

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672

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APR 09 1985

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 8512

A RESOLUTION OF THE CITY OF VALDEZ, ALASKA
URGING IMMEDIATE PASSAGE OF SENATE BILL 231
AND HOUSE BILL 288, RELATING TO SUBSISTENCE
FISHERIES, BY THE ALASKA STATE LEGISLATURE

WHEREAS, the Supreme Court of the State of Alaska recently found the Alaska Board of Fisheries Regulation, 5 AAC 01.597 inconsistent with the Legislative intent to provide guidelines for the protection of subsistence fishing, and

WHEREAS, the court found the regulation exceeds the authority delegated to the Board because it operates too restrictively in nonsubsistence uses, and

WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and nonsubsistence fishery issues, and

WHEREAS, the economy of the City of Valdez is critically dependent on the revenue and employment resulting from the commercial and sport fisheries, and


WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal use, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that

Section 1. There be immediate consideration and enactment of Senate Bill 231 and House Bill 288 as proposed by Governor Sheffield.

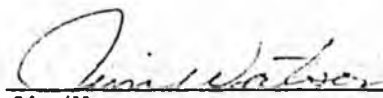
PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA this 1st day of April, 1985.

CITY OF VALDEZ, ALASKA



John Devens, Mayor

ATTEST:



Jim Watson
City Manager/City Clerk

APR 24 1985

from
Mark Jensen

A position statement

released in late November, 1984, by the U.S. Fish and Wildlife Service in Alaska recommends that

"... management of the polar bear, walrus, and sea otter should be returned to the State of Alaska."

In 1973, under terms of the Marine Mammal Protection Act, the FWS and the National Marine Fisheries Service assumed control of ten species of marine mammals in Alaska: the FWS is responsible for the polar bear, walrus and sea otter, while the NMFS is responsible for the sea lion, beluga, and five species of seals.

The FWS said its position statement is based upon five major points:

1. The Marine Mammal Protection Act places restrictions upon the federal government that impedes sound management.

2. Under the MMPA, harvest of a marine mammal species cannot be restricted by federal action until stocks have been found to be depleted, and then only after lengthy hearings before an administrative law judge.

3. Under the Act, as amended in 1981, the state would be able to regulate harvest *before* a stock

becomes depleted and this would not require hearings before an administrative law judge.

4. The State of Alaska has an established history of high-quality research and management of marine mammals.

5. Legislative history of the MMPA and amendments consistently has shown the intent of Congress to be for return of marine mammal management to the States.

While the FWS says it favors return of management of polar bears, walrus, and sea otters to Alaska, it also says that if the state decides against such management, or in the interim before management is returned to the state, "... the FWS will begin a management program."

According to the statement, "In 1981 Congress gave the FWS specific authority to require marking and tagging of marine mammals taken by Natives. In 1984, Congress has issued a mandate to the FWS to implement this effort."

Alaska Natives (Eskimos, Indians, Aleuts) are the only people allowed to hunt marine mammals under the federally administered MMPA.

Last November the Alaska Department of Fish and Game scheduled 40 public hearings throughout Alaska to get the public's view on return of marine mammal management to the state.

The FWS position statement was issued while the public hearing process was underway.

Alaska's newest
passenger
airline, MarkAir, laid



Telegram

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DEAR SENATOR,

IN THE EVENT THAT HB288 DOES NOT PASS ANGOON WOULD BE NEGATIVELY IMPACTED BY NON-ANGOON RESIDENTS BECOMING ELIGIBLE. ANGOON IS ONE OF TWO SOUTHEAST COMMUNITIES EFFECTED. THE A.D.F.G. ALLOCATION WAS BASED UPON HOUSEHOLD NEED IN AND AROUND ANGOON. WE WOULD APPRECIATE YOUR SUPPORT FOR PASSAGE THIS YEAR. IF THE AREA WERE OPEN TO ALL USERS, RAPID DEPLETION OF SUBSISTANCE RESOURCES WOULD BE INEVITABLE.

THANK YOU,

EDWARD J GAMBLE SR MAYOR
CITY OF ANGOON

MAY 06 1985

EMMONAK CORPORATION AND CITY OF EMMONAK
JOINT RESOLUTION IN SUPPORT OF HOUSE BILL 288

TO ALL MEMBERS OF THE ALASKA LEGISLATURE:

THIS RESOLUTION expresses the most urgent request by the people of Emmonak that House Bill 288 be passed immediately.

Six hundred forty-one people live in Emmonak. Many, but not all, are shareholders of Emmonak Corporation. The primary resource from which our people derive income and subsistence is the lower Yukon fishery. This fishery provides ninety percent (90%) of the cash income for the people of Emmonak. Nearly all other non-governmental enterprises are also dependent upon cash income from this fishery.

The lower Yukon fishery has historically been managed so as to provide adequate fish for subsistence users without conflict with commercial fishermen. This sustained yield management can continue to provide for this balance and for a viable community economy in Emmonak.

Recent developments in the law, particularly as expressed in Madison v. Alaska Department of Fish and Game, Opinion No. 2911 of the Alaska Supreme Court, threaten the destruction of the only viable cash economy in the lower Yukon area. At the present time these developments, unless altered by passage of House Bill 288, may end commercial fishing on the lower Yukon for the 1985 season and possibly thereafter. The impact of this development on our people, both commercial fishermen, subsistence users, and other non-governmental enterprises, will be catastrophic. A substantial portion, if not all of our

population, will find it necessary to seek governmental assistance for the barest of essentials absent the cash incomes derived by the community from commercial fishing operations.

Even those of us who depend on subsistence fishing will be injured due to the destruction of the cash economy of the lower Yukon.

We unanimously have resolved to urge you to pass House Bill 288 as soon as possible. Preparations for the 1985 season have already begun. These preparations require start-up financing which may become unavailable if the current uncertainties following Madison are not resolved immediately.

RESPECTFULLY SUBMITTED to the Legislature of the State of Alaska this ____ day of May, 1985.

EMMONAK CORPORATION
By its Board of Directors

CITY OF EMMONAK

Martin B. Moore, Chairman

Andrew Kelly, Sr., Mayor

Mr. Billy Charles

Mary Ann Immamak, Vice Mayor

Ms. Elizabeth Carden

attest:

Mr. Raymond F. Waska, Sr.

Secretary

Mr. Phillip G. Immamak

Mr. Donald B. Redfox

Mr. James M. Kameroff

Mr. Jacob A. Johnson, Sr.

Mr. Andrew C. Kelly, Sr.



KENAI RIVER SPORTFISHING ASSOCIATION

3301 "C" Street Suite 202
Anchorage, Alaska 99503
Phone (907) 276-1451

MAY 08 1985



May 7, 1985

To: All members of the Alaska Legislature

From: Kenai River Sportfishing Association

Subject: House Bill #288

Kenai River Sportfishing Association strongly urges you to achieve the following objective:

1. Complete legislation this year which will return us as near as possible to the status that we experienced prior to the Madison decision.
2. Install a "sunset clause" of either one or two years in the event that problems occur and require further legislation.
3. Make every effort to have the legislation enforceable.

by Bob Gerdon, Jr.
acting President of Kenai River Sportfishing Association



Alaska Sportfishing Association

MAY 08 1985

3805 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

May 7, 1985

To: All Members of the Alaska Legislature
Subject: House Bill 288

The Alaska Sportfishing Association feels strongly about the following three points:

1. Legislation is needed this year to preclude widespread anarchy, particularly in the hunting area.
2. The legislation needs a sunset clause since the only bill being presented or considered to date is from the same organization that originated the divisive 1978 Subsistence bill.
3. Provisions must be included that will insure that Fish and Game regulations and the allocations made by the Boards of Fish and Game are enforceable, that is, subsistence cannot be used as a defense in court to get around these regulations.

ALL three points are necessary together to insure that fair, well thought out, comprehensive, enforceable legislation is passed.

Sincerely,

Robert L. Hunter
Chairman, Legislative Committee

TO: MEMBERS, ALASKA STATE LEGISLATURE

FROM: Rep. Jack Fuller, Chairman,
House Interim Committee on Subsistence

DATE: October 10, 1985

SUBJECT: Subsistence Committee Hearings

The House Interim Committee on Subsistence would like to invite you to join us for public hearings in early November. As the hearings will be teleconferenced on a statewide basis, you may join us by participating in your community's teleconference.

The first hearing in Anchorage, November 6, will begin with an update on what has happened with the subsistence issue since the end of last session. This update will include the current status of all litigation, federal action, AFN's legal petitions, comments by the Department of Fish and Game, and 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.

I encourage you to join us in November.

The hearing schedule is as follows:

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

FAIRBANKS & INTERIOR: Testimony from Fairbanks area and Interior. All other sites may listen in. Thursday, November 7; 12:00-5:30 p.m., 7:00-9:00 p.m. Location: Fairbanks LIO, 315 Barnett St., Suite 101.

SOUTHEAST, PRINCE WILLIAM SOUND, KODIAK: Testimony from these areas. All other sites may listen in. Tuesday, November 12; 9 a.m.-1 p.m. Committee members and other Representatives present at their home sites.

WESTERN, NORTHWESTERN, SOUTHWESTERN: Testimony from these areas. All other sites may listen in. Tuesday, November 12; 2 - 6:00 p.m. Committee members and other Representatives present at their home sites.

May 8, 1985

MAY 09 1985

Governor Bill Sheffield
Members of the
Alaska State Senate

Gentlemen:

The following members of the Kenai Peninsula Borough Assembly do hereby request that a Subsistence Bill be enacted this session. This legislation should guard against the combined risks of
(1) Federal intrusion
(2) Unprosecuted violations of Fish and Game laws
(3) Possible closures of both sport and commercial seasons.
Please consider these possible negative effects, and implement a subsistence law which protects all user groups.

As a result of the approaching end of the Legislative Session, and restrictions upon the time of the Kenai Peninsula Borough Assembly, we were unable to have this item considered as a formal matter of business of the Assembly. We therefore chose to utilize this forum to express our opinions, and it needs to be clear that these are only our opinions and not a statement of Borough policy.

Thank You For Your Consideration,

- 1. *[Signature]* FRANK MULLEN DISTRICT II SEAT C - SOLDOTNA
- 2. *[Signature]* MARIE E. WALLI DISTRICT IV HOOPER
- 3. *[Signature]* KAREN S. Mc GAVAN DISTRICT III NIKISKI
- 4. *[Signature]* Jim Skogstad DISTRICT I HOPE
- 5. *[Signature]* GARY FANDEL DISTRICT III NIKISKI
- 6. *[Signature]* RONALD J. JOHNSON DISTRICT III NIKISKI
- 7. *[Signature]* Betty J. Chick DISTRICT III KENAI
- 8. *[Signature]* Jonathan W. Sewall DISTRICT I SEWARD
- 9. *[Signature]* Francis S. Moore DISTRICT II SOLDOTNA
- 10. *[Signature]* M. DIVALLICK DISTRICT IV NIKISKI
- 11. *[Signature]* PAUL DALE DISTRICT II SOLDOTNA
- 12. *[Signature]* DIME (unclear) DISTRICT IV SOLDOTNA
- 13. *[Signature]* Kenn Stephens DISTRICT II SOLDOTNA

Rural Alaska Community Action Program, Inc.

May 9, 1985

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

Dear Senator Sturgulewski:

On March 20, 1985 at our regular Board meeting the Rural Alaska Community Action Program (RurAL CAP) passed Resolution 85-06, "In Support of Legislation to Maintain Orderly Harvest of Fish and Game Resources" (copy attached). RurAL CAP urges immediate action to respond to the Madison Supreme Court decision.

HB 283 has been carefully considered in the House: the teleconference hearings, the floor debates, the intensive media coverage, and the bill's ultimate approval May 4 have provided extensive opportunity for public involvement. The time has come for action on HB 288 in the Senate, before adjournment of this session.

The Madison Supreme Court ruling struck down the Board of Fisheries' definition of subsistence, specifically the part that said in order for a person to qualify as a subsistence user, he/she would have to live in a rural area. The court said that this definition did not give the kind of protection to subsistence users that was meant to be given by the State of Alaska's 1978 subsistence priority law.

The Eluska decision basically says that, since no regulations currently exist for subsistence use of game, a subsistence hunter cannot be prosecuted for taking moose or caribou, etc. if the meat is used for subsistence.

The combination of these two decisions makes it impossible for the Department of Fish and Game, and the Boards of Fish and Game to manage the allocation of fish and game resources. The Madison ruling has taken away their authority to regulate the taking of fish and game. Presently, the only thing they can do is to apply emergency regulations, but ONLY if the "sustained yield" of any resource is threatened. The likelihood of the "sustained yield"

of, for example, salmon fisheries that used to be taken mostly by commercial fishermen being threatened is very remote. Therefore, the Madison ruling that says the Board of Fish cannot differentiate between rural and urban to decide who is a subsistence user and who is not, means that just about anyone in Alaska qualifies for subsistence uses of fish and game. This creates a critical situation: the commercial fishermen who rely on fishing for their livelihood will have to wait until the Department of Fish and Game or the Board of Fish says all subsistence users have been satisfied before they will be allowed to take commercial fish. The sports fishermen will have to wait, too. Meanwhile, who is to say WHEN the Board or Department can say, truthfully and with documentation to back themselves up, that ALL subsistence uses have been satisfied?

The Eluska decision further muddies the water: it says, since the Madison ruling makes almost everybody subsistence users, and since there are no regulations for subsistence hunting (because of Madison there cannot be any) then almost anyone can take almost anything in the name of subsistence.

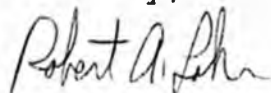
We believe that individual senators are, in fact, concerned about acting on the subsistence issue this session, and for good reason: lack of action this session aimed at correcting the imbalance created by the Madison court decision will result in serious harm to commercial and sports users of especially fisheries resources this spring and summer. Those who have subsisted in rural Alaska will continue to do so and suffer little or no impact as a result of inaction or delay by the Senate in 1985. This inequity is not in the interest of the people of Alaska. No public official could countenance a return to the divisiveness of 1982 when the subsistence repeal effort split the people of this State. By timely, responsible action this session you have the opportunity to defuse a potentially explosive situation.

Our constituency consists of both rural and urban residents; subsistence, commercial and sports users of fish resources; Democrats and Republicans. Their concern over this latest evidence of conflict over resource uses has been expressed to the Directors, and the result was unanimous adoption by the Board of Resolution 85-06. We recognize that the Senate's constituency is likewise diverse, and hope that you as a concerned Senator will

respond to the statewide expression we heard during the House teleconferences of the desire on the part of Alaskan residents that something be done about this issue this year.

Thank you for your attention and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Robert A. Lohr".

Robert A. Lohr
Executive Director

Enclosure

RAL:ct

Rural Alaska Community Action Program, Inc.

Resolution #85 - 06

- ENTITLED: In Support of Legislation to Maintain Orderly Harvest of Fish and Game Resources.
- WHEREAS, the orderly harvest of fish and game resources is essential to the general welfare of rural Alaskans who depend on these resources for a large part of their livelihood; and
- WHEREAS, the Alaska Supreme Court, in Madison, et al. vs. the Alaska Department of Fish and Game, struck down state regulations designed to determine eligibility for subsistence as being inconsistent with state law and legislative intent; and
- WHEREAS, the decision would have the effect of allowing massive increases in the number of subsistence permits which may be issued; and
- WHEREAS, this ruling also has the effect of preventing orderly harvest of subsistence fish and game resources because it diminishes the authority delegated to the Alaska State Board of Fisheries to establish criteria for the eligibility of users; and
- WHEREAS, the ruling broadens the eligibility for subsistence permits to include all residents of the state, because it focuses on the place where customary and traditional uses have occurred, rather than the people who conduct them; and
- WHEREAS, relaxing the eligibility requirements may necessitate emergency closure of commercial and sport harvests due to the influx of "court-created" subsistence users; and
- WHEREAS, the court recognized that the legislature intended to protect subsistence rights in the 1978 statute; and
- WHEREAS, the court, by broadening subsistence access so dramatically, jeopardizes the preference for those who depend most directly on the resource: rural residents of Alaska; and

WHEREAS, Governor Sheffield has introduced legislation that would restore order to the harvest of fish and game by more strictly defining the personal use and subsistence use of fish and game; and

WHEREAS, the subsistence use definitions must include the use of the words "rural" and "residents" in order to protect limited resources from virtually unlimited access by urban residents who have never depended upon fish and game resources for maintaining their way of life;

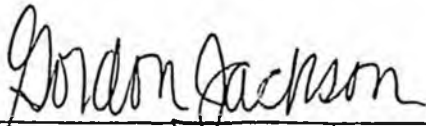
now, therefore, be it

RESOLVED: that the Board of Directors of the Rural Alaska Community Action Program, Inc., endorses Senate Bill No. 231, "An Act Relating to the Taking of Fish and Game for Subsistence and Personal Use," and

be it further

RESOLVED: that the Alaska State Legislature is urged to act immediately on this legislation, in order to maintain harmonious relations among Alaska fish and game user groups.

ADOPTED at a regular meeting of the Board of Directors meeting in Juneau, Alaska, March 20, 1985.

- 

Gordon Jackson, President
Board of Directors



Robert A. Lohr
Executive Director

Kie - We need a new approach
& this may be a useful direction. I have
a feeling we're not seeing forest for trees.

This draft bill attempts to:

1. Place the state in a positive management role instead of being always on defensive.
2. Convey a clear message of cooperation to feds & of equal treatment to Alaskans.
3. Comply with ANILCA & thereby preclude litigation & the big "fed threat".
4. Establish rationality in Alaska resource management & preclude annual crisis, threats, etc.
5. Shift the subsistence allocation/priority burden to the feds who originated it.
6. Neutralize the advocacy role of this (or any) administration & the attendant dubious advice being received from A & F&G.

Sec 1. Findings. The Legislature finds that:

- (1) The management of fish & game resources is increasingly complex as human populations increase.
- (2) There is increasing controversy over priorities among competing user groups.
- (3) Priority classes among citizens are not consistent with common property resource use.
Establishing any priority leads to a need for additional future priorities.
- (4) Federal law imposes a subsistence priority on federal land in Alaska, a situation that does not exist in the other United States.
- (5) The complex overlap of state & federal law is a basis for increasingly frequent litigation & misleading expectations among citizens.
- (6) It is state intent to meet federal requirements of ANILCA.
- (7) It is desirable to simplify the management of state fish & game by initiating a new management format for a test period of 5 years.

Sec 2. The (existing? subsistence law) is repealed & reenacted to read:

A. The Boards shall regulate fish & game use as either personal use or commercial use.

(1) All subsistence & recreational opportunities are regulated as personal use.

(2) There shall be no priority among personal uses.

~~Sec 2.~~

B. The Boards shall adopt regulations permitting additional subsistence opportunities on federal lands when:

(1) Residents of those areas have no opportunity to meet their needs under existing personal use regulations, and;

(2) The Dept of Interior presents documented findings of subsistence needs specific to fish or game stocks & to geographic area.

Sec 3 This act is authorized for a period of 5 years.

alaska's marine mammals who will benefit from state management?

Passed in 1972, the Marine Mammal Protection Act (MMPA) imposed a moratorium on the taking of marine mammals and marine mammal products for any purposes. Exempted from that moratorium were Alaskan Natives, who were allowed to continue their traditional and customary use of marine mammals and marine mammal by-products for subsistence purposes, and for purposes of creating Native handi-



crafts. Under the MMPA as originally adopted, the federal government had exclusive management authority and authority to issue permits on a limited basis for the taking of marine mammals for scientific research. The federal government also had authority to allow commercial harvesting of marine mammals but has consistently refused to exercise that authority. Consequently, no commercial or sport harvesting of marine mammals in Alaska has occurred since 1972.

The MMPA provided a mechanism by which coastal states could obtain a transfer of management authority. To obtain such a transfer, the state would have to show that it had developed and would implement a program for the conservation and management of marine mammals consistent with the purposes and goals of the Act. The transfer provisions of the MMPA provided states with the opportunity to authorize and regulate a sport and commercial harvest of marine mammals on conditions that those harvests not reduce the population of the harvested species below optimum sustainable population levels.

In 1982, the State of Alaska engineered adoption of amendments to the MMPA regarding transfer of marine mammal regulatory authority. The transfer provisions adopted in 1982 authorize a transfer of management authority to the State of Alaska on a finding that (1) the State has

adopted a mechanism to allow the taking of marine mammals for subsistence uses, (2) ensures that taking of marine mammals for other non-subsistence uses will be authorized only on a finding that such taking will not significantly impact subsistence uses, and (3) that the taking will, to the maximum extent practicable, provide economic opportunities for the residents of rural coastal villages in Alaska.

Since the 1982 amendments, the State has been seriously considering whether to request a transfer of management authority from the federal government. It has held hearings throughout the State in coastal villages and elsewhere on this issue. It also secretly developed a draft application for transfer of marine mammal management authority to the State.

Transfer of marine mammal management authority would have catastrophic consequences for rural Native Alaskans who rely on marine mammals for subsistence purposes, as well as on the marine mammals themselves. Under the 1982 MMPA amendments, transfer of management authority to the State of Alaska would result in subsistence taking by all rural residents of Alaska. Such taking would no longer be restricted to Native Alaskans who customarily rely on those species for food, clothing, and handicrafts. It takes little imagination to realize that expanding the category of persons who may engage in "subsistence" harvesting of marine mammals will result in increased tensions and most likely outright conflicts between Natives and non-Natives. Non-Native harvesters will, under the guise of engaging in subsistence harvesting, substantially interfere with Native access to and use of such critical species as Pacific walrus; ringed, spotted, and harbor seals; and polar bears. The number of marine mammals actually taken could skyrocket. Moreover, non-Native harvesting of Pacific walrus will result in a flood of non-Native ivory carvings, thereby destroying the only opportunity for Native residents of Bering Sea villages to obtain the cash necessary to continue their subsistence activities. The poor will get poorer while a new class of "artisans" will begin to reap the benefits of the ivory trade.

Beyond the dilution of Native subsistence harvesting rights, the State plan will result in both commercial and sport harvesting of

many species of marine mammals. Among the species the State claims can support a commercial and sport harvest are belukha whales, Pacific walrus, polar bears, sea otters, Steller's sea lions (adults to be harvest for crab bait or animal food), bearded seals, harbor seals (sustainable yield projected in excess of 10,000 animals annually), ringed seals (6,000 harvested annually for both human and animal consumption) and spotted seals (up to 3,000 harvested annually for both human and animal consumption).

Alaska Friends of the Earth objects to the State's attempt to obtain management authority over marine mammals. The threats to the species themselves as well as to the opportunity of rural Native Alaskans to continue their customary and traditional taking and use of these species cannot be tolerated.

This policy statement was unanimously approved by the Board of Directors of Alaska Friends of Earth on April 4, 1985. Emphasis has been added.

Alaska Friends of the Earth

Volume 1 Number 1 Newsletter Spring, 1985

Published quarterly by the Alaska Branch of Friends of the Earth. Subscriptions for non-members are \$15 annually.

Editor: Margie Gibson
 Board of Directors:
 Mike Holloway, Chair
 Sue Libensen, Secretary
 Alicyn Hedberg, Treasurer
 Jim Bamberger
 Gordon Wright

Checks should be made payable to Friends of the Earth
 Return to: Alaska Friends of the Earth
 1069 West Sixth Avenue
 Anchorage, AK 99501
 Contributions to Friends of the Earth are not tax-deductible.

Aspects Needing Consideration in Subsistence Legislation.

The continuing controversy surrounding the subsistence law attests to several basic flaws in the law. Those flaws have made implementation of the law by the Boards of Fisheries and Game extremely difficult, as numerous successful challenges to the Boards' regulations amply demonstrate.

The first part of this discussion will highlight the major flaws in the current law and then suggest corrective approaches for them. The three bills currently in the Legislature, HB 288 and SB 231 (the Governor's bills--hereafter treated together) and SB 320 will then be evaluated regarding these flaws.

The last part of this discussion will consider several other aspects of the subsistence issue that have generated considerable debate. The Governor's bills and SB 320 will be evaluated relevant to those aspects.

A. BASIC FLAWS IN THE CURRENT SUBSISTENCE LAW.

1. Lack Of Adequate Definition Of Subsistence Use.

Perhaps the most significant flaw hindering successful implementation is an inadequate definition of subsistence use. Defining subsistence use as the customary and traditional use of fish and game for food, clothing, etc., is not adequate. The quagmire that the Boards found themselves in is ample proof of that. For example, the Board of Game chose an individual family approach, using history of use and income level as a means of identifying who had subsistence uses, whereas the Board of Fisheries used community attributes and residency as the criteria. Both approaches were legally faulty. Customary and traditional are words that do not have legally precise meanings. If the Legislature believes it necessary to keep customary and traditional use as the definition of subsistence use, then customary and traditional need to be clearly and unambiguously defined so that all Alaskans have the same understanding of what is subsistence.

Governor's bills.--These two bills do not define customary and traditional use. Instead, the bills give the subsistence priority to rural Alaskan residents. In defining who qualifies, however, additional confusion regarding customary and traditional use arises. That confusion arises because the priority is given to residents of communities and areas in which personal and family consumption of fish and wildlife is a significant characteristic of the economy. So is personal and family consumption the definition of customary and traditional use? Is the economic aspect the critical aspect of

the definition (and where then should the economically important commercial fisheries fit in)? What constitutes a significant characteristic of the economy? Rather than reducing confusion by defining customary and traditional, the Governor's bills simply add an additional level of confusion.

SB 320.--This bill does not explicitly define customary and traditional. However, it defines who qualifies for that use. By so doing, the bill in effect defines subsistence use. The definition essentially involves a documented history of use and an inability to obtain alternative sustenance. The criteria that SB 320 contain can be implemented. They are also clear enough in their meaning so that litigation due to ambiguity should not be frequent. Furthermore, SB 320's approach to subsistence probably is the one most Alaskans have in mind when they think of subsistence; general accord as to what is subsistence should result.

2. Inability To Regulate And Manage Subsistence Harvests.

The current law does not allow adequate regulation of subsistence harvests. The recent Supreme Court decision in the Madison case, and the Court of Appeals ruling in the Eluska case clearly indicate that no restrictions at all can be placed on subsistence take if sport or commercial harvests are occurring (in fact, if any consumptive uses other than subsistence are occurring). Furthermore, subsistence use can only be restricted if sustained yield (of that subsistence use) is jeopardized. The consequences of not being able to regulate the harvest of cow moose during the calving season, the inability to stop shooting of ptarmigan during nesting, and the inability to restrict gill netting of spawning rainbow trout should be obvious to all. To properly manage fish and wildlife populations, the regulatory agencies need the ability to restrict those harvests that are most detrimental to fish and wildlife stocks. Such flexibility often allows larger total harvests to be taken safely. For example, 500 geese might be harvested on a sustainable basis if they are shot during nesting, but a sustainable harvest of more than 2,000 might be possible if they are taken in the fall. For common property such as fish and wildlife, one cannot allow sound management practices to be violated, regardless of the beneficial use being considered. The present law needs to be modified to allow adequate regulation of subsistence harvests.

Governor's bills.--The Governor's bills don't address this problem. In fact, an Assistant Attorney General apparently advised one legislator during the last week of the session that the Boards did have authority to restrict subsistence harvests -- even despite

the very explicit wording in the Court of Appeals ruling (see particularly footnotes 6 and 7 of that ruling). One can only conclude that the Assistant Attorney General's pronouncement was one of advocacy and not of legal scholarship. The point is, the Governor's bills would not correct the regulatory difficulty that currently does exist.

SB 320.--This bill does address the problem. It specifically states that only those subsistence uses allowed by regulation are legal. Obviously, regulations based on proven principles of fish and wildlife management can be implemented under this bill.

3. Legal Implications Of Granting Priority To A Use.

Does granting a use a priority status infer that regulations partially restricting such use (i.e. not allowing complete satisfaction of that use), so that other uses can be partially satisfied concurrently, are illegal? That is, does a priority use have exclusive right to the resources if the resources cannot satisfy all demands for the priority use? Or is a priority satisfied if only a reasonable opportunity is provided to subsistence users, even though such an opportunity is not expected to fully satisfy all demands for the priority use? To our knowledge, the legal implications of granting a use a priority status have not been addressed in the courts. Undoubtedly they will be, if the current priority designation is retained in the law. Rather than let the courts decide, the Legislature should carefully specify what is meant by priority if that designation is retained. If priority can be equated only with exclusive use in cases of inadequate resource supply, then the designation should be changed from priority to preference. Whatever the designation, it is not reasonable that other uses will be allowed only in those cases in which the status use can be satisfied completely.

Governor's bills.--These bills do not address the priority issue. The priority designation would be unchanged if the Governor's bills are adopted as is.

SB 320.--This bill does not specifically address the priority issue. The bill does indicate that historical levels of subsistence use could be designated, thereby putting a cap on the amount of subsistence use allowed. However, the question of exclusivity when the resources are in short supply is not addressed. We believe that must be addressed in the bill.

B. OTHER ASPECTS OF THE SUBSISTENCE ISSUE.

1. Location Of Residence As A Basis For The Subsistence Priority.

The current law does not have residency as a criterion for subsistence use. It is used, however, in allocating resources among subsistence users. The legislative record established during passage of the current law clearly indicated legislative intent that all subsistence uses, regardless of where occurring in the state, would have a priority; the intent clearly was not to restrict the priority only to certain communities or only to rural Alaska. In spite of that record, the Boards did restrict the priority to rural Alaskans, with the Board of Fisheries implementing it solely on a community basis. The Attorney General's staff took an active advocacy role in developing the rural/community approach; an often voiced argument was that the State needed to be "in compliance" with the Federal rural designation, otherwise Federal preemption of State management on Federal lands would result. The State Supreme Court in the Madison ruling found the rural/community approach in violation of the State subsistence law; the Court did not rule on the constitutionality of that approach. However, a significant legal question remains regarding the constitutionality of the location of residency criterion, particularly when one considers the very extensive legislative record documenting that subsistence uses occur in both urban and rural Alaska.

The current State administration, through the Attorney General's staff and the Commissioner's office of ADF&G, is pushing a rural/community approach. Their principal argument is that in view of the Supreme Court's Madison ruling a rural/community approach is necessary to eliminate the management/regulatory chaos created by the Madison decision. If that decision did create such chaos, the rural/community approach, which would reduce the number of individuals qualifying for the subsistence priority, would not eliminate the chaos, although it might constrain it somewhat. Any chaos created by the decision would be due to two sources: an increased number of subsistence users and the legal recognition that subsistence use of a resource cannot be restricted so long as any other consumptive use of that resource is occurring. The latter aspect has at least as dire an implication for resource management as does the former. The salient point is this: using a rural/community criterion for determining the subsistence priority is not going to correct the management/regulatory hiatus (revealed by the Madison decision) that exists with the current subsistence law! That aspect is of fundamental importance when considering revisions to the subsistence law.

The rural/community criterion for determining who gets a subsistence priority has one significant drawback -- it is not fair! Not all individuals and families with equal dependence on the fish and wildlife resources are treated equally. All individuals in a community designated as a subsistence community would get the subsistence priority (regardless of their use of the resources), but those individuals in a community not so designated would not have the priority, regardless of how dependent on the resources an individual or a family might be! People equally situated should be treated equally. Until that is assured, the subsistence law will be a continuing source of controversy.

The argument has been raised that the subsistence priority must be on a community basis so that a village economy is not threatened or unduly impacted. If a village economy has a substantial dependence on subsistence use of fish and wildlife, one would expect most individuals and families in that community to qualify on an individual basis for the subsistence priority. Hence, that village's economy would be protected by granting the priority on an individual, not a community, basis.

Governor's bills.--As indicated above, the administration is pushing the rural/community approach; these bills contain the rural/community criterion.

SB 320.--This bill assigns the priority on an individual basis, including all dependant members of that individual's household.

2. Compliance With The Federal Law.

One very significant difference between the State and Federal subsistence provisions is the priority. In State law, subsistence use is the priority use; in Federal law subsistence use is only a priority among the consumptive uses. That difference has troublesome management implications for Alaska. Under State law, the Boards are required to provide for subsistence use, restricting such use only if two conditions hold: 1)all other competing consumptive uses are abolished, and 2)sustained yield of the subsistence use is jeopardized. Obviously, National Parks and Preserves, primarily dedicated to non-consumptive uses, were not established under ANILCA with that scenario in mind. Recent interactions between the Board of Game and the National Park Service regarding subsistence regulations in the Gates of the Arctic National Park demonstrate the divergent mandates. Obviously, State law is not in compliance with the Federal law on the critical point of priority. Should we modify our State law to gain compliance, thus placing subsistence use only in a priority status with respect to other consumptive uses? If compliance with the Federal law is very important, perhaps we should! But is compliance that

important?

The argument advanced for compliance is that without it the Feds might preempt State management authority on Federal lands. They might, especially in those instances in which the variant in the State law disallows satisfaction of provisions mandated in the Federal law. The different specifications for priority might be one such variant, for Federal officials may need to restrict subsistence uses in order to protect non-consumptive values for which the land was set aside.

The question of compliance needs to be evaluated on a case by case basis. That is the only rational approach, for one provision of the law might be modified with only slight negative impacts on state and private lands, whereas modification of a different provision to conform to Federal law might produce very undesirable results for resource use on non-federal lands. That is, some provisions in the Federal subsistence law may be very undesirable ones from the State perspective (and perhaps even at variance with the State of Alaska constitution). The rural provision in the Federal law may be the prime example.

Non-compliance does not imply that Federal preemption is inevitable. Even if legal action is initiated, based on claims that the State statutes and regulations do not provide the subsistence privileges specified in ANILCA, the State's management authority probably will not be preempted unless it is clear that State laws and regulations are more restrictive than those the Federal officials would promulgate. Who is likely to be stronger advocates of consumptive uses of fish and wildlife -- the State of Alaska or the Federal officials, particularly those in the National Park Service? Anyone contemplating legal action to institute Federal management of subsistence should carefully evaluate the ultimate consequences of those actions.

Governor's bills.--These bills would bring State law into accord with the Federal law regarding rural priority. Other points of disagreement would remain.

SB 320.--This bill would not change the current situation that the priority is given to any subsistence user, rural or urban. Other points of disagreement would also exist.

3. Trade and Barter Provisions

???????

(Also need a summary regarding the Gov's bills and SB 320)

1. License

2. Qualifications. For license
must be individual/family

3. Regulate the use

4. Preference, not absolute
priority.

5. Trade & route

Mary Bishop
1555 Jess Crisal
Abks, AK 99701

with
AK Outdoor Council
455-6151

Talking with Mary Bishop.
Subsistence Use.

License

A subsistence user must have a licence

Regulations.

The use must be regulated by game laws.

Qualifications for permit to use.

The qualifications must be personal, familial, or individually determined, not determined by community.

Subsistence harvested ~~game~~ ^{resources} should not be available for sale.

Comments

Emperor geese are down more than half from several years ago. Down 17 % in last year. Cackling Goose down to 5% of population some ¹⁰ years ago. Black Brant is down, White Fronted is down. Some populations are in deep trouble. ¹⁹⁸⁰

People of the Y-K Delta are harvesting geese. ^{in spring}

People who have won the subsistence fight now want to prove that they can do what they have gained the right to do.

Moose population down from Fort Yukon is very low. Hunting, loss of habitat from fire control, wolves. Politically cannot close but it probably would not make much difference. 25D hunting area.

Community based privilege is a stepping stone to treating a village as a "dependent ^{Fort Yukon} community". → sovereignty

Inholding problems that would result from Tribal Council establishment.

*Not
material*

GENERAL POINTS FOR CONSIDERATION AND CONCURRENCE - SUBSISTENCE

1. Licensing: A license will be required for subsistence preference use. Licensing will be based on personal or household qualifications--not on the locality in which one lives nor upon racial, cultural or ethnic considerations.
2. Limiting Qualifications: Qualifications for the license will be very restrictive, requiring that (1) the wild resource taken be used for personal and household consumptive use only; and (2) the applicant must assert and establish that he needs the subsistence because it is reasonably necessary for his survival or the survival of his dependent household.
3. Subsistence Seasons and Bag Limits: The license holders will be subject to specific subsistence regulations on seasons, quotas, bag limits, etc. The opportunity to harvest will be given a preference but no guarantee of harvest is intended.
4. Preference Not Priority: The preference will not be an absolute priority over sport, commercial or recreational use. These latter uses need not necessarily be eliminated before subsistence preference use is restricted or regulated.
5. Trade and Barter: Trade provisions will be similar to those in current state law. Subsistence use may include trade, barter or sharing for personal or family consumption of wild renewable resources and must be limited to the first exchange. No cash exchanges shall be included in subsistence use.

APR 23 1985

UCIDA
United Cook Inlet Drift Association
Box 4440 Kenai, Alaska 99611

UCIDA POSITION ON SUBSISTENCE

The United Cook Inlet Drift Association is an organization of commercial fishermen comprised of 300 members out of a fleet in Cook Inlet numbering nearly 600. We have studied the subsistence issue thoroughly in light of the Madison decision and the recent opinion released by Judge Madsen and the Court of Appeals.

Earlier this year, the Alaskan Supreme Court ruled (in the Madison decision) that the State of Alaska and the Board of Fisheries has been in error by restricting subsistence fishing to rural areas. The decision now states that subsistence fishing has priority over all other methods of harvest and that every citizen of Alaska may participate in a subsistence fishery.

To further complicate matters, in a recent decision of the State Court of Appeals, it was ruled that a subsistence defense is now available (as a result of the Madison decision) to violators of game laws. We expect that "subsistence fishermen" will put their nets in the water on Cook Inlet beaches in June or July, to test this theory as it may apply to fisheries law, which could throw the whole management plan into turmoil.

The UCIDA board has looked at this whole situation closely. We have concluded (along with nearly every other fishing organization in Alaska) that fishing seasons cannot be adequately managed by the Department of Fish and Game in a climate of uncertainty over subsistence harvests and the threat of court action. Any curtailment of our season could be disastrous. We honestly feel that subsistence should be for rural Alaskans, and that urban residents can adequately share in the resource through sport or personal use harvests.

Governor Sheffield has introduced legislation that would, if properly amended, legalize the balance between subsistence, personal use, sport, and commercial harvests that seems to have worked well in recent years. Many critics blame the Board of Fisheries for the problems that exist today, and expect the Board to come forward with all-encompassing solutions. We feel that solutions to this problem lie with the legislature. If the legislature refuses to deal with this issue as soon as possible, it will be a slap in the face to the commercial fishing industry in the State of Alaska.

The United Cook Inlet Drift Association urges support of HB 288 and SB 231 in hopes that fishermen will be allowed the opportunity to earn a living and support their families with assurance in 1985.

APR 23 1985

April 16, 1985

Sen. Arliss Sturgewlewski
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgewlewski;

UCIDA is an organization of commercial fishermen comprised of 300 paid members out of a fleet in Cook Inlet numbering nearly 600. We have studied the subsistence issue thoroughly in light of the Madison decision and the recent opinion released by Judge Madsen and the Court of Appeals which validates the "subsistence defense" for game violations.

The UCIDA Board of Directors strongly supports passage of SB 231 this session with a sunset clause if necessary for the following reasons:

- The 1985 fishing season cannot be adequately managed by the Department of Fish and Game in a climate of uncertainty over subsistence harvests and the threat of court action. Any curtailment of our season could be disastrous.
- We honestly feel that subsistence should be for rural Alaskans, and that urban residents can adequately share in the resource through sport or personal use harvests.

Please support SB 231, and allow fishermen the opportunity to earn a living and support their families with assurance in 1985.

Sincerely,



Jim Evenson
President, UCIDA

cc: all legislators

Legislative

ANCHORAGE FISH & GAME ADVISORY COMMITTEE
c/o 333 Raspberry Road
Anchorage, Alaska 99518-1599

October 30, 1985

*10/31
Contacted Don Hennessy
Thank you copying
this letter please*

Don W. Collinsworth
Commissioner
ADF&G
PO Box 3-2000
Juneau, AK 99802

Dear Commissioner Collinsworth:

The Anchorage Fish and Game Advisory Committee strongly disapproves of the fact that the Madison decision, as well as the questionable interpretation of it by the Attorney General's office, have necessitated closure of many previous sport hunts and have allowed them only as subsistence Tier II hunts.

Therefore, the Anchorage Fish and Game Advisory Committee strongly urges the Board of Game and the Department of Fish and Game to do the following two things.

Our first recommendation addresses what the board and the department can and should do before the legislature addresses the subsistence issue or if the legislature fails to amend the subsistence law to correct the present Tier II problems. We urge that the Board of Game, with the assistance of the department, identify all Tier II hunts where the Tier II harvest did not approach, and will not likely approach, the authorized Tier II harvest level. The department and the board should open these hunts to all Alaskans as Tier I hunts, either through standard unrestricted participation or through lotteries in which any Alaskan has an equal chance. Examples include the moose hunts in the Eagle River and Eklutna areas.

Second, we request that the board and the department work aggressively with the Alaska Legislature to have it adopt amendments to the state subsistence law that would re-open to all Alaskans all sport hunts that were in effect prior to the 1985 season, now classified as Tier II hunts. Furthermore, any amendments should also include or clarify the authority of the board to identify appropriate and inappropriate subsistence stocks. For example, we believe that some species or stocks of wildlife, such as sheep, brown bear, cranes, steelhead, and rainbow

October 30, 1985

trout, goats, bison, and musk oxen generally are not subsistence stocks. We also believe that the board and the department should work with the legislature to address what constitutes "customary and traditional" subsistence use, and other uncertainties in the present law.

Sincerely,

A handwritten signature in cursive script that reads "Tim Stevens".

Tim Stevens, Chairman
Anchorage Advisory Committee

ANCHORAGE FISH AND GAME ADVISORY COMMITTEE

COMMENTS ON AFN-PROPOSED 5 AAC 99.010

IN JOINT BOARD BOOK

The following amendments to the AFN proposal in the Joint Board Book concerning 5 AAC 99.010 are done in the standard format for amendments. Amendments adding language are underlined, and amendments deleting language are bracketed and capitalized.

PREAMBLE TO ANCHORAGE ADV. COMM. AMENDMENTS TO AFN PROPOSED 5 AAC 99.010

The Anchorage Fish and Game Advisory Committee prefaces their proposed changes to 5 AAC 99.010 in lieu of the AFN proposal, with the following caveats:

- 1) We find the concept of subsistence priority to be a deprivation of individual opportunity under the Alaska Constitution to harvest fish and game;
- 2) We favor elimination of subsistence priority to fish and game resources within the state;
- 3) We favor a system where those in true need of the resource, can harvest the resource;
- 4) We favor defining "need" as those living below the federal poverty levels, and without common amenities such as hot and cold running water, electricity, aircraft, and without substantial public assistance;
- 5) Failing elimination of subsistence priority, we favor return of all Tier II hunts to Tier I hunts, except where biological circumstances limit the available resource;
- 6) Failing this, we favor the following proposed 5 AAC 99.010 which although containing reprehensible conditions such as "rural residents" and "subsistence use zones" is the only avenue currently available within the law to return equity of opportunity in harvest of fish and game resources;

5 AAC 99.010. BOARDS OF FISHERIES AND GAME SUBSISTENCE PROCEDURES: (a) The Board of Fisheries and the Board of Game shall identify and regulate the taking of fish stocks and game populations according to the following procedures:

(1) Meeting in joint board session, the boards shall seek to --

(A) identify and quantify the amount of customary and traditional subsistence uses of fish and game that is necessary to provide a reasonable opportunity for rural residents engaged in a subsistence way of life to do so; provided that such determinations shall be based at least upon the research, analysis, comments and recommendations of the subsistence division of the department that are reviewed and concurred in by the other divisions of the department.

(B) identify and designate customary and traditional subsistence use zones utilized by such rural residents;

(C) identify fish stocks and game populations that customarily and traditionally have been important subsistence stocks and populations utilized by such rural residents for subsistence use;

Explanation:

The new paragraph (1) requires the boards to jointly determine the approximate amount of fish and game resources that are necessary to meet customary and traditional subsistence needs, customary and traditional subsistence use zones for populations of rural residents, and fish and game populations that have customarily and traditionally been important to subsistence use. There is a strong emphasis in each element of this paragraph on what is customary and traditional. This emphasis should put the boards in a good position to find that certain rural practices, such as round-hauling of fish and barter of fish in a substantially commercial setting, are not customary and traditional subsistence use.

The first element, i.e. the quantification of the amount of fish and game needed to continue the opportunity for a customary and traditional subsistence life-style, is necessary to resolution of any allocation issues, but it has never been stated formally as a requirement. This would correct that deficiency.

The second element, i.e. the identification of subsistence use zones is similar to a concept in the federal subsistence law, which requires "resident subsistence zones" to be identified for regulating subsistence use in national parks. (The concept of residency has been omitted from the proposed language, however, because it would create a legal problem in that it is a Tier II concept in state and federal law, except with respect to national parks. The second element, however, comes as close as legally possible to

effectively making area residency a qualification without actually requiring it.

The third element, i.e. identification of important subsistence stocks, allows there to be a preference only on those stocks and not on unimportant stocks that may only incidentally be used for food or other subsistence uses. The rationale is that those incidental uses could be accommodated through non-subsistence regulations without interfering with the purpose of the state and federal subsistence laws, which is to provide the opportunity for the subsistence life-style to continue.

(2) [(1)] Each board will assess the biological status of fish stocks and game populations that are important subsistence stocks and populations within the use zones and determine whether a surplus may be harvested during a regulatory year [IDENTIFY THE HARVESTABLE SURPLUS WHICH MAY BE TAKEN FROM EACH STOCK AND POPULATION] consistent consistent with the utilization, development and conservation of such stocks and populations on the sustained yield principle, consistent with the conservation of healthy and natural populations of the resource, and consistent with the public interest;

Explanation:

This is modeled after a similar provision, 5 AAC 99.010(a)(1), in the Joint Board's Subsistence Policy, but the above amendments make several improvements.

By focusing the assessment of biological status on important subsistence stocks, any depletion that occurs through subsistence, sport, or commercial over harvest will be identified in relation to that stock, rather than in relation to a set of present and potential subsistence stocks. In other words, this would help identify stocks that need to be managed conservatively to rebuild the stocks. Without the provision, efforts to rebuild could be stymied by claims that the stocks should be managed for lower than sustainable populations and any or most of the harvest of a depressed population would have to be allocated to subsistence or primarily to subsistence. For example, the Nelchina caribou herd has been depressed for many years and is in a rebuilding phase. We would want to avoid assertions that the herd should be managed at a depressed level with a disproportionate amount of the harvest allocated to subsistence and that any shortfall in subsistence need for caribou should be met by allocating more moose (a present subsistence stock) or more sheep (a potential subsistence stock) to meet overall need for subsistence uses, where the additional subsistence allocation of moose or sheep would be contrary to sustained yield or the conservation of healthy and natural populations. In other words, one depressed population should not lead to creation of another, regardless of whether it is of a different species or stock within the subsistence zone

or outside the subsistence zone. If this principle is not accepted by subsistence users, then the subservience of subsistence to sustained yield and the maintenance of natural and healthy populations will be rendered meaningless.

Finally, the phrase "conservation of healthy and natural populations" is rooted in the federal law, whereas the present state law refers only to "sustained yield". Sustained yield is vague, but is more appropriate for stocks where all the harvestable animals are of similar size, age, and character (eg. salmon and ducks), and where the management concern is for sufficient reproduction to maintain future harvests and reproduction, and where the animals die upon reproduction (salmon) or are short-lived (eg. ducks and caribou). However, with other species, such as trout, sheep, moose, brown bear, management for merely sustained yield will disrupt the natural distribution of age classes within the population, and in some instances such as sheep or brown bear this disruption may have biological effects. Thus, the amended language adds to the sustained yield principle the requirement that the boards also consider the maintenance of healthy and natural populations and the public interest in maintaining healthy and natural populations, regardless of whether those public interests are for consumptive trophy harvest, non-consumptive use, or are for biological reasons other than sustained yield.

[(2) WITH RESPECT OF EACH FISH STOCK OR GAME POPULATION FOR WHICH A HARVESTABLE SURPLUS HAS BEEN IDENTIFIED, EACH BOARD WILL IDENTIFY "SUBSISTENCE USES" OF SUCH STOCK OR POPULATION AS SUCH TERM IS DEFINED IN SEC. 803, PUB. L. 96-487 (16 U.S.C. 3113), TO WIT THE CUSTOMARY AND TRADITIONAL USES OF SUCH STOCK OR POPULATION BY RURAL ALASKA RESIDENTS FOR DIRECT PERSONAL OR FAMILY CONSUMPTION AS FOOD, SHELTER, FUEL, CLOTHING, TOOLS, OR TRANSPORTATION; FOR THE MAKING AND SELLING OF HANDICRAFT ARTICLES OUT OF NONEDIBLE BYPRODUCTS OF STOCKS OR POPULATIONS TAKEN FOR PERSONAL OR FAMILY CONSUMPTION, AND FOR CUSTOMARY TRADE.]

Explanation:

This paragraph has been deleted because paragraph 1(A) now does this better language. A problem with the deleted language is that it essentially says that every stock of fish and game for which there is a harvestable surplus will have subsistence uses put upon it.

(3) (A) After identifying subsistence uses of a fish stock or game population that is important to customary and traditional subsistence use [pursuant to paragraph (2)], the appropriate board will determine the amount of harvestable surplus of such stock or population required to [FULLY] provide a reasonable opportunity to engage in such uses, and [PURSUANT TO SEC. 804, PUB. L. 96-487 (16 U.S.C. 3114),] will adopt regulations which authorize the taking

of such stock or population for subsistence uses; provided that such regulations may be the same as, different from or in addition to regulations governing other consumptive uses of the stock or population.

Explanation:

Deletion of the word "fully" avoids tension between "fully" and "reasonable". Any subsistence preference should not unreasonably restrict non-subsistence users of important subsistence stocks.

Allowing subsistence regulations to be worked into existing sport or commercial regulations, or to be separate from them, allows the boards discretion and overcomes the problem raised in the Eluska case, in which the trial court declined to enforce an out-of-season hunting regulation because the Board of Game had failed to provide a separate subsistence season. This language allows the boards not to provide a separate subsistence season if the present sport (or commercial) season is adequate to meet subsistence needs, so long as it is also specified as a subsistence season.

[(B) PURSUANT TO SEC. 802, PUB. L. 96-487 (16 U.S.C. 3112) AND THE MAINTENANCE OF FISH STOCKS AND GAME POPULATIONS ON THE SUSTAINED YIELD PRINCIPLE, REGULATIONS ADOPTED PURSUANT TO THIS PARAGRAPH WILL CAUSE THE LEAST ADVERSE IMPACT POSSIBLE ON PERSONS ENGAGED IN SUBSISTENCE USES OF SUCH STOCKS AND POPULATIONS.]

Explanation:

This paragraph is not founded on the previous Joint Board's Subsistence Policy, 5 AAC 99.010. Instead, it is inappropriately derived from policy language in sec. 802 of ANILCA that is focused on federal land use decisions and the effect such land use decisions have on subsistence. That policy addressing land use is implemented by sec. 810 of ANILCA and governs federal actions concerning leases, land disposals, and permits for the use and occupancy of federal lands. Such issues are faced by land federal management agencies having primary jurisdiction over the land, rather than by the Alaska boards of fish and game, which have primary jurisdiction over fish and game. As a matter of law, neither sec. 802 or sec. 810 requires the boards to implement a legal standard of "least adverse impact possible" of subsistence use. Instead, both the federal and state subsistence law afford a priority or preference for subsistence use. Thus, this proposed language, unfounded in previous board policy or state or federal law, creates a politically dangerous extension of the subsistence preference by adding a very restrictive and unnecessarily overly protective legal standard for disallowing even the slightest avoidable harm to subsistence use. Such a standard will only

further exacerbate opposition to any subsistence priority or preference.

(4) If the harvestable surplus of a fish stock or game population that is important to subsistence use is not large enough to safely sustain a harvest [CONSISTENT WITH THE SUSTAINED YIELD PRINCIPLE] by all persons engaged in subsistence uses of such stock or population, in that the harvest by all subsistence users of such stock or population would be inconsistent with the sustained yield principle, the conservation of healthy and natural populations and the public interest, then the appropriate board will adopt regulations which allocate the opportunity to take such stock or population for subsistence uses among such persons on the basis of the following criteria:

- (A) customary and direct dependence upon the [LIVE] stock or population as the mainstay of livelihood;
- (B) local residency; and
- (C) the availability of alternative [FOOD] resources.

Explanation:

This is Tier II subsistence, which is how the subsistence preference or priority found in both federal and state law is administered when there is no enough harvestable resource to accommodate all subsistence uses of the stock. The amendments here conform this provision to previous amendments and federal and state law as it now stands.

(5) [IF THE HARVESTABLE SURPLUS OF A FISH STOCK OR GAME POPULATION IS LARGER THAN THE AMOUNT OF THE SURPLUS NEEDED TO FULLY PROVIDE A REASONABLE OPPORTUNITY TO ENGAGE IN SUBSISTENCE USE OF SUCH STOCK OR POPULATION, THE] Each board will, in its discretion, adopt regulations pursuant to AS 16.05 which authorize the taking, for non-subsistence uses, of any [SUCH] stock or population identified as important for subsistence use, [FOR NONSUBSISTENCE USES CONSISTENT WITH THE SUSTAINED YIELD PRINCIPLE] to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish and game resources on a sustained yield basis or the conservation of natural and healthy populations, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided by this section.

Explanation:

As originally proposed paragraph (5) is poorly drafted in that it actually infringes on the discretion of the boards to authorize non-subsistence uses of fish and game. It does so in several respects.

First, it again carries the erroneous presumption that all fish and game are subsistence stocks.

Second, it again carries the tension between "fully" and "reasonable".

Third, when these first and second problems are considered in light of the federal subsistence law, the

proposed paragraph (5) makes it more difficult for the boards to keep non-subsistence uses authorized. This is because the federal subsistence law, in sec. 805, Pub. L. 96-487, (16 U.S.C. 3115) appears to create a higher "substantial evidence" test (as opposed to the conventional and more easily met "rational basis" test) for regulations proposed by regional advisory councils. The proposed paragraph (5) puts each board in a position of having to close non-subsistence uses if two criteria are met: (1) if a regional council proposes closure on the alleged grounds that subsistence needs are not being fully met, and (2) if the board can only find a rational basis, but not substantial evidence, sufficient to show that subsistence needs are being fully met. The legal principles here are complicated, so let's clarify the problem through a concrete example involving a contemporary real issue: moose harvest along the Petersville Road.

Let's say there is poor or no data on the population size of moose along the Petersville Road, but the responsible game biologist says the population is probably sufficient to sustain subsistence and sport harvest although no data exists. Based on that statement, the Board of Game can rationally leave the area open to sport harvest, because the board will have a rational basis for doing so, i.e. it has the testimony of the biologist. However, if the regional council for the Petersville Road area proposes closure to sport use and says simply that there are not enough moose to fully provide a reasonable opportunity for subsistence harvest, then the board will have to close the area to sport moose hunting unless the biologist can come up with substantial evidence, such as moose surveys along the road, to show that there are plenty of moose for sport use and for fully providing a reasonable subsistence opportunity. Such surveys cost money, so the board in many instances will never get the substantial evidence necessary to keep non-subsistence uses open.

(b) for the purposes of subsection (a), the terms -

(1) "rural residents" means residents engaged in customary and traditional subsistence as a way of life [A COMMUNITY OR AREA IN WHICH THE TAKING OF FISH STOCKS AND GAME POPULATIONS FOR PERSONAL OR FAMILY CONSUMPTION IS A SIGNIFICANT CHARACTERISTIC OF THE ECONOMY OF THE COMMUNITY OR AREA].

Explanation:

This ties the definition of rural residents to the definition of a customary and traditional subsistence life-style. The definition proposed by AFN mixes the concepts of "community or area" with the concepts of subsistence life-style and subsistence economy.

Previous board policy at 5 AAC 99.010 appropriately tied "rural residents" to the criteria for determining what constituted "customary and traditional." Thus, the amendment suggested by the Anchorage Fish and Game Advisory Committee retains existing policy without conflicting with Madison. The AFN proposed definition of "rural" may result in conflicts with the federal subsistence law in that the proposed definition could qualify areas or communities in which the taking of fish and game for personal or family consumption is a significant characteristic of the economy but is not customary and traditional.

(2) "customary and traditional" means:

(i) a long term, consistent pattern of legal use of a fish stock or game population, excluding interruption by circumstances beyond the control of the persons taking such stock or population such as regulatory prohibition;

(ii) a use pattern which recurs in specific seasons of each year;

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

(iv) the consistent harvest and use of such stock or population near, or at a location reasonably accessible from [TO,] the residence of the persons taking such stock or population;

(v) the handling, preparing, preserving and storing of such stock or population in a manner which has traditionally been used by past generations, but not excluding recent technological advances in appropriate instances;

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

(vii) a use pattern in which the hunting or fishing effort or the products of that effort [DERIVED FROM SUCH STOCK OR POPULATION] are distributed or shared among others within a definable community of persons, including customary trade (excluding trade in the nature of a commercial enterprise [TO SIGNIFICANT COMMERCIAL ENTERPRISES]), barter, sharing, and gift-giving; and

(viii) a use pattern which includes reliance for subsistence purposes upon a wide diversity of fish stocks and game populations of an area for personal and family consumption and which provides substantial benefits to the economic, cultural, social, and nutritional well-being of persons who take and consume such stock or population for their sustenance.

(3) "fish stock" means a species, subspecies, geographic grouping or other category of fish capable of management as a unit which at any time during any season of the year may be found in waters of the United States, including but not limited to navigable waters described in 33 U.S.C. 1362(8), the territorial sea, waters

located within the boundaries of a conservation system unit and waters which abut land the title to which is in the United States.

(4) "game population" means a group of game animals of the same species or smaller taxa whose members in whole or in part use or may be found at any time or during any season of the year upon land the title to which is in the United States or upon or in waters described in paragraph (3) of this subsection.

(5) "the conservation of healthy and natural populations" means that for some species, stocks, or populations of fish and game the sole application of the sustained-yield principle may not alone be enough in terms of sound management to assure wise conservation, use and development of those species, stocks or populations. Sustained yield is appropriate for wildlife of which all or most of the harvested animals are of the same or similar age class, size, reproductive value, and biological significance, such as with salmon, waterfowl, most small game, and perhaps caribou. But, sustained yield principles may not be sufficient management guidance for wildlife such as brown bear, sheep, trout and others where maintenance of age classes within the population is either a biological consideration or where such maintenance is important to the sound conservation, development and utilization of the resource. Use of phrase "conservation of healthy and natural populations" is intended to clarify sustained yield in appropriate circumstances rather than replace the sustained yield principle. Use the the word "natural" is not intended to mean that the resource may not be harvested at all.

Explanation:

This definition is largely self-explanatory. It is important that this definition is a clarification, rather than a replacement, of sustained yield principles for particular stocks or populations of fish and game because sustained yield management is required by Article VIII, Sec. 4 of the Alaska Constitution. The phrase "conservation of healthy and natural populations" comes from the federal subsistence law (Title VIII of ANILCA) and its legislative history (Sen. Rept. No. 96-413, 96th Cong., 1st sess. at 232-233). Therefore, the phrase is consistent with the federal law.

(c) The taking of fish stocks and game populations which are not subject of regulation pursuant to subsection (a) of this section shall be regulated by the boards pursuant to AS 16.05.

ANCHORAGE FISH AND GAME ADVISORY COMMITTEE

COMMENTS ON AFN-PROPOSED 5 AAC 99.010

IN JOINT BOARD BOOK

The following amendments to the AFN proposal in the Joint Board Book concerning 5 AAC 99.010 are done in the standard format for amendments. Amendments adding language are underlined, and amendments deleting language are bracketed and capitalized.

PREAMBLE TO ANCHORAGE ADV. COMM. AMENDMENTS TO AFN PROPOSED 5 AAC 99.010

The Anchorage Fish and Game Advisory Committee prefaces their proposed changes to 5 AAC 99.010 in lieu of the AFN proposal, with the following caveats:

- 1) We find the concept of subsistence priority to be a deprivation of individual opportunity under the Alaska Constitution to harvest fish and game;
- 2) We favor elimination of subsistence priority to fish and game resources within the state;
- 3) We favor a system where those in true need of the resource, can harvest the resource;
- 4) We favor defining "need" as those living below the federal poverty levels, and without common amenities such as hot and cold running water, electricity, aircraft, and without substantial public assistance;
- 5) Failing elimination of subsistence priority, we favor return of all Tier II hunts to Tier I hunts, except where biological circumstances limit the available resource;
- 6) Failing this, we favor the following proposed 5 AAC 99.010 which although containing reprehensible conditions such as "rural residents" and "subsistence use zone" is the only avenue currently available within the law to return equity of opportunity in harvest of fish and game resources;

5 AAC 99.010. BOARDS OF FISHERIES AND GAME SUBSISTENCE PROCEDURES: (a) The Board of Fisheries and the Board of Game shall identify and regulate the taking of fish stocks and game populations according to the following procedures:

(1) Meeting in joint board session, the boards shall seek to --

(A) identify and quantify the amount of customary and traditional subsistence uses of fish and game that is necessary to provide a reasonable opportunity for rural residents engaged in a subsistence way of life to do so; provided that such determinations shall be based at least upon the research, analysis, comments and recommendations of the subsistence division of the department that are reviewed and concurred in by the other divisions of the department.

(B) identify and designate customary and traditional subsistence use zones utilized by such rural residents;

(C) identify fish stocks and game populations that customarily and traditionally have been important subsistence stocks and populations utilized by such rural residents for subsistence use;

Explanation:

The new paragraph (1) requires the boards to jointly determine the approximate amount of fish and game resources that are necessary to meet customary and traditional subsistence needs, customary and traditional subsistence use zones for populations of rural residents, and fish and game populations that have customarily and traditionally been important to subsistence use. There is a strong emphasis in each element of this paragraph on what is customary and traditional. This emphasis should put the boards in a good position to find that certain rural practices, such as round-hauling of fish and barter of fish in a substantially commercial setting, are not customary and traditional subsistence use.

The first element, i.e. the quantification of the amount of fish and game needed to continue the opportunity for a customary and traditional subsistence life-style, is necessary to resolution of any allocation issues, but it has never been stated formally as a requirement. This would correct that deficiency.

The second element, i.e. the identification of subsistence use zones is similar to a concept in the federal subsistence law, which requires "resident subsistence zones" to be identified for regulating subsistence use in national parks. (The concept of residency has been omitted from the proposed language, however, because it would create a legal problem in that it is a Tier II concept in state and federal law, except with respect to national parks. The second element, however, comes as close as legally possible to

effectively making area residency a qualification without actually requiring it.

The third element, i.e. identification of important subsistence stocks, allows there to be a preference only on those stocks and not on unimportant stocks that may only incidentally be used for food or other subsistence uses. The rationale is that those incidental uses could be accommodated through non-subsistence regulations without interfering with the purpose of the state and federal subsistence laws, which is to provide the opportunity for the subsistence life-style to continue.

(2) [(1)] Each board will assess the biological status of fish stocks and game populations that are important subsistence stocks and populations within the use zones and determine whether a surplus may be harvested during a regulatory year [IDENTIFY THE HARVESTABLE SURPLUS WHICH MAY BE TAKEN FROM EACH STOCK AND POPULATION] consistent with the utilization, development and conservation of such stocks and populations on the sustained yield principle, consistent with the conservation of healthy and natural populations of the resource, and consistent with the public interest;

Explanation:

This is modeled after a similar provision, 5 AAC 99.010(a)(1), in the Joint Board's Subsistence Policy, but the above amendments make several improvements.

By focusing the assessment of biological status on important subsistence stocks, any depletion that occurs through subsistence, sport, or commercial over harvest will be identified in relation to that stock, rather than in relation to a set of present and potential subsistence stocks. In other words, this would help identify stocks that need to be managed conservatively to rebuild the stocks. Without the provision, efforts to rebuild could be stymied by claims that the stocks should be managed for lower than sustainable populations and any or most of the harvest of a depressed population would have to be allocated to subsistence or primarily to subsistence. For example, the Nelchina caribou herd has been depressed for many years and is in a rebuilding phase. We would want to avoid assertions that the herd should be managed at a depressed level with a disproportionate amount of the harvest allocated to subsistence and that any shortfall in subsistence need for caribou should be met by allocating more moose (a present subsistence stock) or more sheep (a potential subsistence stock) to meet overall need for subsistence uses, where the additional subsistence allocation of moose or sheep would be contrary to sustained yield or the conservation of healthy and natural populations. In other words, one depressed population should not lead to creation of another, regardless of whether it is of a different species or stock within the subsistence zone

or outside the subsistence zone. If this principle is not accepted by subsistence users, then the subservience of subsistence to sustained yield and the maintenance of natural and healthy populations will be rendered meaningless.

Finally, the phrase "conservation of healthy and natural populations" is rooted in the federal law, whereas the present state law refers only to "sustained yield". Sustained yield is vague, but is more appropriate for stocks where all the harvestable animals are of similar size, age, and character (eg. salmon and ducks), and where the management concern is for sufficient reproduction to maintain future harvests and reproduction, and where the animals die upon reproduction (salmon) or are short-lived (eg. ducks and caribou). However, with other species, such as trout, sheep, moose, brown bear, management for merely sustained yield will disrupt the natural distribution of age classes within the population, and in some instances such as sheep or brown bear this disruption may have biological effects. Thus, the amended language adds to the sustained yield principle the requirement that the boards also consider the maintenance of healthy and natural populations and the public interest in maintaining healthy and natural populations, regardless of whether those public interests are for consumptive trophy harvest, non-consumptive use, or are for biological reasons other than sustained yield.

[(2) WITH RESPECT OF EACH FISH STOCK OR GAME POPULATION FOR WHICH A HARVESTABLE SURPLUS HAS BEEN IDENTIFIED, EACH BOARD WILL IDENTIFY "SUBSISTENCE USES" OF SUCH STOCK OR POPULATION AS SUCH TERM IS DEFINED IN SEC. 803, PUB. L. 96-487 (16 U.S.C. 3113), TO WIT THE CUSTOMARY AND TRADITIONAL USES OF SUCH STOCK OR POPULATION BY RURAL ALASKA RESIDENTS FOR DIRECT PERSONAL OR FAMILY CONSUMPTION AS FOOD, SHELTER, FUEL, CLOTHING, TOOLS, OR TRANSPORTATION; FOR THE MAKING AND SELLING OF HANDICRAFT ARTICLES OUT OF NONEDIBLE BYPRODUCTS OF STOCKS OR POPULATIONS TAKEN FOR PERSONAL OR FAMILY CONSUMPTION, AND FOR CUSTOMARY TRADE.]

Explanation:

This paragraph has been deleted because paragraph 1(A) now does this better language. A problem with the deleted language is that it essentially says that every stock of fish and game for which there is a harvestable surplus will have subsistence uses put upon it.

(3) (A) After identifying subsistence uses of a fish stock or game population that is important to customary and traditional subsistence use [pursuant to paragraph (2)], the appropriate board will determine the amount of harvestable surplus of such stock or population required to [FULLY] provide a reasonable opportunity to engage in such uses, and [PURSUANT TO SEC. 804, PUB. L. 96-487 (16 U.S.C. 3114),] will adopt regulations which authorize the taking

of such stock or population for subsistence uses; provided that such regulations may be the same as, different from or in addition to regulations governing other consumptive uses of the stock or population.

Explanation:

Deletion of the word "fully" avoids tension between "fully" and "reasonable". Any subsistence preference should not unreasonably restrict non-subsistence users of important subsistence stocks.

Allowing subsistence regulations to be worked into existing sport or commercial regulations, or to be separate from them, allows the boards discretion and overcomes the problem raised in the Eluska case, in which the trial court declined to enforce an out-of-season hunting regulation because the Board of Game had failed to provide a separate subsistence season. This language allows the boards not to provide a separate subsistence season if the present sport (or commercial) season is adequate to meet subsistence needs, so long as it is also specified as a subsistence season.

[(B) PURSUANT TO SEC. 802, PUB. L. 96-487 (16 U.S.C. 3112) AND THE MAINTENANCE OF FISH STOCKS AND GAME POPULATIONS ON THE SUSTAINED YIELD PRINCIPLE, REGULATIONS ADOPTED PURSUANT TO THIS PARAGRAPH WILL CAUSE THE LEAST ADVERSE IMPACT POSSIBLE ON PERSONS ENGAGED IN SUBSISTENCE USES OF SUCH STOCKS AND POPULATIONS.]

Explanation:

This paragraph is not founded on the previous Joint Board's Subsistence Policy, 5 AAC 99.010. Instead, it is inappropriately derived from policy language in sec. 802 of ANILCA that is focused on federal land use decisions and the effect such land use decisions have on subsistence. That policy addressing land use is implemented by sec. 810 of ANILCA and governs federal actions concerning leases, land disposals, and permits for the use and occupancy of federal lands. Such issues are faced by land federal management agencies having primary jurisdiction over the land, rather than by the Alaska boards of fish and game, which have primary jurisdiction over fish and game. As a matter of law, neither sec. 802 or sec. 810 requires the boards to implement a legal standard of "least adverse impact possible" of subsistence use. Instead, both the federal and state subsistence law afford a priority or preference for subsistence use. Thus, this proposed language, unfounded in previous board policy or state or federal law, creates a politically dangerous extension of the subsistence preference by adding a very restrictive and unnecessarily overly protective legal standard for disallowing even the slightest avoidable harm to subsistence use. Such a standard will only

further exacerbate opposition to any subsistence priority or preference.

(4) If the harvestable surplus of a fish stock or game population that is important to subsistence use is not large enough to safely sustain a harvest [CONSISTENT WITH THE SUSTAINED YIELD PRINCIPLE] by all persons engaged in subsistence uses of such stock or population, in that the harvest by all subsistence users of such stock or population would be inconsistent with the sustained yield principle, the conservation of healthy and natural populations and the public interest, then the appropriate board will adopt regulations which allocate the opportunity to take such stock or population for subsistence uses among such persons on the basis of the following criteria:

- (A) customary and direct dependence upon the [LIVE] stock or population as the mainstay of livelihood;
- (B) local residency; and
- (C) the availability of alternative [FOOD] resources.

Explanation:

This is Tier II subsistence, which is how the subsistence preference or priority found in both federal and state law is administered when there is no enough harvestable resource to accommodate all subsistence users of the stock. The amendments here conform this provision to previous amendments and federal and state law as it now stands.

(5) [IF THE HARVESTABLE SURPLUS OF A FISH STOCK OR GAME POPULATION IS LARGER THAN THE AMOUNT OF THE SURPLUS NEEDED TO FULLY PROVIDE A REASONABLE OPPORTUNITY TO ENGAGE IN SUBSISTENCE USE OF SUCH STOCK OR POPULATION, THE] Each board will, in its discretion, adopt regulations pursuant to AS 16.05 which authorize the taking, for non-subsistence uses, of any [SUCH] stock or population identified as important for subsistence use, [FOR NONSUBSISTENCE USES CONSISTENT WITH THE SUSTAINED YIELD PRINCIPLE] to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish and game resources on a sustained yield basis or the conservation of natural and healthy populations, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided by this section.

Explanation:

As originally proposed paragraph (5) is poorly drafted in that it actually infringes on the discretion of the boards to authorize non-subsistence uses of fish and game. It does so in several respects.

First, it again carries the erroneous presumption that all fish and game are subsistence stocks.

Second, it again carries the tension between "fully" and "reasonable".

Third, when these first and second problems are considered in light of the federal subsistence law, the

proposed paragraph (5) makes it more difficult for the boards to keep non-subsistence uses authorized. This is because the federal subsistence law, in sec. 805, Pub. L. 96-487, (16 U.S.C. 3115) appears to create a higher "substantial evidence" test (as opposed to the conventional and more easily met "rational basis" test) for regulations proposed by regional advisory councils. The proposed paragraph (5) puts each board in a position of having to close non-subsistence uses if two criteria are met: (1) if a regional council proposes closure on the alleged grounds that subsistence needs are not being fully met, and (2) if the board can only find a rational basis, but not substantial evidence, sufficient to show that subsistence needs are being fully met. The legal principles here are complicated, so let's clarify the problem through a concrete example involving a contemporary real issue: moose harvest along the Petersville Road.

Let's say there is poor or no data on the population size of moose along the Petersville Road, but the responsible game biologist says the population is probably sufficient to sustain subsistence and sport harvest although no data exists. Based on that statement, the Board of Game can rationally leave the area open to sport harvest, because the board will have a rational basis for doing so, i.e. it has the testimony of the biologist. However, if the regional council for the Petersville Road area proposes closure to sport use and says simply that there are not enough moose to fully provide a reasonable opportunity for subsistence harvest, then the board will have to close the area to sport moose hunting unless the biologist can come up with substantial evidence, such as moose surveys along the road, to show that there are plenty of moose for sport use and for fully providing a reasonable subsistence opportunity. Such surveys cost money, so the board in many instances will never get the substantial evidence necessary to keep non-subsistence uses open.

(b) for the purposes of subsection (a), the terms -

(1) "rural residents" means residents engaged in customary and traditional subsistence as a way of life [A COMMUNITY OR AREA IN WHICH THE TAKING OF FISH STOCKS AND GAME POPULATIONS FOR PERSONAL OR FAMILY CONSUMPTION IS A SIGNIFICANT CHARACTERISTIC OF THE ECONOMY OF THE COMMUNITY OR AREA].

Explanation:

This ties the definition of rural residents to the definition of a customary and traditional subsistence life-style. The definition proposed by AFN mixes the concepts of "community or area" with the concepts of subsistence life-style and subsistence economy.

Previous board policy at 5 AAC 99.010 appropriately tied "rural residents" to the criteria for determining what constituted "customary and traditional." Thus, the amendment suggested by the Anchorage Fish and Game Advisory Committee retains existing policy without conflicting with Madison. The AFN proposed definition of "rural" may result in conflicts with the federal subsistence law in that the proposed definition could qualify areas or communities in which the taking of fish and game for personal or family consumption is a significant characteristic of the economy but is not customary and traditional.

(2) "customary and traditional" means:

(i) a long term, consistent pattern of legal use of a fish stock or game population, excluding interruption by circumstances beyond the control of the persons taking such stock or population such as regulatory prohibition;

(ii) a use pattern which recurs in specific seasons of each year;

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

(iv) the consistent harvest and use of such stock or population near, or at a location reasonably accessible from [TO,] the residence of the persons taking such stock or population;

(v) the handling, preparing, preserving and storing of such stock or population in a manner which has traditionally been used by past generations, but not excluding recent technological advances in appropriate instances;

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

(vii) a use pattern in which the hunting or fishing effort or the products of that effort [DERIVED FROM SUCH STOCK OR POPULATION] are distributed or shared among others within a definable community of persons, including customary trade (excluding trade in the nature of a commercial enterprise [TO SIGNIFICANT COMMERCIAL ENTERPRISES]), barter, sharing, and gift-giving; and

(viii) a use pattern which includes reliance for subsistence purposes upon a wide diversity of fish stocks and game populations of an area for personal and family consumption and which provides substantial benefits to the economic, cultural, social, and nutritional well-being of persons who take and consume such stock or population for their sustenance.

(3) "fish stock" means a species, subspecies, geographic grouping or other category of fish capable of management as a unit which at any time during any season of the year may be found in waters of the United States, including but not limited to navigable waters described in 33 U.S.C. 1362(8), the territorial sea, waters

located within the boundaries of a conservation system unit and waters which abut land the title to which is in the United States.

(4) "game population" means a group of game animals of the same species or smaller taxa whose members in whole or in part use or may be found at any time or during any season of the year upon land the title to which is in the United States or upon or in waters described in paragraph (3) of this subsection.

(5) "the conservation of healthy and natural populations" means that for some species, stocks, or populations of fish and game the sole application of the sustained-yield principle may not alone be enough in terms of sound management to assure wise conservation, use and development of those species, stocks or populations. Sustained yield is appropriate for wildlife of which all or most of the harvested animals are of the same or similar age class, size, reproductive value, and biological significance, such as with salmon, waterfowl, most small game, and perhaps caribou. But, sustained yield principles may not be sufficient management guidance for wildlife such as brown bear, sheep, trout and others where maintenance of age classes within the population is either a biological consideration or where such maintenance is important to the sound conservation, development and utilization of the resource. Use of phrase "conservation of healthy and natural populations" is intended to clarify sustained yield in appropriate circumstances rather than replace the sustained yield principle. Use the the word "natural" is not intended to mean that the resource may not be harvested at all.

Explanation:

This definition is largely self-explanatory. It is important that this definition is a clarification, rather than a replacement, of sustained yield principles for particular stocks or populations of fish and game because sustained yield management is required by Article VIII, Sec. 4 of the Alaska Constitution. The phrase "conservation of healthy and natural populations" comes from the federal subsistence law (Title VIII of ANILCA) and its legislative history (Sen. Rept. No. 96-413, 96th Cong., 1st sess. at 232-233). Therefore, the phrase is consistent with the federal law.

(c) The taking of fish stocks and game populations which are not subject of regulation pursuant to subsection (a) of this section shall be regulated by the boards pursuant to AS 16.05.

ANCHORAGE FISH & GAME ADVISORY COMMITTEE
c/o 333 Raspberry Road
Anchorage, Alaska 99518-1599

October 30, 1985

Don W. Collinsworth
Commissioner
ADF&G
PO Box 3-2000
Juneau, AK 99802

Dear Commissioner Collinsworth:

The Anchorage Fish and Game Advisory Committee strongly disapproves of the fact that the Madison decision, as well as the questionable interpretation of it by the Attorney General's office, have recessitated closure of many previous sport hunts and have allowed them only as subsistence Tier II hunts.

Therefore, the Anchorage Fish and Game Advisory Committee strongly urges the Board of Game and the Department of Fish and Game to do the following two things.

Our first recommendation addresses what the board and the department can and should do before the legislature addresses the subsistence issue or if the legislature fails to amend the subsistence law to correct the present Tier II problems. We urge that the Board of Game, with the assistance of the department, identify all Tier II hunts where the Tier II harvest did not approach, and will not likely approach, the authorized Tier II harvest level. The department and the board should open these hunts to all Alaskans as Tier I hunts, either through standard unrestricted participation or through lotteries in which any Alaskan has an equal chance. Examples include the moose hunts in the Eagle River and Eklutna areas.

Second, we request that the board and the department work aggressively with the Alaska Legislature to have it adopt amendments to the state subsistence law that would re-open to all Alaskans all sport hunts that were in effect prior to the 1985 season, now classified as Tier II hunts. Furthermore, any amendments should also include or clarify the authority of the board to identify appropriate and inappropriate subsistence stocks. For example, we believe that some species or stocks of wildlife, such as sheep, brown bear, cranes, steelhead, and rainbow

October 30, 1985

trout, goats, bison, and musk oxen generally are not subsistence stocks. We also believe that the board and the department should work with the legislature to address what constitutes "customary and traditional" subsistence use, and other uncertainties in the present law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tim Stevens".

Tim Stevens, Chairman
Anchorage Advisory Committee

Alaska Sportfishing Comments Re: Draft Subsistence Bill
November 6, 1985

The following comments on the 9/25/85 draft subsistence bill are those of the Alaska Sportfishing Association. We feel that the bill has two major omissions:

(1) It does not have a needs test to establish individual qualifications for subsistence preference.

(2) It does not include language to allow substitution of one comparable species for another. From a fisheries standpoint this is of critical importance. It is imperative that the board be able to utilize and substitute those species, particularly salmon, which occur in the greatest numbers in order to reduce pressure on species which occur in far too few numbers.

In addition, many words and phrases must be defined. Specific line by line comments are as follows:

pp1 L10

Hunting and fishing may be important or substantial food sources not necessarily "principal means" . . . Why not delete the word "principal"?

pp1 L26

The word "preference" must be defined.

pp1 L27-28

The term "where no practical alternative means are available to re-place food sources . . ." needs definition. Every community in Alaska utilizes canned and/or processed food to some degree. Therefore, there appears always to be a "practical alternative".

pp3 L11-12

This section is not needed. Bag limits are covered in item 3. Hook and release is simply one particular bag limit.

pp3 L13-14

This section is also not needed. The harvest of fish by all user groups is covered in sections 2-4.

pp3 L24

"Preferred" needs definition.

pp3 L28/pp4 L2

These three sections from the original statute, which were never defined by the legislature, are what has caused much of our current problem. No definition has been added in the draft bill.

pp4 L4-5 Section (d)

The importance of this section depends upon how "reasonable regulation" relates to other uses, ie. a definition of "preference".

pp4 L6-11

A great section. It allows the board to exclude species such as rainbow trout. This is a very important section, which we feel must stay in the bill.

pp4 L12-16

This section needs to be clarified. It appears to preclude timely enactment of regulations. Every controversial regulatory decision would go through two regulatory meetings rather than one. How would the appeal process be structured? If court actions could be avoided, this section would appear to have considerable value.

pp4 L17/pp6 L17

Hunting section of the bill not reviewed by our organization.

pp6 L18 Section 16.05.330

We disagree with licences and fees for subsistence hunting and fishing. If subsistence is somehow related to needy persons, we should not assess a licence fee. In addition, a permit is much more flexible in that conditions or stipulations particular to specific areas can be included on the permit.

pp7 L15

It is critical that "a rural subsistence area of the state" be defined on a geographic basis. Section 30 on pp8 adds qualifying language but never defines what "area" means.

pp7 L25 (28)

Add personal use fishing definition. This section should clearly state that personal use fishing has no priority over other uses.

pp8 L13-15

Why include aliens as persons who qualify for subsistence preference?

pp8 L28/pp9 L1

This section is the one which really limits the communities which qualify. I can not believe a section this restrictive will remain in the bill. For example, every Alaskan community has regularly scheduled air service, at least for mail delivery. If this section is dropped what do we want to replace it? It is probably important that individual communities not be listed in the bill. Once they are included they will be in forever.

MESSAGE

Date 5-8 Time 3:15

For: Arliss

From: Karen McGahan

of Nikiski

Phone No. 776-8240

Telephoned Called to see you
Please call Will Call Again
Returned your call Urgent

Message On Ken. Pen. Bor. Asmbly. Called to
express appreciation for your work on sub-
sistence. Last night's Borough Assembly
meeting could not issue resolution because
of no time for public input, but they have
written a letter, signed by 14 members, ex-
pressing support for your subsistence bill;
have also sent POMs and other communication
to Senators Bennett, Abood and others.

Operator _____

LAA-16

DAC WITH MAY FLATS
Netherlands REC

Water Quality

cosponsor of
Environmental Lobby's
Aspects
~~At 2000's~~

~~Act~~ in World Peace

needs
acknowledged
but

MAY 08 1985

Bog Hollow
Homer, Alaska
May 2, 1985

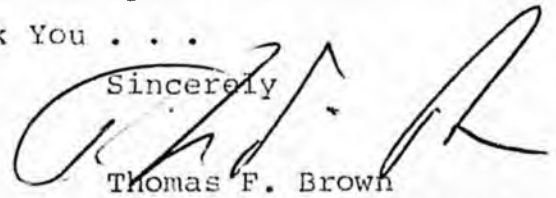
Hello

This letter and the enclosed are for you to consider in reference to the SUBSISTENCE Law. I am one of the founding members of the Kachamak Bay Subsistence Inc. which has fought successfully since 1976 for Subsistence rights in Alaska. At the time of our founding I requested that the group advocate for all Alaskens Subsistence rights especially as to the gear they used. At that time it was decided that it was best to fight a holding action, resisting the attempts of the Board of Fisheries to take away our local use of nets and not to expand the conflict to include those who like myself had always used hook and line to feed myself. I supported the decision of the group and aided in the organization any way I could. As you may know for the last month I have carried this idea to the Board of fisheries, the media, the personal use fishermans organizations like Alaska Sportsmans Organization, the Kenai River Sportsmans Organization, and the Cook Inlet Profesional Sportfishermans Organization among others. Along the way I've covered every sporting goods store from Talketna to Homer and most of the lodges, gas stations and other buisness's serving the personal use fisherman. It is my intention to accomplish the following actions:

1. to get the gear "hook and line held in the hand or attached to rod or pole, and dipnet" added to the Subsistence law
2. to establish subsistence fisheries everywhere that sport fisheries have existed for fish except for Rainbow and Steelhead trout as these are not available for subsistence use
3. to establish forever the concept that "personal or family consumption as food," is the priority consumptive use of aquatic resources.

I hope you can join me in this effort. Please resist the governors bill and any other legislative attempts to modify or restrict the Subsistence Law other then as above. Thank You . . .

Sincerely



Thomas F. Brown
Box 657, Homer, 99603

P.S. what a start for the new governor

①

WILL NATIVE PEOPLE NOT BE ABLE TO DEFEND THEIR USE OF THE LOCAL RESOURCES UNDER THE '78 SUBSISTENCE LAW?

THE SUBSISTENCE LAW ESTABLISHES TWO TIERS OF CONSUMPTIVE USE, THE FIRST FOR ALL ALASKANS AND THE SECOND AND FINAL USE BY THOSE WHO CAN DEMONSTRATE "CUSTOMARY AND DIRECT DEPENDENCE, LOCAL RESIDENCEY AND A LACK OF ALTERNATIVE RESOURCES". ALL ALASKANS CAN LIMIT SUBSISTENCE USE WHEN THERE ISN'T ENOUGH TO GO AROUND.

②

WILL THE SUBSISTENCE LAW MEAN THE END OF THE SALMON, THE DESTRUCTION OF THE RESOURCE, OR ANY OTHER SUCH THING?

THE SUBSISTENCE LAW IS ESTABLISHED ON THE CONCEPT OF "SUSTAINED YIELD" WHICH MEANS THAT EVERY TOOL EVER DEVELOPED FOR THE MANAGEMENT OF FISH AND GAME FROM GEAR RESTRICTIONS, QUOTAS, BAG LIMITS, OPEN AND CLOSED SEASONS AND OR AREAS, TO SIZE AND SEX LIMITATIONS ARE AVAILABLE TO THE DEPT. FISH AND GAME AND THE BOARDS FOR THEIR USE.

③

CAN COOK INLET FISHERIES BE MANAGED FOR RESIDENT SUBSISTENCE USE WITHOUT LIMITING THE USE BY NON-RESIDENT SPORT FISHERMEN?

YES. SINCE SUBSISTENCE AND SPORTS FISHERMEN FISH IN THE SAME TIME AND PLACE, USING THE SAME GEAR, AND SINCE THE OVERWELMING CONSUMPTIVE USE HAS BEEN BY COMMERCIAL FISHERMEN WHICH WILL BE LIMITED IN ORDER TO QUARANTEE A SUBSISTENCE HARVEST, THE NET EFFECT WILL BE TO GET MORE FISH INTO THE RIVERS. GIVEN THE RELATIVELY SMALL CONSUMPTION BY NONRESIDENT FISHERMEN IT IS ALMOST IMPOSSIBLE TO JUSTIFY CLOSURE OF A SPORT FISHERY IN ORDER TO ACCOMADATE A SUBSISTENCE FISHERY.

④

WHY ALL THE CONTARVERCY ABOUT THE SUBSISTENCE LAW?

1. THIS IS THE ONLY PLACE IN THE WORLD WHERE THE SUBSISTENCE RIGHT EXISTS IN LAW. IT'S A NEW IDEA.
2. COMMERCIAL FISHERMEN, WHO PREVIOUSLY EXCLUSIVELY HELD THE BOARD OF FISHERIES, WILL BE IMPACTED TO SOME DEGREE, ESPECIALLY IN COOK INLET.
3. THE GOVENOR IS HEAVILY INDEBTED TO THE COMMERCIAL FISHERMEN.
4. PREVIOUSLY THE SPORTSMEN HAS BEEN THE ONE TO PAY THE PRICE, BEING THE "LAST FISHERY IN LINE", FOR THE BIOLOGICAL INTEGRITY OF THE SALMON RUNS. SOME PERCIEVE A THREAT TO THEM BY SUBSISTENCE. BY ESTABLISHING ROD AND REEL AS SUBSISTENCE GEAR WE REMOVE THAT THREAT.

1951

* First mention in commercial regulations.

Required notification of intention to take salmon for personal use, with statement of type of gear to be used, area, time, number of fish to be taken and intended disposition of fish taken.

Fish, Ship, and Campbell and Cottonwood Creeks closed to subsistence fishing.

1952

To intent to take notification required. More streams closed, including all tributaries to Knif Arm, Willow Creek (tributary to Susitna), Campbell Creek, and all streams and lakes of Kenai Peninsula that are tributary to Cook Inlet: Provided this

* shall not apply to fishing with rod, hook and line for personal use.

* * * (Apparently this was the first time many Cook Inlet streams were closed to use of nets for personal use of fish.)

1953

Above regulations same, plus added stipulation that no personal use fishing allowed within 500 feet of weirs and ladders. Snagging was prohibited for the first time.

* Prior to statehood, much of the subsistence fishing took place in salmon spawning streams with gear ranging from hook and line to gill nets. Snagging was one of the more popular methods. Re: Page # 6

Also, personal use fishing prohibited within 500 yards of all other streams or lakes except with hand rod, hook and line. Day limit two (2) per day per person. Re Page # 10

Kenai Times

WEDNESDAY, APRIL 19, 1985

76 pages/25¢

Kenai anglers claim new status

Rods, reels called subsistence gear

By Bill Skarvold
Times Outdoor Writer

Fishermen on the Kenai Peninsula, following a lead given earlier this year in a court ruling that said all Alaskans may be classified as subsistence users, have taken the first step in an effort to have rod and reel included as a subsistence method.

Tom Brown, a subsistence fisherman who lives in Homer, delivered three letters to the Alaska Department of Fish and Game's Soldotna office on Thursday requesting that rod and reel subsistence fisheries be established on the Kenai River and in Cook Inlet.

Currently, with one exception, there are no rod-and-reel subsistence fisheries established in Alaska. The lone exception allows ice fishing in the Arctic Yukon-Kuskokwim area.

Rod and reel fishing is defined by state law as a sports fishing rather than subsistence fishing method. Brown and other Alaskan fishermen plan to change that law.

"Ultimately, we're hoping that this action will lead to a court suit which will establish rod and reel as subsistence gear," Brown said. "We also want to establish subsistence fisheries for that gear throughout the state."

Brown submitted three "official requests" to the Soldotna ADF&G headquarters on Thursday. One copy was submitted to Sid Logan, an area management biologist in the Sport Fish Division. The letter, signed by Jim Golden of Soldotna, requested a rod-and-reel subsistence fishery on the Kenai River for four types of salmon: kings, silvers, redds and

See Subsistence, page A-1.

Continued from page A-1

pink.

Two letters were also given to Paul Reusch of the Commercial Fish Division requesting rod-and-reel subsistence fisheries on the Kenai River and Cook Inlet.

In addition, Brown asked for permits to conduct rod-and-reel subsistence fishing for salmon in those areas. In each instance, the request was denied.

"They (Logan and Reusch) were interested and amused, but calm," Brown said. "Their reaction was pretty much 'Oh boy, here comes another court suit.' They verbally denied the requests. Eventually I expect there will be an emergency meeting of the Board of Fisheries to make a decision on the requests. I expect it will be denied and then it will go to court."

Brown added that he has another 30 requests.

signed by different individuals and cover all the waters in the state," he said. "The action has the support of the Cook Inlet Professional Sportfishermen's Association."

Logan explained that "the request had to be denied. The Board of Fisheries has not de-

fined rod and reel as a subsistence means. I expect his next step will probably be to take legal action. I think he was laying the groundwork for a lawsuit against the state. I guess this is a spinoff from the recent (Supreme Court) decision (which ruled that all Alaskans are subsistence users).

Added Reusch, "Rod and reel subsistence fishing has not been legally established by the Board of Fisheries. It doesn't exist, so we couldn't issue the permits he requested. But (Brown) didn't seem surprised. It seemed like he was going through the motions."

The letters delivered by Brown were addressed to Fish and Game and state and read: "I do hereby declare myself to be a subsistence fisherman. I intend to use rod and reel as defined in the sport statute as the gear for catching fish. I will fish at the locations listed below and for the species of salmon listed below. It is my intent to observe the regulations established under sport fishing in 1985 during this fishery. I hereby request that the department manage the fishery in such a way as to provide for my subsistence harvest."

PAGE TWO REGULATION PROPOSAL BY TOM BROWN

JUSTIFICATION CONT.: THE SAME BAG LIMITS AS PRESENTLY OPEN TO THE USE OF HOOK AND LINE UNDER THE SPORTS REGULATIONS. SINCE THE SUBSISTENCE PRIORITY WILL ALLOW GREATER UTILIZATION OF FISHERIES RESOURCE BY INDIVIDUAL ALASKAN RESIDENTS AND WILL FUNCTION TO PROVIDE MORE SALMON IN STREAMS ALSO UTILIZED BY THOSE NOT ELEGABLE FOR THE SUBSISTENCE PRIORITY THE NET EFFECT WILL BENEFIT THE PEOPLE OF THE STATE AND THE INDUSTRIES WHICH SERVICE THOSE PEOPLE.

140-1

STATEWIDE PROVISIONS

DELETED

(f) The use of explosives and charnicais is prohibited.

(g) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Kotzebue-Northern, Norton Sound-Port Clarence, Yukon, Kuskokwim and Bristol Bay areas.

(h) Each subsistence fisherman shall plainly and legibly inscribe his first initial, last name, and address on his fishwheel, or on a keg or buoy attached to gill nets and other unattended subsistence fishing gear.

(i) All pots used to take fish must contain an opening in the webbing of a side wall of the pot which has been laced, sewn or secured together by untreated cotton twine or other natural fiber no larger than 120 thread, which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one half of the tunnel eye opening perimeter.

(j) Persons licensed under AS 43.75.011 to engage in a fisheries business may not receive for commercial purposes or barter or solicit to barter for subsistence taken salmon or their parts. Further restrictions on the bartering of subsistence taken salmon or their parts may be implemented by emergency order for a specific time or area if circumvention of management programs is occurring because of illegal bartering activities.

(k) No person may use a gill net web that contains less than 30 filaments in the taking of salmon for subsistence purposes.

(l) The taking of rainbow trout and steelhead is prohibited.

Authority: AS 16.05.060
AS 16.05.251(a)(2), (3), (4) and (b)
AS 16.05.930(c)

5 AAC 01.015. SUBSISTENCE FISHING PERMITS AND REPORTS. (a) Salmon may be taken only under the authority of a subsistence fishing permit issued by the commissioner or his local representative, unless a permit is specifically not required in a particular area by the subsistence regulations in this chapter, or unless the fisherman is retaining salmon from his commercial catch consistent with sec. 20 of this chapter.

(b) If a subsistence fishing permit is required by this chapter, the following permit conditions apply unless otherwise specified by the subsistence fishing regulations in this chapter:

(1) the numbers of fish taken for subsistence use may not exceed the limits set out in the permit

(2) permits must be obtained from a local representative of the department prior to subsistence fishing;

(3) permits must be retained in the possession of the permittee and be readily available for inspection while taking fish. A person who transports subsistence taken fish shall have a subsistence fishing permit in his possession.

STATEWIDE PROVISIONS

(4) the permit may designate the species and numbers of fish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) if specified on the permit, each subsistence fisherman shall keep accurate daily records of the catch involved, showing the number of fish taken by species, location and date of the catch and such other information as the department may require for management or conservation purposes;

(6) subsistence fishing reports must be completed on forms provided by the department and submitted to the department office from which the permit was issued at a time specified by the department for each particular area and fishery;

(7) if applicable, the total annual possession limit for the permittee must be entered on each permit by the local representative of the department issuing the permit, if applicable, the local representative of the department issuing the permit; if applicable, the local representative of the department issuing the permit shall require from an applicant documented proof of residency, income or other criteria required by regulation, or in the absence of such documentation, a signed affidavit setting forth duration of residency, income, or other criteria required by regulation, to determine the applicable annual possession limit and residency of the applicant;

(8) if an applicant for a subsistence salmon fishing permit is unable to personally take salmon due to physical disability, the permit may be issued to his authorized designee to take salmon for the applicant.

(c) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit, a permittee who fails to comply with such reporting requirements is ineligible to receive a subsistence permit for that activity during the following calendar year, unless the permit applicant demonstrates to the department that failure to report was due to loss in the mail, accident, sickness or other unavoidable circumstance.

(d) Salmon taken for subsistence use or under subsistence fishing regulations may not be subsequently used as bait for commercial fishing purposes.

Authority: AS 16.05.251(a)(2), (3), (4), and (b)

5 AAC 01.020. SUBSISTENCE FISHING BY COMMERCIAL FISHERMEN. Commercial fishermen may retain fish for their personal use from their lawfully taken commercial catch.

Authority: AS 16.05.251(a)(2), (3), (4) and (b)

5 AAC 01.030. UNLAWFUL POSSESSION OF SUBSISTENCE FINFISH. (a) No person may possess, transport or place into the possession of another person, raw or unprocessed subsistence taken fish or their parts which the person has taken contrary to state law or regulation.

(b) No person may possess or transport raw or unprocessed subsistence taken fish or their parts if the items have been received from a person who took, possessed or

"COOK INLET Subsistence Fishery"
Stephen Braund Tech Paper #54

10x
year
↓

Eleven (25.6 percent) of the 43 respondents had subsistence fished in other areas of the State (i.e., the Copper River and Bristol Bay area), and 33 persons (76.8 percent) had sport fishing licenses. When asked if they caught adequate salmon for their needs through sport fishing, 28 (85 percent) of the 33 sport fishing license holders said no. These respondents often described the rising cost of gasoline and the relatively small sport fish bag limits as deterrents to acquiring the desired amount of salmon through sport fishing. Only 6 (15 percent) of the respondents were commercial fishermen. Two of these were halibut fishermen, while the other four fished for salmon.

It is interesting to note that 28 percent of the respondents who acquired a permit in 1979 did not actually fish (Table 10). Most of these people had learned about the permitted fishery from a friend, made plans to go fishing, but for a variety of personal reasons, never went. About half of these people did not plan to acquire a 1980 subsistence permit.

The following remarks by a 1979 Anchorage permittee are typical and describe his first and last attempt at subsistence fishing:

I learned about this subsistence fishery from my neighbor who is a commercial fisherman. A few friends and I got together and bought a net so we could try it. It seemed like a good weekend outing - a chance to get out with the kids and enjoy the outdoors. We had six adults all with permits plus the kids, and we caught 14 fish. The beach was too muddy and the fishing was hard work.

This fisherman and his friends only went fishing one time in 1979, and he did not plan to subsistence fish in 1980. Other, long-time users (i.e., 30 percent of the sample), who had subsistence fished in Cook Inlet for many years without a permit, knew more about the fishery, were more successful, and planned to continue fishing.

Court gives poachers

By CRAIG MEDRED
Daily News reporter

Alaskans caught hunting out of season can claim subsistence — the customary and traditional harvest of wildlife — as a defense for otherwise illegal activities, the state Court of Appeals ruled Friday.

State officials said the ruling could make it difficult to prosecute some poachers for killing caribou, moose and other big game.

The appeals court unanimously decided David Eluska of Kodiak could cite subsistence as a valid reason for killing a female Sitka blacktail deer in May 1983.

Kodiak District Court Judge Roy H. Madsen had earlier ruled the state could not prosecute Eluska at all because there are no laws regulating subsistence hunting.

Attorneys for the state appealed — arguing hunting rules were the same for both sport

subsistence defense

and subsistence hunters on Kodiak Island, where there is a five-month deer season from Aug. 1 to Jan. 31 and a limit of seven deer per year.

The appeals court rejected the state's argument, but sent the Eluska case back to Madsen for trial.

"In the absence of appropriate regulations governing subsistence hunting, we believe that the best way to accommodate Eluska's

statutory right to subsistence hunting and the state's right to reasonably protect the state's game resources is to judicially recognize a defense for subsistence hunting," Judge James Singleton wrote.

"... Only those who recklessly hunt in bad faith will be subject to prosecution," the appeals court further directed. "... The state

See Back Page, SUBSISTENCE

must prove guilt beyond reasonable doubt by convincing a jury that the hunting in question was not a subsistence use."

State attorneys said they are still trying to determine how the decision is going to influence enforcement of fish and game laws.

"It doesn't invalidate the existing hunting seasons. It doesn't provide carte blanche," said Liza McCracken, an assistant attorney general.

"I don't think the court is recommending that people go out and violate the game laws. It is just giving them the opportunity to raise a defense to a criminal charge."

The Board of Game probably can avoid a crisis by changing existing sport hunting regulations to cover hunting under the state's 1978 subsistence priority law, said Dennis Kelso, deputy director of the Alaska Department of Fish and Game.

"People will be tearing their hair when it comes to dealing with separate regulations, but it's more of a mechanical problem of sitting down and making sure they are formatted appropriately," he said.

"There's really no way out but to work it out," said Joel Bennett, a member of the game board.

The board, he added, tried to avoid complicating regulations by lumping together sport and subsistence hunting — particularly in areas like Kodiak and Southeast Alaska, where deer populations would support long seasons and large harvests.

The appeals court chastised that decision, saying the board "failed to carry out its responsibilities.

"If the state had enacted regulations making adequate provision for subsistence hunting, then the defense we have recognized would not exist."

But even if the state moves quickly to plug that legal loophole, there are still big subsistence problems on the horizon, said Larri Spengler, an assistant attorney general.

The appeals court underlined the priority the state, Supreme Court earlier this year gave all subsistence users — whether urban or rural, she said.

"As the Supreme Court pointed out ... the Board (of Game) may not restrict subsistence hunting at all in an area in which sport or commercial hunting is permitted," the appeals court said.

"Even if sport and commercial hunting are totally prohibited at all times in an area, the Board is still prohibited from restricting subsistence hunting unless the Board specifically finds that unrestricted subsistence hunting will interfere with sustained yield."

The attorney general's office has given the Game and Fisheries boards similar opinions, but they have continued to restrict subsistence activities.

The Board of Fisheries, for instance, decided against a subsistence fishery for Kenai River king salmon this year — although both sport and commercial fishermen are allowed to harvest those fish.

The appeals court ruling seems to indicate that if a subsistence fisherman put out net for those fish and was arrested, "the subsistence defense would be available to him," she said.

The fish and game boards have urged the legislature to solve most of these problems by passing Gov. Bill Sheffield's bill limiting the subsistence priority to rural Alaskans.

MAY 06 1985

MEMORANDUM

TO: ALL LEGISLATORS:
For Your Information

FROM: AXEL JOHNSON, EMMONAK
FORMER STATE REPRESENTATIVE

DATE: MAY 5, 1985

SUBJECT: HB 288, SUBSISTENCE
(Taken over telephone by Sen. Sackett
Mr. Johnson's # is 949-1127)



"I do not want the identity of the Eskimo, Indians, and Aleuts to be lost, and I feel this will happen if we do not pass the subsistence legislation.

As a former older legislator I beg the Senate to pass the bill.

I am dying (cancer) but I want this for my children and my grandchildren. Our life is subsistence and today there is no other alternative to being able to hunt & fish in order to eat. In 10 - 40 years maybe we will be modernized but right now there is no economy, few jobs, its tough to make ends meet, so we need to hunt & fish.

When we met together in Juneau in 1959 to organize the State we were not Republicans or Democrats - we were just a group of people who were there to set up rules. Things were tough then, but we tried for the whole state.

Again, I plead and pray that the Senate will pass the bill on subsistence.

I thank each one of you very much."

JUL 15 1985

James C. Picard
4840 Talus Drive
Anchorage, AK 99516
345-5530

July 12, 1985

Board of Game
State of Alaska
333 Raspberry Road
Anchorage, AK 909502

Dear Board Member:

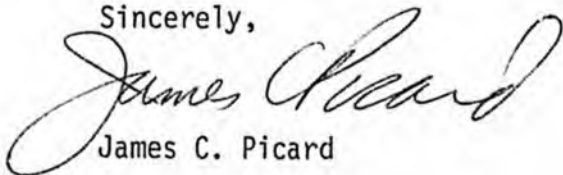
The purpose of this letter is to provide comment on the "tier two" emergency rules recently issued by the board of game. I am angry and I object to your decision which cuts me and a majority of all citizens from certain of Alaska's wildlife resources.

My first objection deals with location criteria. I do not believe that you can legally eliminate city dwellers just because they live in Anchorage, Fairbanks or Juneau. I also object to the dependency of resources criteria which translated favors an unemployed bush resident over an employed urban dweller. The example becomes more objectionable when large quantities of game are utilized to feed dogs used for marginally productive or non-existent tasks.

I also question your wisdom in restricting access to "locals" of a particular area such as bison in Delta. If Kenai runs short on salmon, will the board in its wisdom, limit salmon to those residing on the Kenai? The restriction on the Delta bison is particularly objectionable given the fact that bison are not indigenous to the area and their development and management has been funded to a great extent by fees paid by urban hunters.

I feel that I am a subsistence hunter and all subsistence hunters should be placed on equal footing, regardless of where one resides in the state or level of income. If the resource is short, settle the issue via a drawing. A rural hunter is no more automatically a subsistence user than an urban dweller is automatically a sports hunter.

Sincerely,



James C. Picard

cc: Governor Bill Sheffield
Senator Arliss Sturguleski —
Senator Jan Faiks
Representative Fritz Pettyjohn
Representative Steve Rieger

B. Laker
P.O. Box 870554
Wasilla, Alaska
99687

Mam, .. MAR 3-10-85
13 1985

Please do all possible in
a positive way to see that
House Bills 29, 36, 43
and especially 86 & 93
to enhance the sport fishing
& access to it in upper
Cook inlet, etc.

Our kids future will be
very bleak with out good fishing
areas. Alan Laker

MARCUS F. JENSEN
P.O. BOX 2220
JUNEAU, ALASKA 99803

APR 30 1985

April 29, 1985

Dear Editor:

Governor Sheffield gave a radio talk on Sunday, April 28, on his subsistence bill, House Bill 288. His talk indicated a lack of understanding of the problem. His bill adds the word "rural" to circumvent the recent Alaska Supreme Court decision. The "Madison" decision says existing state law provides for subsistence regulations but that they must cover both rural and urban Alaskans.

While HB 288 would allocate subsistence only to "rural" residents, it fails to define "rural". Who are the rural residents of Alaska? Are they those individuals living in cities and towns served by roads, commercial aircraft, ferries and trains? Or are they the individuals residing in truly remote areas? And should subsistence be available only to "rural" Alaskans? The Governor should address the intent and scope of his proposal. Merely tossing the Boards another law on subsistence that further restricts their ability to fairly allocate the resources among the various beneficial uses is not the answer.

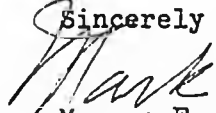
The answer must include protection of the resources and fairness in the allocation of their uses.

The Governor says he is afraid of federal take-over as is provided for in ANILCA. Instead of meekly complying with a bad federal act, perhaps he should use his authority to test the validity of the federal act. Many lawyers feel it is unconstitutional. By testing the federal act the Governor would be representing most Alaskans who want to control their own resource without federal intervention. This is what statehood was all about.

The need for a state subsistence act is greatly diminished when one understands that 42 million acres were given to the Natives for top priority use for subsistence. This land mass is equal to one mile wide and sixty five thousand miles long. It should raise a few animals.

The Governor's proposed law will only further confuse and alienate people and it is not needed. We should all accept the Alaska Native Claims Act for what it was--settlement of aboriginal claims including special claims on fish and game, and get on with fair and equitable allocation of these resources for all Alaskan citizens.

Sincerely yours,



Marcus F. Jensen



MAY 01 1985
ALASKA OUTDOOR COUNCIL, INC.
3780 McGINNIS DR., JUNEAU, AK 99801
(907) 789-3450

PRESIDENT

Rupert Andrews
9416 Long Run Drive
Juneau, AK 99801
(907) 789-7422

April 28, 1985

REGIONAL VICE-PRESIDENT

Lyle Carlson
Box 2741
Fairbanks, AK 99707
(907) 452-3498

Senator Arliss Sturgulewski
Alaska State Capitol - Pouch U
Juneau, AK. 99811

REGIONAL VICE-PRESIDENT

Robert Rausch
P.O. Box 2662
Juneau, AK 99803
(907) 789-3764

Dear Senator Sturgulewski

The Alaska Fish and Wildlife Federation and Outdoor Council endorsed the concept espoused in the attached resolution. Your consideration and support of this action is respectfully requested.

REGIONAL VICE-PRESIDENT

Ron Swanson
3417 Katlian
Eagle River, AK 99577
(907) 694-9564

Sincerely,

Rupe Andrews
President

TREASURER

Ed Grasser
Box 1350
Palmer, AK 99645
(907) 745-3772

SECRETARY

Sam Harbo
P.O. Box 80522
Fairbanks, AK 99708
(907) 452-7815

DIRECTOR-AT-LARGE

Warren Hoflich
6901 Tall Spruce Dr
Anchorage, AK 99502
(907) 243-4790

Resolution 3-85

Predator Management

Whereas, it is the policy of the Alaska Fish and Wildlife Federation and Outdoor Council to remove fish and wildlife management from political manipulation, and

Whereas, it is also the policy of the Alaska Outdoor Council to support the reduction of wolf populations when the need has been scientifically established and alternative methods have been considered, and

Whereas, the Board of Game has blatantly disregarded the testimony of the Interior Advisory Committees, the Interior Regional Council and the Southcentral Regional Council by rejecting the proposals to increase moose and caribou population by reducing selected wolf populations, and

Whereas, the Board of Game has adopted a wolf management policy that is technically unfeasible and economically impractical, instead of taking prompt and effective action to restore depressed moose and caribou populations, and

Whereas, the Board of Game's failure to authorize the reduction of wolf populations is a flagrant and crass disregard of the advisory committee and regional council system and the public participation system of fish and wildlife management, now

Therefore, be it resolved that the Game Board immediately rescind the policy established at the March 1985 meeting, and

Be it further resolved that the Game Board reinstate the moose and caribou recovery programs in Units 20A and 20E and favorably act upon the proposals and testimony of the Interior Advisory Committees and the Regional Council.

Am writing to you to ask that you amend the Subsistence law so that rod and reel and dip net would be subsistence gear. The reasons for this are several:

First, ninety nine percent of the effort in personal use fishery (as opposed to commercial use fishery) occurs with this gear type. This has happened through choice- it is the second oldest gear type, and through legislative and regulatory restriction. At one time, prior to statehood, an individual who wished to feed himself could do so with any gear or technique. At statehood fish traps, weirs, and other techniques were outlawed. With limited entry the use of commercial license and gear were restricted to permit holders. In 1975 attempts began to outlaw and restrict subsistence access and gear which continued up until this spring with the Maddison decision. The trend has been over time to force the vast majority of fishery users into use of rod and reel. Is it fair to now say that this gear is ineligible for subsistence use?

Second - the subsistence law says that "gill net, seine, fishwheel, longline, and other means defined by the Board of Fisheries", shall be subsistence gear. The legislation is not exclusive of any gear, and in fact as all that gear is also commercial gear, implies that no gear is exclusive to any one category of use. This spring I offered the Board of fisheries the opportunity to add rod and reel to the subsistence regulations. They have so far declined. Is it reasonable to expect the Board to make a decision which rightfully belongs to the representative branch of government, the Legislature?

Third - the sport fish statute defines sport gear as "hook and line held in the hand, hook and line attached to pole or rod, or other means defined by the Board of fisheries." There is nothing exclusive about either sport, subsistence, or commercial gear type. Each delegates to the Board the power to define any gear in any fishery - a power which originates with the legislature.

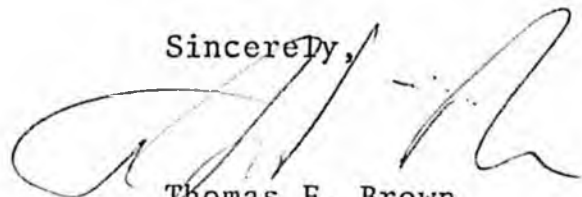
Fourth - the four gear types now available to subsistence use are non selective in harvest. If we are to authorize subsistence in smaller

APR 18 1985

bodies of water then Cook Inlet and Kachemak Bay, a more selective gear type is necessary. Rod and reel and dipnet have the added advantage in that only one fish at a time is caught, allowing effort to be spread out over time and encouraging closer observance of whatever bag limit is in effect.

In order to generate interest and to inform the public about this opportunity, I have visited every sporting goods store from Wasilla to Homer, talked to every radio station, television station and newspaper, attended the Board meetings this spring, begun contact with every local advisory board in the Cook Inlet region, and lobbied every individual and group even remotely associated with the personal use of the fishery. I think that if you contact the Kenai River Sportsmens Ass., Seward Sportsmens Ass., Alaska Sportsmans Ass., and the Marine Dealers Ass. you will receive positive input about this proposal. Enclosed are documents which relate to this issue. Thank you for your consideration.

Sincerely,



Thomas F. Brown
P.O. Box 657
Homer, Alaska 99603

P.S. The following is the proposal which the Board has taken under consideration. If you were to act on adding rod and reel and dip net to the law, it would make their consideration of the other issues considerably simpler.

"WHEREVER, WHENEVER AND IN WHATEVER MANNER BE IT BY BAIT, LURE OR FLY THAT FISHING HAS TAKEN PLACE LEGALLY IN 1984 USING ROD AND REEL, A SUBSISTENCE FISHERY SHALL BE ESTABLISHED TO COINCIDE WITH THAT FISHERY SUCH THAT ROD AND REEL SHALL BE THE METHOD OF CATCH, USING THE SAME GEAR RESTRICTIONS, BAG LIMITS AND HOURS OF FISHING."

There's a catch in subsistence

In the current state of Alaskan subsistence matters — who's to say how things may change tomorrow — all residents of the state are subsistence users.

From Ketchikan to Barrow, from Eagle to Attu, all Alaskans may subsistence fish in the summer of '85, courtesy of the state Supreme Court's ruling of Feb. 22.

There is a catch, however (no pun intended).

You can subsistence fish if you choose to use a net, seine, spear, fishwheel or long line; but not if your preferred choice of gear is a rod and reel.

This fact eliminates a large majority of the state's fishermen from subsistence use. How many of your friends own a net, fishwheel or seine? It also



HOMER
Brown

angers many Alaskans. One of those is Tom Brown.

Rather than merely cry "unfair" and curse his luck and the state's decision makers — in this instance, the Board of Fisheries — Brown is trying to undo what he feels is a wrong.

The 37-year-old Homer resident has presented a proposal to the Board of Fisheries which would add rod-and-reel fishing to the board's list of allowed-sub-

sistence-methods-of-catch.

Brown is no raving revolutionary wild-eyed trouble-maker. He's thought this through quite carefully.

Brown moved to Alaska in 1975. To supplement his diet, he began subsistence fishing in Kachemak Bay — w rod and reel.

"At that time it was an unregulated fishery," he says. "It was open to anybody."

In 1976, Brown was told he could no longer subsistence fish with a rod and reel. He's "been asking for my subsistence rights ever since."

Brown insists that the no-rod-and-reel-allowed subsistence regulation "discriminates against the majority of the consumptive users in the state. Fishermen have been regulated into the

fishing regulations

sition of using rod and reel. Most don't have the resources or the ability to invest in the other methods that do meet the current regulations.

"There has been a gradual but certain restriction of fisheries use over time," he adds.

And the people feeling the brunt of those restrictions have been the rod and reel users.

"It's the interests of the commercial fishermen who have been served," Brown says. "Although by law the rights of (subsistence, sports and commercial groups) are supposed to be equal, in fact they are not equal."

Although his idea may seem controversial, Brown is not seeking to add to the tensions or bad feelings which have too often existed among commercial, sports and subsistence users. His ultimate

goal is "to bring an end to competition and begin a peaceful cooperation between the different users."

Brown's more immediate aim is to make sports fishermen's groups recognize the possible benefits of rod-and-reel subsistence use.

"There has been an attempt to set sports groups and subsistence groups against one another. But true sport is non-consumptive; it's hook and release. If you kill the fish and use it for yourself or even barter it, then you are subsistence fishing. The two types of fishing are not competitive," Brown explains.

"If rod-and-reel subsistence methods were allowed, it would immediately access 99 percent of Alaska's population to subsistence fishing. But it would not

See Angler, page E-3

Angler

Continued from page E-1

have to impact sports fishing," he adds. "The two groups can be cooperative."

Brown says that the rod and reel could easily be added to the list of "approved subsistence gear."

"The subsistence law says that fish may be taken by 'gill net, seine, fishwheel, long line or other means defined by the Board of Fisheries. Only the Board of Fisheries can deny your use of rod and reel,'" Brown wrote in a question-and-answer explanation to his proposed regulation.

Blx Bonney, a member of the Board of Fisheries, isn't so sure the problem is that simple.

"The problem is that there are legislative statutes which designate the rod and reel as a sports fishing method. You'll need legislative action to change it so that rod and reel can be a subsistence method," Bonney says. "But I don't think the chances of such a bill going through are very good. I think it will be blocked by the commercial fishery interests.

"Putting recreational fishing in a priority position over commercial gives it an unfair advantage. I don't think (rod and reel) fishing should have that priority. The concept is great and it may be proposed as a bill. But I don't think it will pass this year."

Brown, meanwhile, argues that it has been the sports and

frustrated

subsistence groups which have been put at a disadvantage during the past decade.

"It's been the commercial group which has benefited the most from the board's regulations," he says. "This (rod-and-reel subsistence use) would provide the chance to reverse the numbers. It would finally provide a chance for subsistence users — and thus sports users, who can be

Bog Hollow
Homer, Alaska
April 10, 1985

Board of Fisheries

Hello,

After consideration and consultation with others even more expert in the feild then myself, and in order to clarify issues which were not spelled out in my original petition to you I am requesting that you accept this amended version of the proposed regulation I submitted to you in March. The text is as follows:

WHEVEVER, WHENEVER, AND IN WHAT EVER MANNER BE IT BY BAIT, LURE OR FLY, THAT FISHING HAS TAKEN PLACE LEGALLY IN 1984 USING ROD AND REEL, A SUBSISTENCE FISHERY SHALL BE ESTABLISHED TO COINCIDE WITH THAT FISHERY SUCH THAT ROD AND REEL SHALL BE THE METHOD OF CATCH USING THE SAME GEAR RESTRICTIONS, BAG LIMITS AND HOURS OF FISHING.

As you see this version is much clearer in its intent and execution then that which I submitted previcusly. Thank you for your help, I am

Sincerely yours

Thomas F. Brown
P.O.Box 657
Homer, Alaska 99603

TRANSCRIPT OF POLITICS IN PERSPECTIVE, ALASKA PUBLIC RADIO
MARCH 17, 1985

DON COLLINGSWORTH, COMMISSIONAR OF FISH AND GAME

" WE HAVE NO IDEA AT THIS TIME HOW MANY PEOPLE WILL CHOOSE TO PARTICIPATE IN THE SUBSISTENCE FISHERY USING THE TRADITIONAL SUBSISTENCE GEAR WHICH IS NET GEAR."

" THE PROBLEM WILL BE IF WE HAVE A NEW FISHERY THAT IS FAIRLY LARGE THAT IS IN FRONT OF ANOTHER FISHERY THAT IS IN COOK INLET IN THE SPORT FISHERY THEN IN ORDER TO ASSURE THAT WE GET OUR ESCAPEMENT THEN WE WILL HAVE TO MAKE OUR MANAGEMENT ADJUSTMENT IN THE LAST FISHERY IN LINE IN THIS CASE IN COOK INLET IN THE SPORT FISHERY."

" THE THING TO NOTE IS THAT UNDER ALASKA STATUTE RECREATIONAL FISHING IS DEFINED IN A SPECIFIC WAY AND WITH ROD AND REEL, SPORT FISHING IS DEFINED AS USE OF ROD AND REEL."

THE TRANSCRIPT ABOVE INDICATES SOME FACTS WHICH NEED CLARIFICATION. FIRST, THE STATUTE FOR SPORT FISHING IS "SPECIFIC" IN ITS MENTION OF "HOOK AND LINE HELD IN THE HAND, HOOK AND LINE ATTACHED TO A ROD OR POLE, AND OTHER MEANS DEFINED BY THE BOARD OF FISHERIES."

SECOND, WHILE PRESENT MANAGEMENT STRATEGY PENALIZES THE "LAST FISHERY IN LINE", UNDER THE SUBSISTENCE LAW STRATEGY WILL BE TO FRONT LOAD FISHERYS WITH FISH FOR SUBSISTENCE HARVEST WHICH WHEN IT OCCURS IN COINCIDENCE WITH A SPORT FISHERY WILL HAVE THE EFFECT OF PROVIDING FOR BOTH.

"Be it enacted..."

THE SUBSISTENCE LAW

LAWS OF ALASKA

1978

Source: SCS CSHB 960 am S

Chapter No: 151

AN ACT

Relating to fish and game management.

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

Section 1. INTENT. The legislature finds that there is a need to develop a statewide policy on the utilization, development and conservation of fish and game resources, and to recognize that those resources are not inexhaustible and that preferences must be established among beneficial users of the resources. The legislature further determines that it is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs and traditions of Alaskan residents. The legislature further finds that beneficial use of those resources by all state residents should be carefully monitored and regulated, with as much input as possible from the affected users, so that the viability of fish and game resources is not threatened and so that resources are conserved in a manner consistent with the sustained-yield principle.

Sec. 2. AS 16.05.090 is amended by adding a new subsection to read: (c) There is established in the Department of Fish and Game a section of subsistence hunting and fishing.

Sec. 3. AS 16.05 is amended by adding a new section to read: Sec. 16.05.094. DUTIES OF SECTION OF SUBSISTENCE HUNTING AND FISHING. The section of subsistence hunting and fishing shall

(1) compile existing data and conduct studies to gather information, including data from subsistence users, on all aspects of the role of subsistence hunting and fishing in the lives of the residents of the state;

(2) quantify the amount, nutritional value, and extent of dependence on food acquired through subsistence hunting and fishing;

(3) make information gathered available to the public, appropriate agencies, and other organized bodies;

(4) assist the department, the Board of Fisheries,

and the Board of Game in determining what uses of fish and game, as well as which users and what methods, should be termed subsistence uses, users, and methods;

(5) evaluate the impact of state and federal laws and regulations on subsistence hunting and fishing and, when corrective action is indicated, make recommendations to the department;

(6) make recommendations to the Board of Game and the Board of Fisheries regarding adoption, amendment and repeal of regulations affecting subsistence hunting and fishing;

(7) participate with other divisions in the preparation of statewide and regional management plans so that those plans reorganize and incorporate the needs of subsistence users of fish and game.

Sec. 4. AS 16.05.251 is amended by adding a new subsection to read: (b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of 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.

Sec. 5. AS 16.05.255 is amended by adding a new subsection to read: (b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of game

(continued)

by "subsistence utilization"
with the board's change to change

resources on a sustained-yield basis. Whenever it is necessary to restrict the taking of game to assure the maintenance of game resources on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

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

Sec. 6. AS 16.05.257 (a) is amended to read: (a) The Board of Game, at its regularly scheduled annual meeting and other meetings held under authority of sec. 300(a) of this chapter, shall consider and may adopt regulations providing for subsistence hunting in a game management unit or subunit or a portion of a unit or subunit upon

- (1) recommendation of the department, based on biological evidence;
- (2) the recommendation of the active local advisory committees for that game management unit or subunit or a portion of a unit or subunit;
- (3) the written petition of not less than 100 interested residents of that game management unit or subunit; or
- (4) the written petition of not less than 25 interested residents of an area which is requested for establishment as a subsistence area within a game management unit or subunit.

Sec. 7. AS 16.05.257(c) is repealed and re-enacted to read: (c) No regulations may be adopted by the Board of Game under (a), (b) or (f) of this section unless in addition to the requirements of AS 44.62.180 - 44.62.290, the department

(1) holds public hearings, after reasonable notice, at least 30 days before the meeting at which the regulation is to be adopted, with at least one of the hearings being held in close proximity to the area potentially affected;

(2) presents at the hearings the information provided for in (e) of this section;

(3) makes the information provided for in (e) of this section available to the appropriate advisory committees and to petitioners if consideration of adoption of regulations was prompted by petitions under (a) (3) or (4) of this section; comments shall be received by the board until 10 days before any adoption of regulations.

Sec. 8. AS 16.05.257(d) is amended to read: (d) A petition submitted under (a)(3) - (4) of this section shall contain a complete description of the area requested as a subsistence area and a specification of the species within the area considered necessary for subsistence use. A petition or recommendation made under (a)(2), (3) or (4) of this section must be filed with the department at least 75 days before the

meeting of the board at which the petition or recommendation is to be considered.

Sec. 9. AS 16.05.257(e) is repealed and re-enacted to read: (e) The department shall investigate, by collecting existing data, and, when necessary, conducting new studies, every petition or recommendation made under (a)(2), (3) or (4) of this section to the extent practicable within the time available and provide the following information:

- (1) the concentration of the species to be affected and carrying capacity of the area to be affected;
- (2) the current hunting practices in the area, including numbers of animals taken and by what methods and means and whether the take is subsistence or recreational;
- (3) the dependence of persons in the area for subsistence use of a species;
- (4) the population trends of the affected fish and game in the area;
- (5) whether the affected fish and game population is able to support a nonsubsistence harvest; and
- (6) other information considered necessary by the section of subsistence hunting and fishing.

Sec. 10. AS 16.05.257(h)(1) is amended to read:

(1) "subsistence hunting" means the taking of game animals by a state resident for subsistence uses by means defined by the Board of Game;

Sec. 11. AS 16.05.257(h)(2) is repealed and re-enacted to read:

(2) "subsistence hunting area" means an area in which only subsistence hunting of the affected species is permitted and which is managed for maximum food potential.

Sec. 12. AS 16.05.257 is amended by adding a new subsection to read: (i) The Board of Game may make no decision denying, creating or changing a subsistence hunting area unless based on specific written findings of fact regarding all the information provided in accordance with (e) of this section.

Sec. 13. AS 16.05.930 is amended by adding a new subsection to read: (e) This chapter does not prevent the traditional barter of fish and game taken by subsistence hunting or fishing, except that the commissioner may prohibit the barter of subsistence-taken fish and game by regulation, emergency or otherwise, if a determination on the record is made that the barter is resulting in a waste of the resource, damage to fish stocks or game populations, or circumvention of fish or game management programs.

Sec. 14. AS 16.05.940(17) is amended to read:

(17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

Sec. 15. AS 16.05.940 is amended by adding new paragraphs to read:

(26) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources

ding with the management and utilization of a herd of caribou as large as the Western Arctic herd, limitation of the language and actualization of numbers becomes a problem for both Fish and Game biologists and residents of northern Alaska who harvest caribou.

The impact of the three major changes described earlier (firearms, distribution and expansion of population, and snowmobiles) considered to and may have been a major cause of the decline in the size of the Western Arctic herd between 1970 (est. population 100,000) and 1976 (est. population 75,000). A major drop in numbers was first noted in 1975 when Game Department biologists estimated the herd size as 100,000 animals. Many residents of northern Alaska refused to believe these estimates and the seriousness of the problem. In view of the limitations of the local language to deal with large numbers and the fact that in the fall of 1975 well over 100,000 caribou migrated a few miles inland from the coast (south of Point Hope to the Kiana area) close to several villages, it is no wonder that doubts arose about the accuracy of caribou estimates. By 1976 the population was estimated to be 65,000 (minimum). The annual harvest had been 25,000. Recognizing that this was a serious problem, the Board of Game in 1976 set a bag limit on the bull by permit only with a maximum of 3,000 permits being issued. In 1977 these regulations were modified in response to a new ruling, but the total allowable harvest remained the same. The 1977 caribou population estimate was 75,000. In 1978 the Board of Game lowered the bag limit to two bulls and the quota to 5,000 bulls but kept the permit system. The 1978 population estimate rose again to 100,000.

Although compliance with the bag limits and stipulations of the permit system have been far from perfect, the fact remains that the annual harvest has been

drastically reduced and the problem of crippling and waste (killed but unretrieved, mainly), observed by Department biologists and others in 1975-76 and prior years, has been significantly curtailed. Both have occurred with little or no enforcement by the State—it has been accomplished by the residents themselves. This, it seems to me, is a noteworthy achievement.

Finally, the question of need must be addressed. I am often asked if northern Alaskans still need the resources they claim they need. To a large extent, the answer is yes. Although the amount of meat needed per household has probably decreased as a result of their getting rid of dog teams, the people still need to eat. In most villages, there are limited opportunities to earn cash, and prices for food in local stores are extremely high. For example, in Barrow hamburger currently sells for \$3.20 per pound, white bread \$2.20 per loaf, eggs \$2.30 per dozen, milk \$3.20 per half gallon and butter \$2.80 per pound. In outlying villages, these items, if available, sell for higher prices than these; but

usually, these and many other items are unavailable for weeks at a time. There are many reasons why village stores are poorly stocked. Two common ones are: a lack of capital to pay for a large, well-balanced stock, or lack of storage space to stock enough food for periods when freight can't be delivered to the village. Thus, there remains an absolute need for as high quality food as can be obtained from local resources. However, with the redistribution, concentration and increase in village population size, some restraints on resource utilization must be observed. The days of no closed season and no bag limit, especially for highly-prized species like caribou, are probably gone forever.



Herb Melchior has an A.B. in biology, and an M.S. in plant ecology from the University of New Hampshire. He has conducted a variety of ecological studies in northern and northwestern Alaska and has taught animal behavior at San Diego State. He began working for ADF&G in 1971.

(continued from page 8)

“Be it enacted...”

for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible byproducts of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or share for personal or family consumption; for the purposes of this paragraph, “family” means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

(27) “barter” means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

Approved by the Governor: July 12, 1978

Actual Effective Date: October 10, 1978



§ 16.05.940

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Fish and Game unless

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§ 16.05.940

FISH AND GAME

§ 16.05.940

(13) "operator" means the individual by law made responsible for the operation of the vessel;

(14) "resident" means a person who for 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained his voting residence in the state; and in the case of a partnership, association, joint stock company, trust, or corporation, "resident" means one that has its main office or headquarters in the state; however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this chapter, and the dependent of a resident member of the military service, who has been living in the state for the preceding year is a resident for the purposes of this chapter, and a person who is an alien but who for one year has maintained a permanent place of abode in the state is a resident for the purposes of this chapter;

(15) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under this chapter by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(16) "sport fishing" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(18) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

(19) "taxidermy" means tanning, mounting, processing, or other treatment or preparation of fish or game, or any part of fish or game, as a trophy, for monetary gain, including the receiving of the fish or game or parts of fish or game for such purposes;

(20) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(21) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state;

(22) "visitor" means a nonresident or alien temporarily sojourning in the state as a visitor or tourist;

(23) "aquatic plant" means any species of plant, excluding the rushes, sedges and true grasses, growing in a marine aquatic or intertidal habitat;

(24) "fish derby" means a contest in which prizes are awarded for catching fish;

X

APR 29 1985

Box 39214
Ninilchik, Alaska 99639
April 24, 1985

Senator Arliss Sturgulewski, Chairman
Senate Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

I hope that I can say what is on my mind in a reasonable fashion. I would once again like to address criteria for the Board of Fisheries. Allow me to preface my remarks by saying that when speaking of the ordinances for proper Christian living we go to our guidebook--the Bible--where the apostle Peter says, "I will not be negligent to put you always in remembrance of these things..."--going back a little he says, "For if these things be in you, and abound, they make you that ye shall neither be barren nor unfruitful." [in the knowledge of our Lord Jesus Christ]. As legislators, you also have basic guidebooks or documents written for the express purpose of channeling your thoughts and actions in the proper directions under our American system of government.

Permit me to quote from our Declaration of Independence: "When a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government and to provide new guards for their future security." Because we now have these guards in place in our American system of government, it seems only proper that when an increasingly heavy burden of arbitration falls upon a segment of population and evinces a design to reduce them by despotic means, that it is time for those of you who watch for our souls, or are supposed to, to take it upon themselves to provide new guards for our future security.

I say this with the knowledge that we have been very successful in our arbitration with the state and little note seems to be taken of it, but when the state loses, as in the Madison case, attempts are made to arouse public furor through grossly misrepresented statements made by our state officials with no supporting evidence that any problem is really lingering in the wings at this point.

On the other hand, the increasingly successful amount of arbitration against the Board of Fisheries, because of rash and biased judgment, is a clear indication that steps need to be taken soon within the legislative process to alleviate the problem. It is clear and apparent from your express purpose as legislators, that such guards can only come by a pure mandate of law. The board process is fraught with special interest, which, by the way, is probably the next litigation to be taken up in court, and I encourage all of you to follow it with interest as to the outcome.

Senator Arliss Sturgulewski
Page 2
April 24, 1985

Let me say in closing that the legislature represents our only place of real rest on these issues of criteria for the board process, and that arbitration is not peace, it just leads from one court battle to the next. I invite you to be looking with bated breath for court decisions and to be looking at the mandating of criteria for managing the resource by a professional board process with the Department of Fish and Game as an integral part of the hierarchy so that their expertise and advice cannot be ignored in the decision making process.

Sincerely,

MIKE SUTTON

Mike Sutton ^{CS}

MS:cbs

c.c. Senator Bettye M. Fahrenkamp
Senator Jack Coghill
Senator Jan Faiks
Senator Richard I. Eliason
Senator Vic Fischer
Senator Rick Halford
Senator Fred F. Zharoff
Senator Paul Fischer

APR 23 1985

Valdez Chamber of Commerce

P.O. Box 512 • Valdez, Alaska 99686 • Phone 835-2330

April 18, 1985

Alaska State Legislature
Pouch V
Juneau, Alaska 98111

Dear Senator:

On April 18th, 1985 the Valdez Chamber of Commerce Membership voted in support of House Bill No. 288 and Senate Bill No. 231 on subsistence which was introduced in the Fourteenth Legislature of the State of Alaska.

This Act relating to taking of fish and game for subsistence and personal use and providing for an effective date is an important issue for all Alaskan communities. The Valdez Chamber of Commerce recognizes the need for subsistence fishing rights, however, we do not believe it should adversely affect the commercial fishing industry. We believe the two groups can and should exist harmoniously.

The need for this legislation to pass quickly is imperative to many Alaskans. We urge you to help in the passage of these bills.

Thank you for your support in this issue.

Sincerely,



William J. Simpson
President, Valdez Chamber of Commerce

APR 23 1985

SOUTHEASTERN ALASKA
SEINE BOAT OWNERS & OPERATORS

18 WATER STREET
SITCHIKAN, ALASKA
99901

April 19, 1985

Senator Arliss Sturgulewski
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Sturgulewski:

We support SB 231, the Governor's bill to place in statute the Board of Fisheries' ruling on subsistence and personal use.

We recognize that defining "subsistence uses" as the customary and traditional uses by rural residents may not be a perfect solution to the question of who is entitled to be a subsistence user, however, we think it to be the most reasonable and most workable.

We urge you to support this bill.

Sincerely,

Executive Board of Directors
SOUTHEASTERN ALASKA SEINE BOAT OWNERS & OPERATORS

GEORGE E. HALE, M.D., Inc.

A PROFESSIONAL CORPORATION

501 L STREET

ANCHORAGE, ALASKA 99501

APR 18 1985

TELEPHONE (907) 272-6525

April 16, 1985

GENERAL SURGERY

Senator Arliss Sturgulewski
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Sturgulewski:

Most of the many hunting and fishing sportsmen of Alaska are hunting and fishing with hook and line for subsistence which is actually for personal consumption.

We voted for subsistence as the highest State priority in 1978, believing that we were voting for our personal consumption hunting and "sport" fishing as the highest priority.

The State officials disenfranchised us after the vote by defining subsistence as fishing with nets instead of hook and line.

Most of the "sport" hunters and fishermen came to Alaska primarily to continue to enjoy their sport as a means of obtaining food for themselves and their families.

Most of the 250,000 hook and line fishermen of the State would like to see this situation corrected, which could be done by properly defining subsistence hunting and fishing.

Hunting for meat and fishing with hook and line to feed one's family is the highest and best way to use the fish and game resources of the State. I hope it will be recognized as such by the officials of the State of Alaska.

George Hale



The days of 'magic' mon

By Jan

EDITOR'S NOTE: This is the first in a series of on-going columns in which members of the Anchorage Municipal Assembly will discuss local issues. The columns will be published on Wednesdays, and

all assembly members will participate on a rotational basis. The initial submission, which follows, is from Chairman Jane Angvik. Assemblyman Paul Baer will write next week's column.

Letters to the editor

State constitution guarantees equality when it comes to taking the fish

Dear Editor:

With the recent Supreme Court decision, the state now has the direction and opportunity to assure to all Alaskans the equal consideration to take fish and game for their own personal consumptive use. This decision supports the state constitution's provision that "Wherever occurring in their natural state fish, wildlife and waters and reserved to the people for common use."

The court stressed that common "use" and not priority "users" was the main intent and should be the effect of the subsistence regulations. The court found that all consumptive users, and not just rural residents, are eligible priority subsistence users.

But the same politics that supported the illegal discriminatory subsistence regulations are at work to speedily fix their court failure. Their main weapon, now as in the past, is their threats aimed at the majority of Alaskans.

One such threat is that the over 200,000 sportfishermen will be severely impacted by the Supreme Court decision. The court, in fact, said that all personal consumptive users were to be given equal consideration. As most so-called sport fishermen eat the fish that they catch, any priority

subsistence use must include them.

And those "pure sport fishermen" who catch and release are not harvesters of the resource, therefore have a negligible impact. With an annual harvest of well over 100,000,000 salmon, all Alaskans should be entitled to the equal opportunity to take fish for their own dinner table.

Another political threat used is that the federal government will deny our state the right to manage our fish and game unless the subsistence priority is based on rural residency. When the feds mandate that the resource must be managed as they say, the state has in fact already lost the right of management authority.

This restriction resulted from state politics that requested and supports such residency discrimination. When Ron Sommerville was Alaska's representative during the early days of D-2 and ANILCA, and opposed this federal mandated discrimination, he was removed from his Washington, D.C., post. Gov. Hammond admitted in a public meeting of the Boards of Fish and Game that Sommerville was removed because of native pressure.

His replacement, John Katz, has compromised the Alaskan public's constitutional rights on

this and many other issues. For the state not to politically and judicially oppose this discriminatory action, which specifically denies equality to all residents of Anchorage, Fairbanks, Juneau and Ketchikan, shows a planned sell-out of our rights.

This plan includes the continued lobbying action of Larry Spengler of the attorney general's office supporting a priority subsistence use of Alaska's fish and game to be as discriminatory and restrictive as has been politically motivated. Alaska would be better served if our attorney general would be motivated by a responsibility to assure that all residents are not discriminatorily restricted in their rights.

The history of Gov. Sheffield's stern actions has been a well known threat to any state employee who would question these unconstitutional subsistence regulations. He fired Fish and Game Commissioner Ron Skoog and Game Division Chief Ron Sommerville because of their private personal stands against these regulations.

And he then requested the resignations of all Board of Fish and Game members when they began questioning the blatant directions ordered by Larry Spengler.

It is time that all Alaskans are again equal under the law, no matter where they reside, and that such equality is promoted by our state and is not necessitated by continued court challenges by its residents.

Dale Bondurant
Chugiak

'Your leadership is demanded'