

HB

804

POLICY STATEMENT ON SUBSISTENCE UTILIZATION OF FISH AND GAME

- A. LETTER TO BILLY G. BARRIER, DIRECTOR
DIVISION OF LEGAL SERVICES
- B. HB 804 AND CH 199
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February 5, 1976

Billy G. Barrier, Director
Division of Legal Services

I respectfully request that the following proposed legislation be drafted.

A) Option to create subsistence zone area.

The thought is that a fish and game unit area or combination of two or more game units or regional area coincidental to regional association area (such as Association of Village Presidents) can opt to become a subsistence zone area.

The procedure for seeking this particular status will be somewhat similar to that of how municipalities are created, i.e. hearings, application by recognized regional or local fish and game advisory boards to the Dept. of Fish and Game.

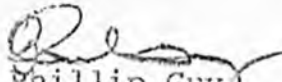
A commission of five shall be formed composed of Representatives from the following Departments and organizations.

- 1) Dept. of Fish and Game
- 2) Dept. of Community and Regional Affairs
- 3) Office of the Governor-appointee
- 4) Two representatives from two other organizations such as Alaska Federation of Natives and Rural Alaska Community Action Program, Inc.

There will be provision for the subsistence zone area dissolution.

Hopefully funding for the commission work will come from each entity collectively or singularly.

Sincerely,


Phillip Guy



LAWS OF ALASKA

1975

Source

SCSHB 369 am S

Chapter No.

199

*City of
Bob
Don
Thou*

AN ACT

Relating to game conservation; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.255. SUBSISTENCE HUNTING REGULATIONS. (a) The board, at its regularly scheduled annual game board meeting, may adopt regulations providing for subsistence hunting in a game management unit or subunit or a portion of a unit or subunit only upon recommendation of the department, based on biological evidence, or the majority vote of the active local advisory committees for that game management unit or subunit, including but not limited to:

- (1) the establishment of subsistence hunting areas;
- (2) the regulation of transportation methods and means to protect subsistence hunting within subsistence hunting areas, including the prohibition or limitation of pack animals, mechanized vehicles and air craft, other than watercraft or wheeled vehicles operating on a road maintained by public funds;
- (3) the establishment of open and closed seasons and areas to protect subsistence hunting;
- (4) the limitation of hunting to only one sex of the animal.

(b) In this section

- (1) "subsistence hunting" means the taking of

Chapter 199

game animals by a state resident for food or clothing for personal or immediate family use;

(2) "subsistence hunting area" means an area designated by the board as primarily important for subsistence use and in which it is unlikely that subsistence needs will be met if recreational hunting including hunting for trophy purposes is permitted or if certain methods and means are continued.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

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Approved by governor: June 25, 1975
Actual effective date: June 26, 1975



STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

Phillip Guy
C

MEMORANDUM

March 2, 1976

SUBJECT: HB #804 and Ch 199 (SLA 1975)

TO: Phillip Guy

FROM: Joel Bennett *JAB*

1) AS 16.05.255 is the section dealing with the regulatory authority of the Board of Game. AS 16.05.257 is the subsistence hunting regulation section. Therefore section 257 is appropriate for repeal under HB 804.

2) The difference between existing 16.05.257 and HB 804 lies primarily in the fact that HB 804 provides an expanded mechanism for the creation of subsistence areas. Where AS 16.05.257 empowers the game board to set up areas only upon recommendation of the Department of Fish and Game, based on biological evidence, or the majority vote of active local advisory committees, HB 804 directs such to be considered in response to (1) petitions by resident groups, the governing body of a village or rural community, the board of directors of a village corporation created under ANSCA, or a fish and game advisory committee. Hearings are expressly provided for with direction that a decision must be made by the board within a reasonable time after hearings are concluded. HB 804 sets up a separate subsistence advisory commission to facilitate board determinations (not in present law) and provides that subsistence fishery areas may be considered as well as game subsistence areas (not in present section 257).

The types of limitations possible to the board to protect subsistence uses are enumerated in present AS 16.05.257(a) (1)-(4). These would be covered via consideration of the petition request in section 735 of HB 804. In other words, the burden is on the petitioner to set out what is required to protect his specific subsistence situation. The board would then consider whether to incorporate that in the creation of the area.

Present AS 16.05.251-255 includes very general authority relating to subsistence activity, if AS 16.05.257 were not law and without the provisions of HB 804. Both 257 and HB 804 are attempts to specify what that authority is, and expand it to include necessary additional concerns.

I hope this will be of some assistance to you in explaining this legislation.

JB:smh

STATE OF ALASKA

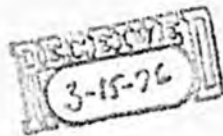
DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUPPORT BUILDING
JUNEAU 99801

D
JAY S. HAMMOND, GOVERNOR

March 4, 1976



*note:
first stamp
date 3/12/76
A.M.*

The Honorable Phillip Guy
House of Representatives
Alaska State Legislature
Pouch V, State Capitol
Juneau, Alaska 99801

Dear Mr. Guy:

I have prepared an analysis of HB 804 and Sec. 16.05.257 of Title 16 for your consideration. Copies of this analysis are also being sent to the House and Senate Resources Committees, at their request. The department believes that Sec. 16.05.257 of Title 16 is the preferred method for designing a system to insure local benefits from the game resource. Previously the Board of Fish and Game and the commissioner adopted a policy on subsistence utilization of fish and game (a copy is enclosed). Section 16.05.257 is consistent with that policy and provides direction and authority to the Board of Game.

The Boards of Game and Fisheries (formerly the Fish and Game Board) have consistently provided for local preferences under existing statutes without undue discrimination. Examples are abundant and include: the sale of caribou for barter and commercial purposes north of the Yukon River; unlimited caribou bag limits and year-around seasons north of the Yukon; bag limits on walrus that recognize differences between animals taken for food and for recreational purposes; registration systems for taking game that require registration at specific entrance points, thereby favoring local residents; seasons timed to facilitate natural preservation of meat; seasons late in the winter to provide meat at a critical time of the year; restrictions on taking game with the aid of mechanical vehicles; and restrictions on taking big game the same day airborne. The foregoing are a few of the many regulations the Boards have promulgated in their efforts to assure continued benefits to rural consumers of game.

An Analysis of HB 804

Sec. 16.05.730, Legislative Findings. While subsistence uses of fish, game, berries and plants are of particular importance to the health, safety and general welfare of rural Alaskans, they are of no less value for the same and additional purposes to many urban dwellers.

Sec. 16.05.735, Petition for the Establishment of a Subsistence Area. The probable effect of this provision would be to elicit petitions for subsistence areas around each village in Alaska. The effect of these areas, if established, is not clear in this bill. For example, if the intent of the subsistence area concept is to allow subsistence use only by a certain class, such as those residents of the subsistence area, then the proposal may violate Article VIII, Sec. 4 of the Constitution. Alaska Constitution, Sec. 4, "Fish, forest, wildlife, grasslands and all other replenishable resources belonging to the state shall be utilized, developed and maintained on the sustained yield principle, subject to preferences among beneficial uses." The creation of a separate class of user perhaps would be a subversion of the term "uses" by interpreting it to mean "users." Undoubtedly an opinion from the Attorney General's office is appropriate. The intent of the phrase "length of time necessary to adequately utilize the species for subsistence purposes" is not clear to us. There is also the probability that so large a number of petitions would make the Board's mandated task of reviewing impossible. This tends to be reinforced by the term "shall" on page 1, line 22.

In several instances the bill refers to the retention of authorities already vested in the Boards of Fisheries and Game. These repetitions appear unnecessary. Examples are found on page 2, lines 7 through 11, and 26 through 29, and page 3, lines 18 through 23.

On page 4, lines 15 through 18, (29) "sustained yield level," this appears to be a paraphrase of the term "optimum sustained yield" that appears in the

Marine Mammal Protection Act of 1972. In the Marine Mammal Protection Act of 1972 the term "optimum sustainable population" means with respect to any population of stock, the number of animals which will result in the maximum productivity of the population, or the species, keeping in mind the optimum carrying capacity of the habitat and health of the ecosystem of which they form a constituent element. This term has never been satisfactorily defined and it remains a stumbling block in Alaska's attempt to regain management of marine mammals. Such a difficult terminology should not be a part of state legislation.

Page 3, lines 12 through 17. Sec. 16.05.748, Application of the Administrative Procedures Act. This section appears to exempt the establishment of subsistence areas from the Administrative Procedures Act. If that is the meaning of the term "classification" the department believes that such an exemption is, both unnecessary and undesirable. Since most other regulations enacted by the Board require adherence to the A.P.A., there seems no necessity for such an exemption. Establishment of subsistence areas will be of general interest and concern to all citizens and they should have the protection and coverages afforded by the Administrative Procedures Act.

Differences between HB 804 and Sec. 16.05.257 of Title 16.

There are several essential differences between HB 804 and Sec. 16.05.257 of Title 16. Sec. 16.05.257 basically is a management statute providing the department and the board with several powers to respond to legitimate needs of the various citizen groups. It is permissive, requiring only that the Board of Game seek the best solution to a particular problem. The powers listed include, "(1) the establishment of subsistence hunting areas; (2) the regulation of transportation methods and means to protect subsistence hunting within subsistence hunting areas, including the prohibition or limitation of pack animals, mechanized vehicles and aircraft, other than water craft or wheeled vehicles operating on a road maintained by public funds; (3) the establishment of open and closed seasons in areas to protect subsistence hunting; (4) the limitation of hunting to only one sex of the animal." These powers allow for enactment of regulations to provide for local needs without going to the extreme of establishing exclusivity in the use of the resource.

Also, the definition of "subsistence hunting" is straightforward and it does not establish classes or areas of preference.

House Bill 804 establishes a new regime for managing fish and wildlife in that it requires consideration of each petition for a subsistence area, establishes a commission to assist in evaluating these petitions and waives the Administrative Procedures Act. While exclusivity of use by residents of the subsistence areas that might be created by HB 804 is not mandated, there is strong suggestion that such is the intent.

March 4, 1976

HB 804 clearly intends to include the subsistence fishery within its scope of activity. However, it is difficult for the department to analyze the impact of the fishery portions of the bill upon the existing commercial and recreational fisheries. Section AS 16.05.740(b)(3) authorizes either board, or both in joint meeting, to change the boundaries of a subsistence area if "a conflict exists in an area that is being commercially fished as of the effective date of this act." However, the definition of subsistence area (AS 16.05.940(28)) refers only to the impact on subsistence needs of recreational hunting for trophy purposes. No mention is made of either the commercial or recreational fishery. We can but speculate as to the intended interaction of these and other features of the bill with respect to the existing recreational and subsistence fisheries. For example, is it the intent of the bill that a commercial fishery outside the subsistence area could be in essence terminated by the Board by means of extending the subsistence area to include the area of the commercial fishery?

Justification for this, conceivably, could be that the commercial fishery in an area far removed from the subsistence area was having a definite impact on subsistence requirements. The same principal of course could apply for recreational fisheries both in and removed from the subsistence area itself.

In summary, the department believes that Sec. 16.05.257 of Title 16 provides all of the tools necessary for the Board of Game and the department to provide for local uses of game. For that and other reasons listed above, we prefer 16.05.257 to House Bill 804.

Sincerely,


James W. Brooks
Commissioner

cc: Nels Anderson
Mrs. Kay Poland

Enclosure

POLICY STATEMENT ON SUBSISTENCE UTILIZATION OF FISH AND GAME

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BY THE

ALASKA BOARD OF FISH AND GAME

AND

COMMISSIONER, ALASKA DEPARTMENT OF FISH AND GAME

3-15-76
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While fish and game resources were once a crucial factor in the survival of all Alaskans, a growing population segment is becoming partially or totally independent of these resources. This change is the result of advanced food production technologies elsewhere, rapidly improving logistics, and a growing immigrant population whose demands mainly involve recreational and non-consumptive resource uses. Nevertheless, direct domestic utilization of fish and game is still vital to the maintenance of most rural Alaskans and is an essential supplement to the larders of some urban citizens. Beyond directly satisfying food requirements, home consumption of fish and game tends to preserve indigenous cultures and traditions and gives justification and gratification to a strong desire possessed by many to hunt and fish. The latter functions seem genuinely important to the physical and psychological well-being of a large number of Alaskans.

The very rapid changes occurring in Alaska now give rise to grave concerns that the accustomed contribution of fish and game to subsistence economies will be threatened. By reason of culture, location, economic situation or choice, large numbers of people will find it impossible to abandon or alter their way of life at a pace paralleling changes brought by new shifts in land status and ownership, nonrenewable resource developments, road extensions and transportation improvements and a phenomenal rate of population growth. In recognition of the above facts and of the responsibilities mandated to the Board and the Commissioner, the following statements which express the views of these authorities are considered necessary and timely.

The existing variety of cultures and life styles in Alaska are of great value and should be preserved. While limitations on the productivity of fish and game must discourage continued increases in the numbers of subsistence type resource users, domestic utilization is still of fundamental importance to many Alaskans, and accordingly it is assigned the highest priority among beneficial uses. Within legal and biological constraints, fish and game will be allocated to subsistence users on the basis of need. It is understood that the needs of individuals, families or groups will differ in type and degree and that subjective judgments will unavoidably be necessary in weighing actual need. Elements considered in establishing the level of need include culture, custom, economic status, alternative resources, location, and voluntary choice of life style. It is further understood that subsistence requirements will not make equal demands on all resources in all areas, and that recreational, commercial and nonconsumptive uses will continue to be permitted where and to the extent that they do not truly interfere with or jeopardize subsistence resource use. It is the expressed intent of the Board and Commissioner to be guided by the above stated policies in fulfilling their duties of managing Alaska's fish and game in the face of drastic changes in land status, nonrenewable resource development, and economic and social changes.