

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672

4222.27 RES SUBSISTENCE: MCDOWELL ET AL - NEWSCLIPPINGS

The board based its restrictive regulation, 5 AAC 01.597, on the words "customary and traditional." The legislature did not define these words in the 1978 subsistence law. In such a case, reference to legislative history may provide an insight into the legislature's intent and a statute's meaning. North Slope Borough v. Sohio Petroleum Corp., 583 P.2d 534, 540 (Alaska 1978). In the House floor debate on House Bill 960, Representative Cotton introduced an amendment to delete the words "customary and traditional" from the statute. The floor manager of the bill, Representative Anderson, opposed the amendment in the following speech:

The two words are used in this context to put some guidelines around the uses of Alaska's freedom of resources. What we were afraid of, it was brought to our attention by people who were concerned that this would leave the field of the definition wide open. That newcomers just coming to the State of Alaska would automatically be able to establish not only residency in 30 days, but be able to go out and state that they have a customary and traditional use of Alaska's fish and game resources. The use of customary and traditional also is in recognition of a historical use of fish and game for food, shelter, fuel, clothing, tools, transportation, etc. This is not only in conformance with the aboriginal uses, but also those that have come in, those people who have come in later. . . . [The nonnative people in the State of Alaska have established customary and traditional uses of Alaska's fish and game resources for subsistence purposes. And in order to give the Board of Fish and Game more clarification in the area, we have come up with the (inaudible) of customary and traditional rather than leaving that section

then the last people that you are going to cut off are the subsistence people who have the greatest reliance on the resource. . . . [I]f it were defined that dip net fishing were for subsistence uses and not for sale or any other purpose, that would be allowed and I would think that people from Fairbanks would fall under these categories. I don't know where else they would go to . . . where people from Fairbanks make it a custom to go down to the Chitina area and if it was determined that that resource was down to the point where only subsistence would be allowed, those people would be taken care of under this section. I don't see that it is eliminating.

(Emphasis added).

\* In the House debate, Anderson attempted to assure Parr that residents of urban Fairbanks could be considered priority subsistence users. Contrary to the board's interpretation of the subsistence statutes, there is no indication that legislators understood the 1973 subsistence law to restrict subsistence use to either a rural or a community context. In fact, the House debate indicates that the 1978 subsistence law was necessary to protect subsistence uses as a priority use of Alaska's fish and game resources. This intent is clearly expressed by the preamble to the subsistence law:

[I]t is in the public interest to clearly establish subsistence use as a priority use or 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

\*  
IV. THE BOARD'S ADOPTION AND APPLICATION OF 5 AAC 01.597

We now turn to the board's interpretation of the 1978 subsistence law. In December 1980, the board met to examine the uses of salmon in Cook Inlet and to determine which uses would qualify for the subsistence use priority. Tom Lonner, the director of the subsistence section of the Alaska Department of Fish and Game, presented the department's recommendations on the subsistence statute. He suggested that the board begin its analysis of customary and traditional uses with an assessment of user profiles and use patterns on a case by case basis. Lonner noted that such information was most lacking in the major Cook Inlet subsistence fishery because of the rapid growth of subsistence uses in recent years, and that obtaining such information would be expensive.

The board did not follow Lonner's suggested approach.<sup>14</sup> After the board heard extensive testimony on subsistence use, its "chairman appointed a committee,"<sup>15</sup>

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(Footnote Continued)

all state residents" should be carefully monitored and regulated, it did not express an intention to limit subsistence uses to rural Alaska residents.

14. A board member, Nick Szabo, stated that the board's limited budget prevented implementation of a case by case approach.

15. The board stipulated in 1982 that it violated

(Footnote Continued)

criterion: "A use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use."<sup>16</sup> The board found:

Although some users have shown the existence of a community of interest (e.g., the Kenaitze Tribe and the Kachemak Bay Subsistence Group), these persons either are too widely dispersed or are too heterogeneous to be considered an identifiable community, subcommunity or group. On the evidence presented, the Board cannot conclude either that activities are conducted in common or that sharing or other group interchange occurs in relation to the resource.

In other words, an individual subsistence user (such as Madisen or Gjosund) would not qualify for a subsistence use priority from the board unless he were part of an identifiable subsistence community or group.<sup>17</sup> Under the

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16. See 5 AAC 01.397 set out in n. 8 above.

17. In contrast, the Commercial Fisheries Entry Commission issues commercial fishing permits on an individual basis. See AS 16.43.250. We do not, however, read the words "customary and traditional" as a grant of authority to the Department of Fish and Game and the Board of Fisheries to impose a "grandfather" rights system with respect to subsistence users. Imposing an equitable system of grandfather rights is an extremely complicated task, as Alaska's experience with such a system in the commercial salmon and herring fisheries has demonstrated. See AS 16.43.010-990 and the numerous, and ever increasing, judicial decisions interpreting this act noted in the annotations. Such a system would also be extremely controversial. It is preposterous to suppose that the legislature intended to create such a system merely by using

(Footnote Continued)

APR 02 1985

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 Constitution's provision that "Wherever occurring in their natural state fish, wildlife and waters are 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. They found that all consumptive users, and not just rural residents, are eligible priority subsistence users.

Government and its laws should apply even handedly to All Alaskans and make sure that whatever criteria is used is not unjustly discriminatory in intent or effect. The Constitution does not on a whole and should not have severe restrictive provisions. This same need should be observed by any legislation and should be used to make sure that its clear intent is to protect and insure the equal and just consideration of All Alaskans.

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, Alaska's representative during early d-2 / ANILCA, opposed this federal mandated discrimination he was removed from his Washington D.C. post. Governor 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, Attorney General 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 Governor 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*

Dale Bondurant  
SR 1 Box 2516  
Chugiak, Alaska 99567

MAR 25 1985

Letter to the Editor:

I'm delighted to see at least one lawmaker, Senate President Don Bennett, publicly say the Governor's urgent measure to circumvent the Supreme Court's recent ruling on subsistence salmon fishing isn't likely to make it through the legislature this year. Bravo! That statement triggered off all sorts of comical dire threats from the Board and Department of Fish and Game, which are both strongly pro-commercial-fishing.

Commissioner Collinworth is now desperately trying to incite the sports fishermen with false alarms of closures to gain their support to pressure the legislature into quick action on the Governor's proposal to restore the status-quo. But they won't get away with it for long, because the Kenai Peninsula plaintiffs in the lawsuit are equally determined to get equal fishing rights guaranteed by our State Constitution.

Article VIII Section 3 states "Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use", and Section 15 says "No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State". An example of how prejudiced our local court system has been in this matter was shown when judge Hornaday in 1981 wouldn't even allow me to read this Section 3 to a jury, in my defense of salmon fishing with a gillnet in an unauthorized area. This was on the nearby commercial setnetter's "sacred" Kalifonsky Beach during an open day for personal-use-gillnetting and closed to commercial fishing. The only area on the Kenai Peninsula designated by state officials was around remote Boulder Point near Nikiski. Then to top it off, the dishonorable judge even prohibited me from telling the jury my testimony was being restricted, which really clinched my conviction. Great!

This Supreme Court ruling simply means to me that all Alaska residents (that's you and me) now have first priority to catch all the salmon we need to eat as quickly and easily as possible. This decision will certainly not necessarily disrupt the commercial or sports fishery, as the Governor and state officials would like you to believe, but could only force the commercial fishermen in Cook Inlet to share a small part of their annual take with the rest of us, who voted them their limited-entry bonanza in 1972.

According to a recent five year average count of the total salmon harvest from Cook Inlet by local Fish and Game officials, 94.3 percent was commercial, 5.4 percent was sports, and 0.3 percent was subsistence/personal use. So even if the latter increased 10 times, it would only decrease the commercial catch by 3 percent. So what's all the fuss about that?

MAR 25 1985

4231 Tanoe Drive  
Anchorage, Ak. 99515  
March 21, 1985

Senator Arliss Sturgulewski  
Alaska State Senate  
Pouch V  
Juneau, Ak. 99811

Dear Senator Sturgulewski:

I am writing to express my opposition to the governor's proposed amendments to the state's subsistence law.

In my opinion, there should be preferences for local use of fish and game resources in some parts of Alaska. Those preferences can be provided for by regulations of the Fish and Game Boards. Such preferences have been in place for years, and are mostly found in portions of fish and game regulations dealing with methods and means, controlled use and management areas, gear and boat size, where permits are issued (e.g. local remote communities), etc. I do not believe that merely living in rural Alaska (wherever that is) entitles anyone to an automatic priority to publicly owned resources found on mostly publicly owned land. If my understanding of the Alaska constitution is correct, the governor's amendment is illegal because of the equal protection clause.

Another option to letting the Boards give preference through regulation is to base subsistence on need - probably income level. This may be another form of welfare, but it does make some sense.

Fish and game and their management have become pawns of native special interest groups and their lawyers, IRA sovereignty moves, and other agendas for politicians and special interests. "Deep sixing" the governor's amendments will be the first step in reversing this situation, and would be a clear message to Congress that Title 8 of ANILCA, the Marine Mammal Protection Act and the Endangered Species Act need change.

The legislature should be clear in their intent for who gets subsistence preferences where, and leave little for AG interpretation. The AG is responsible for the Madison Decision because he advised the Boards that the former law really meant rural; the Supreme Court unanimously disagreed. Another AG opinion which the Game Board routinely works from is that restrictions to protect the resource do not mean seasons, bag limits, methods and means, closed areas, etc. Only when a restricted number of permits are issued is there a restriction!

The present subsistence law as made by the Supreme Court can be administered by the Boards of Fish and Game in the Tier I level of user demand and resource status. Tier II cannot be rationally administered and will continually be based on AG opinions, law suits and more court decisions. This will be true with or without a rural priority.

# **CORRECTION**

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

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*Charlie Parker*

And if our esteemed ex-governor Hammond and all his white and native neighbors at Lake Clark are allowed to catch unlimited numbers of salmon in front of their homes with gillnets in the lake, then we, too, should have the same privilege in comparable Tustumena Lake; where even hook and line fishing for red salmon is prohibited, and where an over-escapement during <sup>each of</sup> the past several years has been from 30 to 100,000 salmon. Even the local fishery biologists say they couldn't care less what happens to the remaining fish after their maximum escapement quota of 150,000 is safely in the lake.

Well, one logical, easy solution for Cook Inlet, where nearly all the dissension is, is simply to issue family punch-card allocations to every resident Alaskan who wants one, to fish with gillnets on all commercial beaches every Saturday and Sunday thru-out the fishing season, when commercial fishing is usually closed. That would spread the fishing pressure out in time and space, enable Fish and Game agents to watch the operation, and spare <sup>most</sup> ~~some~~ of the fall silvers for the sports fishermen; and should work to everyone's satisfaction if the setnetters could only get over the false notion that they own the beaches during the commercial fishing season. Cheers.

## Rising to the bait

A certain amount of natural dumbfoundedness is encountered in the course of following human events. This may be the case more in Alaska than elsewhere. The current brouhaha over the Supreme Court's subsistence ruling is a case in point.

If the court had merely acted and then the state had responded with plans to follow its ruling, the rest of us would mostly sit and watch to see how the next fishing season goes. If it didn't work out — Do such questions here ever work out? — then attempts at legislative remedy would be expected.

Instead, Alaskans today find their governor caught up in a political battle called at his own signal over whether the Supreme Court's ruling should be circumvented with new legislation. Such action may not be without precedent, but it is certainly unusual.

In the first place, the Supreme Court ruling in the Madison case was supposedly won by the fishermen, whose attorney, Chuck Robinson of Soldotna, is now mystified at the actions taken by Gov. Bill Sheffield and his Department of Law.

The governor, in effect, has asked the Legislature to adopt new legislation to restore fish and game matters — ala subsistence, sports and commercial categories — to the way things were before the Supreme Court said that the way things were was wrong.

One of the governor's appointees, Bix Bonney of the Board of Fish, has been prominent in crying that the sky will fall on the fishermen if the governor's will is not enacted. And the governor's attorneys general are helping with this hue and cry by exclaiming, in effect, that they don't understand what Robinson is talking about.

These matters get confusing anyway, and never more so than when the question of subsistence is involved. It is not pretended that the ultimate truth between these quarreling points of view is to be found in this space. It is suggested, however, that the swiftness of the governor's action in introducing legislation hints that he anticipated the court and that he decided beforehand to make a power play.

What is not clear is why the power play is on. If Robinson and his fishing interests are right — and many have long believed they are — then Alaskans fishing for subsistence get first call on the resource only when there's a shortage of fish (or game).

As it is understood here, the Supreme Court said, in part, that subsistence is open to all Alaskans. But that does not mean that all subsist nor that all who do must be allowed to fill their freezers before anyone else can hook or land a salmon.

The appropriate state response would be to manage fish and game resources along the lines understood to be required and indeed suggested by Robinson and those who won the Supreme Court's nod. If someone then finds that approach unreasonable, they can take the matter back to the court and see what happens.

What is strange is that the chief of the state's government is instead responding to the court's action with legislation that anticipates the sky is falling before knowing if it will.

So long as there are plenty of fish to go around, the governor's bill is meaningless. And, if a shortage comes, the Supreme Court says subsistence users get first preference.

Our saving grace is that the escape from this maze, at least for now, is expected to come from a Legislature that has other things on its mind and will let the governor bolt without spawning.

*Very Good.*

Richard Morgan/Publisher  
John Marrs Editor  
Wayne Dunworth General manager

## Opinion

MAR 25 1985

4231 Tahoe Drive  
Anchorage, Ak. 99515  
March 21, 1985

Senator Arliss Sturgulewski  
Alaska State Senate  
Pouch V  
Juneau, Ak. 99811

Dear Senator Sturgulewski:

I am writing to express my opposition to the governor's proposed amendments to the state's subsistence law.

In my opinion, there should be preferences for local use of fish and game resources in some parts of Alaska. Those preferences can be provided for by regulations of the Fish and Game Boards. Such preferences have been in place for years, and are mostly found in portions of fish and game regulations dealing with methods and means, controlled use and management areas, gear and boat size, where permits are issued (e.g. local remote communities), etc. I do not believe that merely living in rural Alaska (wherever that is) entitles anyone to an automatic priority to publicly owned resources found on mostly publicly owned land. If my understanding of the Alaska constitution is correct, the governor's amendment is illegal because of the equal protection clause.

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The legislature should be clear in their intent for who gets subsistence preferences where, and leave little for AG interpretation. The AG is responsible for the Madison Decision because he advised the Boards that the former law really meant rural; the Supreme Court unanimously disagreed. Another AG opinion which the Game Board routinely works from is that restrictions to protect the resource do not mean seasons, bag limits, methods and means, closed areas, etc. Only when a restricted number of permits are issued is there a restriction!

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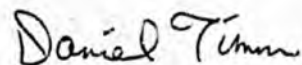
It seems to me that if the Board of Fisheries made a regulation that hook and line was a traditional subsistence method, sport fishermen would be mostly placated. Not knowing exactly how commercial fishermen would be affected (rhetoric abounds from AGs and political appointees, but nothing from biologists), I am unable to make a rational recommendation.

Emotionalism about the "hordes from urban Alaska" decimating our fish and game resources if the law stands is just that, hot air. There is a matter of the subsistence law and a rural preference affecting the ability of managers to efficiently manage and protect resources, and I can provide my thoughts on that if you wish.

The federal government "takeover" is, I believe, mostly rhetoric. The Park Service has already taken over and the annual report to Congress on state compliance with Title 8 should dictate - unless native groups sue Interior - how the FWS "takes over". The second paragraph of this letter explains how read subsistence needs and preferences can and have been easily provided by respective Board action. I believe that the FWS will do everything possible to keep from "taking over".

This issue is one of the most complicated of any in Alaska and I thank you for considering my point of view.

Sincerely,



Daniel Timm

P.S. I hope you decide to run for governor.

TO: ALL SENATORS  
ALL REPRESENTATIVES

FROM: BOB BURKE, BOX 1032, PETERSBURG 99833, 772-3641

RE: SUBSISTENCE

THE SUBSISTENCE ISSUE IS VERY BAD FOR THE PEOPLE OF ALASKA AND FOR FISH AND WILDLIFE. THIS ISSUE WILL PUT PEOPLE AGAINST EACH OTHER AND MAKE FISH AND WILDLIFE MANAGEMENT DIFFICULT OR IMPOSSIBLE. PUT PRESSURE ON THE FEDS TO REPEAL THE SUBSISTENCE PORTION OF INILCA. DO NOT PASS ANY STATE SUBSISTENCE LAWS EITHER.

\* DELIVER TO: JPOM \*

\* ORIGINAL \*

\* SENT: 03/21/85 TIME: 09:59 \*

\* FROM: LIOA \*

\* SUBJECT: POM \*

\* PRINT DATE: 03/21/85 TIME: 09:59 \*

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TO: ALL LEGISLATORS

FROM: SAM E. MCDOWELL  
CONCERNED ALASKAN  
336 E 23RD AVE  
ANCHORAGE, AK. 99503  
PHONE 272-6605 HM

I'M OF THE OPINION, UNITED FISHERMEN OF ALASKA RECENT ENDORSEMENT OF GOVERNOR SHEFFIELD'S PROPOSED ANTI-URBAN, PRO RURAL SUBSISTENCE LAW MAY PROVE TO BE A VERY SERIOUS MISTAKE AND NOT IN THE BEST INTERESTS OF ALASKA'S VALUABLE COMMERCIAL FISHERIES. IS IT TRUE UNITED FISHERMAN OF ALASKA SUPPORTS DISCRIMINATION?

.....  
TO: ALL LEGISLATORS

FROM: SAM E. MC DONALD  
A CONCERNED ALASKAN  
336 EAST 23 AVE.  
ANCHORAGE, AK. 99503 PHONE: 272-6605

RE: MEMBER OF BOARD OF FISHERIES

PLEASE BE ADVISED, I REQUESTED MR. BIX BONNEY TO BE IMMEDIATELY TERMINATED FROM THE BOARD OF FISHERIES. THE BOARDS RECENT DECISIONS TRYING TO MAKE END RUNS AROUND THE MADISON DECISION IS A DISGRACE. IMPACTS OF MADISON DECISION CAN BE WORKED OUT, HOWEVER NOT BY GOVERNOR SHEFFIELDS PROPOSE DISCRIMINATORY PRESSURE POLITICS. HAVE A GOOD DAY.

TO: ALL LEGISLATORS

FROM: SAM E. MCDOWELL  
336 E 23RD AVE.  
ANCHORAGE, AK. 99503  
PHONE 248-1923 HM

PLEASE BE ADVISED PLANS CALL FOR ME TO ARRIVE IN  
JUNEAU MARCH 27TH TO SPEAK OUT AGAINST GOVERNOR  
SHEFFIELD'S PROPOSED ANTI-URBAN, PRO-BUSH SUBSISTENCE  
LEGISLATION.

I REQUEST PERMISSION TO MEET WITH YOU LEGISLATORS TO  
PROVE ALASKA SUBSISTENCE LAW HAS BEEN USED TO  
DISCRIMINATE AGAINST URBAN ALASKANS.

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\* DELIVER TO: JPOM \*  
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\* ORIGINAL \*  
\* SENT: 03/26/85 TIME: 13:36 \*  
\* FROM: LIOA \*  
\* SUBJECT: POM \*  
\* PRINT DATE: 03/26/85 TIME: 13:37 \*  
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TO: ALL LEGISLATORS

FROM: SAM E. MCDOWELL  
336 E 23RD AVE.  
ANCHORAGE, AK. 99503  
PHONE 248-1923 HM

THE WEBSTERS DICTIONARY DEFINES SUBSISTENCE AS A MEANS  
OF SUPPORT. THEREFORE, I'M OF THE OPINION GOVERNOR  
SHEFFIELD'S PAST ACTIONS PROVES GOVERNOR SHEFFIELD IS A  
PRIORITY SUBSISTENCE USER OF NORTH SLOPE RESOURCES.  
CAMPAIGN RECORDS CLEARLY SHOWS GOVERNOR SHEFFIELD  
RECEIVED CONSIDERABLE NORTH SLOPE FINANCIAL RESOURCES.

TO: ALL LEGISLATORS

FROM: SAM MCDOWELL  
CONCERNED ALASKAN  
336 E 23RD AVE  
ANCHORAGE, AK. 99503  
PHONE 272-6605 HM

I'M OF THE OPINION, PROPOSED FISHERIES LEGISLATION  
SB 35 AND HB 235 WOULD CLOSE ALASKA PERSONAL USE  
FISHERIES.  
FOR EXAMPLE, IF COMMERCIAL FISHERIES CANNOT BE  
RESTRICTED DUE TO ECONOMIC LOSS, WE CAN SAY GOODBYE TO  
CHITNA DIP NET FISHERY, PLUS ALL OTHER IN RIVER  
PERSONAL USE FISHERIES.

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\* DELIVER TO: JFOM \*  
\* ORIGINAL \*  
\* SENT: 03/21/85 TIME: 10:21 \*  
\* FROM: LIOSOL \*  
\* SUBJECT: P.O.M. \*  
\* PRINT DATE: 03/21/85 TIME: 10:22 \*  
\*\*\*\*\*

\*\*P.O.M.\*\*

TO: ALL SENATORS  
AND  
ALL REPRESENTATIVES

FROM: KENAITZE INDIAN TRIBE  
PO BOX 988 KENAI 99611  
283-3633

MESSAGE: REGARDING: HB 288 & SB 231-SUBSISTENCE  
THE KENAITZE TRIBE GOES ON RECORD AS OPPOSING HB 288 AND SB 231.  
THE KENAITZE TRIBE URGES ALL SENATORS AND REPRESENTATIVES TO  
CAREFULLY REVIEW THE LEGALITY OF HB288 AND SB231 BEFORE MAKING  
THIS VERY IMPORTANT DECISION. WE WOULD APPRECIATE YOUR SUPPORT

E.O.M.

TO: ALL LEGISLATORS

FROM: SAM E. MCDOWELL  
CONCERNED ALASKAN  
336 E 23RD AVE  
ANCHORAGE, AK. 99503  
PHONE 272-6605 HM

I'M OF THE OPINION, ALL ALASKA LEGISLATORS WHO PUSH  
THEIR VOTING BUTTON FOR GOVERNOR SHEFFIELD'S PROPOSED  
ANTI-URBAN, PRO-BUSH SUBSISTENCE LAW SHOULD ONCE AGAIN  
READ PRESIDENT ABRAHAM LINCOLN'S GETTYSBURG ADDRESS.  
YES, I SUPPORT GOVERNMENT OF THE PEOPLE, BY THE PEOPLE,  
FOR THE PEOPLE. DO YOU? STOP DISCRIMINATION.

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\* DELIVER TO: JPOM  
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\* ORIGINAL  
\* SENT: 03/28/85 TIME: 14:19  
\* FROM: HARRY MANDREGAN  
\* SUBJECT: FOM  
\* PRINT DATE: 03/28/85 TIME: 14:19  
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28

TO: ANCHORAGE DELEGATION; SENATORS ABOOD, DEVRIES, FAIKS, VIC  
FISCHER, HALFORD, JOSEPHSON, KELLY, KERTTULA, RODEY, STURGULEWSKI  
AND REPRESENTATIVES BOUCHER, CLOCKSIN, COLLINS, COTTEN, FURNACE,  
GRUENBERG, HANLEY, JENKINS, MARTIN, PEARCE, PETTYJOHN, PHILLIPS,  
PIGNALBERI, POURCHOT, RIEGER, SZYMANSKI AND UEHLING

FROM: ROBERTA BOOHER  
4006 ARKANSAS DRIVE  
ANCHORAGE, ALASKA 99503  
HOME NO.: 243-7906  
WORK NO.: 544-9185

RE: ADMINISTRATION SUBSISTANCE BILL

I OPPOSE THE ADMINISTRATION SUBSISTANCE BILL. SUBSISTANCE USE  
PRIORITIES SHOULD BE DEFENDED ON ECONOMIC NEED NOT ON AN  
UNDEFINED TERM SUCH AS RURAL.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

SAM E. McDOWELL and )  
DALE E. BONDURANT, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 DON W. COLLINSWORTH, COMMIS- )  
 SIONER OF FISH & GAME; BOARD )  
 OF FISHERIES; BOARD OF GAME; )  
 and STATE OF ALASKA, )  
 )  
 Defendants. )

No. 3AN 83-1592 CIV

SECOND AMENDED COMPLAINT

COMES NOW the plaintiffs, by and through their attorney, DAVID B. RUSKIN, and for cause of action against defendants, allege and complain as follows:

FIRST CAUSE OF ACTION

I.

Plaintiffs Sam E. McDowell and Dale E. Bordurant have been residents of Alaska since 1948 and 1951, respectively, and have been, since statehood, and now are citizens of the State of Alaska and are otherwise entitled to maintain this action.

II.

That prior to the time of statehood, and every year since statehood, plaintiffs have purchased licenses for fishing and hunting game.

III.

Plaintiffs have not taken fish or game for any purposes other than consumptive uses.

IV.

Plaintiffs McDowell and Bondurant reside within the Municipality of Anchorage, Third Judicial District.

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1 V.

2 Defendant Collinsworth is the present Commissioner  
3 of Fish & Game charged with the duties set out in AS 16.05.050.

4 VI.

5 The defendant State of Alaska is a sovereign  
6 legal entity and one of the United States.

7 VII.

8 The Board of Fisheries and Board of Game are  
9 regulatory agencies of the State of Alaska with the powers  
10 and duties set out in AS 16.05.221 - .320.

11 VIII.

12 That in 1978, the Alaska State Legislature enacted  
13 § 4 ch 151 SLA 1978, later codified as AS 16.05.251(b),  
14 which reads as follows:

15 (b) The Board of Fisheries shall adopt  
16 regulations in accordance with the Administrative  
17 Procedure Act (AS 44.62.010 -  
18 44.62.650) permitting the taking of fish  
19 for subsistence uses unless the board  
20 determines, in accordance with the Administrative  
21 Procedure Act, that adoption of  
22 such regulations will jeopardize or interfere  
23 with the maintenance of fish stocks  
24 on a sustained-yield basis. Whenever  
25 it is necessary to restrict the taking  
26 of fish to assure the maintenance of fish  
27 stocks on a sustained-yield basis, or  
28 to assure the continuation of subsistence  
29 uses to such resources, subsistence use  
30 shall be the priority use. If further  
31 restriction is necessary, the board shall  
32 establish restrictions 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.

IX.

That the Alaska State Legislature enacted §5,  
ch 151 SLA 1978, later codified as AS 16.05.255(b) which

1 is identical to the language contained in AS 16.05.251(b),  
2 except that the word "game" is substituted for the word  
3 "fish" in the last sentence of the section.

4 X.

5 The foregoing statutes (AS 16.05.251(b) and  
6 .255(b)) attempt to create a special class of persons  
7 entitled to take fish and game on a preferential basis;  
8 namely, those persons entitled to take fish and game for  
9 subsistence uses.

10 XI.

11 The plaintiffs have fished the Cook Inlet area  
12 each year since before statehood.

13 XII.

14 Pursuant to the authority granted in AS 16.05.251(b)  
15 the Board of Fisheries has adopted subsistence regulations  
16 for the Cook Inlet area at 5 AAC 01.550 - .597.

17 XIII.

18 The subsistence regulations for the Cook Inlet  
19 area provide that only persons domiciled in Tyonek, Port  
20 Graham or English Bay (5 AAC 01.580) are entitled to subsis-  
21 tence fish. Each household in these villages is entitled  
22 to a permit because the communities have received a subsistence  
23 priority. If either of the plaintiffs were domiciled  
24 in one of the three villages they would be entitled to  
25 a subsistence permit for their household.

26 XIV.

27 The fish caught by the class of people who qualify  
28 for subsistence fishing and from which the plaintiffs  
29 are excluded are fish to which the plaintiffs no longer  
30 have the opportunity to catch. The Board of Fisheries  
31 regulations restrict a harvest opportunity otherwise avail-  
32

1 able to the plaintiffs. The diminished availability of  
2 fish and the opportunity to fish for them constitutes  
3 an injury-in-fact to the plaintiffs.

4 XV.

5 The subsistence fishing regulations for the  
6 Cook Inlet area are not founded on a compelling state  
7 interest nor even on a rational basis since any domiciliary  
8 of the chosen villages may qualify for a subsistence permit  
9 irrespective of their individual economic status. Under  
10 present regulation the only criteria for allocation of  
11 subsistence permits in Cook Inlet is geographical residency.

12 SECOND CAUSE OF ACTION

13 XVI.

14 Plaintiffs incorporate all allegations contained  
15 in paragraphs I through XV of their First Cause of Action  
16 as though fully set forth herein.

17 XVII.

18 Pursuant to the authority granted in AS 16.05.255(b)  
19 the Board of Game has adopted 5 AAC 81.010-.395 which  
20 include subsistence hunting regulations for the State  
21 of Alaska.

22 XVIII.

23 On previous occasions plaintiffs have hunted  
24 in the Nelchina Caribou hunt which is controlled by regulat-  
25 ion 5 AAC 81.320 (also referred to as hunts numbered 515  
26 and 516W in the Alaska Department of Fish and Game paper  
27 titled: Alaska 1983-34, Permit Drawing Hunts).

28 XIX.

29 The Nelchina hunt provides for up to 450 subsis-  
30 tence permits to be issued to residents of Game Management  
31 Units 11, 13 or 12 before the remaining 1300 permits will  
32

1 be made available to Alaska residents as a whole. The  
2 only criteria to determine priority subsistence use is  
3 the requirement that the applicant: 1) reside in Game  
4 Management Units 11, 13 or 12 along the Nabesna Road;  
5 2) be over 12 years of age; and 3) attest that at least  
6 half of the meat and fish of the applicant's diet consist  
7 of fish and game which has not been purchased.

8 XX.

9 The subsistence hunting regulations for the  
10 Nelchina Caribou Hunt in Game Management Units 13 and  
11 14 are not founded on a compelling state interest nor  
12 even on a rational basis since any resident of those units  
13 may secure a subsistence permit regardless of their indi-  
14 vidual economic status.

15 XXI.

16 The caribou killed by the class of people who  
17 qualify for a subsistence permit and from which the plain-  
18 tiffs are excluded diminish the plaintiffs' chances of  
19 securing a permit to shoot one of the 1750 caribou the  
20 Board of Game has determined may be harvested. Either  
21 of the plaintiffs would qualify for a subsistence permit  
22 if the regulation were not based on geographical residence.  
23 The Board of Game regulation restricts a harvest opportunity  
24 otherwise available to the plaintiffs. The plaintiffs'  
25 right to hunt the Nelchina caribou is diminished solely  
26 because they reside in Anchorage and not Game Management  
27 Units 11, 12 and 13. The diminution of right and restricted  
28 opportunity is an injury-in-fact to the plaintiffs.

29 THIRD CAUSE OF ACTION

30 XXII.

1 Plaintiff incorporates the allegations contained  
2 in paragraphs I through XV of the First Cause of Action  
3 as though fully set forth herein.

4 XXIII.

5 That the Board of Fisheries has promulgated  
6 regulations for the taking of subsistence fish within  
7 the Bristol Bay area (5 AAC 01.300-01.345).

8 XXIV.

9 There are no criteria for the issuance of subsis-  
10 tence fishing permits in the Bristol Bay area except as  
11 set forth in 5 AAC 01.330(d) which provides in part that  
12 subsistence salmon permits for the Naknek River drainage  
13 will be issued only to those persons domiciled in the  
14 Naknek and Kwichak River drainages.

15 XXV.

16 The fish caught by the class of people who qualify  
17 for subsistence fishing and from which the plaintiffs  
18 are excluded are fish to which the plaintiffs no longer  
19 have the opportunity to catch. The Board of Fisheries  
20 regulations restrict a harvest opportunity otherwise avail-  
21 able to the plaintiffs. The diminished availability of  
22 fish and the opportunity to fish for them constitutes  
23 an injury-in-fact to the plaintiffs.

24 XXVI.

25 The subsistence fishing regulations for the  
26 Naknek and Kwichak River drainages are not founded on  
27 a compelling state interest nor even on a rational basis  
28 since any domiciliary of the area may qualify for a subsis-  
29 tence permit irrespective of their individual economic  
30 status. Under present regulation the only criteria for  
31 allocation of subsistence permits in Naknek and Kwichak  
32

1 River drainage area is geographical residency.

2 FOURTH CAUSE OF ACTION

3 XXVII.

4 Plaintiffs incorporate the allegations contained  
5 in paragraphs I through XV of the First Cause of Action  
6 as though fully set forth herein.

7 XXVIII.

8 That the Board of Fisheries has promulgated  
9 regulations for the taking of subsistence fish within  
10 the Illiamna-Lake Clark drainage area (5 AAC 01.300-01.345),  
11 a subdistrict of Bristol Bay.

12 XXIX.

13 There are no criteria for the issuance of subsis-  
14 tence fishing permits in the Illiamna-Lake Clark area  
15 except as set forth in 5 AAC 01.330(e) which provides  
16 in part that subsistence salmon permits for the Illiamna-Lake  
17 Clark drainage area will be issued only to those persons  
18 domiciled in the Illiamna-Lake Clark drainages.

19 XXX.

20 The fish caught by the class of people who qualify  
21 for subsistence fishing and from which the plaintiffs  
22 are excluded are fish to which the plaintiffs no longer  
23 have the opportunity to catch. The Board of Fisheries  
24 regulations restrict a harvest opportunity otherwise avail-  
25 able to the plaintiffs. The diminished availability of  
26 fish and the opportunity to fish for them constitutes  
27 an injury-in-fact to the plaintiffs.

28 XXXI.

29 The subsistence fishing regulations for the  
30 Illiamna-Lake Clark drainages are not founded on a compelling  
31 stat. interest or even on a rational basis since any domiciliary  
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1 of the area may qualify for a subsistence permit irrespective  
2 of their individual economic status. Under present regu-  
3 lation the only criteria for allocation of a subsistence  
4 permit in the Illiamna-Lake Clark drainage area is geograph-  
5 ical residence.

6 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

7 The regulations referred to in Causes of Action  
8 One through Four which discriminate against plaintiffs  
9 on the basis of geographical residence and the attempt  
10 to justify such discrimination under the guise of subsistence  
11 use violates plaintiffs' constitutional rights in the  
12 following respects:

13 A. The regulations violate plaintiffs' rights  
14 to due process of law and equal protection under the 14th  
15 Amendment to the Constitution of the United States. *eq pro/due process*

16 B. The regulations violate plaintiffs' rights  
17 to due process under Section 7, Article I to the Constitution  
18 of the State of Alaska. *due process*

19 C. The regulations violate Section 2 of Article VIII  
20 of the Constitution of the State of Alaska. *max benefit*

21 D. The regulations violate Section 3, Article VIII  
22 of the Constitution of the State of Alaska. *common use*

23 E. The regulations violate Section 15, Article  
24 VIII of the Constitution of the State of Alaska. *ex right*

25 F. The regulations violate Section 17, Article  
26 VIII of the Constitution of the State of Alaska. *eq pro*

27 G. The regulations violate Section 19, Article  
28 II of the Constitution of the State of Alaska. *local/special*

29 The result of which has caused injury and damage  
30 to plaintiffs.

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WHEREFORE, plaintiffs pray as follows:

1. That the court declare that the residency regulations referred to in Causes of Action One through Four be declared in violation of the Constitution of the United States and the State of Alaska and that this court issue appropriate orders.

2. That the court restrain defendants from conducting the Nelchina Caribou Hunt described in the Second Cause of Action until such time as the Board of Game promulgates appropriate regulations consistent with the Constitution of the State of Alaska.

3. That plaintiffs be awarded their costs for maintaining this action including a reasonable attorney's fee.

4. For such other and further relief as the court deems proper.

DATED this 27th day of July, 1983.

DAVID B. RUSKIN  
Attorney for Plaintiffs

By David B. Ruskin  
David B. Ruskin

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of July, 1983, a true and correct copy of the foregoing was served by mail on the following attorneys:

Larri Spengler and Don Mitchell

By David B. Ruskin

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COOK INLET MANAGEMENT AREA SUBSISTENCE  
FISHERY REPORT 1972

A. General Information

1. Description of Area: The Cook Inlet area includes all waters of Alaska in Cook Inlet and Resurrection Bay north of Cape Douglas and west of Cape Fairfield, including the Barren Islands. (Figure 1)
2. Species Utilized: All five species of pacific salmon are utilized in the Cook Inlet area. Since 1962 cohos have made up 66 percent of the subsistence catch, reds 20 percent, pinks 8%, chums 5%, and kings 0.2 percent. (Table 1) King crab, tanner crab, dungeness crab, shrimp, smelt, herring, bottom fish, and clams are also utilized for subsistence purposes. However, few records are available on degree of utilization. In actuality it is hard to define what constitutes "sport fishing" and what constitutes "subsistence fishing" for the above listed species.
3. Economic Conditions: No figures are available on the average income of those applying for subsistence permits in the Cook Inlet area. It is the personal opinion of the area management biologist that less than five

\* See pages # 3, 6, 7, 9, + 17.

FIGURE I

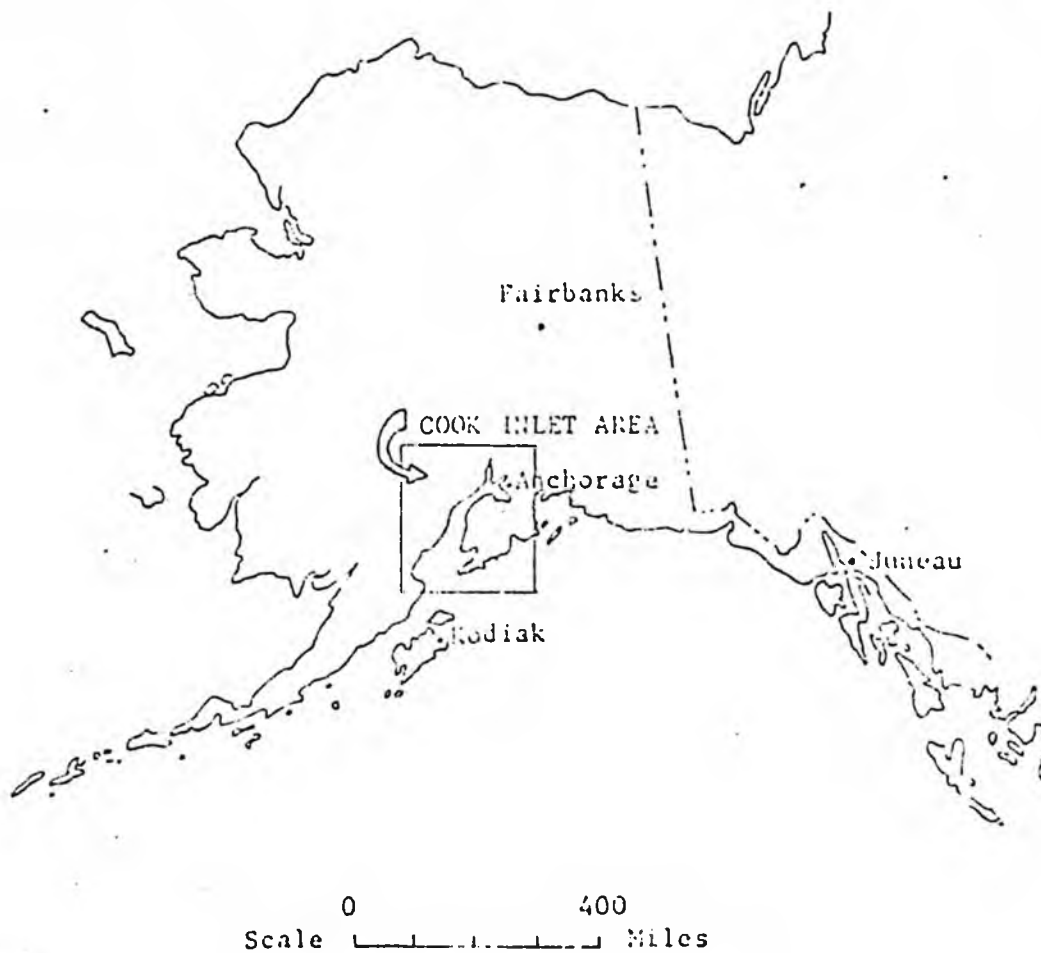
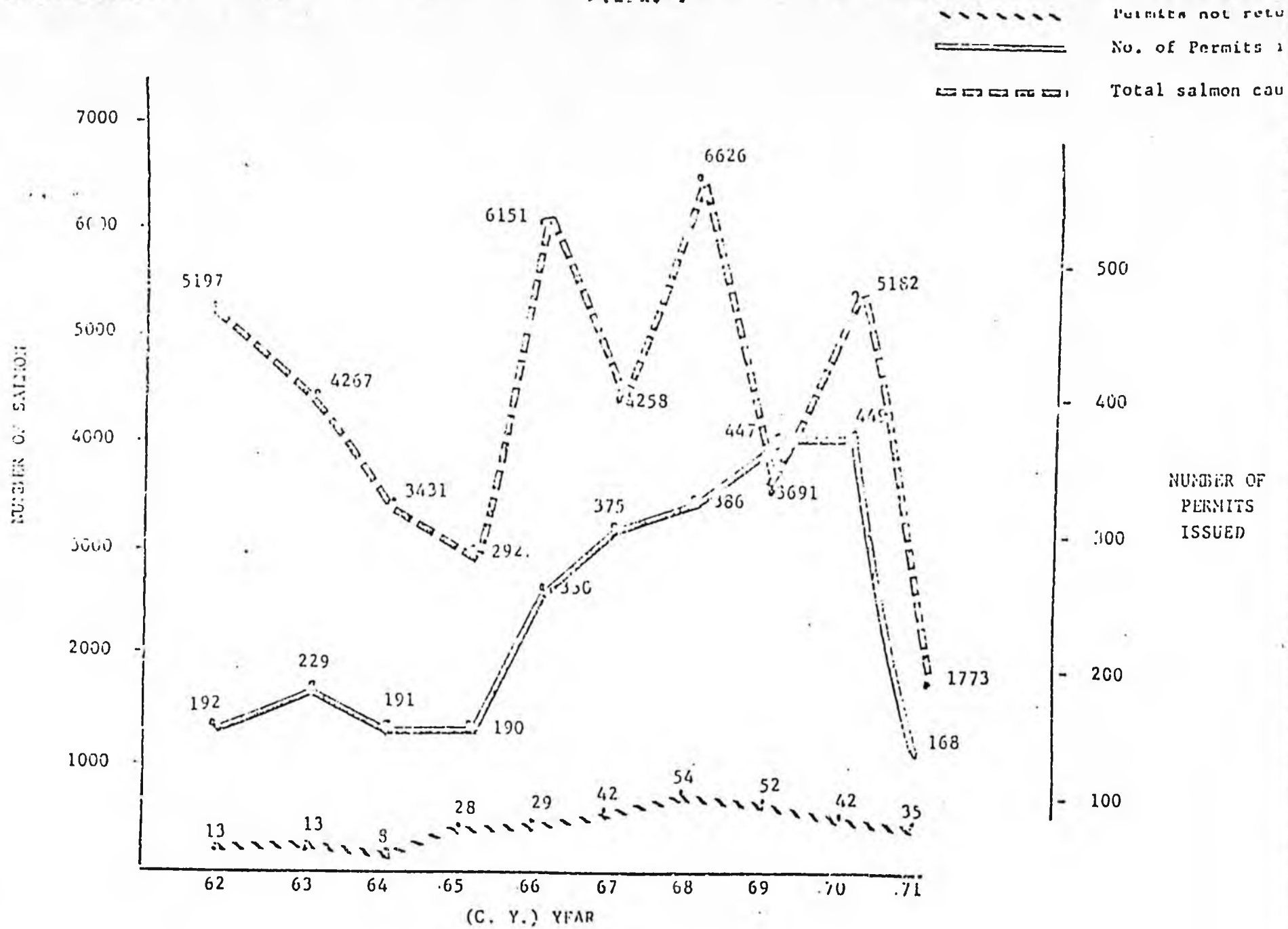


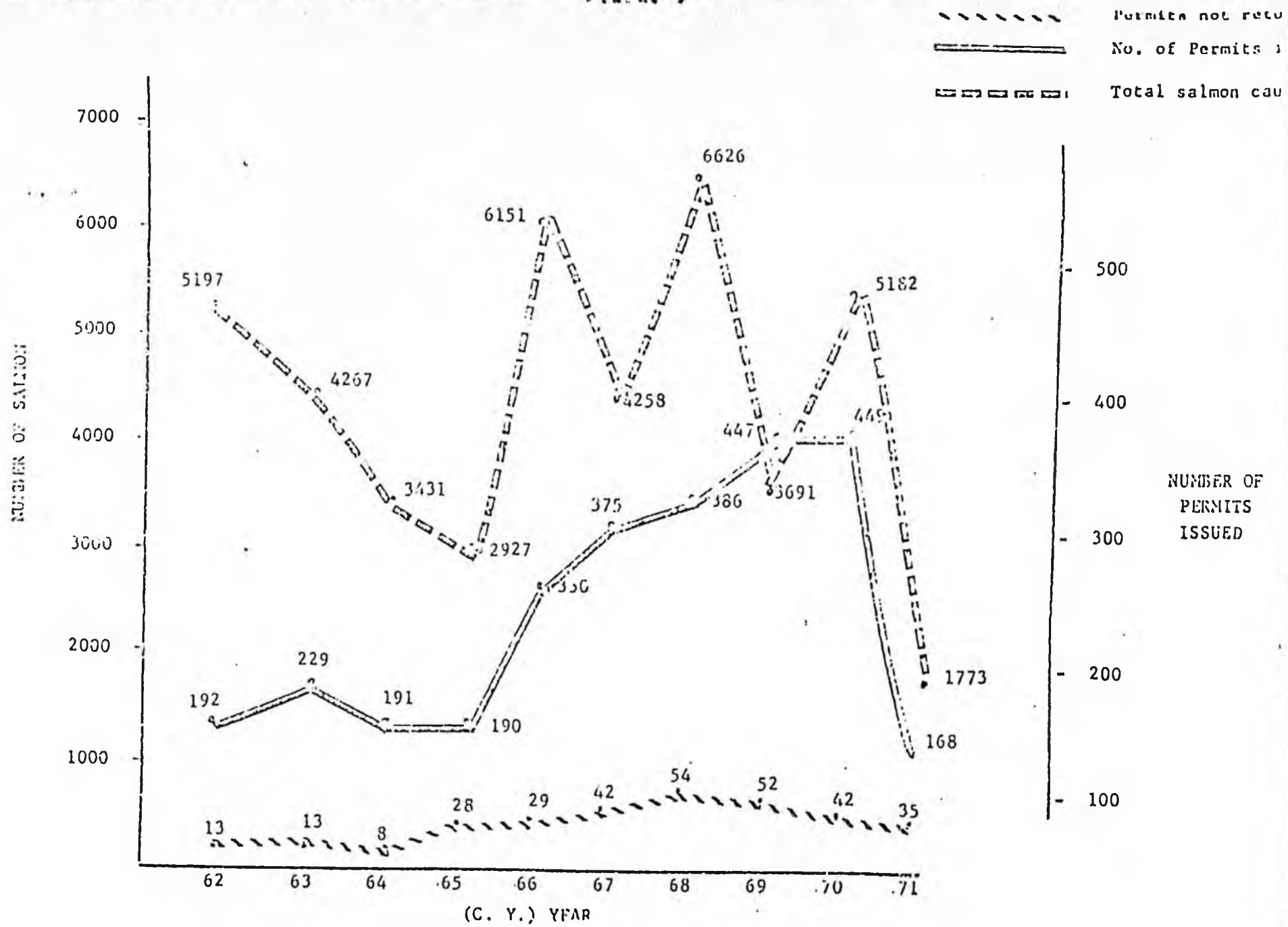
Figure 1. Cook Inlet area location map.

TABLE 1

## COOK INLET SUBSISTENCE CATCH OF SALMON, 1962-1971

YEAR	NO. PERMITS	DID NOT REPLY	KINGS	REDS	COHO	CHUM	PIGG	TOTAL
1962	192	13	45	770	3574	391	417	5197
1963	229	13	29	859	2510	424	447	4269
1964	191	8	--	393	2463	207	368	3431
1965	190	28	--	484	2109	285	49	2927
1966	330	29	8	1656	3533	356	598	6151
1967	375	42	4	863	3105	213	73	4258
1968	386	54	10	1009	4201	236	1170	6626
1969	447	52	--	1518	2011	94	68	3691
1970	449	42	3	1218	3371	152	438	5182
1971	168	35	2	23	1697	7	44	1773
TOTALS	2,957	316	101	8,793	28,574	2,365	3,672	43,505
PERCENT	100.0	10.7	0.2	20.2	65.7	5.4	8.4	100.0





or ten percent of the subsistence fishing in the area is carried out by persons in such financial positions that they actually have a legitimate need of the resource harvested in order to subsist. The type of subsistence fishing found in the Cook Inlet area could more appropriately be classified as recreational or supplemental fishing. Many people regard it as a form of sport fishing in which they not only derive recreational benefits but at the same time supplement their food stocks. Some people in the Cook Inlet area, natives and whites alike, because of either need or personal preference, are trying to maintain a "live-off-the-land" life style. To these few, "subsistence" fishing may fall into a need category and may play an important part in their means of existing.

## B. History of Fishery

1. Methods of Fishing: A variety of subsistence fishing methods are used in the Cook Inlet area, as it is a multi-species utilization area.
  - a. Salmon: Set nets, seines and drift nets are currently used with set nets accounting for about 95 percent of the effort. Since statehood, all subsistence salmon fishing has been in conformance

with commercial regulations and, therefore, areas open and methods used have been identical to those in commercial fishing. 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.

\*

- b. Shellfish: King crab, tanner crab, dungeness crab and shrimp are taken with various forms of pots. Most fishing takes place at or near the small boat harbors of Homer and Seward. Clams for subsistence are taken by use of a clam shovel. The methods currently used for taking shellfish species for subsistence purposes do not differ appreciably from those used prior to statehood.
- c. Smelt: Both bill nets and dip nets have been used in the Cook Inlet area for taking smelt, however, in 1972 dip nets became illegal gear for taking smelt in the waters of the Kenai Peninsula. A limited amount of hook and line snagging for smelt also exists.

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d. Freshwater species: The gear most commonly utilized for freshwater species is small mesh gill nets and seines. In the past, fish-wheels and dip nets have also been used in freshwater.

2. Catches and Fishing Effort

a. Salmon: Salmon fishing is the only subsistence fishing for which reliable catch and effort data exists and this data covers from 1962 to 1971 only. During these years, a total of 2,957 subsistence permits were issued and all but 316 were returned. The total reported salmon catch from 1962 to 1971

\* is as follows: 101 kings, 8,793 reds, 28,574 cohos, 2,365 chums, 3,672 pinks, for a total of 43,505 salmon.

The number of permits issued and the total catch by species appears in Table 1 and is depicted in graphic form in Figure 2.

b. Smelt: Catch data on smelt is only available for the past two seasons. In 1971, there were 1,387 smelt reported taken and in 1972, the reported catch was 8,542. Most effort has taken place along the western shoreline of the Kenai Peninsula and around Turnagin Arm.

The number of permits issued by year since 1969 appear below:

<u>Year</u>	<u>Salt Water</u>	<u>Kenai River</u>	<u>Total</u>
1969	150	194	344
1970	157	393	550
1971	92	*	92
1972	160	*	160

\*Smelt permits not required for Kenai River.

- c. Shellfish: No permits are required for taking shellfish and, therefore, no records are available on effort or catch. Most effort occurs in Kachemak and Resurrection Bays.
- d. Freshwater species: Relatively few permits have been requested for taking freshwater species and most of these have been for Lake Louise and Tyone Lakes. Whitefish comprise about 90 percent of the catch.

3. Management Regulations: The following is a history of subsistence regulations in Cook Inlet from 1943 to 1972.

1942 through 1950

No mention made in Cook Inlet section of commercial fisheries regulations.

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

No intent to take notification required. More streams closed, including all tributaries to Knik 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 300 feet of weirs and ladders. Snagging was prohibited for the first time.

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.

And subject to laws regulating commercial fishing 48 hours before and continuing 48 hours after each fishing period. Except for fall season and/or place greater than 25 miles from waters open to commercial fishing. . .

\* And in Knik Arm where 15 fathom set nets, 100 yards apart, shall be operated prior to August 6, only during hours open to commercial fishing in the Northern district.

1954

Same as 1953 with additional sections that. . . Commercial gear may be used for personal fishing during any fall season. . .

Fishing allowed in Turnagain Arm east of a line between Hope and Indian, and. . .

Fishing allowed more than 5 miles upstream from tidewater on all streams and lakes of Cook Inlet drainage South and West of the Susitna River or South of town of Homer.

1955

General regulations and .

Cook Inlet regulations same as 1954.

1956

Same as 1955 with added restrictions. . .

Closed Kenai & Russian Rivers within 300 yards of their confluence (this to 'Sportsmen').

Rod and line. . . limited take to two (2) salmon over 16 inches, per person per day.

1957

General regulations same as 1956.

Cook Inlet about same except for limit on take by rod and line fishermen ('. . not to exceed 10 inches'. . per person per day by hook and line, and not more than two (2) may exceed 16 inches').

1958

General same as 1957 plus. .

A series of regulations devised to try to curb snagging. . including limiting size hooks and making it illegal to use weights with multiple hooks.

Cook Inlet same as 1957.

1959

General same as 1958.

Cook Inlet--added restrictions that. . .personal use fishing be allowed in the main stem of the Susitna River above the town of Alexander. . . with nets less than 30 feet and more than 100 yards from any other set net and from tributary streams-- and identified with name and address of owner.

And personal use fishing must be done in conformance with commercial regulations (This closed Knik Arm and Turnagain Arm).

Many Kenai Peninsula streams closed above ~~markers~~ placed from 3 to 5 miles up from mouth (Anchor, Deep Creek, Stariski and many others).

Added closure of Cooper Creek, Little Willow Creek and Montana Creek. . And. . allowed 30 yards of set nets for use in Knik Arm after August 9, also Fish Creek closed July 21 (snaggers harrassing red run).

1960

General same as 1959.

Cook Inlet--personal use fishing to be allowed on Northwest shore Knik Arm. . with nets 90 feet or less and more than 500 yards from terminus of any salmon stream. . and conform to commercial open periods in Northern district. . and identified with name and address of owner.

1961

General same as 1960.

Cook Inlet added open fishing season on clams, crabs, and bottomfish. . all in conformance with commercial regulations.

Salmon for subsistence was broken into districts. . . apparently this did away with fishing in main stem of Susitna River above Alexander (see subsistence regulations for Northern district 1961).

1962

General regulations added restrictions--personal use fishing must be done by permit only, issued by commissioner. . . limited subsistence catch to individual regional regulations.

Cook Inlet---same as 1961.

1963

General regulations--new regulation--fish other than salmon may be taken at any time in any area of state by any method except by use of explosives or chemicals, except as hereinafter provided or as provided in the Sport Fishing Regulations of the Department.

Cook Inlet--same as 1962.

1964

General same as 1963.

Cook Inlet--new regulation--must have permit for salmon and all catches by species, location and date of catch must be reported. Freshwater species except for trout, grayling, and char may be taken for subsistence purposes via permit and these permits be issued by commissioner or his representative when deemed warranted.

Also not more than 50 salmon be taken per permit and subsistence fishing is prohibited in any area closed to commercial fishing except for parts of Knik Arm.

And all districts with exception of Outer district, must have name and address of owner on fishing gear. The Outer district regulations were amended to conform with commercial regulations.

Another Cook Inlet regulation was amended--sports fishing licenses required for clams and/or bottom fish and crab pot floats will contain the name of owner. No sex or size limitations on crab.

1965 through 1969

Outside of minor amendments and a few changes in regulations in the different fishing districts, personal use fishing regulations are about the same for that period from 1965 to 1969.

1969

Cook Inlet--new regulations--

Restrictions:

(a) Subsistence fishermen taking herring and smelt in the Kenai River must be physically present at all times said net is being fished.

(b) A sports fishing license is required when bottom fish are taken with fishing rod and line.

(c) A sports fishing license is required for the digging of razor clams.

Size Limits: There are no size or sex limitations on crab.

1970

Cook Inlet--new regulations--

Salmon - The subsistence fishery on the Northwest of Knik Arm was deleted.

Smelt - In the Kenai River the length of gill nets may not exceed 20 feet in length.

Smelt may be taken in that portion of the Kenai River from its mouth upstream to the Soldotna bridge from April 1 through May 31.

1972

Cook Inlet--new regulations--Smelt - Dip nets may not be used for taking smelt in the waters of the Kenai Peninsula.

4. Problem Areas

1. Northwest Shore Knik Arm: This area is no longer a problem as it was closed to subsistence fishing in 1971. The number of permits issued for this area had increased during the mid-60's to a level of 290 during the last two years of the fishery. (1969 and 1970) The reported catch during this period averaged 3,300 salmon (Table 2). The main justification for closing this area was the declining red salmon escapements into Fish Creek which reached a low of 6,233 in 1969.
2. Mud Bay: The problem here appears to be over-utilization of available fishing space rather than over-utilization of the resource. Commercial fishing, sports fishing, and subsistence fishing all take place in this rather confined area of Kachemak Bay along the Northeast side of the Homer Spit. Peak utilization occurs in mid to late August when approximately 10 seine fishermen, 50 subsistence fishermen and several hundred sports fishermen fish

TABLE 2

COOK INLET SUBSISTENCE SALMON FISHERY  
Permits Issued and Total Salmon Catch By District, 1967 - 1972

YEAR	NORTHERN <sup>1/</sup>		NORTH and SOUTH CENTRAL		SOUTHERN		EASTERN	
	Permits	Total Catch	Permits	Total Catch	Permits	Total Catch	Permits	Total Catch
1967	218	2,947	13	119	51	942	91	262
1968	276	5,395	30	303	79	953	--	--
1969	290	1,563	40	400	85	1,067	32	929
1970	290	3,448	45	206	78	1,386	36	181
1971	9	10	28	138	112	1,618	19	7
1972	9	<u>2/</u>	5	<u>2/</u>	151	<u>2/</u>	5	<u>2/</u>

<sup>1/</sup> Northern district represents Northwest shore at Knik Arm

<sup>2/</sup> Catch data not available for 1972.

this area. The main species being sought are silver salmon and the subsistence catch has averaged about 1,000 since 1967. The commercial catch in the Southern district has averaged 2,800 silvers since 1967 and an estimated 50 percent of these have been taken from Mud Bay proper. Sports harvest figures are not available, however, the average catch since 1967 would probably not exceed 500 fish. Commercial and subsistence harvest figures indicate no decline in abundance of silver stocks in Mud Bay. A tagging study in 1970 indicated the silver stocks of Mud Bay were mostly local stocks bound for upper Kachemak Bay and escapement indices in this area have been consistent in recent years.

Although there is no biological justification for closing Mud Bay, the time has perhaps come for closing a portion of Mud Bay to commercial and subsistence fishing because of user-group conflicts.

For the last several years proposals have been submitted to the Board of Fish and Game asking for either complete or partial closures of Mud Bay. The commercial fish staff has always opposed these closures on the basis that no biological justification exists.

Because of the increasing sports fish utilization there will be a public proposal submitted to the Board of Fish and Game at the November meeting by a Homer commercial fisherman which will ask for a partial closure of the Mud Bay area. The commercial staff intends to support this proposal.

3. Shellfish: Another potential problem is the crab and shrimp pot fisheries which have developed tremendously in the last few years. A considerable volume of gear is being fished in the immediate vicinity of the Homer small boat harbor and again, rather than over-utilization of the resource, the main problem is over-utilization of area. Gear is so concentrated in this one area that navigation has been hindered. A regulation may be necessary in the near future to close a section of the bay in the immediate vicinity of the small boat harbor entrance.

D. Recommendations:

It is the personal opinion of the area biologist that a need exists for subsistence fishing in Cook Inlet and that it should be continued perhaps with some modifications. The 5 or 10 percent of the people who actually have a legitimate need to subsistence fish should not be denied this right just because the fishery has become recreationally oriented.

Perhaps a fee could be placed on a subsistence permit or license. This might tend to eliminate some of those who are participating more for recreation than need and yet keep the regulation constitutional. For those who could show need, through an application for a waiver on the license fee, a special free permit would be granted. A maximum income level would be established similar to that used in the Food Stamp Program and those falling below the established level would be eligible for the free permit. These measures would probably reduce subsistence fishing by 75 percent in the Cook Inlet area and subsistence fishing would again conform with the true meaning of subsistence.

APPENDIX

1. A copy of the Cook Inlet Subsistence Fishery Instructions of 1972.

COOK INLET SUBSISTENCE SALMON FISHERY, 1972

Salmon may be taken for subsistence purposes under authority of a permit which may be obtained from the local representative of the department.

Each subsistence fisherman taking salmon shall keep accurate records of the catch involved, by species, location caught, date of catch, and other such information as the department may require.

Salmon may be taken for subsistence purposes only by residents.

Identification of fishing gear shall consist of the name and address of the owner and the number of his subsistence permit.

Not more than 50 salmon may be taken under the authority of a subsistence permit.

Only one salmon subsistence permit will be issued to each person during a year.

A set gill net shall not be longer than 35 fathoms in length and 45 meshes in depth.

The operation of each set gill net shall be performed or assisted by the fisherman in whose name it is registered.

No part of a set gill net may be placed or operated within 600 feet of any part of another set gill net.

FISHING SEASONS:

NORTHERN DISTRICT: from 6:00 a.m. July 21 until 6:00 a.m. September 20 during open commercial fishing periods in conformance with all commercial regulations.

NORTH & SOUTH CENTRAL DISTRICTS: from 6:00 a.m. August 18 during open commercial fishing periods in conformance with all commercial regulations.

SOUTHERN DISTRICT: from 6:00 a.m. August 18 during open commercial fishing periods in conformance with all commercial regulations EXCEPT that set gill nets may be used in any beach area open to commercial salmon fishing.

OUTER DISTRICT: in conformance with commercial regulations.

EASTERN DISTRICT: from June 1 through June 30 during open commercial fishing periods in conformance with all commercial regulations EXCEPT that set gill nets may be used in any beach area open to commercial salmon fishing.

SUBSISTENCE

NEWSCLIPPINGS

# 3rd suit filed over sale

12/30/85  
Villagers focus  
on subsistence

By JEFF BERLINER  
United Press International

Saying oil and their subsistence lifestyles don't mix, three far western Alaska Native villages have filed suit in U.S. District Court to stop next month's federal offshore oil lease sale.

The suit, filed Friday, becomes the third lawsuit in a week to be filed in federal court against Secretary of Interior Donald Hodel in an attempt to halt the Jan. 15 sale of oil tract leases covering 5.6 million acres off the coast of southwest Alaska.

Unlike the other suits, which emphasize the potential harm to Bristol Bay's billion-dollar commercial fishery and to other wildlife in the oil exploration area, this lawsuit focuses almost entirely on the subsistence lifestyle of the Aleuts and Eskimos who live there.

The suit was filed by the villages of Akutan, Nelson Lagoon and Togiak, bringing to 20 the number of plaintiffs in the three cases. Plaintiffs in the other suits include the State of Alaska, fishermen's associations, environmental organizations and Eskimo groups.

"For an industrial society, the thought of fishing and hunting for one's sustenance is a quaint anachronism," lawyers for the villages wrote. "In Native Alaska, it is a fact of daily life."

The villages' complaint serves as a primer on the subsistence lifestyle, what it means, how it works, and how the Aleut and Eskimo people in the villages survive without the cash economy that is second nature to most Americans.

Lawyers for the three villages wrote the court that in these small communities "cultural forces and lack of integration into the Western cash economy join together to make subsistence hunting and fishing the prime focus of life."

Oil activity in the region will threaten the subsistence lifestyle, disrupt village life and cause communities to disintegrate, according to the suit.

The villages asked the court to stop the oil lease sale because the Department of Interior allegedly failed to properly study the impact oil activity would have on the subsistence culture.

Subsistence is mentioned but is not the centerpiece of the other legal attempts to halt the scheduled federal lease sale. The state wants the lease sale put off until 1994.

Amidst the legal jargon and case citations in the suit are details such as the fact that Aleuts collect tern eggs from the arctic migratory birds breeding in cliffs near the oil lease sale waters.

"Because Alaskan Natives cannot afford to buy food, they must catch it or kill it," the complaint said.

## Man files lawsuit over rod-and-reel ban in subsistence fishing

The Associated Press

KENAI — A Homer man went to court Friday seeking to prevent the state from enforcing laws against using rods and reels or hook-and-line equipment for subsistence fishing.

In a lawsuit filed in Kenai Superior Court, Tom Brown said the Board of Fisheries' refusal to allow such gear for subsistence

fishing is "an inappropriate and illegal regulation."

He said he filed the suit "to safeguard our statutory and constitutional rights as Alaskan residents to subsistence."

According to the state's subsistence law passed in 1978, fish may be taken by "gillnet, seine, fishwheel, long line or other means defined by the board of fisheries."

The law doesn't specifically include rod-and-reel or hook-and-line, Brown said. And he pointed out that the board allows their use for subsistence fishing in the Kotzebue, Norton Sound, Port Clarence, Yukon, Kuskokwim and Bristol Bay areas.

Rod-and-reel and hook-and-line gear also are allowed for subsistence halibut fishing in Cook Inlet, according to Brown's complaint.

His suit asks that the court block any new board regulations that deny subsistence fishing rights to anglers using the common sport gear.

"The Department of Fish & Game has and will continue to manage the fishery in a way that will deprive subsistence fishermen of the opportunity to catch fish," Brown's suit says.

The state has 30 days to respond to the suit.

## Barrow captain defies commission, lands whale

By HAL SPENCER  
The Associated Press

An Eskimo from Barrow landed a bowhead whale Tuesday in defiance of the Alaska Eskimo Whaling Commission, which only last Friday fined the man \$5,000 for making an unauthorized whale strike, sources said.

A source in Barrow said the whaling captain, whose identity could not be con-

firmed, is philosophically opposed to whale quotas set by the National Marine Fisheries Service and enforced by the Eskimo Whaling Commission.

The quota limited Barrow whalers to four strikes this year. Whalers there filled the quota earlier this month, taking three whales and striking a fourth.

"There are hundreds of whales going by out there, and he (the whaling captain)

doesn't accept the government telling him how many he can take," the source said.

The whaling captain was still on the ice Tuesday, and could not be reached.

Eskimo Whaling Commission officials referred all questions to commission chairman Lennie Lane Jr. of Point Hope. He could not be reached.

Another source in Barrow said there was concern that

the action could jeopardize Alaska whaling interests during International Whaling Commission meetings this summer in England.

Dave Flannigan of the enforcement division of the National Marine Fisheries Service in Juneau said, "We understand a whale was landed this morning in Barrow." He declined further comment, saying the service had an agreement with the whaling

commission not to discuss the matter with the press.

The service this year set a quota of 18 strikes for whalers along the western and northern coasts of Alaska.

Flannigan said all but two of those strikes have been used as of Tuesday. The 16 include the two in Barrow that were unauthorized.

Flannigan said the fisheries service has an agreement allowing the whaling commis-

sion to enforce the quotas.

He said the federal government would intervene only if the commission would not or could not enforce the rules and then "only after negotiations."

Bowhead whales are considered endangered, and commercial harvest of them is banned. But the International Whaling Commission allows Eskimos to continue to hunt them for subsistence.

# Quick action not likely on subsistence

By BRUCE SCANDLING  
The Associated Press

1/9/86

JUNEAU — Key lawmakers are pledging fast action on subsistence when the second session of the 14th Alaska Legislature convenes Monday, but signals are already pointing to the possibility of a months-long squabble.

"I'm hesitant to be optimistic about a rapid process; it's such a strong issue," said Rep. Jack Fuller, D-Nome. "We haven't been able to solve it over the last several years, so I don't know why the first couple of months of the session are supposed to be magic."

The issue is volatile because it can directly affect all Alaskans, said Senate President Don Bennett, R-Fairbanks.

"We're talking about who is going to get what from the state's (fish and game) resources," Bennett said. "It's a thing that won't go away."

At issue is who should get the priority to hunt and fish for subsistence when fish and game populations are threatened by too much pressure.

Because most of that pressure is coming in and near Alaska's cities, it's urban residents who are most affected by how broadly laws are written.

Acting on a subsistence law passed by the legislature in 1978, state regulatory boards drafted rules giving first rights primarily to residents

## Legislature hopes to act on subsistence

Continued from Page C-1

of roadless rural villages.

Sportsmen's groups complained that the law takes away rights for urban residents who rely heavily on fish and wildlife to feed themselves and their families.

But a 1982 ballot initiative that would have erased the subsistence law was easily defeated in a statewide vote. Then came the Madison decision.

The Alaska Supreme Court said in February that state regulatory boards had too narrowly interpreted the legislature's 1978 action in crafting net-fishing restrictions for Cook Inlet.

Basically, the court said all Alaskans qualify as subsistence users.

That opinion, however, directly contradicts the federal Alaska National Interest Lands Conservation Act of 1980.

The law says state agencies can manage fish and wildlife on federal land in Alaska — about 55 percent of all land in the state — as long as rural residents are given the subsistence priority.

After failing last session to adopt Gov. Bill Sheffield's proposal to return the priority to rural Alaskans, lawmakers are now faced with a threat of federal intervention later this year.

Unless the state passes a law to comply with ANILCA, the Department of Interior has said it will initiate on June 1 a takeover of fish and game management on federal land in Alaska.

When lawmakers get back to work next

week, they'll find Sheffield's subsistence proposal still on the table. That measure passed the House by one vote late last session, but stalled in the Senate when Bennett and other leaders said the issue needed more study.

Sen. Mitch Abood, an Anchorage Republican who chairs the Senate State Affairs Committee, carried the subsistence bill this summer. He conducted hearings around the state and has helped draft a new management proposal.

How quickly the legislature act on the issue this year could depend on how Abood and the Senate leadership decide to handle Sheffield's bill, several lawmakers said. The administration measure could be amended to include new Senate provisions, or it could be killed and replaced with a new Senate bill.

House leaders are hoping the Senate will choose simply to amend the governor's bill, a move meaning a joint House-Senate conference committee could quickly iron out differences and forward the new package to Sheffield.

Abood said he's flexible about using Sheffield's bill to incorporate new Senate proposals, but on first blush does not like the idea.

Many lawmakers fear a lack of action within the first 60 or 90 days of the 120-day session will toss the subsistence issue into the middle of election-year politics.

"It will just be a political football again in an election year," Fuller said. "I would certainly like to see it resolved as soon as possible."

# Debate on subsistence bill continues

by Sue Cross  
Associated Press

2/18/86  
JUNEAU — The subsistence rights bill that has grown from a legislative fix for ambiguous language to a blueprint for redesigning Alaska fish and game management could pass the Senate in much the same form it's in now, the chairwoman of the Senate Resources Committee predicted Monday.

But other legislators and administrators who have worked on the measure say the Senate only increased the bill's flaws, and that simplification will be needed before it becomes law.

The Resources committee is to begin hearings on the bill Wednesday, and hopes to take action on it March 5, said Sen. Arliss Sturgulewski, R-Anchorage, head of the Senate Resources Committee.

The Alaska Federation of Natives and the Alaska attorney general's office have questioned whether parts of the bill are constitutional, if they meet federal standard, and if they would be unfair to subsistence hunters and fishermen.

Sturgulewski said in an interview that those doubts easily can be resolved.

"It's my feeling that a good many of these issues raised by the attorney general's office either are not real problems or they can be addressed by some minor wording changes," she said.

"I anticipate a bill very much like this one will pass (into law)."

The Senate State Affairs Committee added more than five pages of amendments to the 2½-page bill that passed the House last session.

Among the major policy changes inserted are instructions for the Alaska fisheries and game boards to identify stocks available for subsistence use, and to giving the boards authority to apportion the stocks as they see fit.

The apportionment clause raises the ire of Don Mitchell, attorney for the Alaska Federation of Natives. He said in a Feb. 10 analysis that the clause "makes a mockery of the subsistence priority."

Mitchell said if the provision became law, the boards could, for example, shut down subsistence fishing of king salmon, the most desirable for commercial and sport fishing, and switch sub-

sistence users to red or other less-coveted salmon species.

Sturgulewski said debate over the apportionment clause leads her to believe it will be amended.

The Senate version also calls for the fisheries and game boards to set up an appeals process, which petitioners would have to exhaust before taking a subsistence complaint to court.

Sturgulewski said that proposal would add a level of bureaucracy that is commonplace in other state programs, and one that would justify its cost by reducing the number of lawsuits filed. She said the cost has not been determined.

Jim Ayers, legislative liaison for Gov. Bill Sheffield, said the boards already hear subsistence appeals, and the attorney general's office has said any additional appeals would have to be made to the Commissioner of Fish and Game. That would be inappropriate because the commissioner only carries out policies created by the board and should not rule on its decisions, Ayers said.

No one in the commissioner's office was available to comment because Monday, President's Day, was a state holiday.

Ayers and Sturgulewski both said there are ambiguities in the bill's language that should be taken out or defined, such as what is meant by the "sound management" of fish and game required in the Senate version, and how "customary and traditional" uses should be used to determine subsistence rights.

But Ayers said that even if those points are clarified, the bill, in general, attempts too much.

"Our bill fixed what was broken. They've now taken on other issues and other discussions of problems that weren't there before they opened them up," he said.

The Department of Interior has given Alaska a June 1 deadline to enact a new subsistence law or lose control of fish and game on all federal land in the state.

Alaska has not complied with the federal Alaska National Interest Lands Conservation Act of 1980 since the state Supreme Court ruled last year that regulatory boards too narrowly limited subsistence rights to rural residents.

# Ombudsman faults subsistence hunt permit point system

By CRAIG MEDRED  
Daily News reporter

Big game hunters had ample reason to complain about procedures used to qualify for subsistence hunting permits this year, state Ombudsman John B. Chenoweth has told the Alaska Board of Game.

Chenoweth, in an eight-page report to the board, said a permit-scoring scheme designed to distinguish among subsistence hunters based on their perceived need for game was flawed from its inception.

"The board's decision to forego reliance on verifiable criteria, to my mind, allows individuals to interpret and apply the standards of 'customary and direct dependence' and 'availability of alternative resources' so broadly as to render them meaningless," Chenoweth said.

"Unless the current system is changed, I would guess that

future applicants would, as board member Vic Van Balenberghe observed in the course of the June proceedings, learn 'in a hurry' the significance of securing the highest possible point score, as a consequence of which '... they're gonna lie!'"

Chenoweth suggested the board develop a verifiable and quantifiable system for awarding permits in 117 hunts next year. Among the hunts are some of the most popular in Alaska, including the Nelchina Basin caribou hunt where more than 10,000 hunters annually apply for fewer than 2,000 permits.

Those permits had in the past been awarded by random drawing in a lottery. The drawings ended this year after the state Supreme Court ruled the state subsistence law gives Alaskans hunting

See Page C-3, OMBUDSMAN

## Ombudsman critical of '85 subsistence hunt point system

Continued from Page C-1

or fishing for food and clothing a priority. The ruling added that if there wasn't enough fish or game to meet everyone's need, the priority could be restricted on the basis of residency and dependence on the resource.

Acting on the advice of the state attorney general, the Board of Game interpreted that to mean most permit hunts must be made into subsistence hunts. The board then developed a point system for scoring permit-hunt applicants in 52 separate permit hunts for moose, bison, caribou, sheep and goats.

The scoring system was in-

tended to favor rural and low-income residents by awarding points for local residency and dependence on local resources.

Hunters in urban areas of Alaska objected vehemently, but the hunts proceeded.

Board members defended the system by saying they did the best they could in a short period of time.

More than 4,800 permits for five species of wildlife were issued under the new regulations this fall, said Lew Pamplin, director of the state Division of Game.

Permit applications however, were down from 45,000 in 1984 to 8,600 — apparently

reflecting the opinions of many urban residents who didn't think they had a chance at getting a permit under the new rules, said Pamplin.

"My recommendation that the board reconsider the (present) approach is based upon what I believe are well-founded observations of lack of public confidence in and support of the current system," Chenoweth said. "In the public meetings I have attended, many in the audience are familiar with the identity of the successful applicants and the manner in which these applicants answered the questions, and they tend to treat it as a

joke."

He also criticized a provision of the scoring system which awards points for past hunting success, saying that will eventually create a "privileged status for a limited number of successful applicants."

And he criticized the board for writing regulations that are virtually unenforceable. The public expects enforceable laws, Chenoweth said, noting "that is a significant factor, I believe, in public perception of and support for game regulation."

The board is now reviewing what to do with permit hunts for next year.

# Boards put off <sup>11-14-8</sup> News action on AFN's subsistence plan

By CRAIG MEDRED  
Daily News reporter

The Alaska Boards of Fisheries and Game voted 10-4 Wednesday to defer action on an Alaska Federation of Natives petition to limit subsistence hunting and fishing priorities to rural residents who have customarily and traditionally used fish and game.

The boards' decision was designed to leave resolution of the subsistence law controversy to the Alaska Legislature.

The action came after more than two hours of discussion among board members of the effects of any decision on the political and legal battles raging over the issue.

Subsistence hunting regulations approved by the boards this spring are being disputed in the courts, and the state Senate is in the midst of an effort to write new subsistence legislation.

"There are lawsuits pending on almost every side of this issue," said Jeri Museth, a fish board member from Juneau. "There are messages sent (to the courts and the legislature) no matter what way we go on this."

Board members said they did not want to limit the prerogatives of the legislature in rewriting the subsistence law, and they hinted that their action on the AFN petition might undermine the state's position in court.

All Alaskans can now qualify for subsistence privileges.

That has thrown fish and wildlife management into confusion as state officials have scrambled to develop a system for discriminating between Alaskans who hunt and fish for food and those who do so for recreation.

The state Supreme Court has ruled that any hunting or fishing for food or clothing qualifies as subsistence.

The boards met in closed session Tuesday for a briefing on the legal aspects of subsistence by Larri Spengler, a state assistant attorney general.

John Simon, a member of the fish board, said Spengler advised the boards that deferral of the AFN petition on subsistence might help stall action in the court.

Simon was one of the four board members who favored denying the petition. He said that would leave the board with a clean slate when it again considers subsistence regulations in the spring.

Even if the legislature writes new subsistence legislation, the board will need to develop those subsistence hunting and fishing regulations.

State law says subsistence hunters and fishermen have a preference over commercial and sport interests, and a state court has ruled the boards must write regulations ensuring that preference.

Simon called it "the subsistence quandary."

"It's a terribly difficult and confusing situation for the public at large," he said.

# Boards delay action on subsistence

*Times 11-14-85*

Mary Scarpinato  
Staff Writer

rural residents' priority back into state law.

The hope is that by that time the legislature will have passed a subsistence bill and the petition before the boards will be moot.

Even though the boards did not feel it was their place to accept the petition, they did not want to reject it either, and thus push AFN toward a lawsuit.

"All of us know the type of controversy that (a court battle)

causes," said fisheries board member Jesse Foster of Quinhagak. "Resentment flares up all over the state."

Last spring, the Alaska Supreme Court struck down the special rural resident categories, which had been set by the fish and game boards. Only the legislature has the power to make such policy decisions, the high court had ruled.

The state House then intro-

duced a bill on subsistence rights but the Senate stalled action with a call for further study.

AFN's petition notes that federal law requires Alaska to protect the subsistence hunting and fishing rights of rural residents in the state. The federal government has given Alaska until June 1, 1986, to pass legislation on these rights or federal officials will take over all fish and game management here.

State fish and game boards say it's not their job — but the Alaska legislature's task — to decide if state subsistence law should give priority to rural residents.

Based on that reasoning, the boards deferred until their joint meeting in the spring a petition put before them by the Alaska Federation of Natives to put

*Times 9-27-85*

## Sheffield's support for timber industry

Dear Editor:

After reading Bob Richards' column on the timber industry in Southeast Alaska, I agree with him on two points: the Southeast timber industry is in serious trouble, and that Sen. Murkowski has been very supportive of that industry. However, regarding his comments that the Sheffield administration has not done anything, that just isn't so!

In my 16 years of involvement with Alaska's timber industry, I haven't observed any governor

as committed to helping the timber industry as Gov. Sheffield. The problems of the Southeast timber industry are indeed deep-rooted and complex. To think that the state or anyone else can quickly solve these problems is not realistic. Only time, persistence, hard work, and a little luck will do that.

John L. Sturgeon  
State Forester  
Department of Natural Resources  
Juneau

# Subsistence foreseen as hot issue in 1986

Times 9-27-85

by Larry Persily  
Times Juneau Bureau

Juneau — Several legislators say they are committed to passing a subsistence law by June 1, 1986, which will be acceptable to the federal government.

The alternative, according to a Department of the Interior ultimatum, is to have the federal

government take over management of fish and game on federal land in Alaska.

"The monkey's on our back," said Sen. Mitch Abood, R-Anchorage, who said the subsistence debate will be the biggest issue of next year's legislative session.

"I'm sure we'll have some

kind of a bill" by the interior department's deadline of June 1, 1986, Abood said, adding, "We don't want the feds coming in, do we?"

The interior department this week wrote Gov. Bill Sheffield to inform him that Alaska is no longer in compliance with federal law providing fish and game

subsistence preference rights to rural Alaskans.

"I find the idea of federal management of our fish and game to be absolutely, totally untenable," said Sen. Arliss Sturgulewski, R-Anchorage, chair of the Senate Resources Committee.

See Subsistence, page A-10

## Subsistence issue

Continued from page A-1

Sturgulewski said she wants a bill that defines who qualifies as a "rural" resident and what is considered to be "subsistence game." She said she is confident the conflicts will be resolved and lawmakers next session will pass a bill acceptable to the interior department.

The House this past session passed a subsistence bill designed to bring the state into compliance with federal law, though the legislation stalled in the Senate State Affairs Committee, chaired by Abood.

The Alaska Supreme Court in February struck down state subsistence regulations, taking the state out of compliance with federal law and putting the burden on the legislature to adopt new statutes guaranteeing rural residents preference for fish and game resources.

The state boards of fish and game this year adopted temporary measures to maintain subsistence rights for rural Alaskans. Subsistence hunts have been allocated on a point system measuring local residency, dependency on the resource and availability of alternative resources.

Abood already has held public hearings in Anchorage on the subsistence issue, with his committee scheduled to hold additional hearings Oct. 9-10 in Fairbanks and again in Anchorage in November.

Because of the complexity of the issue, the senator said, he decided to hold the matter until next year's session.

The governor this year had proposed legislation that would have returned Alaska to the subsistence management that existed before the court decision, with rural Alaskans having preference for fish and game resources.

"No one's going to get elected by solving this problem," Abood said, arguing it should not become a political issue.

The Senate state affairs chairman said he would hold the subsistence bill in his committee until Senate and House members reach a compromise on the issue.

House Speaker Ben Grussendorf, D-Sitka, said it's been difficult to draft subsistence legislation acceptable to urban hunters and there was a lot of pressure on the Senate from Anchorage and Fairbanks sportsmen "not to move too fast."

Though urban hunters may not favor a continuation of the rural preference for subsistence uses, Grussendorf said the legislature "probably would come up with a subsistence plan that would be much more beneficial to the urban hunters than would the federal government."

Mike Scott, an aide to Sen. Frank Ferguson, D-Kotzebue, said, "Subsistence should have the highest priority, after that there's where the problem

comes in" with the allocation of fish and game resources.

"We tried to get a compromise last year, then Abood took it upon himself to say he's going to hold hearings so it's in his hands," Ferguson said.

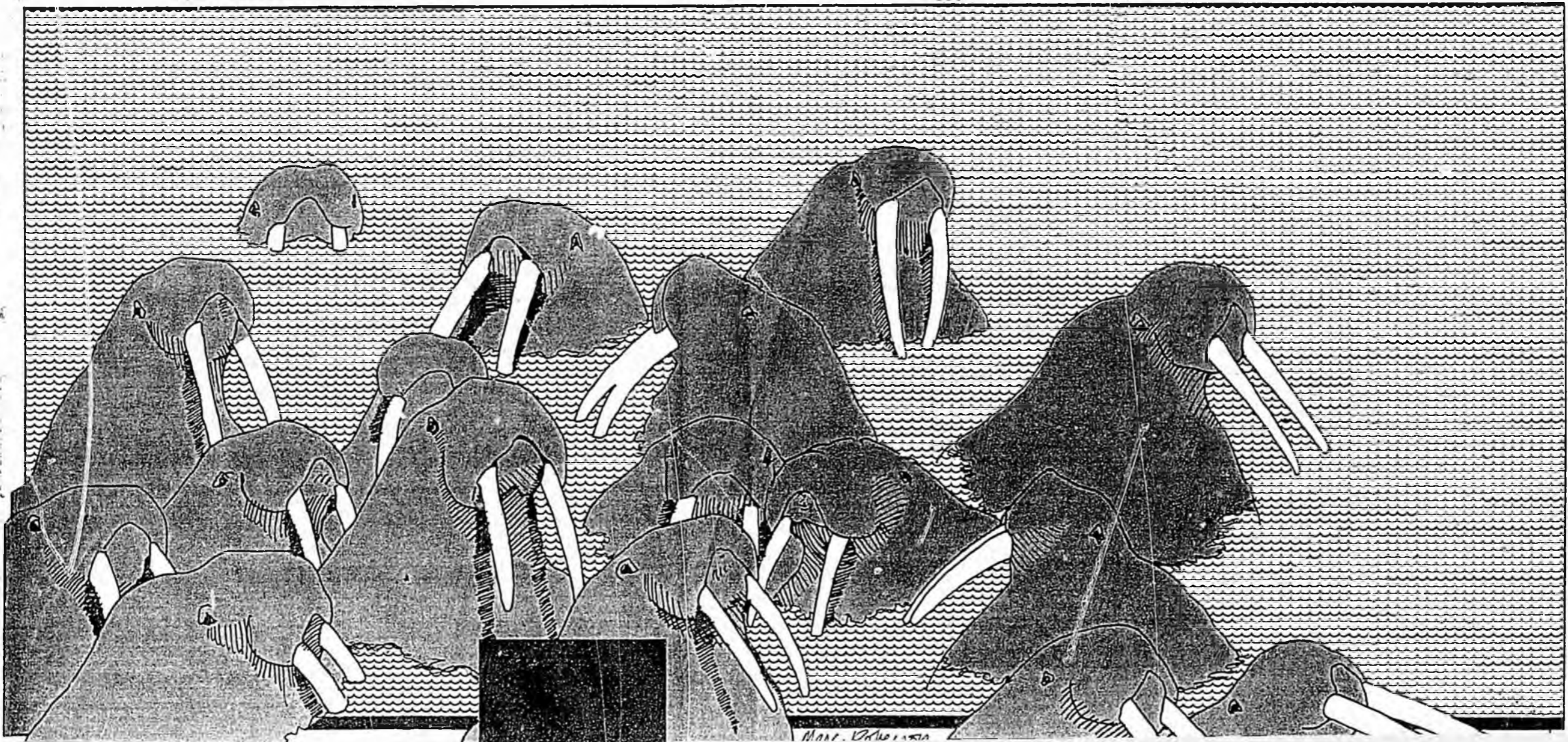
Sturgulewski commented, "I know we're going to see some saber-rattling on this now," but she is looking for next year's legislation to provide "a method of fair allocation" of Alaska's fish and game resources.

# Outdoors

Daily News-Miner, Fairbanks, Alaska

Sunday, October 27, 1985—D-3

## Subsistence walrus hunting: scourge of the North



By CHRISTOPHER BATIN  
Correspondent

A fur-clad hunter slowly maneuvers a wooden boat among the massive ice chunks of the Bering Sea. The remaining six hunters in the boat gaze across the icy expanse of the Bering in an attempt to spot their quarry—the Pacific walrus. The situation is tense, as the walrus' belligerent behavior and habitat make it a challenge to hunt. But the occupants of the boat are not sport hunting.

Suddenly a furred mitten grabs a frost-encrusted rifle as a hunter spots a herd of walrus basking on an ice floe several hundred yards away; their long, ivory tusks reflecting the brilliance of the arctic sun. The boat operator slowly maneuvers his craft through a patch of ice fog as the hunters quickly load their rifles.

The walrus, many exceeding 3,000 pounds, fill the air with strange guttural sounds—like a hammer striking a pipe. A sentinel walrus awkwardly attempts to move its lumbering hulk toward the open sea, and the hunters begin to fire into the herd of now panicky walrus. Several walrus are killed instantly and sink before the hunters can reach them, but many more escape wounded to suffer as long as six months before dying an agonizing death from malnutrition caused, in part, by the wounds.

Several clips of ammo later, comparative quiet reigns, with the silence occasionally broken by a shot taken at an escaping walrus. The hunters proceed to land their craft and pride themselves over the gleaming, blood-stained tusks of ivory.

After a few minutes of chopping and cutting, a stockpile of walrus heads are stowed aboard the boat. The hunters soon depart, failing to salvage any of the thousands of pounds of edible meat. The headless carcasses will assume the ultimate fate of washing up on some shore several months later.

This account is not a horror story on a hunting scene that occurred a 100 years ago, but rather, a factual account of the atrocities committed by many subsistence walrus hunters.

Under the provisions of the Marine Mammal Protection Act of 1972, the killing and market use of marine mammals is prohibited by law, with one exception. Alaska Natives are allowed to harvest walrus for nonwasteful, subsistence purposes and sell the subsequent ivory handicrafts.

Village merchants, soon discovered, however, that it was difficult to sell these ivory crafts at

retail prices in village stores. Soon merchants began demanding cash for goods instead of ivory. Rather than search for a more lucrative market for their goods, many Natives began to sell raw ivory for instant cash through black market connections, which is prohibited under current regulations. Thus, a lucrative black market for ivory evolved, with illicit channels traced to Anchorage, Seattle, Portland, the East Coast, Hawaii and the Orient.

Much of this illegal ivory is destined for the Orient, where it is carved by hand and machine. The ivory is returned to the gift shops in Alaska and throughout the U.S. as a counterfeit "Eskimo handicrafts," where it can be sold over the counter at a substantial profit. The U.S. Fish and Wildlife Service estimates that these marketers process several million dollars worth of black-market ivory annually. Reports indicate that over 95 percent of all walrus shot off Alaska's west coast are killed just for their ivory.

One of the main reasons for the huge demand for walrus ivory is to replace the restricted influx of ivory from endangered African and Indian elephants. With such a restricted market, the value of ivory has increased, along with the walrus kill, which is evident through Alaska Department of Fish and Game records. The annual harvest from 1962 through 1974 averaged 1,700 animals. According to John Sease, with the University of Alaska-Fairbanks Fisheries and Wildlife Department, the current harvests vary on weather and ice conditions. He estimates that in 1984, 5,500 to 6,000 walrus were harvested, and roughly 4,000 to 4,500 walrus in 1985. Past ADF&G reports indicate that annually up to 1,500 walrus were killed but not retrieved because they sank or escaped wounded.

However, the problem of excessive walrus harvesting was compounded when Alaska decided to return management back to the federal government over a decade ago. Federal authorities had imposed unrealistic goals and regulations upon the state in managing walrus populations; goals which the federal government in its 40-year management history prior to state control had not obtained. Under federal management, there is no bag limit or regulations regarding the use of meat.

From a biological standpoint, there is reason for concern, but not from overharvesting. Several years ago, walrus populations were at an all-time high of 250,000 animals. According to the National Oceanic and Atmospheric Administration and biological experts, walrus

*The walrus, many exceeding 3,000 pounds, fill the air with strange guttural sounds—like a hammer striking a pipe.*

populations are currently suffering from a population decline due to overabundance. Marine Mammal biologist John Burns said that population crashes are nature's way of controlling the species. "It happens with mosquitoes and hares. It's happening with the walrus. Too many people blame the decline on the subsistence hunters. They did not initiate the decline. However, an increase in subsistence take, especially when walrus populations are declining, could create some problems in the future."

Burns also said that the economics of walrus hunting is one side of the story, and traditional use is another. "Twenty years ago, Natives harvested walrus for dog food. Now that they have snowmachines, they don't need to bring in as much meat. Only what they are going to eat. Who's to say if it's ethical to bring in meat so a dog can turn it into manure or leave it out on the ice for the crabs to feed on?"

But many sportsmen have an ethical problem with the state and federal government's current definition of "subsistence." Sportsmen question if the word "subsistence" gives a select group of people the right to indiscriminately kill walrus for a limited source of cash rather than as a source of food, and of their preference over a resource that belongs to everyone.

There are many villages that do use both meat and ivory. But this usage seems to vary according to season. According to a report by marine mammal biologist John Matthews, "Meat utilization is very poor among Native hunters. Early in the season when food supplies are low, fresh meat is welcomed by the Natives. However, as a supply of meat is cached, the utilization of walrus dropped to near zero."

Matthews observed that during a single, 18-hour period, one boat retrieved 100 walrus, but only two hearts and a stomach were kept. Much of the meat was stored on beaches where it was subjected to high tides and weather, which eventually ruined the meat before it could be utilized. Matthews concluded by stating, "... less than 30 animals or meat equivalent were returned to the village. This is less than 5 percent of the total amount available for village use."

One reason for this poor return is that hunters often fail or are unable to retrieve walrus that are sunk or lost. Matthews commented in his report: "When 10 to 15 rounds of ammunition are fired by each man of a 12-man crew into a herd of 250-300 animals and only 25 are retrieved, one has to expect a high percentage of wounded animals.

Improper ammo is another factor contributing to high losses. Many hunters are using surplus military ammunition to hunt walrus. These shells are loaded with non-expanding bullets which are designed to wound rather than kill. The result is many crippled and lost walrus.

Another factor pertinent to high loss rates is the shooting of walrus in the water. According to a 1977 ADF&G report on walrus, "Due to a lack of ice, Native hunters resorted to shooting walrus in the water. Loss rates were as high as 85 percent. Hunters attempted to butcher many of the carcasses in the water. In almost all cases, the heads were removed and the rest was left to sink."

But the problem is much more complex than the ethical issue of wanton waste. Marine mammal biologist Dan Strickland stated in a report that a friend announced an offer to buy walrus meat for his dogs at 50 cents per pound from Native villagers. He had to resort to knocking on doors to get any response. Strickland pointed out, "... this may indicate that the problem is much deeper than no freezer facilities. If the Natives are becoming too lazy to retrieve meat, which is difficult work under adverse weather conditions, and can survive quite adequately on ivory, a commercial meat project may fail entirely."

He also stated that an operational freezer was installed at Savoonga, but Natives were using it as a storehouse which was subject to frequent theft.

Several buyers have created a demand for walrus hides, offering to supply the salt and transportation for the hides in addition to paying \$150 for each hide. A walrus hide can be split up to 12 times due to its thickness and is often referred to as an exotic skin. The Natives failed to respond. The general consensus was that it appeared to be too much trouble and effort for the price.

This deteriorating responsibility by some users in utilizing the entire animal is most prevalent among the larger villages, along with what seems to be a biased attitude toward fish and game personnel.

Matthews elaborated on this attitude. "After I answered a

young hunter's question about bag limits, quotas, and what would happen if they were exceeded, the hunter became belligerent and said that any attempt to seize his ivory, legal or not, would result in him shooting that person, in this case, myself."

Matthews also quoted a Native stating that, "Fish and Game personnel were only good for shooting at." Matthews concluded his report by commenting, "It is my feeling that this type of response is becoming more prevalent at Diomedes." Other biologists have recorded similar animosities at other major villages.

However, many Natives of the smaller villages, especially along the Yukon-Kuskokwim coast, try in earnest to comply with regulations. "Y-K hunters don't consider going out after walrus without bringing in the meat," said Burns. On the other hand, biologist's field reports indicate that the larger villages of Savoonga, Gambell and Little Diomedes have little use for the tons of meat harvested annually. Strickland, in his 1977 report, writes, "I would say that 90 percent of those Natives hunting out of skin boats brought back a substantial amount of meat. However, those hunting out of speed boats are the reverse, 90 percent of those don't retrieve anything but the tusks."

The slaughter has been so great at times during the past decade that the Soviet Union has sent letters of protest concerning the number of headless walrus carcasses washing up on their beaches. Sport hunters have said that this makes the issue more than just a state problem, but a national concern.

Natives realize that waste is a problem, yet they feel that the current economic situation leaves no other alternative. Ivory is needed for economic support. After harvesting three or four walrus, the primary goal is no longer meat, but ivory."

Yet, the slaughter continues despite the benefits many Natives receive in the form of welfare checks, Bureau of Indian Affairs checks, food stamps and other federally aided programs. Subsistence users in many villages can go to the village store and purchase televisions, snowmachines and other modern appliances, paid for by the rising slaughter of walrus under the term of "traditional subsistence."

In an interview several years ago, Sidney Huntington, former member of the Alaska Board of Game, blamed the federal government for the current waste. "Regulations have prevented us from making use of the walrus. Very few people actually live a

total subsistence lifestyle and don't require much meat. They eat beef like everyone else. But walrus can be used to make soap, fertilizer, and the hides in the making of leather. But we can't start any commercial projects with a harvest of 3,000 animals."

What are the solutions to these problems? To start, management of walrus herds should be transferred back to the state. The federal government should be realistic in its requirements concerning walrus management, especially since it has offered protection in name-only and has done little for the walrus in its 45-year history of management and enforcement. Enforcement would be a major factor in curbing the abuse of black marketing and waste.

Upon receipt of management, Alaska should allow sport hunting for walrus and relax present laws, allowing Natives to become registered guides in their own areas. This would permit Natives to obtain guide licenses without the customary waiting period and prerequisites. This would help check rising walrus populations in the future, and deter black market dealings by creating a source of income for villagers.

The state should pass legislation outfitting remote coastal villagers with proper food storage facilities. Harvest should be moderately curtailed until the walrus population stabilizes and present waste of meat is controlled.

Many Natives feel that any lost aspect of their subsistence lifestyle, i.e. how much to hunt or how much to harvest, will result in a part of their heritage disappearing or being changed forever. But with the introduction of TVs, telephone and snowmachines, where do lawmakers draw the line in deciding what is "traditional" and what isn't? If the indiscriminate killing of walrus for their teeth alone and subsequent waste is part of the Native heritage, it may well be a Trojan Horse of shame that will haunt them in years to come. As one hunter attending a recent subsistence forum said, "I am proud of my hunting tradition and practices. Yet how many of Alaska's subsistence walrus hunters can actually say the same?"

Sidebar

The walrus is not the only mammal that is suffering from the indignant fate of black marketing and indiscriminate killing under the guise of subsistence. Under the provisions of the Marine Mammal Protection Act, Natives are also allowed to harvest polar bear without limit or restriction.

The take of polar bear by Na-

tives has quadrupled over the past 12 years from 20 to over 160 bears, with the harvesting of cubs and females with cubs permitted. This increased harvest is due, in part, to excessive walrus carcasses washing ashore, enticing large numbers of polar bears to come in off the pack ice to feed on the carrion. In the past, polar bears were seldom found near the mainland for reasons other than birthing.

Documentation is scarce on black market polar bear hides. However, in 1977, 800 polar bear hides went up for auction on the London market, with 80 percent of those originating from Alaska. In Japan, polar bear hides are the mainstay of cocaine dealings in some Alaska Bush areas.

Spring hunting for waterfowl is another major problem. Subsistence users are permitted to harvest molting waterfowl and kill paired birds before they have a chance to nest. Bush residents harvest over 100,000 waterfowl annually, killing not only the parents but the potential brood of each pair. This cause has been blamed, in part, for the drastic decrease in four species of Pacific Flyway geese. The federal government has failed to enact regulations stipulated in the Migratory Bird Treaty Act that would stop this harvest.

Natives continue to hunt seals, even though the need to do so is not as vital as in past years. According to Dan Strickland's notes on seal hunting in the village of Shishmaref, he states, "Towards the end of my stay, I noticed quite a few seal carcasses (that) were being left on the beach to rot, even to the point where they were unfit for dog-food. I would estimate that 40 seals were in this condition. A woman commented to me that they had more than enough meat and skins and would ask the men to stop hunting, except for their reluctance to do so. It seemed both force of habit and the pleasures of hunting were factors here."

The caribou is also on the black market of waste. Subsistence users are receiving over \$40 per pound for caribou antlers. Brent Jones, an Anchorage taxidermist and guide, said several buyers set up a market for caribou antlers to be sent to the Orient to be used as aphrodisiacs. Jones stated the buyer needed 20,000 to 40,000 pounds of caribou antlers. In part, this market has been the reason for the considerable waste of caribou among subsistence hunters in rural villages.

Chris Batin is an avid outdoorsman and author of the book "How to Catch Alaska's Trophy Sportfish."

# Letters

## Subsistence

EDITOR, Southeastern Log:

I would like to respond to the accusations recently leveled by Governor Sheffield and Janie Leask blaming the Alaska State Senate and the Alaska Outdoor Council for the present hunting regulation "dilemma."

Since I am registered as the full time lobbyist for the Alaska Outdoor Council during the legislative session, I am fully aware of the position and lobbying effort of our organization on the subsistence issue.

Both Gov. Sheffield and Ms. Leask, the present president of AFN, took the predictable position in support of the Governor's subsistence bill which would have given the subsistence priority to only "rural" subsistence users. The Governor's proposal eventually passed the state House with a vote majority of one. The continued delays in the House clearly illustrated the divisiveness of the issue and was only passed after considerable political arm twisting and maneuvering on the part of the Governor's office.

Since the Governor's bill failed to pass the Senate, the Board of Game was forced to comply with the two 1985 Alaska Court cases' mandate that the subsistence laws be implemented. The result was the adoption of some very controversial hunting regulations which obviously infuriated many hunters throughout

the State who were suddenly excluded from participating in popular big game hunts. We might debate whether the Board had to take such drastic actions but that is not my major point of concern in this letter.

Frankly, we concur with the courts' interpretation of the law as it is now written.

The Governor and Ms. Leask took great pains to lay the blame for the present "crises" at the feet of the state Senate and its leadership. Ms. Leask in particular accused the Alaska Outdoor Council of lobbying to kill the Governor's bill in order to create some sort of urban backlash against the subsistence law. I can appreciate Ms. Leask's frustrations in not getting her bill through the state Legislature but it hardly seems appropriate to try and dupe the public by trying to discredit our organization and by presenting false information. I would like to correct a few inaccuracies for the record.

Yes, the Alaska Outdoor Council did lobby against the Governor's bill. Contrary to Ms. Leask's accusation, however, the oft printed position of the council is not to eliminate the subsistence law but rather to restructure a new bill giving a preference based on individual or family need.

It didn't take much of an experienced observer to realize the Governor's bill was in for tough sledding last session. Most of us were well aware of the administration's threats

of sweeping regulatory changes if the Governor's bill stalled in committee. For this reason, the Alaska Outdoor Council and many of its affiliated clubs, such as the Alaska Sportfishing Association, offered a substitute bill which would have met the Governor's requirements of placing the subsistence regulations at the pre-Madison point with a provision that the compromise legislation would provide a "moratorium" for only one year. This "moratorium" would have provided for a more orderly review of the recent court rulings and would have given the House, Senate and Governor's office time to structure a more acceptable State subsistence law.

The compromise moratorium bill was offered in the House and was solidly rejected by the administration and the state House leadership. Again, in the Senate, the same compromise measure was offered at the Senate State Affairs hearing during the latter part of the session. Deputy commissioner of the Alaska Department of Fish and Game, Dennis Kelso, and representatives from the Governor's office rejected the compromise temporary solution. The Governor took an all or nothing position and gave the Alaskan hunting public nothing in return.

If the Governor's office and Ms. Leask's organization were truly interested in the hunting and fishing opportunities of the urban users one must ask why they refused to consider a temporary moratorium in order to get all of us through a rapidly approaching regulatory season.

Ms. Leask does some fancy footwork by trying to convince us all that the urban and non-subsistence

rural hunters and fishermen will have more equality and more hunting and fishing time by eliminating themselves from any rights under the subsistence priority law. In other words, agree to the priority for only rural subsistence users. She carefully weaves an argument that the criteria used to discriminate between subsistence users in rural Alaska doesn't apply to downtown Anchorage. One must ask why a user must eliminate his or her use because the criteria developed by the Legislature in 1978 was unworkable. Logic says you should consider changing the criteria.

She carefully avoids the fact that rural Alaska is growing fairly rapidly in many areas and would demand the exact same regulations that are presently eliminating urban and rural non-subsistence users from many hunting and fishing opportunities. At best, the Governor's bill would only delay the inevitable for two or three years until the Boards of Fisheries and Game had complied with the State courts' ruling that they must develop regulations to protect the subsistence priority wherever subsistence occurs.

In defense of the Senate, I would like to add that there would not have been a Madison case nor an Eluska case nor any emergency game regulations, if the Governor's office, the Attorney General's office and the Boards of Fisheries and Game had chosen to abide by the state law. In essence, the dilemma was created by "rural" subsistence advocates who chose to alter the state law by administrative action rather than the normal legislative process.

My last few points are concerned

Please see Subsistence on B-15

**CHRISTENSEN LUMBER & HARDWARE**  
presents

# Subsistence

Continued from B-14

with the Governor's failure to recognize (or remember) what the key issues are now that the courts have reviewed and ruled on the state's subsistence law.

1. The state courts admonished the boards for not developing regulations protecting the subsistence priority statewide. A return to pre-Madison will not eliminate the need for the state to develop or maintain many of the controversial regulations now in effect. The Governor's bill did not deal with this issue.

2. The State law requires the elimination of commercial or sport uses before subsistence uses are restricted. We contend that the law should allow the boards to allow and blend all uses, even if subsistence is given a priority or preference. The Governor's bill did not treat this issue.

3. The state law almost implies that subsistence uses cannot be restricted or regulated before other uses are eliminated. We contend that all uses must be regulated to protect the basic resources. The Governor's bill did not treat this issue.

4. The courts ruled that the state cannot allocate fish and wildlife resources on a community basis as it had in the past. We favor any mandatory allocation or preference being based on personal or family need rather than on a citizens residence. The Governor's bill did not deal with this issue.

5. The present law is not clear on the authorities of the boards to designate which species are subsistence species (i.e. bison which were transplanted) and whether alternative resources can be used in places of low level target species. We favor the boards having this authority. The Governor's bill did not

consider this point.

Let's face up to the obvious, "rural" subsistence advocates like Ms. Leask and her strongest supporter (Gov. Sheffield) are adamant that the ultimate subsistence priority will only be given to rural Alaskans. Not only that, there is a sense of almost pure panic as if time would eventually reveal the true weaknesses and intent of the unpopular law.

The continued incremental discrimination against urban and non-vested rural users was only derailed by two fairly accurate court interpretations of the 1978 State law. Bolstered by threat of federal pre-emption, the Governor and AFN have refused to compromise and negotiate a long term settlement to this socially divisive state law. It has been this

dogmatic and uncompromising approach that has created the existing "crises," not the last minute refusal by the Senate to cave in to political pressures from the Governor's office.

If the Governor and Ms. Leask are truly interested in solutions, we would appreciate a little less political rhetoric, a lot more accuracy and a greater presence at the negotiations table.

Sincerely,  
RONALD SOMERVILLE  
Executive Director

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*Saved Frank*

# Natives consider own panel to manage marine mammals

by Mary Scarpinato  
Times Writer

Claiming the state and federal governments have failed to properly manage marine mammal populations here, Alaska natives want a new commission that would be empowered to do so.

A steering committee to organize the Alaska Native Marine Mammal Commission was selected from among about 100 interested coastal region residents who gathered here Friday.

Such a commission would work to insure natives' subsistence hunting of these species, as well as set harvest regulations.

The residents say seal, sea lion, sea otter and walrus herds are overpopulated, and their numbers are damaging fishing resources.

"Now, if you go out to get a seal, they're totally skinny and sickly because of overpopulation," said Sven Haakanson Sr.,

mayor of Old Harbor on Kodiak Island.

"Clam beds and crabs are being completely wiped out because the sea otters are killing them off," he said. "But we could harvest them (marine mammals) so it would benefit us and them (overpopulated species)."

Only natives are allowed to hunt marine mammals here, and only in numbers considered adequate to supply subsistence needs. The species are protected from any other kills under the 1972 Marine Mammal Protection Act.

But natives complain that none of these species were endangered then because of sound conservation measures already in place.

Haakanson said Kodiak Island natives had once planned a processing plant for seal catches that would have made sausages and various hide articles. "It all

went beautiful until (the act's regulations)," he said, adding that islanders had previously been harvesting 7,000 seals a year without population damage.

Under the act, federal authorities have not budgeted the manpower or funds to perform much more than token research. But natives, who are familiar with the species' habitat and biological cycles, could arrive at rational population management policies, those at Friday's meeting agreed.

The plan would be to organize and empower a native commission under federal government authority, said Tony Vaska, program developer for the Association of Village Council Presidents. AVCP is one of the leading supporters of such a commission. The Alaska Federation of Natives is sponsoring organization efforts.

# Somerville says rules punish Senate

News  
in  
10-5-85

By ANDY RYAN  
Alaska News Service

JUNEAU—New hunting regulations drafted by the Department of Fish and Game are designed to punish the state Senate for not acting this year on Gov. Bill Sheffield's proposed subsistence law, a former state game director has charged.

The proposed emergency game regulations, prepared this month by the department's staff, will be considered by the state Board of Game at a special meeting beginning here Monday.

Former state game division director Ron Somerville said he believes the proposed regulations, which could reduce the amount of sport hunting permitted in some areas of the state, are a form of retaliation for the Senate's inaction on the governor's subsistence bill.

"My general impression is that these regulations are being adopted to punish the Senate for not acting," said Somerville, an outspoken critic of the state's current subsistence law. Somerville currently serves as executive director of the Alaska Outdoor Council, a consortium of sportsmen's organizations.

Dennis Kelso, deputy director of the Department of Fish and Game, said Somerville's remarks are "ridiculous."

Kelso said the department's proposed regulations are a necessary response to a pair of recent court decisions. Those court rulings, in effect, extended subsistence hunting and fishing rights to most Alaskans under the current subsistence law.

"The department has two overriding obligations," Kelso said. "One of them is to protect the re-

(See REACTION, page 3)

## REACTION . . .

(Continued from page 1)

source, and we'll do whatever is necessary to accomplish that.

"The other is to follow the law. And the Supreme Court and the Alaska Court of Appeals have both given specific direction, which the department is bound to follow."

In a May 17 memo, a department official laid the blame for the proposed new regulations at the feet of the state Senate.

"Because the Senate failed to change the state subsistence law, the Division of Boards has prepared a first draft of game regulations reorganized to accommodate the (court) decisions," division director Beth Stewart wrote in the memo.

"Beth Stewart is wrong," Somerville said in a prepared statement.

"Subsistence regulations are required because of the law and not because the Senate failed to adopt changes."

Tuesday, Kelso and his fellow deputy commissioner, Jim Ayers, accused Somerville of intentionally distorting the subsistence issue for personal political gain.

"It's a serious public policy question, and there are people who be-

lieve that as long as it's not settled, it's in their personal best interest, because it allows them a public forum to debate an issue that the citizens of the state put to rest in 1982," Ayers said.

"The majority of senators, I think, wanted to solve the problem. I think the delay of action stemmed from people like Mr. Somerville, who continued to make questionable and sometimes unfounded statements simply to keep the political atmosphere in a frenzy," Ayers said.

Rupert Andrews, a former director of the state fish division, and current president of the Alaska Outdoor Council, conceded that new game regulations are needed in light of the recent court decisions.

But he said the problems presented by the courts could have been at least temporarily solved by the Legislature this year—giving lawmakers time to work on a long-term solution—if Sheffield had been willing to compromise.

"There was no negotiation on the part of the executive branch to deal with lasting solutions," Andrews said.

# Special meeting to decide who hunts

By DEAN FOSDICK  
Associated Press Writer

JUNEAU—Stripped of all the political smoke and bureaucratic rhetoric, an emergency Game Board meeting scheduled to begin Monday will determine who gets to hunt what in Alaska this year.

It's expected that the panel will need 10 days to two weeks to resolve

subsistence questions raised recently by the courts. That's along with making some technical changes in Alaska's 60-year-old patchwork of game laws.

While the state Department of Fish and Game manages the state's wildlife resources, it's the fish and game boards which separately determine the allocations.

The current system of doling out fish and wildlife has been turned topsy-turvy by two recent court cases pertaining to subsistence. The rulings mean that virtually all Alaskans now qualify for subsistence rights.

Gov. Bill Sheffield introduced a bill about mid-session that would have allocated the same subsist-

ence rules by statute that had been mandated by the fish and game boards. His measure would return first subsistence rights to rural users.

But legislative leaders—particularly in the Senate—shelved the issue until next year. They contended it's too complicated and too politically charged to be solved in

just a couple of months.

That leaves it up to the Game Board to set subsistence hunting policy until lawmakers write a long-term solution.

Because of an Alaska Supreme Court ruling Feb. 22, subsistence use no longer is based solely upon where a person lives in the state. Instead, the law now provides for

subsistence permits to be issued according to three criteria: dependence upon fish and game for daily diet, local residency and access to other food sources.

"As distasteful as it might be, we can allocate fish for subsistence from other user groups—commercial or sport fishing," said Beth Ste-  
(See *SUBSISTENCE*, page 3)

## SUBSISTENCE . . .

(Continued from page 1)

wart, director of the Fish and Game Department's division of boards.

"But with game, you run into trouble because you hit subsistence users immediately," she said Tuesday. "There's no falling back on commercial or sport users. Here it's a case of determining which subsistence group is going to get the resource."

Lew Pamplin, who heads the state division of game, said the old random drawing method of handling permit hunts is out.

"It's no longer the luck of the draw," Pamplin said about issuing hunting permits by lottery. "There's not a legal way to do it and that's the dilemma. It throws our permit hunts up in the air to comply with subsistence."

But Pamplin said any talk about banning nonresident hunting or restricting hunters to their own game management units or subunits this year is "an exaggeration."

"There are areas, for example, where caribou numbers have never been greater," he said. "The board

wouldn't have to do anything with that. But the Nelchina (caribou) hunt will have to be managed more carefully—perhaps by using a questionnaire weighing the three subsistence requirements."

A "worst case" scenario would see the Game Board deciding to throw out all the permit hunts, Pamplin said. That would leave state officials without any way of controlling how many animals are harvested within a given area, he said.

"We wouldn't be able to manage the resource so we'd have to refund all our permit applications," Pamplin said. "That would affect other management funds, including federal matching funds."

"We'd lose a significant portion of our revenues for next year," he said.

But problems may crop up with any decision the board makes during its two weeks of deliberations in Juneau, Pamplin said.

"No matter what we (Fish and Game) do, no matter what they (Game Board) do, we'll probably be sued six ways from sundown," he said.

☆ ☆ ☆

# Legislature can prevent a fish-and-game subsistence crisis

Who matter who says what about subsistence these days the message is one of panic.

Ever since February's so-called Madison decision — the Alaska Supreme Court which gave subsistence-user rights to all residents — every outdoor group in Alaska is acting out the tale of Chicken Little and "the sky is falling."

A popular scenario of what may happen runs as follows: because the decision eliminated any distinction between rural and urban subsistence use, Alaskan now qualifies to be a subsistence user or fisherman.

As a result hordes of city people intend to descend upon the streams feeding Cook Inlet and every fish north and south of Anchorage. Untold disaster will follow as the fish disappear. Tens of thousands of anglers will be unable to wet a line and everyone with a commercial interest will be in trouble. In short, chaos and consternation will reign throughout southcentral Alaska.

Recreational fishing groups are approaching apoplexy. They are worried sick their season will be shut down or curtailed because they are the first to be affected if there is a shortage of fish stocks.

Game guides are paranoid. They believe their sealife will be cut for the same reason and some have begun to make application to subsistence fish and reel.

Personal use fishing people believe a concerted effort exists to eliminate them.

Others think they will be next in line and see a number of fishing days shortened by emergency closures.



## Rising to the Bait

Dan Sisson

The drift fleet — next to last in the order of those to be cut — are wondering whether they too may face a limited season.

Even the natives — the original subsistence users who live in rural areas and have fished with little interference — are looking askance at the potential hordes who may compete with them.

The fisheries biologists fear they will have their carefully constructed management systems knocked into a cocked hat.

But if you think the fishing folk are running around claiming the end is near, you should talk to the game management people. Madison has absolutely paralyzed them. They realize that if everyone is a subsistence hunter and can shoot moose, caribou and bear anywhere, at anytime during the season — just because they need the meat — no intelligent game management is possible.

The moose will be exterminated regardless of sex because there simply aren't enough to go around. The 25-year effort to build up herd bulls in specific units will have been in vain. And just ponder what position big-game guides are in: if any type of hunting is to be eliminated non-resident and

guided hunts will be the first to go.

The most horrifying aspect of this looming crisis is the possibility of the federal government taking over management of the state's fisheries and game. A deputy undersecretary of the Interior Department, Bill Horn, has stated: "Our preliminary review of the Madison decision indicates that it put the state in a position of non-compliance. . . . It is possible someone could pursue the judicial remedy specified in the Alaska National Interest Lands Conservation Act and argue that we must take immediate action."

The implications of Horn's statement points to yet another dimension of the crisis: if the federal government — now facing an acute budget crisis — were to take over management of Alaska's fish and game resources where would they find the money?

Where would they find the expertise? Would the state's biologists — who often find themselves at loggerheads with federal policy — cooperate? Or would they find innumerable points of conflict?

If most people think there is potential chaos at present what would a forced return to the fish and game management policies of territorial days mean?

Even more frustrating is the complexity of the subsistence law. Rooted in federal, as well as state, law it is understood by only a few people — mainly lawyers who have studied it for more than a decade. The average sportsman doesn't comprehend it and can't be expected to. And this is part of the problem.

Most sportsmen want a quick fix and then want to go fishing. They don't have time to study the ra-

tionale of courts and judges or the opinions of attorneys general and they are light years from coming to grips with the will of Congress on subsistence.

Yet the scenarios listed above are all possible and some say even probable. If this is true then it is incomprehensible why anyone — especially a state legislator — would not want to accept a bill that returns subsistence to the pre-Madison status quo before anything drastic happens.

But the state senate appears to be running just that risk. Its leadership claims that a year's study — at least — is needed to address the problem. So it proposes to ignore the administration's efforts to restore the status quo by refusing to pass the only legislation proposed so far to avert the coming crisis.

Anyone who has taken even an elementary course in government knows that any law can be amended or changed as circumstances warrant.

The same is true of the subsistence bill now in the legislature. If passed, it would allow fish and game management personnel to proceed in an orderly manner. If further changes in the law are needed, they can be enacted at a later date. No crisis is necessary.

The irony of this situation is that if a real crisis does occur it will be a managed — even orchestrated — one, and the fishermen, guides and biologists should place the blame where it belongs and not tear one another apart.

*Dan Sisson, an outdoors author and college instructor living on the Kenai Peninsula, is a contributor to Field and Stream magazine.*

Anchorage Times 5-2-85

## Game Board did the best it could J

Recently, the *People's Forum* published 12 letters from readers reacting to Alaska's new procedures for permit hunting and one brief letter from Joel Bennett, game board member, explaining the process. All readers were negative about the new procedures and several criticized the game board. One reader suggested that board members were "government puppets." I believe that most of the criticism of the board is misplaced and represents a widespread misunderstanding of what led to the present unfortunate situation.

When the board met in June it was obligated to establish emergency subsistence regulations so that hunting regulations in 1985 would be enforceable. The board did not decide to use local residency, degree of dependency, and availability of alternate resources to determine who could hunt. These criteria were established by the legislature and the court system in interpreting the 1978 subsistence law.

The board in going through virtually all the game regulations followed a fairly rigid procedure in establishing subsistence regulations. Each hunt was discussed with input from game division and subsistence division staff. In those cases where limited drawing permit hunts were the only way to proceed, the board was forced to apply criteria based on local residency, degree of dependency, and availability of alternate resources to determine allocation of permits. These were the criteria established by the legislature as interpreted by the courts. The board is required to operate within the legal constraints established by the legislature and the courts; those who criticize board actions must understand this.

As a game board member and a hunter, I was very disappointed with the outcome of the June meeting. I knew that there would be widespread dissatisfaction, that subsistence and sport hunters alike would face a confusing, disrupted hunting season this year and the game board would face extensive criticism, much of it unwarranted. I do not believe that the turmoil and divisiveness that has emerged is in the best interests of wildlife conservation. But I also do not lose sight of the fact that the game board did not create this situation and had limited flexibility in dealing with it.

At public meetings in Anchorage in November and January, the board will hear public testimony on subsistence regulations. This, plus existing legislation, legal interpretations, and any new court decisions and legislative actions will determine our future direction. I believe that this issue must be resolved and can be resolved and I look forward to participating in its resolution. But the public must have a clear picture of what the game board can and cannot do to improve the present situation. I think we can all agree that it does need improvement.

— Victor Van Ballenberghe, member

9-3-85 News Board of Game  
Fairbanks

5/24/85 - a DN Same  
**Subsistence answer needed**

Sen. Arliss Sturgulewski must be applauded and supported in her efforts to find a permanent solution to the very complex, but dragged out subsistence issue.

Her interest in the problem surely will get her more attention as a candidate for governor. However, Mitch Abood himself played politics with a very hot and important issue, especially to those people that truly depend on the wildlife resources. As it presently stands more people are adversely effected by the Madison discussion.

Commercial fishermen adjacent to urban used rivers and streams will suffer, such as those that fish for a lively hood, near Cordova, Valdez, and Kenai, to mention just a few.

It's sad to see the Board of Fish and Game "shot" down on something they worked so hard at, the subsistence issue. One has to wonder why we even have those two boards anymore. Anything they make a regulation must be politically blessed or the the attorney general's office must agree it cannot be challenged in court. It would be nice if the board could function without all the intrusion.

Maybe all the opponents of the subsistence bill should get out from under their political "umbrellas" and see the issue in reality of true Alaskans.

— Ken W. Chase  
Anvik

Empire 3/25/85

# Subsistence bill testimony heard

By KIRK McALLISTER  
The Juneau Empire

While administration officials warned of potential management problems if a subsistence bill isn't passed this session, a representative of an outdoors group today characterized Gov. Bill Sheffield's subsistence proposal as "blackmail."

The House Resources Committee heard testimony on the bill for the first time this morning and got a full range of opinions.

The departments of Law and Fish and Game gave the committee the administration's view on the importance of the bill (HB 288).

Jim Ayers, special assistant to the Fish and Game commissioner, told the committee the administration wants "an immediate and thorough resolution" of the subsistence issue.

The governor's bill was submitted after the Alaska Supreme Court last month handed down a decision in the Madison vs. Alaska Department of Fish and Game case that opens subsistence use to all state residents. The court said the Board of Fisheries had interpreted state regulations too broadly by limiting subsistence to rural users.

The bill would put into law the regulations the board has already been using to allocate fish among different groups.

Larri Spengler, assistant attorney general, told the committee that the Madison decision poses two problems to the state:

- Potential disruption of management of fish and game resources.

- The state could be found to be out of compliance with the 1981 Alaska National Interest Lands Conservation Act (ANILCA). Under ANILCA, if the state is not in compliance with the federal law, the state could lose management control of the navigable waters and 60 percent of the land in the state.

Ron Somerville, executive director of the Alaska Outdoor Council, disagreed with the administration views.

"The governor is using a blackmail approach to try to get this passed in 30



## ALASKA NEWS

days," Somerville said. "He's resurrecting horror stories in order to get his way."

Somerville said subsistence should be based on need instead of rural or urban residence. He suggested requiring pre-registration of subsistence users so managers would know prior to a season how much they would have to allocate.

"The Legislature is being asked to disenfranchise 85 percent of the Alaska public from subsistence use," Somerville said.

Ron Jolin, chairman of the Alaska Board of Fisheries, warned the committee that commercial and sport fisheries in some areas of the state, including Cook Inlet and the Copper River, might have to be cut back because under federal law, subsistence use has first priority.

Board of Fisheries member Bix Bonney said some streams on the Kenai Peninsula that often attract more than 20,000 anglers on Memorial Day weekend could be closed to sport fishermen to make sure subsistence uses were satisfied first.

"I'm not looking forward to facing 20,000 irate fishermen if we have to close some of these areas down," Bonney said.

Rep. Peter Goll, D-Haines, chairman of the House Fisheries Committee, gave Resource Committee members copies of the testimony his committee heard on the bill. He said the regulations used by the board prior to the Supreme Court decision had been "proven successful."

ALASKA BOARD OF FISHERIES FINDINGS  
SUBSISTENCE REGULATIONS FOR THE 1985 FISHING SEASON

The Alaska Board of Fisheries, meeting in Anchorage, Alaska on March 26, 1985, finds that the Alaska Supreme Court decision in Madison v. Alaska Department of Fish and Game will require a revision of certain subsistence, personal use, sport, and commercial fishing regulations. However, the board finds insufficient time exists before the smelt, herring, bottomfish, shellfish and salmon seasons to allow for an orderly, comprehensive review of all regulations which may be impacted, considering the need to provide an adequate opportunity for public comment and review. Therefore, to ensure an orderly process allowing the opportunity for all members of the public to participate, and implement the court's decision in Madison as possible in the interim, the board finds:

(1) The board will, by emergency regulation, authorize the subsistence take of smelt, herring, shellfish and bottomfish as they were allowed under the 1978 subsistence regulations.

(2) The board will, by emergency regulation, <sup>hand to</sup> authorize access by all Alaska residents to existing Tyonek, Port Graham, and English Bay subsistence salmon fisheries in Cook Inlet. Existing bag and possession limits, time, gear and area regulations and overall guideline harvest will not be adjusted for the 1985 season. The board finds that such regulations promote an orderly harvest which will reasonably satisfy anticipated subsistence uses. Modification of these regulations at this time is not in the best public interest of the public given the inadequate opportunity for public comment at this time, and uncertainty about 1985 participation levels.

(3) During 1985, the board will continue the following presently authorized personal use salmon fisheries in Cook Inlet as personal use fisheries:

the spring Kasilof gill net fishery,  
the Kasilof and Kenai River sockeye dipnet fishery,  
the China Poot hatchery sockeye fishery,  
and the shellfish, herring, and smelt fisheries.

The board cannot reasonably modify or eliminate these fisheries without an opportunity for public comment, which is not possible under the present time frame.

(4) The fall coho set gill net personal use fishery will however, by emergency regulation, be identified as a subsistence fishery, as required by Madison, and will be managed under the regulations used during the 1981 season, except that current reporting requirements will apply.

(5) The Kachemak Bay salmon set gill net fishery will, by emergency regulation, be identified as a subsistence fishery, as required by Madison, and will be managed under the regulations

*same capes available to all*

*a - quarter program*

*13,000 limit simply tops*

*Community has right to req. people to pre-register*

developed for the court ordered fishery. Alaska residents will be able to participate in both of these fisheries.

(6) The board will, by emergency regulation, allow access by all Alaska residents to the following existing subsistence fisheries:

Copper River (salmon)  
Iliamna/Lake Clark (salmon)  
Naknek River (salmon), and  
Angoon (salmon).

The bag and possession, time, area, gear, and overall harvest guidelines of each of these fisheries shall remain as described in existing regulations. The board finds that such regulations are necessary to conduct an orderly fishery and to provide a reasonable opportunity for subsistence needs. Modification of these regulations at this time is not in the best interest of the public given the inadequate opportunity for public comment at this time.

(7) As to the Copper River subsistence and personal use salmon fisheries, which will combined into a subsistence fishery by emergency regulation, the board will retain existing regulations as to bag and possession limits, time, area, gear, and overall harvest guidelines, except that rather than separate regulations based on domicile, the regulations developed for those domiciled in the Copper Basin and other specified communities will be applied to the fishwheel fishery and those developed for those not so domiciled will be applied to the dip net fishery. The board finds these regulations to be necessary to conduct an orderly fishery and to provide a reasonable opportunity for subsistence needs. Further, the overall harvest guidelines, bag limits, and areas represent historical harvest. The dip net portion of this guideline represents a total harvest which was not taken during the 1984 season. The harvest lid is necessary to manage the downriver commercial salmon drift gill net fishery to ensure escapement for reproductive needs and the upriver subsistence fishery. The bag and possession limits, while different for dipnetters and fishwheel fishermen were developed by the board after extensive public testimony and information demonstrating that the differing bag limits reflected historical use by each group.

The board hereby calls for proposals from the public on all subsistence and personal use regulations to be considered at the fall/winter 1985 finfish meeting. The board will consider all proposals to establish, eliminate or modify any or all subsistence or personal use regulations any any changes in commercial or sport fishery regulations required by such regulations.

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Ron Jolin, Chairman Board of Fisheries

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March 27, 1985

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Pressure Builds On Subsistence as Sturgulewski Breaks With Leadership

By DEAN FOSDICK=

Associated Press Writer=

ANCHORAGE (AP) — Sen. Arliss Sturgulewski has broken with the GOP-dominated Senate leadership by pushing for passage this session of legislation giving all Alaskans subsistence rights to fish and wildlife if they limit their actions to rural areas.

The Anchorage Republican, who announced for governor April 25, wants the subsistence issue taken from the Senate State Affairs Committee, where it has been bottled up for the past two months, and given to Resources, which she chairs.

Sturgulewski has written a draft bill which, she said Monday "has the best shot" at resolving problems stemming from conflicting user groups.

She outlined her concerns and her proposed legislation in a letter Sunday to Senate President Don Bennett, Fairbanks. That, however, stirred up a tempest among some caucus members — particularly Mitch Abood, who chairs the Senate State Affairs Committee.

"If everyone conducted themselves in a fashion which would break bills out of committee, then we'd have chaos," said Abood, Anchorage. "I don't mess with other people's bills and I don't want them messing with mine."

Abood told a reporter he will give the subsistence issue its first Senate hearing Thursday and he may move a bill out of his committee sometime this weekend.

That, however, still would require action by at least two other Senate committees, floor debate and compromise with the House before snipping the issue to the governor.

With lawmakers required to adjourn by midnight Monday, that scenario appears doubtful. Adding some political weight to that conclusion is Bennett's unwavering resolve to delay action on subsistence until next year.

"The pressure is building, but I still don't think it will move," Bennett said Monday afternoon.

The issue wound up with the legislature after the Alaska Supreme Court on Feb. 22 struck down earlier regulations crafted by the state Board of Fisheries. That decision means virtually all Alaskans can qualify for subsistence rights.

Gov. Bill Sheffield introduced a bill about mid-session that would allocate the same subsistence rules by statute that had been mandated by the fish and game boards.

But Bennett has argued that lawmakers don't have enough time to deal with the controversial and complicated issue in just two months, and that it needs extensive public hearings before becoming law.

He wants the issue settled over the interim, with action taken next session.

The House, meanwhile, shipped a bill to the Senate on Saturday slightly changed from Sheffield's original measure.

A House amendment would require the Department of Fish and Game by Jan. 1, 1986, to identify trouble spots in personal use, sport or commercial fisheries around the state that may have been caused by the bill's passage. It also would commit lawmakers to deal with those problems next session.

But Sturgulewski indicated she's looking for a permanent solution not a measure requiring a legislative band-aid in 1986.

In a letter Sunday to Bennett, Sturgulewski expressed "grave concerns about the consequences of inaction."

"We are all aware of the ramifications of no legislation," she wrote. "Among these may be: the closing of some of our major sport and commercial fisheries, federal intrusion into the management of our fish and wildlife resources, unprosecuted violations of fish and game laws and potential damage to our resources," Sturgulewski said.

"I realize there are many in our state who discount these dangers, but the combined risks are grave enough to be of serious concern," she said.

Unlike Sheffield's bill, which would return to rural Alaskans the first right to use fish and wildlife for subsistence, Sturgulewski would open subsistence to all Alaska residents.

But there would be some major strings attached. Subsistence hunting or fishing would be confined to rural areas, the game or fish would have to be consumed in the same rural area where it was taken and it would have to be harvested in traditional ways.

That, Sturgulewski said, would avoid problems with the equal protection clause of the U.S. Constitution.

But Bennett accused Sturgulewski is using the issue for political gain.

"She's obviously a gubernatorial candidate and has statewide interests," he said. "She doesn't want to lose any votes about anything. The bill will get just consideration in h (Abood's) committee."

Bennett said he was expecting Sturgulewski to go it alone on still more issues before the session is wrapped up, and he hinted she may face sanctions from her peers in the 16-member Senate majority caucus.

"This is just the first," he said. "Eventually, my colleagues will have to make a decision."

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WEEK

BC-Fishing-Hunters, 220

D.A.: Need Court Clarification: Issuing New Enforcement Rules  
By DEAN ROSSIGNOL

Associated Press writers

ANCHORAGE (AP) — Fish and wildlife officers have been told to stop seizing evidence, executing search warrants and issuing citations in poaching cases unless so directed by prosecutors until the courts clarify a ruling allowing subsistence as a legal defense.

Anchorage District Attorney Victor Krumm said Tuesday that state prosecutors are going for "the conservative approach" in poaching cases until they get a narrower reading on an April 12 decision from the state Court of Appeals.

"Potentially, there's no closed season on game," Krumm said. "They can claim that (subsistence) as a defense and get away with it."

The appeal court's opinion came in a case involving illegal possession of a dead deer. David Eluska was charged with having a freshly killed doe on Kodiac Island during May, when all deer hunting was prohibited.

Eluska asked a district judge in Kodiak to dismiss the charge, arguing that he was a subsistence hunter and that the state Game Board's regulations failed to provide specifically for subsistence hunting.

District Judge Roy Madsen agreed and dismissed the case, but state prosecutors appealed. They said the general regulations applied to both sport and subsistence hunting.

The appeals court rejected the state's arguments, however, saying they did not square with a 1978 state law on subsistence use.

The panel ordered that the case be retried in Superior Court. Eluska will be allowed to use his subsistence defense, but the judge will not be allowed to dismiss the case this time. It must be heard and decided on the merits of the case, the appeals court said.

"We're looking at it from several directions," Krumm said. "We're in the process of evaluating the case, we're asking for reconsideration of the ruling and we're drawing up a lot of (enforcement) options."

"I'm not ready to discuss the options yet, but some recommendations have been made to the various division heads — recommendations aimed at protecting the resource."

"Clearly, the decision was a serious matter that has to be addressed from an enforcement point of view," he said. "It's potentially very troublesome from our (prosecution) vantage point. But we don't plan to let it become open season on all the animals of the world."

The appeals court decision and an Alaska Supreme Court ruling in February striking down a rule restricting subsistence fishing to rural residents mean big problems for the state's resource managers.

"We view fishing as the immediate problem," Krumm said, indicating that the subsistence defense also might be applied in cases involving fishing.

Sports fishing seasons generally open around the state in summer while hunting seasons begin in autumn.

"We're asking the Court of Appeals to reconsider the effect of its ruling," he said. "We're going in the other direction, too, and suggesting to people in (bureau that they do something (about hunting and fishing rules) quickly."

Yearwhile, state fish and game officers have been ordered to continue investigating and documenting alleged poaching cases, but only under specific guidelines.

Those guidelines were spelled out in a memo issued April 17 by Col. Robert Henderson, director of the Public Safety Department's division of Fish and Wildlife Protection.

The memo:

"... Any violation that involves game and the possibility it was taken for subsistence purposes (i.e., taken for personal consumption), all F&W officers will follow the following guidelines:

1. Investigate and document the case.
2. Present the case to D.A.
3. No physical evidence will be seized unless so directed by D.A.'s office.
4. No search warrants will be executed unless so directed by D.A.'s office.
5. Citations will not be issued unless so directed by D.A.'s

# Sturgulewski offers subsistence bill

By DEAN FOSDICK  
The Associated Press

JUNFAU — Sen. Arliss Sturgulewski has broken with the GOP-dominated Senate leadership by pushing for passage this session of legislation giving all Alaskans subsistence rights to fish and wildlife if they limit their actions to rural areas.

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She outlined her concerns and her proposed legislation in a letter Sunday to Senate President Don Bennett, R-Fairbanks. That, however, stirred up a tempest among some caucus members — particularly Mitch Abood,

who chairs the Senate State Affairs Committee.

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The issue wound up with the legislature after the Alaska Supreme Court on Feb. 22 struck down earlier regulations crafted by the state Board of Fisheries. That decision means virtually all Alaskans can qualify for subsistence rights.

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But Bennett has argued that lawmakers don't have enough time to deal with the controversial and complicated issue in just two months, and that it needs extensive public hearings before becoming law.

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The House, meanwhile, shipped a bill to the Senate on Saturday slightly changed from Sheffield's original measure.

A House amendment would require the Department of Fish and Game by Jan. 1, 1986,



Anchorage Daily News photo

See Page B-3, STURGULEWSKI

Sen. Arliss Sturgulewski

ANCH DAILY NEWS

5-7-85

## Sturgulewski proposes subsistence bill

Continued from Page B-1

to identify trouble spots in personal use, sport or commercial fisheries around the state that may have been caused by the bill's passage. It also would commit lawmakers to deal with those problems next session.

But Sturgulewski indicated she's looking for a permanent solution — not a measure requiring a legislative band-aid in 1986.

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ANCH TIMES 5-7-85

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by Dean Fosdick  
Associated Press

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- (3) During 1985, the board will continue the following presently authorized personal use salmon fisheries in Cook Inlet as personal use fisheries:

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the China Poot hatchery sockeye fishery,  
and the shellfish, herring, and smelt fisheries.

The board cannot reasonably modify or eliminate these fisheries without an opportunity for public comment, which is not possible under the present time frame.

- (4) The fall coho set gill net personal use fishery will however, by emergency regulation, be identified as a subsistence fishery, as required by Madison, and will be managed under the regulations used during the 1981 season, except that current reporting requirements will apply.
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Ron Jolin, Chairman Board of Fisheries

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March 27, 1985