

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672  
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If those two conditions are met, the residents of that area or community are eligible for subsistence fishing or hunting for that specific fish stock or game population, if the resource can sustain a harvest.

The Legislature also clarified that subsistence hunting and fishing are subject to reasonable regulations, and that these will be separate from other hunting and fishing regulations. Subsistence fishing has long occurred under separate subsistence regulations, but subsistence hunting has not. Subsistence regulations will spell out which game populations and fish stocks are used for subsistence and who may harvest each population and stock for subsistence uses.

The identification of subsistence uses will be made on a community or area basis rather than for individual people. It will not be based on an individual's income, but rather on the role that use of fish and wildlife plays in the economy of communities and areas in the state.

To guide the boards in their decisions, the Legislature adopted a letter of intent. The letter specifically mentions eight criteria for identifying customary and traditional uses of fish and game resources, criteria similar to those previously adopted by the board which were subsequently overturned in the Madison case. The legislative record makes it clear that the criteria are consistent with the Legislature's intent. These eight criteria appear in regulation 5 AAC 99.010.

The Legislature also clarified in statute that non-subsistence uses (sport, commercial, and personal use) of fish are to be fairly and reasonably provided for. In addition to the protections for subsistence, the statute gives Alaska residents a preference over non-residents in the hunting of moose, caribou, elk, and deer. It also creates a new category, personal use fishing, to provide opportunities for residents who do not qualify for subsistence fishing to take fish by net for their own use.

#### HOW WILL THE THE NEW LAW WORK?

The Boards of Fisheries and Game are responsible for implementing the law. They will adopt hunting and fishing regulations which conform to the new law and are consistent with the requirements of public participation, the constitutional mandate to provide for sustained yield, and the available information on subsistence uses.

Alaskans who live in rural areas where customary and traditional uses of fish stocks and game populations have been identified by the boards may hunt and fish for those populations and stocks under subsistence regulations. Other

Alaskans will hunt and fish under non-subsistence regulations--in many cases the same general hunting and sport and personal use fishing regulations that existed before the Madison decision.

To implement the new law, the Board of Fisheries and the Board of Game will be conducting a systematic review of all areas, fish stocks, and game populations in the state. The review involves these specific steps:

(1) In November, the two boards will meet jointly to decide which areas or communities are rural. The law says that a "rural area" is a place where the "noncommercial, customary and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy...." To make a decision on a particular area, the board will take into account many aspects of its economy.

To identify rural areas, the boards need to know what role fish and game play in the economy of those areas. They will examine such things as communities' income, employment, businesses, population growth, population characteristics, settlement patterns, distance from urban areas and boundaries, and levels of use of fish and game.

No single indicator or formula determines whether a community or area qualifies as rural. For example, the boards cannot consider income alone. Nor can they consider per capita harvests alone. Many factors have to be weighed together. The boards need to consider the whole pattern of how personal and family use of fish and wildlife fits into the economy of each area or community. This information will come from the Department of Fish and Game, other agencies, the public, and advisory committee members.

The Joint Boards will deal with three types of communities and areas: those that clearly satisfy the standards for rural, those that clearly do not, and those that seem to be near the dividing line between rural and non-rural. The third type will probably get the most attention at the November meeting.

Remote parts of the state with isolated, small communities, few jobs, and heavy reliance on fish and game are most likely to be readily identified as rural. People living there will fish and hunt under subsistence regulations for resources that have customarily and traditionally been used in that area. When game populations that rural people customarily and traditionally use are in short supply, and

subsistence uses must be cut back, these uses will be given preference over non-subsistence uses.

Because the Alaska Legislature intended the changes in the state statute to be consistent with federal law, the boards can use federal legislative intent in interpreting what is meant by rural. The 1979 legislative history of the Alaska National Interest Lands Conservation Act (ANILCA) described Anchorage, Fairbanks, Juneau, and Ketchikan as urban. Residents of those areas will fish and hunt under sport and personal use fishing regulations, and general hunting regulations. They will be able to hunt under these regulations in rural areas.

The boards will probably devote more time to decide whether moderately sized or more recently settled communities are rural or non-rural. People in these places have been able to fish, in many cases, under subsistence regulations, while hunting under general regulations.

ANILCA legislative history also described certain communities (Bethel, Nome, Kotzebue, Dillingham, and Barrow) as rural. At its emergency meeting in summer 1986, the Board of Game determined that Bethel and Kotzebue are rural, but did not have occasion to examine Nome, Dillingham, or Barrow.

These examples will help guide the boards in determining which communities are rural. In reaching their conclusions the boards have to be reasonable. They must do the best they can with the available information to decide if personal use of fish and game is a principal component of the economy of each area or community they examine.

(2) Each board, during their normal separate meetings, will determine whether specific fish stocks and game populations can sustain a harvest. The Division of Game and the fisheries divisions will provide biological information to aid in these decisions.

(3) If a harvest can be allowed, the boards must determine whether the specific fish stock or game population had customarily and traditionally been used by the residents of specific areas or communities for "food, shelter, clothing . . ." or the other purposes listed in the law. The boards will use information from the department and the public in making this determination. The Division of Subsistence provides information on the characteristics of local resource use throughout the state. The Divisions of Game, Commercial Fisheries, and Sport Fish also provide

information about levels, seasons, and methods of harvest. The public, fish and game advisory committees, and regional advisory councils will provide testimony on their uses. The board examines these data against the eight criteria in 5 AAC 99.010 to determine if there are customary and traditional uses.

(4) Each board must then authorize subsistence fishing or subsistence hunting on these specific fish stocks and game populations by the residents of specific rural areas or communities which have customary and traditional uses of those resources.

(5) If there is a harvestable surplus after subsistence uses are provided for, the Board of Fisheries may adopt commercial, personal use, or sport fishing regulations, and the Board of Game may adopt general hunting regulations. In many cases, these additional regulations already exist. The boards must provide for fair and reasonable opportunities for non-subsistence uses, taking into account factors set out in the law, and must give Alaska residents a preference over non-residents in harvesting moose, caribou, elk, and deer.

Obviously, this is a great deal of work for the boards. There is no simple formula, but the law and the eight criteria provide extensive guidelines for decisions.

Because some important hunting seasons would have opened before the next regularly scheduled meeting, the Board of Game held an emergency session to deal with these critical hunts. Here are some examples of how the process worked during that board meeting:

The board decided that Delta bison could be harvested. But the board concluded that bison, a recently introduced species, were not the subject of customary and traditional uses. Therefore they will not be harvested under subsistence regulations. Alaskans will hunt bison under general hunting regulations; and because of the high demand, opportunity will be based on a drawing permit system.

In another case, the board found that moose in the Yakutat area could be harvested; were used for customary and traditional subsistence purposes by the residents of Yakutat; and that Yakutat is rural. Therefore, Yakutat area moose will be harvested under subsistence regulations by residents of Yakutat. The board also determined that there were enough moose to provide for both subsistence and non-subsistence hunting. Thus, Yakutat area moose will be available to all Alaskans under general hunting regulations.

In this case subsistence and general regulations are identical.

Under the subsistence law, subsistence hunting and fishing are subject to seasons, bag limits and other conservation and management measures, just as are all hunting and fishing. Subsistence uses will be provided for, and given a preference when necessary through separate seasons, bag limits, limits on methods of access, etc. In a few extreme cases, such as very low moose populations in the Minto Flats, only local residents will be allowed to hunt. In most cases, however, all Alaskans will have the opportunity to participate in general, drawing permit, registration, or open hunts.

#### PUBLIC INVOLVEMENT

Like all board decisions, board deliberations on rural areas, customary and traditional uses, and the regulations governing subsistence fishing and subsistence hunting are open to public comment, and to modification. The public and advisory committee members may recommend that certain communities or areas be found to be rural or non-rural, or that certain fish stocks or animal populations be identified as being subject to customary or traditional uses, and may provide information supporting the proposed result. The most useful information on whether an area is rural or not is that concerning the role of noncommercial use of fish and game in the area's economy. The eight criteria identify the factors and types of information that the boards use to determine whether a game population or fish stock is subject to customary and traditional uses.

At their November meeting, the boards will hear testimony on rural areas, including those areas examined in June by the Board of Game. Additionally, at the next regular board meetings, advisory committees and the public will have opportunities to comment on subsistence hunting and fishing regulations, and whether they correctly identify and adequately provide for subsistence uses. The process of fine-tuning the regulations will then become part of the boards' normal regulatory cycles.

#### FOR MORE INFORMATION

If you have questions about the upcoming Board of Fisheries and Game meetings, please contact any of the following:

##### Arctic Region

Victor Karmun  
Division of Boards

P. O. Box 686  
Kotzebue, AK 99752

443-3420

Interior Region

Mitch Demientieff Division of Boards	1300 College Road Fairbanks, AK 99701	479-6211
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Western Region

Clara Kelly Division of Boards	P. O. Box 90 Bethel, AK 99559	543-3107
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Southwest Region

Dorothy Wilson Division of Boards	P. O. Box 199 Dillingham, AK 99576	842-5925
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Southcentral Region

Karen Brandt Division of Boards	333 Raspberry Road Anchorage, AK 99518	267-2353
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Southeast Region and Statewide

Beth Stewart, Director Division of Boards	Box 3-2000 Juneau, AK 99802	465-4110
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Steven Behnke, Director Division of Subsistence	Box 3-2000 Juneau, AK 99802	465-4147
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## THE EIGHT CRITERIA

Before Madison, the Boards of Fisheries and Game developed eight criteria in 5 AAC 99.010 which were used to identify customary and traditional uses by rural Alaska residents. The Department of Interior had certified that the eight criteria identified subsistence uses in a way which complies with ANILCA. The state subsistence law as recently amended again authorizes their use.

(1) a long-term consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

(2) a use pattern recurring in specific seasons of each year;

(3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;

(4) the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;

(5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and ~~lore~~ *lore* from generation to generation;

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing and gift-giving; customary trade may include limited changes for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and in which that pattern of subsistence uses provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

MAR 7 1986

R O N S O M E R V I L L E

FOR

GOVERNOR OF ALASKA

8800 Glacier Hwy., Suite 250  
JUNEAU, AK. 99801

March 5, 1986

Senate Resources Committee  
State of Alaska  
Senator Arliss Sturgulewski, Chairman  
Pouch V  
Juneau, AK. 99811

Dear Senators:

It is my understanding that your review of Senate CS for HB 288 (subsistence) is coming to an end and there may not be any further public testimony on this piece of legislation in your committee. Unfortunately, I was unaware of your one teleconference on the bill and thus was not able to testify. I do believe, however, that there are a few points that have not been stressed adequately and since it appears that I will not be able to present them personally, I am putting them in writing.

First, I want to stress that all Alaskans are praying that a fair and workable law will be forthcoming which will lay the subsistence controversy to rest, once and for all. We are also appreciative of the complexity of the problem and the seriousness of the issue as, in one way or the other, it affects the daily lives of most Alaskans.

I would like to compliment the State Affairs and Resource Committees attempts to improve on the simplistic legislation introduced by the Governor and narrowly passed by the House during the last session. There are definite improvements in the legislation.

The provisions which provide the authority to regulate subsistence taking, give the Boards authority to identify subsistence stocks, authorize issuance of subsistence permits, provide that subsistence users be given a reasonable opportunity to harvest and allow no subsistence defense for fish and wildlife harvested outside the regulations are all important and crucial additions to the original bills.

The major stumbling blocks of the subsistence law debates are, however, still left unattended. The Committee chose to eliminate

a critical section of an early draft which allowed the Boards to apportion subsistence use among species, stocks and populations that are similar and reasonably available. The committee also chose to insert the word "rural" into the state law without providing a definition which would possibly narrow a subsistence priority down to the "true subsistence users" which most Alaskans would agree deserve some preferential treatment.

The committee has also chosen to ignore the overwhelming testimony of most Alaskans that any preferential allocation of our common property resources for subsistence should be based on need rather than residency. Alaskans have also strongly endorsed a revision of the existing policy to base subsistence on individual or family need rather than on a community basis where "need" is totally ignored.

We all fully realize that you are under pressure from the Federal government and subsistence advocates to adopt a state law precisely in line with their narrow interpretations of the existing Federal law. Unfortunately, most Alaskans are not going to endorse a law which discriminates based on where a person lives in Alaska.

One of the most volatile issues has been concerned with identifying "who" is a subsistence user. In your legislation, by complying with the Federal law and inserting the word rural, the only residents that are really eliminated from the priority use are those that live in Anchorage, Fairbanks, Juneau and Ketchikan. I fully realize that you have provided direction, through the letter of intent, for the Boards of Fisheries and Game to further delineate "subsistence uses" and "rural areas". In my opinion, by passing the buck to the regulatory boards, the legislature is neglecting its responsibilities. It is obvious that if each legislator is forced to define which area is or is not a subsistence area and thus which constituents are subsistence users, that it is going to be extremely difficult to draft legislation which will pass both houses.

I maintain that the boards are even less prepared to deal with the construction of socially discriminatory laws than is the legislature and further more it is not the function of an allocation board. It is clearly the function of the legislature to develop clear guidelines by which the boards would follow in implementing the laws. Most importantly, every Alaskan would be able to judge and comment personally on the legislation. It is critical that everyone be able to determine whether he or she is "in" or "out" directly from the proposed legislation.

I believe it is hypocritical for the legislature to consistently criticize the administrative agencies for developing broad regulatory authority and then pass a piece of legislation as poorly constructed as this legislation with almost unlimited regulatory options. It is clear that because the legislature cannot deal with the politics of this issue, they are pulling the pin and throwing the hand grenade to the Boards in hope that they

will develop the political guts to do what the legislature is apparently unable to do.

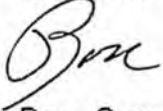
I personally feel you should craft a subsistence law which is acceptable to most Alaskans based on some criteria of need and lack of alternative resources and let the courts settle whether or not it is in compliance with the Federal law. I also strongly urge you to face up to your public responsibilities if you decide to discriminate against urban residents by giving a priority to rural residents by precisely defining what is rural. The public deserves that much consideration on this volatile issue.

I would like to point out in closing that despite recent testimony to the contrary, Alaskans voted in 1982 to retain the existing State law which clearly does not discriminate against urban users. For some reason, subsistence advocates have twisted the 1982 vote as an endorsement of the privilege for only rural residents.

It is also important to express my concern for your lack of consideration for public input into the constantly changing legislation. One poorly advertised teleconference can hardly be considered public participation.

Thank you for considering my comments.

Sincerely,



Ron Somerville

RIC DAVIDGE  
Assistant to the Director  
US FISH AND WILDLIFE SERVICE  
(907) 786-3435

5/21/86

Mickie Campbell

Re your FOIA request I am forwarding a copy of the DRAFT regulations developed by the Federal agencies. Other materials you have requested are being finalized and they should be sent once a complete admin record is approved. The DRAFT regs have been sent to the substance div of ADPFG for review and comment.

David

# Cordova Chamber of Commerce

P.O. Box 99  
Cordova, Alaska 99574  
(907) 424-7260



May 22, 1986

Senator Arliss Sturgulewski  
2957 Sheldon Jackson  
Anchorage, AK 99508

Dear Senator Sturgulewski:

The Cordova Chamber of Commerce wishes to extend its thanks for your efforts toward passage of a reasonable subsistence bill. In the Cordova area, past fish and game management policies have provided for both adequate access to the resources and protection from overharvest. As we understand it, the bill just passed by the legislature will allow state management to be implemented as it had been prior to the Madison court decision.

Again, thank you for your sincere interest and work on this important issue.

Sincerely,

Connie Taylor  
President

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
BETTYE FAHRENKAMP, Vice Chairman  
JACK COGHILL  
DICK ELIASON  
VIC FISCHER  
RICK HALFORD  
FRED ZHAROFF



POUCH V  
JUNEAU, ALASKA, 99811  
(907) 465-4907

## Senate Committee on Resources

March 10, 1986

Ron Somerville  
c/o Somerville for Governor  
8800 Glacier Highway, Suite 250  
Juneau, Alaska 99801

Dear Ron,

Thank you for your letter which I received Friday. As you are aware, though we have agreed on some aspects of the subsistence issue and disagreed on others, I have always valued your opinions.

I share your opinion that we all deeply desire a fair and workable subsistence law that will lay the subsistence issue to rest once and for all. The Senate State Affairs and Resources Committees have worked long and hard to make such a bill a reality. I appreciated your compliments on the improvements to the bill.

As you mention, the ~~subsistence bill now has a number of important provisions that were lacking last year.~~ Among these are:

- a requirement that the boards identify subsistence stocks and populations by area;
- an exclusion from subsistence harvest of stocks and populations which the boards do not identify as subject to subsistence uses. Examples would probably be bison, elk, and mountain goats, most populations of Dall sheep and some steelhead and trout stocks and brown bear populations;
- a requirement that subsistence users be given a reasonable opportunity to harvest;
- a provision that all takings of fish and game are subject to reasonable regulation of seasons, bag limits, and methods and means, including prohibitions on wanton waste;
- a prohibition against the use of the subsistence defense in violations of fish and game laws.

I believe we agree that all of these are important improvements to last year's bill. Unfortunately we seem to

*fair  
in compliance  
with statutory  
enforceable*

disagree on the major principle of whether or not the legislature should pass a bill that complies with federal law. I believe ~~passage of a bill that lacks that compliance would be a meaningless charade and a deception of the public. Lack of compliance will cause a federal takeover of management of our fish and game on all public lands on June 1, 1986. Management of our own resources was one of the driving forces in our becoming a state, and I am not going to be part of giving away that principle.~~

There may be many who would like to characterize the danger of federal takeover on June 1st as an empty threat or as federal bullying. Unfortunately, neither is true. The Department of Interior certainly ~~wishes to avoid takeover and has neither the money nor manpower to do a decent job of management of our fish and game. Assistant Secretary Horn emphasized that point, but he also made it plain that this is an issue on which the department does not have discretion.~~

If the department ~~tries to ignore the federal law, I believe we would immediately see the issue in court under Section 807, the Judicial Enforcement section of ANILCA. We would then be faced not only with a federal takeover of fish and game management, but with the very real risk of a federal judge deciding that he is going to personally supervise that management. Before anyone dismisses that risk, I would suggest that he or she look very carefully at what happened in Washington State with Judge Boldt.~~

I realize that there are persons, including some in the legislature, so strongly opposed to subsistence that they would welcome such a scenario, believing the results would be so onerous that out of the resulting political chaos a strong movement would develop to change the federal law. That approach is playing Russian roulette with our resources. The State Affairs and Resources committees have worked very hard with people on all sides of the issue to hammer out a subsistence bill that will work for all of us, rather than yielding to easy rhetoric based on how we wish things were.

I should point out that there are ongoing private court suits challenging the constitutionality of the federal subsistence law. Enactment of legislation will have no effect on the outcome of those suits. Such legal battles can take years, however, with very uncertain results. The same can be said for attempts to change the federal law. We need a fair and equitable law now, one that retains our own control of our resources, and is enforceable and constitutional. The Senate Resources Committee Substitute for House Bill 288 is such a bill.

In your letter you raise the issues of need and residence. As you well know, the use of a ~~criteria based on individual economic need is clearly not in compliance with federal law.~~

Assistant Secretary Horn testified to that during his appearance before the Senate Resources Committee on March 5, 1986. The federal legislative history on the subject states in part, "The policy also requires that regulatory systems which employ income requirements may not be imposed on rural residents."

Also, as you well know, the federal law explicitly and repeatedly refers to "rural residents." A bill which ignores this fact would also clearly not comply. Again the federal legislative history is specific on this point. It states, "It also should be noted that customary and traditional subsistence uses must be evaluated on a community or area basis, rather than an individual basis." This leaves us a good degree of flexibility, however, in defining "rural area" for the purpose of this bill.

Your interpretation of which areas of the state would have subsistence use eliminated in them may have been correct for the bill as it was originally introduced by the governor. That interpretation is clearly incorrect, however, for the Senate Resources Committee substitute.

"Rural area" in the bill is defined as "a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a significant characteristic of the economy of the community or area." The bill's accompanying sectional analysis cites Congress's intent to protect subsistence uses where "...such uses have played a long established and important role in the economy and culture of the community...". The sectional further states, "It is expected that the boards ...would review areas as conditions change to assure a rural or nonrural classification is still appropriate."

Whether or not a community or area is classified as a "rural area" for the purposes of this bill will be a factual determination by the Boards of Fish and Game. Subsistence will exist in areas only after the boards have made a factual determination based on the economy of the particular area and then only on stocks and populations identified by the boards as subject to subsistence use. The result of limiting the subsistence preference to those who live in areas so identified will be to protect subsistence where it is really needed, but limit it to a small percentage of our population so conflicts will be dramatically reduced. All of this is in perfect compliance with federal law.

We realize that many Alaskans in every part of our state eat a great deal of fish and game. This bill is not intended to limit that in any way. What is intended, however, is to limit the number of people who have a preference over the rest of us when it comes times to harvest that food.

*must*



*Review*

*note*

In closing, I feel the need to respond briefly to your last two paragraphs which left me more than a bit bemused. Your interpretation of the 1982 vote is one of the most interesting attempts at revisionist history I have ever come across. Since you spearheaded the move to repeal the existing law in 1982, I take it you felt differently then.

Your expressed concern for the lack of public hearing falls in a similar category. As this bill has made its way through the legislature, it has had as many public hearings as any piece of legislation I am aware of. There have been numerous statewide teleconferences as well as two-day public hearings in Fairbanks and Anchorage. These hearings culminated in a statewide teleconference by the Senate Resources Committee where we listened to every person who wished to testify.

I am sorry you were not aware of the meeting, but I feel compelled to point out that it was thoroughly advertised, very well attended, and included testimony by Roberta Booher who officially represented the Alaska Outdoor Council, the organization of which you are the former executive director.

I will present your letter to the Senate Resources Committee. I appreciate the depth of your feeling on this issue, and as I said in the beginning of this letter, though we disagree on some aspects, I always value your opinions.

Sincerely yours,



Senator Arliss Sturgulewski  
Chairman, Senate Resources Committee

cc: Senate Resource Committee Members

# Alaska State Legislature

ARLISS STURGULEWSKI, Chairman  
BETTYE FAHRENKAMP, Vice Chairman  
JACK COGHILL  
DICK ELIASON  
VIC FISCHER  
RICK HALFORD  
FRED ZHAROFF



P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 485-4907

## Senate Committee on Resources

Rick Davidge  
Special Assistant to the Director  
U.S. Fish and Wildlife Service  
1011 E. Tudor Rd.  
Anchorage, Alaska 99503

May 19, 1986

*Rich*  
Dear Mr. Davidge:

Pursuant to the Freedom of Information Act, I request copies of the materials the federal government used to develop its proposed policies dealing with subsistence. As part of this request, please include internal memos, decision documents, etc., as well the proposed policies actually developed.

Thank you for your help in this matter.

Sincerely,

A handwritten signature in cursive script that reads "McKie".

McKie Campbell  
Senior Advisor  
Senate Resources Committee



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

May 1, 1986

Senator Arliss Sturgulewski  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Sturgulewski:

At your request, I would like to confirm and clarify two of the points that I made when I testified before your committee on March 5, 1986. The first is whether the legislation approved by the Resources Committee of the Alaska Senate in March 1986 is consistent with the requirements of Title VIII of ANILCA. The second is whether ANILCA allows reasonable regulation of subsistence uses even in situations where all non-subsistence uses have not been eliminated.

When I appeared before the Resources Committee of the Alaska Senate on March 5, 1986, I was asked whether the bill then being considered by the Committee was consistent with the requirements of ANILCA. I noted that I could give only a preliminary opinion and that an official opinion would have to be based on a formal submission by the State and a formal review by the Department of the Interior. Subject to that limitation, I answered that the bill appeared to meet the ANILCA requirements. I also stated that an amendment under consideration by the Committee concerned with "personal use" fishing would not, if adopted, alter my conclusion on the bill's consistency with ANILCA.

The bill ultimately passed by the Committee contained the "personal use" fishing amendment, but is otherwise identical to the bill I referred to. Given my understanding of the bill, which is derived from review of the bill and conversations with Alaska legislature staff, my preliminary conclusion is that the bill is in accordance with the interpretations of ANILCA requirements provided in the April 4, 1986, letter to the Alaska Attorney General sent by Gale Norton, the Associate Solicitor for Conservation and Wildlife. Once the State's legislative process is completed, we would expect to review whatever State legislation is enacted and make a formal determination as to whether the legislation is consistent with the requirements of ANILCA.

The second issue concerns reasonable regulation of subsistence use in situations where the resource is plentiful enough to allow for both subsistence and non-subsistence use. Such regulations, which might concern seasons, means of taking, and daily bag limits, are allowed by ANILCA. The subsistence preference provided for in ANILCA is designed to ensure that opportunities for subsistence

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

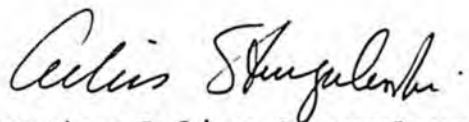
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Chairman, Senate Resources Committee

cc: Senate Resource Committee Members



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## Senate Committee on Resources

Rick Davidge  
Special Assistant to the Director  
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1011 E. Tudor Rd.  
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May 19, 1986

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Thank you for your help in this matter.

Sincerely,

A handwritten signature in cursive script that reads "McKie".

McKie Campbell  
Senior Advisor  
Senate Resources Committee



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

May 1, 1986

Senator Arliss Sturgulewski  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Sturgulewski:

At your request, I would like to confirm and clarify two of the points that I made when I testified before your committee on March 5, 1986. The first is whether the legislation approved by the Resources Committee of the Alaska Senate in March 1986 is consistent with the requirements of Title VIII of ANILCA. The second is whether ANILCA allows reasonable regulation of subsistence uses even in situations where all non-subsistence uses have not been eliminated.

When I appeared before the Resources Committee of the Alaska Senate on March 5, 1986, I was asked whether the bill then being considered by the Committee was consistent with the requirements of ANILCA. I noted that I could give only a preliminary opinion and that an official opinion would have to be based on a formal submission by the State and a formal review by the Department of the Interior. Subject to that limitation, I answered that the bill appeared to meet the ANILCA requirements. I also stated that an amendment under consideration by the Committee concerned with "personal use" fishing would not, if adopted, alter my conclusion on the bill's consistency with ANILCA.

The bill ultimately passed by the Committee contained the "personal use" fishing amendment, but is otherwise identical to the bill I referred to. Given my understanding of the bill, which is derived from review of the bill and conversations with Alaska legislature staff, my preliminary conclusion is that the bill is in accordance with the interpretations of ANILCA requirements provided in the April 4, 1986, letter to the Alaska Attorney General sent by Gale Norton, the Associate Solicitor for Conservation and Wildlife. Once the State's legislative process is completed, we would expect to review whatever State legislation is enacted and make a formal determination as to whether the legislation is consistent with the requirements of ANILCA.

The second issue concerns reasonable regulation of subsistence use in situations where the resource is plentiful enough to allow for both subsistence and non-subsistence use. Such regulations, which might concern seasons, means of taking, and daily bag limits, are allowed by ANILCA. The subsistence preference provided for in ANILCA is designed to ensure that opportunities for subsistence

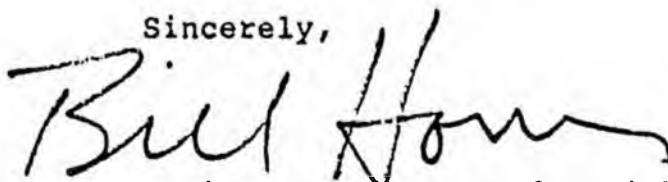
use at customary and traditional use levels are not lost to competition from consumptive non-subsistence uses. It is not designed to strip the State and Federal governments of any ability to regulate subsistence uses when subsistence resources are sufficient to allow for non-subsistence uses. Even when a particular population is sufficient for all subsistence and non-subsistence users, ANILCA provides for reasonable regulation of the subsistence uses in order to avoid wasteful subsistence uses and ensure conservation of healthy and viable fish and wildlife populations. The imposition of such regulations does not require that all non-subsistence uses be eliminated. As stated by Representative Udall:

If the population is sufficiently viable [to satisfy the demands of all users groups] then all user groups may participate in the harvest, but regulations concerning such subjects as seasons and means of taking must be adopted that have the least adverse impact upon rural residents engaged in subsistence uses of the population.

126 Cong. Rec. 29280 (Nov. 12, 1980). ANILCA thus authorizes subsistence "regulations concerning such subjects as seasons and means of taking," without requiring termination of all non-subsistence uses, so long as the regulations do not unreasonably impede opportunities to satisfy subsistence uses.

I appreciate this opportunity to confirm the views I expressed before your committee.

Sincerely,

A handwritten signature in cursive script that reads "Bill How". The signature is written in dark ink and is positioned above the typed name of the signatory.

Assistant Secretary for Fish  
and Wildlife and Parks

cc: Acting Director, Fish and Wildlife Service  
Regional Director, Fish and Wildlife Service  
Anchorage, AK

STATE OF ALASKA

AUG 21 *Kie*  
1985



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4841

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

NOTICE OF MEETING

To: All Interested Persons  
From: Rep. Mike Davis, Chairman  
Date: August 20, 1985  
Re: Meeting of the House Special Committee on Oil & Gas

The House Special Committee on Oil and Gas will be meeting in Anchorage on Monday, September 16. The meeting will be held in the teleconference room of the Anchorage Legislative Information Office at 1024 W. 6th Ave. The meeting will also be teleconferenced to Juneau, Fairbanks, Homer, Kenai and Kotzebue. The agenda for the meeting is as follows:

- |                     |   |
|---------------------|---|
| 9:00 am - 11:00 am  | Discussion of proposed revisions to AS 38.05 and AS 38.06.  |
|                     | Discussion of draft hazardous substance release and oil discharge response funds.   |
| 11:00 am - 12:00 pm | Commissioner Wunnicke will speak on royalty oil contract proposals.   |
| 12:00 pm - 1:00 pm  | Lunch   |
| 1:00 pm - 4:00 pm   | Review by the Division of Oil and Gas of negotiations regarding Cook Inlet royalty gas revaluation, and an overview of unitization and future North Slope oil production. |



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

August 6, 1985

The Honorable Mike Davis, Chairman  
House Special Committee on Oil & Gas  
Alaska State House of Representatives  
542 Fourth Avenue, Suite C  
Fairbanks, AK 99701

Dear Representative Davis:

Thank you for your letter of July 26 concerning the TAPS settlement. I read your comments with interest, and I have directed the Department of Law to give them full consideration.

I am pleased that we both agree that the State, although it should proceed with caution, also has an obligation to deal in good faith with the parties who have signed the settlement. As I stated in my previous letter to you, I believe that means that we do nothing directly or indirectly to subvert the approval process before the Federal Energy Regulatory Commission (FERC). Thus, we will let the companies take the lead in attempting to gain approval of the settlement; if they succeed we will willingly go along with those results. I do not intend to put any roadblocks in their way -- this includes raising arguments or taking positions that would induce procedural complications which might jeopardize the November 30 "drop dead date."

I would note, however, that the FERC recently ruled against the State's request to split the approval process into one proceeding with all non-objecting parties (and thus resulting in an "uncontested" settlement), and one proceeding with parties that object to the settlement (thus giving rise to the probability of a contested settlement). In so doing, the administrative law judges stated that "examination of the initial round of comments that have been filed on the settlement agreement (the reply comments are yet to come) demonstrates the settlement proposal will be a contested one even with respect to the consenting carriers." I have been informed that the State does not intend to challenge that assumption.

Otherwise, we intend at this time to simply support the carriers' reply comments by reference, and do not intend to raise any

The Honorable Mike Davis

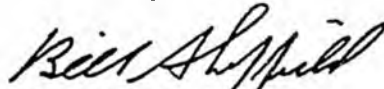
-2-

August 6, 1985

arguments of our own (except possible responses to technical inaccuracies about how the settlement works). Up to this point, the State has carried the ball -- we now intend to hand it off to the other signing parties.

I hope that this responds to your concerns. Should you have additional questions, please call either me, Hal Brown, or Bob Maynard. Thank you again for your thoughtful consideration. I expect that we will be able to continue working together to reach an appropriate resolution of this complex matter.

Sincerely,



Bill Sheffield  
Governor

**RURAL ALASKA RESOURCES ASSOCIATION**

P.O. BOX 3-3908  
ANCHORAGE, ALASKA 99501-3908  
(907) 279-2511

September 4, 1985

Honorable Peter Goll  
Alaska State House  
Alaska State Legislature  
Pouch V (MS3100)  
Juneau, Alaska 99802

RE: Proposed Subsistence Amendments to Title XVI

Dear Representative Goll:

For the Rural Alaska Resources Association I recently presented testimony to the Senate State Affairs Committee regarding proposed amendments to Alaska Statutes Title XVI, Fish & Game, concerning subsistence.

I have enclosed a copy of that statement plus an adendum to the original statement. The latter addresses the need to also amend the statute to authorize the state's system of regional fish and game councils. Regional councils are already in place and functioning, but Alaska Statutes Title XVI is absent any mention of them, while federal law (ANILCA, P.L. 96-487, Dec. 2, 1980) does, in fact authorize regional councils. In summary, the State of Alaska is not only not in conformance with federal law regarding subsistence priority, but seems clearly also not fully consistent with federal law in the matter of regional councils.

This is a relatively simple matter to tend to now. Please let me know if we can assist you in any manner to help achieve a satisfactory resolution of the entire matter. To the extent that "RARA" is a statewide rural subsistence umbrella organization I feel that we can network information and provide helpful information back to you.

Please contact me as noted below, or our RARA staff person, Vernita

Zilys at the letterhead address or telephone.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Kowalsky", with a long horizontal flourish extending to the right.

RURAL ALASKA RESOURCES ASSOCIATION  
Jim Kowalsky, Chairman  
c/o Tanana Chief's Conference, Inc.  
Doyon Building  
201 1st Avenue  
Fairbanks, Alaska 99701  
Phone: 452-8251 ext. 220

JK:de

Remarks to the State Affairs Committee of the Alaska State Senate  
Concerning Subsistence, Anchorage, Alaska, August 27, 1985.

My name is Jim Kowalsky. I speak today as chairman of the Rural Alaska Resources Association, or as we refer to it "R.A.R.A." Our board of directors is made up of representatives of each of ten regional non-profit Native corporations, and also of the Native village of Tyonek and the North Slope Borough. I am employed by the Tanana Chiefs Conference, Inc. as director of its subsistence program. R.A.R.A. is a statewide subsistence advocacy organization.

I wish to make one major point Mr. Chairman, and it is a point which I feel is being missed or which is becoming obscured in this debate, and it is or should be the main consideration of this committee and of the State Senate as they consider any legislative amendments to the state's subsistence law. The point is that the only thing that really matters in this debate to our Alaskan people who live in the far flung, remote rural communities of our state is that they have the opportunity to feed themselves, their families, and their communities - including the elderly, those who are handicapped, who are ill and/or too young, or otherwise unable to hunt or fish.

The animals and the fish are the mainstay of the economy of rural Alaska. Harvesting these resources is an economic activity and it is the only major economic activity in which rural Alaskans generally have any real confidence. On the other hand confidence in the cash economy is limited, not strong, not secure. Generally there is little cash, very few jobs. In some communities there have, at times, been no jobs. Coastal communities in many cases have a richer resource base than do Interior communities, and in some cases may have more seasonal jobs associated with commercial fishing or perhaps in the timber industry. By contrast Interior communities have less resource base.

But in any case no matter how each of you or others in our urban communities choose to discuss or debate subsistence solutions, the economic realities for our rural Alaska communities remains a fact of Alaskan life. This is a compelling and a major issue in the equation which we all seek - whatever local wealth exists in rural Alaska exists as natural harvestable renewable fish and wildlife, and the confidence to harvest these to support human life perpetuates this economic base. I should urge you to consider that there is now available a sizeable body of literature which very competently documents these socio-economic realities of rural Alaska's communities.

Mr. Chairman, I would respectfully like to make several suggestions to the committee.

- 1) Pass the Governor's proposed amendment to the existing subsistence statute. Return the system to what it was in past years, a system perhaps far from perfect, but one which protects the relative handful of rural people who may need the protection this amendment would provide from time to time, but will also allow Anchorage and other urban hunters to participate in, say, the Nelchina Caribou hunt for example. Few rural people like the Tier II subsistence hunt process either. Nikolai may be the one exception in the Interior where local people are able to hunt bison for the first time.
- 2) Don't put the rural subsistence economy on a lottery or drawing system. Can you imagine having your own opportunity to actually feed your family and community placed in a drawing, on a system of chance?
- 3) Don't attempt to devise legislation which will make subsistence into a welfare system which would for example, weed out and prevent a specific rural hunter from engaging in his "employment" just because he might

*Ask N. Ford*

have a cash income higher than most others in his community. This hunter likely provides meat for a large family plus elderly or disabled community residents who may exist in substantial numbers and for whom few other reliable sources of meat or fish exist. Let your legislation reflect the fact of rural Alaskan life which is that communities subsist as communities, but that individuals do not subsist. Also, remarks urging your committee to adopt standards which consider a subsistence priority only be given to a community or individual at the point when they reach the poverty or even starvation level should not be followed. The assumptions made by the advocates of such standards are incorrect. Subsistence is a support system, not a last ditch life support system to which a dying patient is to be hooked onto just before death. A subsistence family and community ideally is a happy, healthy, prosperous people, not a people down and out, standing in the last ditch bread line waiting for the crumbs of a welfare handout.

To conclude, allow me to again emphasize that the subsistence economic system must remain a central or anchor point to your deliberations. In familiar cash flow terms, the rural communities which I attempt to characterize generally range from poor to very poor; but in terms of harvest of renewable resources, rural communities are not to be considered as poor. Rather, the consideration should be that the harvest, the actual physical act of going out to harvest, is the economic system of rural Alaska, it is the employment.

I believe this committee and the Alaska Legislature and the Administration generally do have an obligation to give this economic system the protection that is necessary to allow rural communities the confidence and the best opportunity possible to provide for and to help support themselves. I respectfully must

remind you that you have gone to enormous, far, far-reaching ends to protect, encourage and foster the economy and the economic system and opportunities of most other, if not all other sectors of the Alaskan population.

Thank you for hearing my testimony.

Addendum to Statement by Jim Kowalsky for the Rural Alaska Resources Association to the State Affairs Committee, Alaska State Legislature, Anchorage, Alaska on August 27, 1985.

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### Amend Title XVI to Authorize Regional Fish & Game Councils

An examination of Title XVI will demonstrate that the Alaska State Legislature has not addressed Regional Fish and Game Councils. It has, on the other hand, specifically addressed the system of local fish and game advisory committees. Notwithstanding this omission, the State of Alaska has created a system of regional fish and game councils by regulation only.

This combined system of local advisory committees, regional councils and game and fisheries boards gives the people of Alaska a major voice in fish and game management. This system is unequalled anywhere else in the nation. It would seem an oversight that the Legislature has overlooked the opportunity to authorize the State's six regional councils by statute.

It also would seem that, if the Alaska Legislature is going to go through the task of revising the statute so as to make it complete that it might as well deal with all the necessary corrections at this time so as to avoid having to come back to the issue again yet one more time in the future.

Among the most compelling arguments in the Senate and, ultimately the House in a free Conference Committee, to add the authorization of regional fish and game councils to any legislative amendments to Title XVI likely are:

- 1) Regional fish and game councils, made up as they are of chairpersons of all the state's fish and game advisory committees or their designees be they rural or urban, do increase and make complete the public participation element in the process of establishing fish and game regulations - in other words, here urban and rural people get together and have a voice; and
- 2) the Legislature should take steps now to avoid having to come back yet a third time to fix the state fish and game statute.

Another reason for action on this matter exists:

- 3) Federal law, ANILCA, (PL 96-487 Dec. 2, 1980) Title VIII, Sec. 805, "Local and regional participation" states:
  - (a) "-- the state shall establish -
  - (3) a regional advisory council in each subsistence resource region.

Section 805 continues to set forth the requirements for the composition

and authorities of regional councils, and authorizes the Secretary of the Interior to establish such councils and local advisory committees. But Sec. 805 (d) states

The Secretary shall not implement subsections (a), (b) and (c) of this section if within one year from the date of enactment of this Act the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference and participation specified in, sections 803, 804, and 805 ---- (emphasis added)

On one hand critics of the request to amend to include regional councils may point to the fact that the State has provided for regional fish and game councils since before 1980 by regulation (if not by statute). However, I could argue, so has the state made certain subsistence provisions by regulation only, not by statute. This approach lacks statutory foundation in both instances - subsistence preference and also regional fish and game councils.

I submit to you that the cure is simple, should lack all the controversy associated with subsistence preference, gives a voice to Alaskans, and, to take this action now will save having to deal with it later, a third time.

Regional councils should be added to any amendment package to Title XVI under consideration by the Senate and the full Legislature.

Thank you for considering these views.



# Alaska State Legislature

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

## MEMORANDUM

TO: MEMBERS, HOUSE INTERIM COMMITTEE ON SUBSISTENCE

FROM: Rep. Jack Fuller, Chairman

DATE: September 24, 1985

SUBJECT: Committee hearing schedule

With your concurrence, I have set up the following schedule of committee hearings:

### Anchorage

Testimony from Anchorage area; all other sites may listen in  
Wednesday, November 6  
9:00 - 1:00; 2:30 - 5:30; 7:00 - 9:00  
Location: Anchorage LIO, 1024 W. 6th

### Fairbanks and Interior

Testimony from Fairbanks area and Interior; all other  
sites may listen in  
Thursday, November 7  
12:00 - 5:30; 7:00 - 9:00  
Location: Fairbanks LIO, 315 Barnett Street, Suite 101

### Southeast, Prince William Sound, Kodiak teleconference

Testimony from these areas; all other sites may listen in  
Tuesday, November 12  
9:00 - 1:00  
Committee members and other Representatives present at their home  
sites

### Western, Northwestern, Southwestern teleconference

Testimony from these areas; all other sites may listen in  
Tuesday, November 12  
2:00 - 6:00  
Committee members and other Representatives present at their home  
sites

My office will send you a TR in October; please make your own travel and lodging arrangements. The Fairbanks hearing is timed so that members can take a morning flight up from Anchorage.

My plan is to begin the first hearing with an update on what has happened with the subsistence issue since the end of session. This portion will include a commentary from the Department of Fish and Game, a current status report on all litigation, the status of the federal response to the Governor's office and to the AFN petitions, and an update on the issues before the Fisheries and Game Boards. In addition, I will provide for the committee an analysis of the House-passed bill in light of current problems with game. Committee packets will be made available in advance of the meetings.

Enclosed are news clippings from August 4 to September 15.

Senator Arliss Sturgulewski  
2957 Sheldon Jackson st.  
Anchorage, Ak 99508

September 16, 1985

Dear Arliss:

In my research, I agree with Jeff Parkers written testimony in parts as follows:

a) The subsistence law need to be defined to comply with changes in use patterns, status of resources, and subsistence reusable areas. Methods, means needs to be more restrictive to generally acceptable aids in resource harvesting.

b) The Subsistence law can always be amended, definitions:

Subsistence = Necessary to support life

Rural = Open country, open land, country people

Customary = Getting used to... life style or food

Traditional = Inherited pattern, of life style

Problem = If the ranks of subsistence uses will be thinned out by more restrictive measures, that alone will strengthen the ranks of sports interest groups. That is not acceptable.

Unless a new category is established to fillin a gap created by more restrictive subsistence law, such a personal use on Fish & Game, then that may be acceptable to subsistence use supporters of the State subsistence law.

In my opinion, the subsistence law supporters will support providing for non native or urban hunters , who also have a right to hunt and fish for personal use of the desired resources.

Those people are always accepted in their own right, but not as sports hunters or sports fishermen because of controversial position of some sports interest groups.

Thank you for your time.

Sincerely,

*Jesse Foster*

Jesse Foster, Member  
Alaska Board of Fisheries

*Melissa*

*Send copy to  
Kil - Return*

*to me a*

SUBSISTENCE

CORRESPONDENCE

- file 2 -

MEMORANDUM

TO: Jack  
FROM: Linda *Linda*  
DATE: August 6, 1985

Mary Halloran, Rodger Painter and I met this afternoon with Denny Kelso, Jim Ayers and Larri Spengler for an update on subsistence.

Legal Services filed a petition lawsuit in federal court last winter on behalf of Lime Village, saying that the moose and caribou regulations were inadequate to meet their subsistence needs. Taking the advice of the Department of Law, the suit was stayed while they petitioned the Board of Game to make changes, which the Board did, giving them more animals. However, when Eluska came along, Legal Services took that to mean that they need not abide by bag limits and seasons, so the petition was amended. The lawsuit maintains the Boards are bound by federal standards.

AFN recently filed three petitions (attached), one with the Boards of Fisheries and Game and two with the Secretary of the Interior, stating that the state is not in compliance with ANILCA. The petitions say that since the state is out of compliance with federal standards, the federal standards supersede state law, and the Boards are required to adopt regulations consistent with ANILCA. If the Boards do not act, the petitions ask the DOI to adopt regulations superseding those of the Boards. The joint boards are scheduled to address the AFN petitions at their November meeting. Interior has no required set time to respond to the petition, but likely will do so before November. If DOI accepts AFN's petition, it means they wouldn't have to take over management, but instead would turn the question back to the state, by asking the Boards what they're going to do about it.

This preemption process would bypass the legislature, which did not act to amend state law. If the Boards agreed that federal standards supersede state standards, they could decide they have the authority to return things to the way they were before Madison, which is what AFN and, now, other groups and individuals in Anchorage have been asking for (see attached news clippings).

Larri gave us a copy of her July 12 response to Bill Horn, DOI, regarding the question of whether the state is out of compliance with ANILCA. Essentially, the letter finesses the question, by saying that the Boards haven't had time to go through their whole procedure, including public comment, and so the process isn't complete yet.

Enclosures:

AFN petitions  
AFN letter to you regarding petitions  
Recent news clippings  
AG's response to Dept. of Interior

cc Subsistence Committee members

July 17, 1985

Senator Arliss Sturgulewski  
2957 Sheldon Jackson  
Anchorage, Alaska 99508

Dear Senator Sturgulewski,

Thankyou for the information letter dated June 1985.

As you have stated there are many issues facing the Legislature next year. In light of recent claims of impropriety in the govenor's office I believe the folowing months will place great demands on the Legislature to provide the leadership necessary to gain back the confidence of the Alaska electoral.

I have always believed the one over-riding obligation of an elected body is the protecion of citizen rights and the promotion through legislative action a doctrine of justice and equality. In 1978 the Alaska Legislature failed to meet this fundamental responsibility.

New regulation concerning wild game management was placed in the statutes which has created havoc with proper game management concept, divided Alaska into a two class citizenship and completly dismisses the Alaska Constitution with regard to equality of access to the finite resource of fish and game.

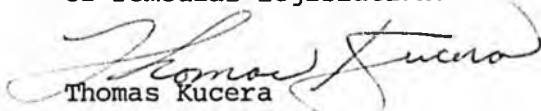
Recent court decisions based on the state subsistence law have clouded the controversy further, forcing the Alaska State Game Board to address a great problem in a limited way. It will be impossible for the Game Board to make policy and regulation with out adding more fuel to the fire.

I do not believe the Legislature in 1978 realized the full impact and consequence of their decision to implement the language of the subsistence law. We now have fish and game management decisions made by judges instead of professionals, such confusion in the law that admitted poachers go unpunished and a complete break down of an effective wild life protection system.

The situation we are now in can only be rectified by legislation that will allow the good stewardship of our game resource that we had prior to 1978. I also realize that this would be in conflict with language found in the Alaska National Interest Lands Act-d.2. These statutes in ANILCA concerning priority hunting and fishing rights have never been challenged by the State of Alaska. It is my strong conviction that if the State opposed any attempt by the Federal Government to regulate wild life with in the state boarder the Federal Government would back-off. In all states, since the concept of wild life management was recognized, the established policy is that resident wild life is best managed by individual states. All states would have an active interest in any litigation resulting from Alaska's opposition.

It will take courage and a test of leadership to correct this bad piece of legislation. Special interest groups that lobbied for the subsistence law in Juneau and Washington DC are still with us and unfortunately are the most vocal and seem to get the most press.

I would encourage you, Senator Sturgulewski, to consider my comments and if you find merit in them, take an aggressive role next January in the development of remedial legislation.



Thomas Kucera  
8605 Swiss Place  
Anchorage, Alaska 99507

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF FISH AND GAME**

**OFFICE OF THE COMMISSIONER**

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802  
PHONE: (907) 465-4100

July 8, 1985

The Honorable Jack Fuller  
Chairman  
House Interim Committee on Subsistence  
P. O. Box 689  
Nome, AK 99762

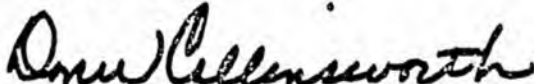
Dear Representative Fuller:

Enclosed is a packet of background materials regarding recent actions by the Board of Game to bring hunting regulations in conformity to court decisions in Madison and Eluska. These materials include:

- Item A- summarizing the actions taken by the Board of Game during its June emergency meeting;
- Item B- a list of the hunts open for non-state residents and those hunts which have been closed to non-state residents;
- Item C- the draft regulations for implementing the three Tier II criteria and the associated point system for evaluating applications for Tier II hunts;
- Item D- draft Tier II permit application and instructions;
- Item E- additional background on the need for emergency actions by the Boards of Game and Fisheries.

I hope this information will be helpful. Please free to call if you need additional information.

Sincerely,



Don W. Collinsworth  
Commissioner

Enclosure

# Replacement for A & B

## PERMIT HUNTS 1985 EMERGENCY MEETING — ALASKA BOARD OF GAME

Meeting between June 10 and 21, the Alaska Board of Game rewrote approximately 450 of the state's hunting regulations to comply with two recent court decisions. To comply with *State v. Eluska*, the board created separate subsistence hunting regulations. To comply with *Madison v. ADF&G*, the board established three basic regulatory situations:

**TIER I and GENERAL HUNT** - This situation exists when the game resource is abundant enough that all who wish to hunt may participate in the harvest.

If the board finds that subsistence uses are not substantially impaired:

- nonsubsistence uses may still be accommodated
- residents and nonresidents will be able to hunt
- the hunting regulations will appear in both the subsistence and general hunting booklets

**TIER I** - <sup>Only -</sup> This situation exists when harvest opportunity must be limited to Alaska residents. Under the Madison decision all Alaska resident hunters may qualify as subsistence hunters.

If the board finds that subsistence uses are substantially impaired:

- nonsubsistence uses must be eliminated
- other regulatory changes may be made to alleviate the impairment

If the board then finds that such changes alleviate the impairment:

- the hunt remains open to all Alaska residents but is closed to nonresidents

**TIER II** - This situation exists when not all resident hunters can participate and still maintain the sustained yield of the game population.

If the board finds that after making the above changes, subsistence uses are still substantially impaired:

- hunter participation must be limited based on the following criteria:
  - (1) customary and direct dependence upon the resource as the mainstay of one's livelihood,
  - (2) local residency, and
  - (3) availability of alternative resources.

Alaskans who wish to participate in Tier II hunts will have to complete a questionnaire that measures these three criteria for each Tier II hunt they are interested in.

The Tier II hunts, by and large, represent some of the most popular hunts in the state. In most cases, these hunts were previously conducted through random permit drawings or first-come/first-served registrations. This change will affect many Alaskans who may already have applied for a permit or had planned to register.

These changes affect approximately 60 different hunts. Perhaps the most difficult decisions were those affecting species that are not commonly thought of in terms of subsistence uses (bison, sheep, goats and brown bears). The current statute does not allow the board to treat these animals differently from caribou, moose or deer.

Every effort will be made to conduct hunts at the times authorized by the board. Administrative difficulties with changing the way permit hunts are conducted may force the department to delay some of the earliest hunting seasons.

The emergency regulations which the board adopted will be in effect for 120 days. The regulations will be circulated for public comment and may be made permanent so that there will be no lapse in regulation prior to the fall Game Board meeting. In November and January, the board will hold public hearings in Anchorage so that the advisory committees, regional councils, and others can provide additional comments.

## HUNTS AVAILABLE TO ALL HUNTERS

A recent decision by the Alaska Supreme Court prompted major revisions in the allocation of big game resources in Alaska. The system of registration and drawing permit hunts previously used to decide who could harvest which animals was largely set aside in favor of a ranking system that gives priority to subsistence use by residents. This means that non-residents must be eliminated from some popular hunts. Those hunts which still allow both resident and non-resident hunters to harvest animals are listed below.

Species	Game Management Unit/Hunt No.	Comments
Black Bear	1-3, 5-7, 9, 11-26	General season—no changes
Brown Bear	1-7 8 All hunts  8 Hunts 201-226  9C Hunt 251 9D Portion 10, Hunt 235 11-21, 22A 22B & 22E, Hunt 280 23, Hunt 281 24 & 26A, Hunt 282 25, Hunt 292-294 26A & 26C, Hunts 285, 287 26B, Hunt 286	General season Nonresident with registered guide by registration permit Drawing permit for nonresident accompanied by resident within the second degree of kindred General season by registration permit General season Registration permit General season Drawing permit Drawing permit Registration permit Drawing permit Drawing permit Registration permit
Bison		No nonresident hunting
Caribou	9, 16, 17, 19C & 18 North of Yukon 10, Hunt 550 12 & 20D North of Alaska Hwy. and 20E  19A, 19B, 19C, 19D  20A, portion 20B, 21, 22A, 22B, 23, 24, 25C, 26A, 26B 20F 25A, 25B, 25D, excluding west fork of Dall River, and 26C	General season Registration permit  Nonresidents limited to early season and bag limit of one Nonresidents limited to early season and bag limit of one General season, part of Unit is closed  General season Nonresidents limited to early season  Bag limit reduced
Deer		General season—no changes

Species	Game Management Unit/Hunt No.	Comments
Moose	1A and portion of 1B	General season
	1B, Thomas Bay	Registration permit
	1C, except Berner's Bay	Registration permit
	5A, Nunatak Bench	Registration permit
	5B & 6B	Registration permit
	6A, 6D, 7 (excluding River), 9A, 9B, 9C, 9E, 11, 12, 14B and 13A portion west of Lake Louise Rd.	General season
	14A, 14C (remainder) & 15A Kenai NWR	Nonresidents limited to one bull
	15A (remainder), 15C, 16A, & 15B remainder	General season
	14A, 14C (portion), 15A Kenai NWR west	Nonresidents limited to one bull
	16B Kalgin Island	Registration permit
16B (remainder), 17B (remainder), 17C, 18 (remainder)	Nonresidents limited to early season	
17B Mulchatna River, 19A, 19B, 19C, 20A, 20B (portion), 20C, & 20D	General season	
20F, 21A, 24	Nonresidents limited to early season	
21B, 21C, 21D, 21E, 23, 25A, 25B, 25C, 25D (except 25D west), 26	General season	
22B, 22C, 22D, 22E	General season for one bull—registration permit for antlerless	
Elk	8, Hunts 702, 751	Registration permit
Mountain Goat	1-5, Hunts 801-817	Registration permit
	8, Hunts 871, 873, 874, 876	Registration permit
	6, Hunt 879	Registration permit
	7, Hunts 830, 833, 836, 839, 840, 842, 844, 845, 846, 847, 852	Registration permit
	11, 14, 15B, Hunt 854	Registration permit
	15C	Registration permit
Muskoxen		No nonresident hunting

Sheep

**NOTICE**

This summary of the status of hunts for 1985 is extracted from regulations of the Board of Game. It may not be complete. It does not contain many of the regulations which apply to these hunts. Please refer to Alaska Game Regulations, permit hunt supplements or an office of the Department of Fish & Game for further specific information relating to permit conditions, seasons and bag limits, and other appropriate regulations.

PERMIT HUNTS — 1985

Species	Unit	Hunt No.	Permit Hunt Type	Subsistence	General	Further Information
Bison	11	406	Tier II	X		Chitina
	11	450	Registration	X		Copper River
	19	451	Tier II	X		Farewell
	20D	403&404	Tier II	X		Delta bulls, cows
Brown Bear	8	201-226	Drawing	.	X	Kodiak
	8	Unknown	Registration	.	X	Nonresidents with guides S. Kodiak Island
	8	250	Registration	X	X	N. Kodiak Island
	8	250	Registration	X	X	Afognak Island remainder Unit 8
	8	NEW	Registration	X		April 1-15, special subsistence regulations apply, Kodiak
	9C	251 F&S <sup>b</sup>	Registration	X	X	Naknek River
	9D	252 F&S	Registration	X	X	Cold Bay
	10	235 F&S	Registration	X	X	Unimak Island
	22	280 F&S	Drawing	NPR	X	Units 22B,22C,22D,22E
	23	281 F&S	Drawing	NPR	X	Western Brooks Range
	24	282 F&S	Registration	X	X	Unit 24 North
	24,26A	290	Registration	X	X	Gates of the Arctic
	25A	292 F&S	Drawing	NPR	X	Unit 25A East
	25A	293 F&S	Drawing	NPR	X	Unit 25A Central
	25A	294 F&S	Drawing	NPR	X	Unit 25A West
	26A	284 F&S	Registration	X		Unit 26A East
	26A	285 F&S	Drawing	NPR	X	Unit 26A West
	26B	286 F&S	Registration	X	X	Central North Slope
	26C	287 F&S	Drawing	NPR	X	Arctic NWR, North Slope
Caribou	7	501	Tier II	X		Kenai Mountain Herd
	10	550	Registration	X	X	Adak Herd
	11	510	Tier II	X		Mentasta Herd
	13,14B	515,562	Tier II	X		Nelchina
	20A	570	Tier II	X		Central Western 20A
	20D	530	Tier II	X		Macomb
Deer	4	630	Registration	X	X	Angoon Area Jan. 1-31
Elk	8	702	Registration	X		Raspberry Island
	8	750	Registration	X	X	Afognak, part of
	8	751	Registration	X		Southwest Afognak
Goat	1A, 1B	801	Registration	X	X	Southern Southeast Mainland
	1C	802	Registration	X	X	Antler-Eagle River
	1C	803	Registration	X	X	Remainder of 1C
	1D	805	Registration	X	X	Haines Area
	1D	806	Registration	X	X	Remainder of 1D
	4	815	Registration	X	X	Baranof
	5A, 5B	817	Registration	X	X	Yakutat
	6D	830	Registration	X		Tiger Glacier
	6	879	Registration	X	X	Cordova
	6D, 7, 15B	839, 840, 842, 844-847, 852, 854, 857-865	Registration	X	X	Kenai West, Prince William Sound
	7, 15B	831, 834, 835, 843, 855	Tier II	X		Selected areas, Kenai
	8	872	Tier II	X		Kodiak, Crown Mountain
	8	871, 873, 874, 876	Registration	X	X	Kodiak
	11	880	Registration	X	X	Copper River-Wrangell Mountains
	14	866-870	Registration	X	X	Anchorage Area

KEY—Hunt No. = as hunt number appears in current hunt supplement  
 NPR = no permit required.

F = fall hunt      S = spring hunt  
 \* = subsistence opportunity provided in new April 1-15 hunt.

PERMIT HUNTS — 1985

Species	Unit	Hunt No.	Permit Hunt Type	Subsistence	General	Further Information
Moose	1B	955	Registration	X	X	Thomas Bay
	1C	901	Tier II	X		Berner's Bay
	1C	956	Registration	X	X	1 C except Berner's Bay
	1D	959	Tier II	X		Haines
	5A	960	Registration	X	X	Nunatak Bench
	5A	961	Tier II	X		Yakutat Forelands
	5B	962	Registration	X	X	Malaspina Forelands
	6B	966	Registration	X	X	Martin Bay
	6C	967, 968	Tier II	X		West Copper River Delta
	7, 14C	910, 911	Tier II	X		Placer River, Twenty-mile
	9C	972	Registration	X		Naknek River Drainage
	13	913	Tier II	X		Any size bull moose, Nelchina
	14A	919,920	Tier II	X		Matanuska Valley, East and West
	14C	923	Tier II	X		Ft. Richardson, late hunt
	14C	924	Hunt cancelled			
	14C	978	Tier II	X		Anchorage M.A.
	14C	974	Tier II	X		Eagle River
	14C	975	Tier II	X		Eklutna
	14C	925, 927, 928	Tier II	X		Knik River, Ship Creek, Peters Creek
	15A	929	Tier II	X		Unit 15A West, cow hunt
	15B	930-939	Tier II	X		Unit 15 B West, "five areas, ten hunts"
	16B	980	Registration	X	X	Kalgin Island
	16B	981	Tier II	X		Beluga River North
	16B	982	Tier II	X		Beluga River South
	17B,17C	983	Registration	X		Early bulls, upper Mulchatna
	20B	985	Tier II	X		Minto Management Area
	21D	988	Registration	X		Galena Area late season
22B	992	Registration	X	X	Eastern Seward Peninsula cows	
22D	991	Registration	X	X	Central Seward Peninsula cows	
22E	990	Registration	X	X	Western Seward Peninsula cows	
25D	994	Tier II	X		Unit 25D West	
Muskoxen	18	1001F	Drawing	X		Nunivak bulls
	18	1003S	Drawing	X		Nunivak bulls
	18	1060F	Registration	X		Nunivak cows
	18	1061S	Registration	X		Nunivak cows
	18	1070	Registration	X		Nelson Island
	26	1007	Registration	X		26C ANWR
Sheep	12, 13, 20	1102	Tier II	X		Tok Management Area
	12, 13, 20	1150	Hunt Cancelled			TMA ewes
	13, 20	1103, 1104	Tier II	X		Delta Controlled Use Area
	14A	1110	Tier II	X		Matanuska Valley ewes
	14C	1130-1135	Tier II	X		Chugach State Park, early
	14C	1160	Registration	X	X	Chugach State Park, late
	20D, 20E	1106-1108	Tier II	X		20D North, 20E except Glacier Mountain
	23	1185	Registration	X		Either sex, Noatak area
	24, 26A,					
	26B	1191	Registration	X	X	Gates of the Arctic
25A, 26C	1190	Registration	X		Arctic NWR, late season	

NOTICE

This summary of the status of permits hunts for 1985 is extracted from regulations of the Board of Game. It may not be complete. It does not contain many of the regulations which apply to these hunts. Please refer to Alaska Game Regulations, permit hunt supplements or an office of the Department of Fish & Game for further specific information relating to permit conditions, seasons and bag limits, and other appropriate regulations.

**Season Dates and Number of Permits  
for Tier II Hunts**

Area	Season Dates	No of Permits
<b>MOOSE</b>		
Berner's Bay	Sept. 21-Oct. 21	15
Haines 1(D)	Sept. 21-Oct. 6	45
5(A) except Nunatak Bench	Oct. 15-Nov. 15	200
6(C)	Sept. 21-Oct. 21	20 Male
		20 Antlerless
Placer R./20-Mile	Sept. 21-Oct. 10	40 Male
		20 Antlerless
13 except part of 13A	Sept. 21-Sept. 30	200
14(A) Cows	Sept. 21-Sept. 30	400
Ft. Richardson	Dec. 1-Feb. 28	50
Anch. Mgmt. Area	Nov. 1-March 31	up to 30
Eagle R. & Eklutna Mgmt Area	Sept.21-Oct. 17	up to 200
Remainder 14(C)	Sept. 21-Oct. 17	50
15(A) Cows	NO SEASON	up to 100
15(B)	Sept. 26-Oct. 17	50
16(B) South	Dec. 1-Jan. 31	up to 75
16(B) North	Dec. 1-Jan. 31	up to 75
20(D) Minto	Sept. 21-Oct. 5	60
	Jan. 10-Feb. 28	
25(D) West	Sept. 21-Oct. 10	
	Dec. 1-Dec. 10	60
	Feb. 18-Feb. 28	
<b>CARIBOU</b>		
Nelchina	Sept. 21-Sept. 30	up to 1,800
	Jan. 1-Feb. 28	
Mentasta	Sept. 21-Sept. 30	up to 350
Kenai Mts.	Sept. 21-Nov. 15	up to 200
20(A)	Sept. 21-Dec. 31	200
20(D) South	Sept. 21-Sept. 30	140
<b>BISON</b>		
Chitina	Sept. 21-Nov. 30	12
Fairwell	Sept. 21-Oct. 31	40
Delta	Oct. 7-March 31	15 Bulls
		40 Cows

## GOATS

Crown Mt.—Kodiak	Oct. 1-Oct. 31	20
7 & 15	Oct. 1-Oct. 31	16—five areas

## SHEEP

14(A) Ewes	Aug. 20-Sept. 27	10
14(C) Chugach State Park	Aug. 25-Sept. 20	120
Tok Mgmt. Area	Aug. 20-Sept. 27	120
Delta Mgmt. Area	Aug. 20-Sept. 27	150
20E & D	Aug. 20-Sept. 27	12—3 areas

## Schedule of Events—Tier II Hunts

### Sheep

Hunt supplement ready for printing	July 5
5,000 supplements (4 pages each) ready for mailing	July 10
Mail/deliver to all F&G offices and selected vendors	July 20
Available to public—9 days	post mark deadline July 29
Deadline for receipt by ADF&G of applications	August 5
Time to score applications	August 6
Select winners	August 7-8
List of permit winners sent to Fairbanks, Tok, Glennallen, Delta, Palmer, Soldotna	August 8
Send permits	August 9
Hunters receive permits	August 12-19

Season opens -August 20

### All Other Species

Tier II and I newspaper and applications ready for printing	July 9
50,000 papers, 110,000 applications ready for mailing	July 15
Mail/deliver to all vendors and F&G offices	July 24
Available to public—10 days	post mark deadline August 5
Deadline for our receipt	August 12
Time to score applications	August 22
Select winners	August 26
Send permits	Sept. 5
Hunters receive permits	Sept. 15

Season open no earlier than - Sept. 21

5 AAC 92.XXX. PRIORITY FOR SUBSISTENCE HUNTING. (a) After nonsubsistence uses of game have been eliminated, and the board finds it necessary to restrict further the taking of game to assure that a game population and its sustained yield are maintained, or to assure the continuation of subsistence uses of a game population, permits will be allocated to individuals scoring highest according to the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood, as indicated by past participation and degree of dependency;

(2) local residency, as indicated by the location of one's domicile and distance to the hunting area; and

(3) availability of alternative resources, as indicated by the presence of other fish and game resources authorized and available for harvest in the hunting area, or in other areas reasonably accessible to the individual, and financial circumstance.

(b) The board will establish a point system for ranking hunting permit applicants for each criterion set out in (a) of this section. Permits will be issued to the highest ranked applicants up to the maximum level of participation the board authorizes for each hunt. Applicants with equal scores shall be selected by random drawing.

5 AAC 92.XXX. POINT SYSTEM FOR CUSTOMARY AND DIRECT DEPENDENCE. A maximum of 30 points will be given an applicant for past participation in a hunt and degree of dependence based on the following schedule:

(1) 1 point for each year the applicant harvested an animal from the population. A maximum of 10 points will be given.

(2) Up to 20 points for degree of direct dependence on the noncommercial harvest of the population for the principal means of support (primary food source) of the applicant:

(A) great dependence, 20 points;

(B) moderate dependence, 15 points;

(C) slight dependence, 10 points;

(D) no dependence, 0 points.

5 AAC 92.XXX. POINT SYSTEM FOR LOCAL RESIDENCY.

(a) A maximum of 30 points will be given based on an applicant's domicile according to the following schedule:

- (1) zone 1: 30 points;
- (2) zone 2: 20 points;
- (3) zone 3: 10 points;
- (4) zone 4: 0 points.

(b) Except as provided in (c) of this section:

- (1) zone 1 means the hunting area;
- (2) zone 2 means outside the hunting area, but within the GMU(s) containing the hunting area;
- (3) zone 3 means in GMUs adjacent to the GMU(s) containing the hunting area;
- (4) zone 4 means in other GMUs.

(c) When the board determines that the zones set out in (b) would treat a specific concentration of similarly located individuals differently, or would be inappropriate due to the range and distribution of the resource, the board will, by regulation, modify the boundaries of the zones.

5 AAC 92.XXX POINT SYSTEM FOR AVAILABILITY OF ALTERNATIVE RESOURCES. A maximum of 30 points will be given to an applicant for availability of alternative resources based on the following schedule:

(1) Availability of fish and game resources in the applicant's hunting area, or other reasonably accessible area:

(A) greatly available: 0 points;

(B) moderately available: 5 points;

(C) slightly available: 10 points;

(D) not available: 15 points.

(2) 15 points will be given if the applicant's financial circumstance is not adequate to purchase non-wild resources as a reasonable alternative to taking the game.

PERMIT APPLICATION FOR TIER II HUNTS  
[A SEPARATE FORM MUST BE FILLED OUT FOR EACH TIER II HUNT]

1. NAME: \_\_\_\_\_  
Last First Middle Initial

2. MAILING ADDRESS: \_\_\_\_\_  
P.O. Box/Street

\_\_\_\_\_  
City/Town State Zip

3. ADDRESS WHERE YOU LIVE (Primary Residence/Domicile\*)

\_\_\_\_\_  
Street or Property Description

\_\_\_\_\_  
City/Town or Closest Community

(\* See 5 AAC \_\_\_\_\_) NOTE TO SUE -- put definition in instructions

4. LIST THE HUNT NUMBER FROM THE EMERGENCY SUBSISTENCE PERMIT HUNT SUPPLEMENT FOR THE HUNT YOU WISH TO APPLY FOR: [LIST ONLY ONE] HUNT NUMBER: \_\_\_\_\_

OR

5. IF YOU ARE UNABLE TO PROVIDE THE HUNT NUMBER, PLEASE LIST THE TYPE OF ANIMAL YOU WISH TO HUNT (caribou, moose, etc.) & THE GAME MANAGEMENT UNIT, SUBUNIT, OR AREA DESCRIBED IN THE CURRENT GAME REGULATIONS:

Animal \_\_\_\_\_ Game Management Unit, Subunit, or Area \_\_\_\_\_

6. WHICH OF THE FOLLOWING DESCRIBES WHERE YOUR PRIMARY RESIDENCE/DOMICILE IS LOCATED? [CHECK ONLY ONE]

- a. I live within the hunt area (see instructions).
- b. I live within the same game management unit(s) as the hunt for which I am applying, but do not live within the hunt area.
- c. I live in a game management unit immediately adjacent to the game management unit in which the hunt is held.
- d. I live in an area not described in a, b, or c.

7. You may be given one point for each year you legally killed an animal(s) in this hunt (same species of animal in the same area as the hunt you are now applying for). A maximum of 10 points may be claimed.

PLEASE LIST THE YEARS IN WHICH YOU LEGALLY KILLED AN ANIMAL(S) IN THIS HUNT.

19\_\_ 19\_\_ 19\_\_ 19\_\_ 19\_\_ 19\_\_ 19\_\_ 19\_\_ 19\_\_ 19\_\_



7/1 11 3  
DRAFT SB 7/1

INSTRUCTIONS FOR SUBSISTENCE HUNTING  
PERMIT (TIER II) APPLICATION AND CERTIFICATION

This form is both an application and a certification regarding how you meet the three criteria for participating in a Tier II subsistence hunt. The Tier II hunts are listed in a special Subsistence Hunting Permit newspaper, available through Department of Fish and Game offices.

Conditions

- ° Submit a separate application and affidavit for each species and area you want to hunt.
- ° Only one member of your household may apply for each hunt, except for caribou. For caribou, two members of your household may apply for the same hunt.
- ° Only those applications which are complete, accurate, and signed will be considered.
- ° A \$5.00 fee is charged for each hunt application for species other than bison and muskox. A \$10.00 application fee is required for bison and muskox.

7/1 11-5 50

Questions 1, 2, and 3: give your full name, mailing address, and place of domicile, which is the location of your primary residence. Evidence of domicile includes, but is not limited to, such factors as where you have claimed your place of residence for other government purposes, where you are registered to vote, where you own, rent, or lease residences or businesses, and which governments you pay taxes to. If your home does not have a street address, please give enough information to help locate it, such as name of road, milepost, etc.

Question 4: Enter the hunt number. Hunt numbers are described in the new Subsistence Hunting Permit newspaper. If you do not know the hunt number, you can answer Question 5 which asks you to name the species and and location that you want to hunt.

Question 6: Check the box which describes where your primary residence (domicile) is in relation to the location of the hunt for which you are applying. Please refer to the Subsistence Permit newspaper for a list of the relevant Game Management Units.

Question 7: List the years in which you or another member of your household previously killed an animal of the same species in the same area as the hunt for which you are applying.

Question 8: Rate how dependent for food your household is on taking the animal for which you are applying. There are four

7/1 F13 -J

categories of dependence. You should use the following guidelines in answering this question: (1) category a, if your household is greatly dependent on this animal as a principal means of support; (2) category b, if your household is moderately dependent on this animal; (3) category c, if your household is slightly dependent on this animal; and (4) category d, not dependent, if your household does not normally consume meat from animals from this population.

Question 9: Check the box which indicates the degree of availability to you of alternative sources of wild animal meat. Alternatives include other game species or fish which are at least as accessible to you as the Tier II animal for which you are applying, and which could reasonably substitute for it. A reasonable substitute means that your household has access to and could legally harvest an equivalent amount of meat from one or more of the alternatives. Use the following guidelines in answering this question: (1) category a, not available, if none of the animal meat which this animal represents could be substituted; (2) category b, slightly available, (3) category c, moderately available, and (4) category d, greatly available, if other game or fish in areas accessible to you are abundant and can be legally taken.

Question 10: Indicate whether or not your household's income is enough to purchase substitutes for the animal you want to hunt.

7/1 11:30 AM

Substitutes include alternative foods from domestic animals as well as alternative sources for other animal products which are necessary for your household's well being.

Question 11: asks if you are at least 12 years old and qualify for a resident Alaska hunting license. You must have resided within the State of Alaska for at least one year to qualify. If you cannot answer yes to this question, you should not submit your application because it will not be considered.

Question 12: asks to verify that you are the only member of your household to apply for a permit for this species, except if the species is caribou. For caribou, two members of your household may apply.

Checklist

- Have you enclosed your application fee?
- Have you filled in the correct hunt number?
- Have you responded accurately to all questions?
- Have you signed and dated the certification?

\* \* \* \* \* Mailing Instructions \* \* \* \* \*  
(yet to be determined)



# Alaska Department of Fish & Game

## NEWS

FOR IMMEDIATE RELEASE

MAY 29, 1985

### GAME BOARD SCHEDULES EMERGENCY MEETING

JUNEAU--The Alaska Board of Game will convene in Juneau for an emergency session beginning June 10, 1985, to adopt emergency regulations providing for subsistence hunting. Without such regulations, Chief Prosecutor Daniel Hickey has concluded that his staff would be unable to prosecute some hunting violations successfully.

In a May 22, 1985, memorandum, the chief prosecutor advised the department that emergency regulations are needed in order to ensure enforceability of all game regulations, some of which cannot be enforced currently. The Department of Law further explained that the board must take these actions because of recent decisions in Madison v. Department of Fish and Game, \_\_\_ P.2d \_\_\_, Op. No. 2911 (Alaska February 22, 1985) and State v. Eluska, \_\_\_ P.2d \_\_\_, Op. No. 210 (Alaska App. April 12, 1985). Because the Legislature has not yet enacted corrective legislation, the Department of Law has noted that the board must now provide subsistence hunting regulations for every game population which has been hunted by Alaska residents for food.

-MORE-

The combined effect of both cases will eventually require the board to change current harvest management extensively. Perhaps the most significant problem the board must address at this meeting will be permit and registration hunts. Although the current random drawing and first-come/first-served type distribution methods for harvest opportunity are no longer legally acceptable, the board will have a great deal of difficulty finding an appropriate feasible alternative. Any alternative must be consistent with the three criteria contained in the current statute and discussed by the Supreme Court in Madison: 1) customary and direct dependence upon the resource as the mainstay of one's livelihood; 2) local residency; and 3) availability of alternative resources.

The meeting will begin at 8:30 a.m. in the Conference Room at the ADF&G headquarters office at 1255 West 8th Street, Juneau. The meeting is open to the public, but, due to the emergency nature of the meeting, public testimony will not be taken. The emergency regulations will be effective for 120 days, and if they are later considered for submission as permanent regulatory changes, public comment will be solicited.

#####

Don W. Collinsworth, Commissioner

Public Communications  
Box 3 - 2000  
Juneau, Alaska 99802  
(907) 465-4113



# Alaska Department of Fish & Game

## NEWS

FOR IMMEDIATE RELEASE

MAY 23, 1985

### EMERGENCY SUBSISTENCE SALMON REGULATION TO BE ISSUED

JUNEAU--In response to a memorandum from the Department of Law, the Department of Fish and Game has begun issuing emergency regulations to provide subsistence fishing permits for locations not open under current regulations.

Chief Prosecutor Dan Hickey has advised the ADF&G that emergency regulations are necessary because of recent judicial decisions in Madison v. ADF&G and State v. Eluska and because the Legislature has not yet enacted corrective legislation. Without such regulations, the Chief Prosecutor has concluded that his staff would be unable to prosecute successfully some subsistence fishing violations.

The emergency regulations, which will incorporate the requirements specified by the Department of Law, will ensure full enforceability of all fishing regulations in Cook Inlet and throughout the state.

Under these emergency regulations, permits will be issued to Alaska residents for subsistence salmon net fishing in Cook Inlet, if that fishing had previously been authorized by state subsistence regulations and the depart-

-MORE-

ment's records indicate that such fishing actually occurred. The permits will indicate locations and times when subsistence fishing will be allowed, gear specifications, and bag limits.

Rod and reel fishing is defined in Alaska statutes as sport fishing and thus no subsistence permits will be issued for fishing with rod and reel gear.

No Cook Inlet subsistence salmon permits will be issued for fishing during May, since no state regulations have ever allowed subsistence fishing during that month.

Violators of sport, commercial, personal use, or subsistence regulations will be cited by ADF&G personnel and by officers of the Fish and Wildlife Protection Division, Department of Public Safety.

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STATE OF ALASKA  
DEPARTMENT OF FISH AND GAME  
PUBLIC COMMUNICATIONS SECTION  
P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000

Don W. Collinsworth, Commissioner

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Box 3 - 2000  
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# Alaska Department of Fish & Game

## NEWS

FOR IMMEDIATE RELEASE

May 16, 1985

### Hunting Regulations Delay Announced

JUNEAU--The Alaska Department of Fish and Game has announced that the hunting and trapping regulations books normally issued by July 1 each year will not be available until late in the summer.

The recent Madison and Eluska court decisions have forced an unanticipated session of the Alaska Board of Game to consider emergency regulations designed to bring the state into compliance. The board will begin its emergency session on June 10 in the Conference Room of the Fish and Game Building, 1255 W. 8th St., in Juneau.

Although the meeting is open to the public, no public testimony or comments will be taken. Once the board has drafted emergency regulations, they will be circulated for public review and written comment.

#####

Alaska Board of Game  
#85-38-GB

Findings on Madison Requirements

April 4, 1985

The Board of Game has examined the legal principles set out by the Alaska Supreme Court in Madison v Alaska Department of Fish and Game, No. 7410. That decision requires substantial reallocation of game resources among Alaskans, in part because the board will no longer be able to use permit drawings to determine which Alaskans can hunt for food.

Before Madison, the board under the subsistence law had been providing reasonable opportunities for subsistence hunting by Alaskans living in rural areas or communities. The board was also providing hunting opportunities for other Alaskans and non-state residents, through general open hunts, registration hunts with unlimited permits, registration hunts with a specified number of permits, and permit drawing hunts.

After Madison, if a game population has been hunted by Alaskans for food, subsistence hunting must be allowed, unless the resource would be jeopardized. All Alaskans are eligible for subsistence hunting, and non-state residents may also be allowed to hunt. However, if the situation will not allow everyone to hunt with an equal legal opportunity, then non state residents may not participate.

Under Madison, the board at that point must determine which Alaskans have the opportunity to hunt based on three criteria contained in AS 16.05.255(b):

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

The approximately 164 permit drawing hunts, which operate on chance, and the eleven registration permit hunts with a limited number of permits, which are distributed to applicants in the order in which they apply, do not distribute the opportunity to hunt based on the three criteria, and therefore must be restructured.

While the current random drawing or first-come, first-served system must be replaced by systems based on the three criteria,

the board must not act arbitrarily and must assess the significance of available information in order to act reasonably under the statute and the Madison mandates. At this time, the Department of Fish and Game, Division of Game, can supply information on the community of residence of people applying for drawing permits in the state, and the Division of Subsistence has a library of approximately 120 technical papers on the use of fish and game by people in various communities and areas in the state. However, the task of synthesizing those two bodies of data and of analyzing their significance in relation to the three criteria will be very expensive and time consuming; the department cannot adequately prepare such material within a few weeks for presentation to the board. Any decision on how to modify these hunts beyond April 7, 1985 will come too late to implement changes in time for the 1985 season. Specifically, it takes up to five days to create a "mock-up" of the two permit papers. At the printer, design and proofing take from 5 - 10 days. Printing and distributing supplements to the regional offices takes three days; distribution of supplements and applications to approximately 800 vendors and department field offices takes about five days to complete. One week must be allowed for mail delivery, thus requiring between 25 - 30 days before information is available to the public. It is expected that the permit applications will be available on or about April 30, 1985, with an application deadline of May 31, 1985 for the fall hunts. It requires up to 6 weeks (or until about July 13) to complete the computerized drawing and mail permits to those whose applications are drawn. The earliest permit seasons presently begin August 10 for some caribou and sheep seasons, thus presuming mailed permits may take at least a week to be delivered, permittees have only about 20 days to prepare for season openings.

Therefore the board finds that the following approach is the most reasonable way to address this problem.

The board requests that the Commissioner of Fish and Game take the first step required by Madison and by delegation to adopt regulations eliminating non-state residents from permit drawing hunts and registration hunts with a specified number of permits. This should not be done for brown bear, Dall sheep or mountain goats, however, since present information indicates that except for sheep in certain identified situations such as the Noatak area of GMU 23 and the north slope of the Arctic Wildlife Range (GMU's 25 and 26) these species are primarily pursued for trophy or recreational purposes.

Secondly, the board hereby calls for proposals from the public on all permit drawing hunts and registration permit

hunts with a specified number of permits for the fall/winter 1985 board meeting. The board also calls for proposals to define the three criteria identified in the statute. During the intervening time, the department is requested to synthesize and analyze the available information, keeping in mind the three criteria which the statute specifies be used to distribute opportunities to hunt: dependency, local residency, and available alternative resources.

Public testimony on how those criteria could be used by the board will be taken at the meeting. The board encourages the advisory committees and regional councils to discuss this subject and to report on those discussions at the board meeting.

It is very important that it be understood that after Madison, if a game population is hunted primarily for food by Alaskans, and if everyone cannot be allowed the same legal opportunity to hunt primarily for food, random permit drawings are not authorized by the statute. Instead, the board must employ the three criteria, and must consider factors that correlate to them, such as miles between the user's residence and the game population, income levels, previous participation in harvest of resources and other less easily quantifiable data.

Before Madison, the uses which the board had provided for as subsistence were those of residents in rural areas and communities, a much smaller group than all Alaskans. Before Madison, other uses could be accommodated, as well, and the board relied heavily on drawing permit hunts to distribute opportunities for other Alaskans to hunt a particular game population. Now that regulatory tool is not available, and as a result many Alaskans who will have a low priority when evaluated under the three criteria will not even have a chance to participate in many hunts. Additionally, non-state residents must be eliminated from many hunts.

---

Brenda Johnson, Chairman  
Alaska Board of Game

Adopted 04/04/85  
Anchorage, Alaska

# MEMORANDUM

State of Alaska

TO: Ron Jclin, Chairman  
Joint Boards of Fish and Game

DATE: March 15, 1985

FILE NO:

TELEPHONE NO: 465-4100

FROM: Don W. Collinsworth *DWC*  
Commissioner  
Department of Fish and Game

SUBJECT: Management Issues  
Arising From the  
Madison Decision

## INITIAL ASSESSMENT

As you requested, my staff has completed an initial assessment of the Madison decision's implications for fish and wildlife management. This memorandum uses the Cook Inlet, Naknek River, and Copper River fisheries as examples, but Madison also affects existing Board of Fisheries regulations for Angoon and Lake Iliamna-Lake Clark and existing Game Board regulations for permit hunts.

Although the Game Board has not applied the eight criteria in the same way the Board of Fisheries has, Department of Law has said that the Game Board may be unable to continue providing permit hunts restricted to particular communities unless guided hunting and hunting by non-residents have already been eliminated. Further the legal analysis concludes that Madison may require the Game Board to discontinue non-state-resident and guided hunting for all permit hunts.

Department of Law and the management divisions are continuing to analyze Madison impacts and more information will be developed. However, this memorandum is intended to alert you to some of the anticipated area impacts.

## COOK INLET/KENAI RIVER/SUSITNA RIVER SALMON

Testimony and data presented to the Board of Fisheries indicate that within the last 20-30 years, almost every part of Cook Inlet, including Knik Arm and Turnagain Arm, has been open to subsistence set-net fishing for salmon (Braund, 1980). The open season for fishing varied from location to location, as well as through time, but included the period May through September. Until 1978, 50 fathoms of net could be used in many areas. Species harvested in these set-net fisheries included primarily kings, sockeye, and coho.

As Anchorage and the Kenai Peninsula grew, subsistence salmon seasons were gradually restricted until only small areas remained open for very short periods with limited gear. Since 1980, subsistence fisheries have been authorized in very limited areas for residents of Tyonek, English Bay, and Port Graham only.

The impacts of the Madison decision on existing Cook Inlet fisheries depend on how many people decide to participate, and where and when they

fish, which makes it difficult for us to precisely assess immediate or long term effects. At a minimum, however, we would expect to see an increase in the gill net harvest of west side and Susitna River king salmon, since any Alaskan will be able to participate in the Tyonek district subsistence king fishery. This fishery begins in May, and has limits of 70 kings per household. Presently, this fishery is restricted to persons domiciled in Tyonek, and on average, 2,000 kings have been harvested annually.

It is impossible to predict how much new effort would occur, but any significant increase in this fishery will require compensating reductions in the expanding sport fishery of the Susitna drainage. This, of course, would mean reductions in seasons, bag limits, or even closures of certain areas to fishing if the subsistence harvest grows substantially.

In addition, the Kenai Peninsula subsistence net fisheries which existed in the late 1970s, and which have been closed since 1980, may have to be reopened to all Alaskans. This would include set net fisheries on king, sockeye, and coho stocks which enter all of the Kenai Peninsula drainages. King and coho stocks, which are already the focus of major allocation conflicts between sport and commercial users, will now have to be shared with another user group, which will have a priority. Additional harvest restrictions on sport and commercial fisheries in Cook Inlet may have to be imposed either before the fishing season or in-season as we determine whether escapements are being achieved.

Because of recent regulatory constraints, past harvests are a poor indicator of the potential demand for subsistence fishing in Cook Inlet. Further, recorded harvests probably underestimate the actual historical subsistence harvest due to inadequate catch reporting systems. If accessible beach areas are opened to net fishing, we would expect a substantial interest, similar to that in the Copper River dip net fishery. One indicator of this demand is the fact that participation in the Cook Inlet subsistence fishery increased from less than 100 people to more than 1,300 between 1977 and 1980, before the Board adopted the regulations restricting subsistence use. An additional indicator of demand are the requests the Fisheries Board has received from people wanting to fish with nets in Knik Arm and other parts of Cook Inlet.

In an extreme scenario, the Board could be required by a court to authorize subsistence fishing wherever it has occurred in Cook Inlet, Turnagain Arm, and Knik Arm, throughout the summer, by any Alaskan. The Madison decision clearly states that sport and commercial uses must be eliminated before subsistence uses can be restricted. Therefore, it seems unlikely that the Board or department could impose subsistence harvest limits or quotas to ensure that commercial and sport uses could continue.

In summary, we see major demands being imposed upon the department for in-season monitoring and management of all harvests to ensure adequate escapements in Cook Inlet. We also see the potential for confusion and controversy over Cook Inlet salmon management escalating and making it more complex.

NAKNEK RIVER SALMON

The Naknek River is currently open to subsistence fishing only by residents of the Maknek and Kvichak river drainages. This regulation was adopted in 1981 because of concern about growth in the Naknek subsistence salmon fishery by other Alaskans. From 1976 to 1980, participation and king harvests in the Naknek subsistence fishery doubled as more people learned about the fishery and came to the Naknek-King Salmon area to take part in it.

The Board, local residents, and sport fishermen all became concerned that this growing harvest was beginning to affect the allocation of the Naknek River's limited king salmon stocks. By restricting the fishery to local residents, the Board of Fisheries was able to allow continued development of the Naknek sport fishery on kings, which has become increasingly significant to guides and transportation services. By creating a personal use sockeye fishery on the Naknek, the Board was able to accommodate non-local fishing demand and shift it to more abundant species.

The Madison decision appears to open the Naknek net subsistence fishery again to all residents of the state. If significant effort occurs, it seems quite likely that restrictions will have to be imposed on the sport fishery in order to ensure king salmon escapement.

COPPER RIVER/PRINCE WILLIAM SOUND SALMON

Historically, Copper River sockeye have been harvested by commercial fishermen in Prince William Sound, residents of the Copper Basin and other interior communities, as well as Fairbanks and Anchorage residents. With population growth and increased publicity, the Chitina dip net fishery grew dramatically; harvests more than tripled from 1980 to 1983. Additionally, many urban dip net fishermen preferred to fish the early portion of the Copper River run, which posed potentially severe management problems for early run sockeye. About 50 percent of the Copper River run passes through the commercial fishery district in the first two to three weeks of the season, which means any management decisions to restrict the fishery must be made on very short notice.

As subsistence harvests increased in the 1970s, the board began restricting fishwheel and dip net harvests in the Copper River. In 1984, the board examined subsistence dip net and fishwheel fisheries in the Copper River. It authorized subsistence fishing for Copper Basin residents. Harvest by the subsistence fishery was predicted to be approximately 20,000 salmon and individual bag limits could go as high as 500. The board then established a personal use fishery for people who did not reside in the communities identified as having subsistence uses. The personal use fishery had bag limits of 15 salmon for individuals and 30 for households. The total catch was limited to 60,000 sockeye plus twenty-five percent of any excess escapement. The in-river sport fishery was predicted to harvest approximately 5,000 sockeye and the Prince William Sound commercial drift gill net fishery was managed to provide for these known harvest and escapement levels.

Under Madison, the Fisheries Board may have difficulty in predicting harvest levels for the Copper River fishwheel and dip net fishery, due to uncertainty about how many people will participate and how many fish they will take. Additional management problems are posed by the timing of the sockeye run and the heavy dip net harvest, which occurs on the early part of the run. These considerations seem to require more conservative management of the Prince William Sound commercial fishery.

In summary, we see a number of complex management issues arising from the Madison decision. Regulation specialists for Commercial Fisheries and Game Divisions are presently identifying the specific regulatory options which the Boards could address for the upcoming season.

# MEMORANDUM

State of Alaska

TO: Ron Jolin, Chairman  
Joint Boards of Fish and Game

DATE: March 15, 1985

FILE NO:

TELEPHONE NO: 465-4100

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Commissioner  
Department of Fish and Game

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Arising From the  
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As Anchorage and the Kenai Peninsula grew, subsistence salmon seasons were gradually restricted until only small areas remained open for very short periods with limited gear. Since 1980, subsistence fisheries have been authorized in very limited areas for residents of Tyonek, English Bay, and Port Graham only.

The impacts of the Madison decision on existing Cook Inlet fisheries depend on how many people decide to participate, and where and when they

Hon. Don Collinsworth, Commissioner  
Department of Fish and Game  
File No. 366-375-85

May 23, 1985  
Page 6

cc: Steve Pennoyer  
Dennis Kelso  
Jim Ayers  
Lew Pamplin  
Steve Behnke  
Beth Stewart  
Dick Logan  
Ken Parker  
ADF&G

Norman Gorsuch  
Ron Lorensen  
Dan Hickey  
Liza McCracken  
Department of Law

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In addition, the Kenai Peninsula subsistence net fisheries which existed in the late 1970s, and which have been closed since 1980, may have to be reopened to all Alaskans. This would include set net fisheries on king, sockeye, and coho stocks which enter all of the Kenai Peninsula drainages. King and coho stocks, which are already the focus of major allocation conflicts between sport and commercial users, will now have to be shared with another user group, which will have a priority. Additional harvest restrictions on sport and commercial fisheries in Cook Inlet may have to be imposed either before the fishing season or in-season as we determine whether escapements are being achieved.

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The Board, local residents, and sport fishermen all became concerned that this growing harvest was beginning to affect the allocation of the Naknek River's limited king salmon stocks. By restricting the fishery to local residents, the Board of Fisheries was able to allow continued development of the Naknek sport fishery on kings, which has become increasingly significant to guides and transportation services. By creating a personal use sockeye fishery on the Naknek, the Board was able to accommodate non-local fishing demand and shift it to more abundant species.

The Madison decision appears to open the Naknek net subsistence fishery again to all residents of the state. If significant effort occurs, it seems quite likely that restrictions will have to be imposed on the sport fishery in order to ensure king salmon escapement.

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As subsistence harvests increased in the 1970s, the board began restricting fishwheel and dip net harvests in the Copper River. In 1984, the board examined subsistence dip net and fishwheel fisheries in the Copper River. It authorized subsistence fishing for Copper Basin residents. Harvest by the subsistence fishery was predicted to be approximately 20,000 salmon and individual bag limits could go as high as 500. The board then established a personal use fishery for people who did not reside in the communities identified as having subsistence uses. The personal use fishery had bag limits of 15 salmon for individuals and 30 for households. The total catch was limited to 60,000 sockeye plus twenty-five percent of any excess escapement. The in-river sport fishery was predicted to harvest approximately 5,000 sockeye and the Prince William Sound commercial drift gill net fishery was managed to provide for these known harvest and escapement levels.

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In summary, we see a number of complex management issues arising from the Madison decision. Regulation specialists for Commercial Fisheries and Game Divisions are presently identifying the specific regulatory options which the Boards could address for the upcoming season.

# ALASKA FEDERATION OF NATIVES, INC.



411 W. 4th Avenue, Suite 1A • Anchorage, Alaska 99501 • Phone 907-274-3611

August 12, 1985

Representative Jack Fuller  
Chairman  
House Interim Committee on Subsistence  
Pouch V - State Capitol  
Juneau, Alaska 99811

Dear Representative Fuller:

As you know, the continuation and protection of reasonable opportunities for the taking of fish stocks and game populations for subsistence uses is one of the Alaska Federation of Native's (AFN) major priorities. The focus of AFN's concern is the reality that, unlike Alaskans who live in our large urban centers, Alaskans - both Native and nonNative - who live in the bush are uniquely dependent upon the harvest of fish stocks and game populations for their sustenance. For that reason AFN has supported the enactment of both state and federal legislation which ensures that the Alaska Board of Fisheries and Board of Game adopt fishing and hunting regulations based upon a regulatory standard which recognizes that Alaskans who live in the bush and Alaskans who live in the cities are dissimilarly situated with respect to their dependence upon fish stocks and game populations for personal and family consumption.

The core of this regulatory approach has two components: recognition that "subsistence uses" of fish stocks and game populations are activities limited exclusively to Alaskans who live in the bush, and a priority for "subsistence uses" over competing consumptive uses in situations in which the harvestable surplus of a particular fish stock or game population is not large enough to safely sustain a harvest by all fishermen or hunters without violating sustained yield principles.

In 1978 the Alaska Legislature and in 1980 the United States Congress enacted legislation which instructs the Board of Fisheries and Board of Game to adopt fishing and hunting regulations consistent with this regulatory approach. Sadly, a small, but vocal, group of urban sportsmen who adamantly oppose the public policy embodied in the 1978 and 1980 statutes obtained the requisite number of signatures to place a referendum to repeal the 1978 state

Jack Fuller  
August 12, 1985  
Page 2

statute on the 1982 general election ballot. The referendum was overwhelmingly rejected by the electorate.

The election campaign which preceded the 1982 vote was extremely emotional for Alaskans who worked both for and against the referendum. However, although they may frequently have thought that there was little common ground between the two sides, in fact all parties were in substantial agreement with respect to an important and fundamental issue. Regardless of their views as to whether the 1978 statute was appropriate public policy, all parties both explicitly and implicitly agreed that the 1978 statute established a priority for "subsistence uses" of fish stocks and game populations which was limited to Alaskans who live in the bush. However the taking of fish stocks and game populations by urban fishermen and hunters for personal and family consumption might best be regulated in the public interest, such takings were not "subsistence uses".

Subsequent to the defeat of the 1982 referendum, the Board of Fisheries and Board of Game made considerable progress in implementing the 1978 statute in a fair and just manner. As AFN and other involved groups had argued from the beginning, adopting regulations which ensure that the unique dependence of rural fishermen and hunters is protected does not necessitate a substantial restriction on fishing and hunting opportunities previously allocated to urban Alaskans.

Unfortunately, the boards' progress in implementing the 1978 statute was abruptly arrested and the quiet which had descended around the subsistence issue since the 1982 election was shattered last February when the Alaska Supreme Court issued its decision in Madison v. Alaska Department of Fish and Game. In a narrow ruling the Court held that it could find no evidence in the legislative history of the 1978 statute to support the conclusion that the legislature had intended to limit "subsistence uses" to rural fishermen and hunters.

As attractive to some urban fishermen and hunters as it might appear in the abstract, the Madison decision has caused as much hardship and regulatory havoc for urban Alaskans as it has for Alaskans who live in the bush. As a result of the decision urban gill net fishermen must now be afforded a priority over urban rod and reel fishermen competing for access to Cook Inlet salmon stocks. Similarly, the decision requires the Board of Game to adopt regulations pursuant to title 16 which allocate access to finite game populations among urban sport hunters based upon three criteria (local residency, dependence on the

Jac Fuller  
August 12, 1985  
Page 3

population as a mainstay of livelihood, and availability of alternative resources) which were originally intended to differentiate among rural hunters in the rare circumstance (such as the crash of the western arctic caribou herd) in which the harvestable surplus of a particular game population is not large enough to safely sustain a harvest even by rural hunters. Application of these criteria to allocate harvest opportunities among urban hunters makes little sense and frequently produces a harsh, unjust and unnecessary result.

In an attempt to prevent occurrence of precisely the situation in which both urban and rural hunters and fishermen now find themselves, last session Governor Sheffield sent both houses of the Alaska Legislature legislation to cure the Madison decision. The Governor's bill simply proposed that the definition of "subsistence uses" in title 16 be amended to make clear on the face of the statute that "subsistence uses" were uses limited exclusively to Alaskans who live in the bush. The Alaska House of Representatives held a series of statewide hearings on the issue and passed a substitute for the Governor's bill which, had it been passed by the Senate prior to adjournment, would have provided the Board of Fisheries and Board of Game adequate regulatory authority under state law to continue to implement the 1978 statute in the manner they had prior to the Madison decision.

Regrettably, for reasons best known only to itself, the Senate adjourned without taking action on the House bill. The Board of Fisheries and Board of Game then proceeded to adopt regulations for the 1985 fishing and hunting seasons based upon the regulatory standard set forth in the 1978 state statute as interpreted in the Madison decision. Since, for the reasons previously explained, the Madison regulatory standard makes little sense in concrete application, the boards' regulations have caused considerable hardship for rural fishermen and hunters the statute was originally intended to benefit and even more hardship for urban hunters who were previously allocated hunting opportunities by lottery rather than the three criteria. Even more regrettably, regardless of the hardship which the Senate's refusal to act responsibly has caused, and will continue to cause, for both rural and urban fishermen and hunters, it is unlikely that the Senate will pass the House bill during the 1986 legislative session.

For that reason AFN recently filed three administrative rulemaking petitions - one with the Board of Fisheries and Board of Game and two with the Secretary of the Interior - copies of which

Jack Fuller  
August 12, 1985  
Page 4

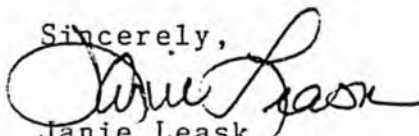
are enclosed. The petitions allege that in 1980 the Congress asserted its jurisdiction to establish the regulatory standard pursuant to which the Board of Fisheries and Board of Game are required to adopt regulations governing the taking of fish stocks and game populations for "subsistence uses", that in the interest of comity between the federal and state governments the Congress afforded the Alaska Legislature an opportunity to amend title 16 to establish a state regulatory standard consistent with the federal regulatory standard, that as a result of the Madison decision and the Senate's failure to pass the House bill the legislature has not enacted a regulatory standard consistent with the federal standard, that, consequently, the federal regulatory standard set forth in sections 803 and 804 of the Alaska National Interest Lands Conservation Act (ANILCA) supersedes the flawed regulatory standard set forth in title 16, and, henceforth, that the Board of Fisheries and Board of Game are required to adopt regulations governing the taking of fish stocks and game populations for "subsistence uses" pursuant to secs. 803 and 804 of ANILCA rather than title 16. The petitions also request that if after being afforded a reasonable opportunity to do so, the boards fail to adopt regulations pursuant to the federal regulatory standard, then secs. 804 and 806 of ANILCA require the Secretary of the Interior to adopt regulations superseding regulations adopted by the Board of Fisheries and Board of Game insofar as such regulations may attempt to regulate the taking of fish stocks and game populations for "subsistence uses" as that term is defined in section 803 of ANILCA.

The AFN Board of Directors has taken this action with the most extreme reluctance. AFN supports the State of Alaska's continued regulation of hunting and fishing. Consequently, the necessity of invoking congressional authority because of the Alaska Senate's failure to act in a timely and responsible fashion is a sad and regrettable occurrence. But the reasonable management of Alaska's fish stocks and game populations for the benefit of all Alaskans - both rural and urban - Native and nonNative - is too important to the health and well-being of all of the citizens of our state to allow the present regulatory confusion and its attendant hardship to continue unabated.

Jack Fuller  
August 12, 1984  
Page 5

If you have any questions about the AFN petitions or if I can be of any further assistance to you and the members of the committee during your consideration of this important issue, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janie Leask". The signature is written in dark ink and is positioned to the right of the typed name.

Janie Leask  
President  
Alaska Federation of Natives



Official Business

# Alaska State Legislature

## House of Representatives

### Special Committee on Fisheries

Pouch V  
Juneau, Alaska 99811

Phone:  
(907) 465-4924

#### M E M O R A N D U M

July 15, 1985

TO: All Legislators

FROM: Representative Peter Goll *Peter Goll*  
Chairman, House Special Committee on Fisheries

SUBJECT: Subsistence Fishing Update

At the mid-point in the 1985 salmon season, subsistence fishing activity across the state had experienced moderate increases, according to the Alaska Department of Fish and Game (ADF&G). No major displacements of sport and commercial fishing has occurred to date, although a late coho gillnet fishery on the East Side Beaches of the Kenai Peninsula is expected to cut into sport catches.

ADF&G has decided to open several long-dormant subsistence fisheries in Southeast, and several other systems are under consideration for later openings. Initial interest in the reopened fisheries was minimal. The Department also had closed a sport fishery on Prince of Wales Island to protect an important local subsistence fishery experiencing weak returns.

On the legal front, the state has been sued by a Homer resident who wants hook-and-line salmon fishing classified as a subsistence activity. Two of the Madison litigants also have threatened to file separate actions against the state, but had not gone to court by early July.

SOUTHEAST--ADF&G had issued about 1,900 subsistence fishing permits for Southeast by July 1, a moderate increase over previous years. However, peak fishing periods in Southeast's most important subsistence fisheries had yet to occur. ADF&G has reopened the Taku and Stikine Rivers to subsistence net fishing for sockeyes. The Taku has been closed to subsistence fishing since 1977 and the Stikine was last open in the late 1960s.

Both river systems support relatively small but important commercial gillnet and sport fisheries, but the initial impacts were expected to be minimal. ADF&G had issued 52