

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672
4222.45 RES SUBSISTENCE: MISCELLANEOUS (file 2) - (file 3) 24

1 essential for regulatory purposes; a fish stock may be the subject of
2 more than one classification;

3 (8) protecting, maintaining and improving watersheds [(7)
4 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management,
5 conservation, protection, use, disposal, propagation, and stocking of
6 fish; watershed and habitat regulations may be adopted under this
7 paragraph only after consultation with the Department of Natural
8 Resources;

9 (9) [(8)] investigating and determining the extent and
10 effect of disease, predation, and competition among fish in the state,
11 and exercising control measures considered necessary to the resources
12 of the state;

13 (10) [(9)] prohibiting and regulating the live capture,
14 possession, transport, or release of [NATIVE OR EXOTIC] fish or their
15 eggs;

16 (11) [(10)] establishing seasons, areas, quotas and methods
17 of harvest for aquatic plants;

18 (12) [(11)] establishing the times and dates during which
19 the issuance of fishing licenses, permits and registrations and the
20 transfer of permits and registrations between registration areas is
21 allowed; however, this paragraph does not apply to permits issued or
22 transferred under AS 16.43;

23 (13) designating and regulating special fishing areas,
24 including personal use areas, trophy management areas, catch-and-
25 release areas, and children's fishing areas, and designating stocks in
26 those areas for which special management is appropriate;

27 (14) establishing a procedure for administrative appeal of
28 board decisions; and

29 (15) regulating commercial, sport, subsistence, and personal

1 use fishing as needed for the conservation, development and utiliza-
2 tion of fisheries.

3 * Sec. 4. AS 16.05.255(a) is amended to read:

4 (a) The Board of Game may adopt regulations it considers advis-
5 able in accordance with the Administrative Procedure Act (AS 44.62)
6 for

7 (1) setting apart and designating game reserve areas,
8 refuges and sanctuaries in the water or on the land of the state over
9 which it has jurisdiction, subject to the approval of the legislature;

10 (2) managing game reserve areas, refuges and sanctuaries;

11 (3) establishing open and closed seasons and areas for the
12 taking of game;

13 (4) [(3)] establishing the means, [AND] methods, marking,
14 and identification requirements employed in the pursuit, capture,
15 possession, tagging and transport of game;

16 (5) [(4)] setting quotas, bag limits, harvest levels, and
17 sex, age, [AND] size, and other limitations on, and game population
18 goals pertaining to, the taking of game;

19 (6) [(5)] classifying game as game birds, song birds, big
20 game animals, fur bearing animals, predators or other categories;

21 (7) [(6)] methods, means, and harvest levels necessary to
22 control predation and competition among game in the state;

23 (8) protecting, maintaining, and improving watersheds [(7)
24 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
25 ment, conservation, protection, use, disposal, propagation and stock-
26 ing of game; watershed and habitat regulations may be adopted under
27 this paragraph only after consultation with the Department of Natural
28 Resources;

29 (9) [(8)] prohibiting the live capture, possession,

1 transport, or release of native or exotic game or their eggs;

2 (10) [(9)] establishing the times and dates during which the
3 issuance of game licenses, permits and registrations and the transfer
4 of permits and registrations between registration areas and game
5 management units or subunits is allowed;

6 (11) regulating sport hunts and subsistence hunts as needed
7 for the conservation, development, and utilization of game and nongame
8 species. (12) *establishing a procedure for administrative appeal of*

9 * Sec. 5. AS 16.05 is amended by adding new sections to read:

10 Sec. 16.05.258. METHODS OF DETERMINING CUSTOMARY AND TRADITIONAL
11 SUBSISTENCE USE AND ALLOCATING FISH AND GAME. (a) The Board of
12 Fisheries and the Board of Game shall:

13 (1) estimate the amount of fish and game needed to provide
14 a reasonable opportunity for rural residents to continue to engage in
15 a customary and traditional subsistence way of life; determinations
16 shall be based on research, analysis, comments, and recommendations of
17 the department;

18 (2) identify and designate the areas used for subsistence
19 harvest, and areas formerly used for subsistence harvest, according to
20 fish stock and game population, and according to subsistence user
21 population; the zones may overlap where different groups of subsis-
22 tence users have customarily and traditionally used the same areas;

23 (3) identify fish stocks and game populations that custom-
24 arily and traditionally have been used by, and are important to, rural
25 residents for subsistence use.

26 (b) The Board of Fisheries or the Board of Game shall assess the
27 biological status of, respectively, the important subsistence fish
28 stocks and the important subsistence game populations in the use
29 zones, and shall determine whether a surplus may be harvested during

1 a regulatory year consistent with the sustained yield principle, sound
2 management principles, and the maintenance of healthy fish stocks, and
3 other wildlife populations.

4 (c) After identifying the important subsistence fish stock or
5 game populations, the appropriate board shall determine the amount of
6 harvestable surplus of the stock or population that will provide a
7 reasonable opportunity to engage in customary and traditional subsis-
8 tence uses of the stocks or populations.

9 (d) The Board of Fisheries and the Board of Game shall adopt
10 regulations, in accordance with the Administrative Procedure Act
11 (AS 44.62), for subsistence fishing and subsistence hunting unless
12 adoption of the regulations could jeopardize or interfere with the
13 maintenance of fish stocks, game populations, or other wildlife popu-
14 lations on a sustained-yield basis, or could be inconsistent with
15 sound management principles or with the maintenance of healthy fish
16 stocks, game populations, or other wildlife populations. The regula-
17 tions may be the same as, different from, or in addition to regula-
18 tions governing other consumptive uses of the stocks or populations.

19 (e) Except as otherwise provided in this chapter or in other
20 state or federal laws, subsistence fishing and subsistence hunting is
21 accorded a preference over other consumptive takings and uses of fish,
22 ~~OR~~ game, ~~[or other wildlife]~~. Whenever it is necessary, after reasonably
23 regulating seasons, bag or catch limits, and means and methods, to
24 further restrict subsistence fishing or subsistence hunting to ⁷protect
25 the continued health and viability of a fish stock or game population,
26 assure sound management, assure the maintenance of a fish stock or
27 game population on a sustained-yield basis, or protect continued
28 future subsistence fishing or subsistence hunting, the preference may
29 be limited by applying the following criteria:

1 (1) customary and direct dependence on the fish stock or
2 game population as the mainstay of livelihood;

3 (2) local residency; and

4 (3) availability of alternative resources.

5 (f) Each board may adopt regulations under this chapter that
6 authorize taking for nonsubsistence uses a stock or population iden-
7 tified as important for subsistence use, to the extent that the non-
8 subsistence uses do not jeopardize or interfere with sound management
9 principles, sustained yield, the maintenance of healthy populations,
10 or the opportunity for taking these resources for subsistence uses
11 under this chapter.

12 (g) The boards, acting jointly, shall adopt regulations that
13 establish criteria that the boards must consider when defining and
14 identifying customary and traditional subsistence uses and customary
15 and traditional subsistence use areas. The regulations ^{shall} may include,
16 but need not be limited to, the following criteria:

17 (1) long-term, consistent patterns of use recurring in
18 specific seasons each year;

19 (2) use patterns consisting of methods and means of harvest
20 characterized by efficiency and economy of effort and cost, and condi-
21 tioned by local circumstances;

22 (3) the consistent harvest and use of fish or game that is
23 near, or reasonably accessible from, the user's residence;

24 (4) use patterns that include the handing down of knowledge
25 of fishing or hunting skills, values, and lore from generation to
26 generation;

27 (5) use patterns in which the hunting or fishing effort or
28 the products of that effort are distributed or shared among others
29 within a definable community of persons, including customary trade,

1 barter, sharing, and gift-giving; customary trade does not include
2 significant commercial enterprises; an area may include specific
3 villages or towns with a historical dependence on subsistence uses;

4 (6) use patterns that include reliance for subsistence
5 purposes on a wide diversity of the fish and game resources of an area
6 and provide substantial economic, cultural, social, and nutritional
7 elements of the life of area residents; and

8 (7) lack of a developed cash economy that could provide all
9 residents of the area a reasonable opportunity for participation.

10 (h) If the appropriate board determines that (1) a particular
11 fish stock or game population is not a customary and traditional
12 subsistence resource or not a significant source of subsistence use
13 and (2) subsistence is not the best use of that fish stock or game
14 population, the board may provide that the fish stock or game popu-
15 lation may not be taken under subsistence regulations, but may be
16 taken under other regulations. The Board of Fisheries may shift
17 subsistence use of a fish stock to a suitable prior or contempora-
18 neous stock of the same or a different species. The Board of Game may
19 shift subsistence use of a game population to another population if a
20 suitable alternative population of the same or a different species is
21 available.

22 (i) The subsistence preference shall provide a reasonable oppor-
23 tunity for subsistence fishing or subsistence hunting. The preference
24 may vary, may be graduated, and may be balanced against the degree of
25 economic and traditional dependence on the resource in question. If
26 dependence on the resource in question is high, the preference shall
27 provide a full opportunity for satisfaction of subsistence needs,
28 including potentially exclusive subsistence use when a resource
29 shortage occurs. If dependence on the resource in question is low,

1 the preference may be less and need not be potentially exclusive. As
2 the degree of dependence varies, the degree of the preference may vary
3 accordingly.

4 Sec. 16.05.259. JUDICIAL APPEAL OF REGULATORY ACTIONS. An
5 aggrieved person must exhaust all administrative remedies before
6 bringing a legal action challenging the adoption or repeal of a regu-
7 lation of the Board of Fisheries or the Board of Game.

8 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

9 (c) The Board of Fisheries and the Board of Game may adopt
10 regulations, under the Administrative Procedure Act (AS 44.62), pro-
11 viding for the issuance and expiration of subsistence fishing permits,
12 subsistence hunting permits, and combination subsistence fishing and
13 hunting permits as needed for authorizing, regulating and monitoring
14 the subsistence harvest of fish and game. The boards shall adopt
15 these regulations when the subsistence preference requires a reduction
16 in the harvest of a fish stock or game population by nonsubsistence
17 users, or when special seasons, bag limits or other provisions are
18 necessary, to provide a reasonable opportunity for subsistence tak-
19 ings. A permit program need not be established in any particular area
20 of the state or for any particular fish stock or game population
21 unless circumstances warrant.

22 (d) The commissioner shall administer subsistence permit pro-
23 grams that may be established. The commissioner may appoint and
24 authorize compensation of persons to take applications and issue
25 permits and tags, and may require reports, as provided for licenses
26 and tags under AS 16.05.360 - 16.05.390.

27 (e) This section may not be construed as altering other require-
28 ments of state or federal law for licenses, permits, stamps, tags, or
29 seals.

1 * Sec. 7. AS 16.05.940(22) is amended to read:

2 (22) "subsistence fishing" means the nonwasteful taking of,
3 fishing for, or possession of fish, shellfish, or other fisheries
4 resources in accordance with regulations adopted under AS 16.05.258
5 for subsistence uses with gill net, seine, fish wheel, long line, or
6 other methods and means defined by the Board of Fisheries;

7 * Sec. 8. AS 16.05.940(23) is amended to read:

8 (23) "subsistence uses" means the nonwasteful, customary and
9 traditional uses by residents of rural subsistence areas in Alaska of
10 wild, renewable resources for direct personal or family consumption as
11 food, shelter, fuel, clothing, tools, or transportation, for the
12 making and selling of handicraft articles out of nonedible by-products
13 of fish and wildlife resources taken for personal or family consump-
14 tion, and for the customary trade, barter, or sharing for personal or
15 family consumption; in [FOR THE PURPOSES OF] this paragraph, "family"
16 means [ALL] persons related by blood, marriage, or adoption, and a
17 [ANY] person living in [WITHIN] the household on a permanent basis;

18 * Sec. 9. AS 16.05.940 is amended by adding new paragraphs to read:

19 (28) "fish stock" means a species, subspecies, geographic
20 grouping or other category of fish manageable as a unit;

21 (29) "game population" means a group of game animals of a
22 single species or geographic subgroup;

23 (30) "nonwasteful" means making reasonable use of a har-
24 vested fish or game animal or most of its parts;

25 (31) "residents of rural subsistence areas" means state
26 residents domiciled in rural areas of the state that the Board of
27 Fisheries and the Board of Game determine, under AS 16.05.258, are
28 customary and traditional subsistence use areas;

29 (32) "subsistence hunting" means the nonwasteful taking of

1 ^{or hunting for} ~~by a person qualified~~ ^{in accordance with regulations adopted} ~~under~~
 2 V game animals V under AS 16.05.258 for subsistence
 3 uses by methods and means defined by the Board of Game.

4 * Sec. 10. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

5 * Sec. 11. This Act takes effect June 1, 1986.

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IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to fishing and hunting; and providing for an effective date."

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

* Section 1. AS 16.05.251(a) is amended to read:

(a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.-62) for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of fish;

(3) setting quotas, bag limits, harvest levels, escapement levels, and sex, [AND] size, age, and other limitations pertaining to [ON] the taking of fish;

(4) establishing the means and methods employed in the pursuit, capture, and transport of fish;

(5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;

Sec 1. S.A.A. (6) classifying as commercial fish, sport fish, personal use fish, subsistence fish, or predators or other categories essential for regulatory purposes;

Sec 2. S.A.A. (7) protecting, maintaining and improving watersheds [WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management,

conservation, protection, use, disposal, propagation, and stocking of fish;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, and exercising control measures considered necessary to the resources of the state;

(9) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(10) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

(11) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43;

Sec 3
(12) designating and regulating special fishing areas, including personal use areas, trophy management areas, catch-and-release areas, and children's fishing areas, and designating stocks in those areas for which special management is appropriate;

(13) regulating commercial, sport, subsistence, and personal use fishing as needed for the conservation, development and utilization of fisheries.

* Sec. 4. AS 16.05.255(a) is amended to read:

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(a) The Board of Game may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

(1) setting apart and designating game reserve areas, refuges and sanctuaries in the water or on the land of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) managing game reserve areas, refuges and sanctuaries;

(3) establishing open and closed seasons and areas for the taking of game;

(4) [(3)] regulating [ESTABLISHING] the means and methods employed in the pursuit, capture and transport of game;

(5) [(4)] setting quotas, bag limits, harvest levels, and sex, age, [AND] size, and other limitations on the taking of game;

(6) [(5)] classifying game as game birds, song birds, big game animals, fur bearing animals, predators or other categories;

(7) [(6)] methods, means, and harvest levels necessary to control predation and competition among game in the state;

Sec 4 (a) (7) ^{amended to read} ~~(7)~~ protecting, maintaining, and improving watersheds [(7) WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management, conservation, protection, use, disposal, propagation and stocking of game;

(9) [(8)] prohibiting the live capture, possession, transport, or release of native or exotic game or their eggs;

(10) [(9)] establishing the times and dates during which the issuance of game licenses, permits and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed;

Sec 5 (a) (10) ^{new section} ~~(10)~~ regulating sport hunts and subsistence hunts as needed for the conservation, development, and utilization of game and nongame species.

* Sec. 3. AS 16.05 is amended by adding new sections to read:

Sec. 6.05.258. SUBSISTENCE USE AND ALLOCATION FISH AND GAME.

(a) The Board of Fisheries and the Board of Game shall:

(1) ^{subsistence harvest} designate ~~areas [used for subsistence harvest]~~, according to fish stock, ~~[and] game population~~, and ~~[subsistence]~~ user population

areas *to reflect common use by different*
the ~~zones~~ may overlap where different groups of subsistence users use the same areas;

(2) identify for each subsistence area, the fish stocks and game populations *important to the subsistence economy and culture of each area;* that customarily and traditionally have been used by, and are important to, rural residents for subsistence use.

(3) estimate *in each area* for each subsistence area, the amount of fish and game needed *to provide a reasonable opportunity for customary and traditional subsistence; use in each exact stocks and populations identified under (2) of this section* to provide a reasonable opportunity for customary and traditional subsistence; determinations shall be based on research, analysis, comments, and recommendations of the department;

(b) [After identifying the important subsistence fish stocks or game populations,] the appropriate board shall assess the biological status of the stocks and populations in each subsistence area, and

The boards shall determine whether a surplus may be harvested during a regulatory year (consistent with [the] sustained yield [principle], sound management [principles], and the maintenance of healthy fish stocks, game populations, or other wildlife populations. The appropriate board shall then determine the amount of harvestable surplus, if any, that will reasonably satisfy subsistence needs.

reasonable regs (c) The [appropriate] board shall adopt [regulations] [in accordance with the Administrative Procedure Act (AS 44.62),] that will provide for subsistence fishing and subsistence hunting *of* the important stocks and populations *at* a level sufficient to *reasonably* satisfy subsistence needs, unless adoption of the regulations could jeopardize or interfere with the maintenance of fish stocks, game populations, or other wildlife populations on a sustained-yield basis, or could be inconsistent with sound management principles or with the maintenance of healthy fish stocks, game populations, or other wildlife populations. [The regulations may be the same as, different from, or in

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addition to regulations governing other consumptive uses of the stocks or populations.)

(d) Except as otherwise provided in this chapter or in other state or federal laws, subsistence fishing and subsistence hunting is accorded a [subsistence] preference ^g over other consumptive takings and uses of fish, game, ^p or other wildlife. This preference is not a preference over nonconsumptive takings and uses of fish, game, or other wildlife, such as catch-and-release fishing if the fish stock is substantially unrelated to customary and traditional subsistence needs, or over the taking, capture, tagging, or transport of fish, game, or other wildlife for biological or management purposes, or over nonconsumptive uses of game in areas, such as national parks, that are open only to subsistence hunting. Whenever it is necessary to restrict subsistence fishing ^{of a surplus} or subsistence hunting ^{of a surplus} to [protect the continued health and viability of a fish stock, game population, or other wildlife population], assure sound management ^{of} [assure the maintenance of a fish stock or game population on a sustained-yield basis] ³ for protect continued future subsistence fishing or subsistence hunting ² the preference may be limited by applying the following criteria:

- (1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

(e) Each board may adopt ^{considered by the purposes of this section} regulations under this chapter that authorize taking ^{identified} for nonsubsistence uses a stock or population identified as ~~important~~ for subsistence use, to the extent that the non-subsistence uses do not jeopardize or interfere with sound management principles, sustained yield, the maintenance of healthy populations,

or the reasonable opportunity for taking these resources for subsistence uses.

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f) If ^a the [appropriate] board determines that (1) a [particular] fish stock or game population is not a [customary and traditional] subsistence resource or not a long established and important source of subsistence use [and (2) subsistence is not the best use of that fish stock or game population], ^{the board may provide that the fish stock or game population ~~may~~ not be taken under subsistence regulations, but may be taken under other regulations. // The Board of Fisheries may shift subsistence use of a fish stock to a suitable prior or contemporaneous stock of the same or a different species that is readily available. The Board of Game may shift subsistence use of a game population to another population if a suitable alternative population of the same or a different species is readily available.}

g) Each board may adopt regulations, under the Administrative Procedure Act (AS 44.62), that prohibit the taking of fish or game for subsistence uses by persons who have not qualified previously for subsistence takings. The authority in this subsection shall not be used to prohibit subsistence use by children or family members of subsistence users.

h) The subsistence preference shall provide a reasonable opportunity for subsistence fishing or subsistence hunting. The preference may vary, may be graduated, and may be balanced against the degree of economic and traditional dependence on the resource in question. [If dependence on the resource in question is high, the preference shall provide a full opportunity for satisfaction of subsistence needs, including potentially exclusive subsistence use when a resource shortage occurs. If dependence on the resource in question is low, the preference may be less and need not be potentially exclusive. As the

degree of dependence varies, the degree of the preference may vary accordingly.

Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries and the Board of Game, acting jointly, shall adopt regulations, under the Administrative Procedure Act (AS 44.62), establish an appeal procedure for persons aggrieved by the adoption or repeal of a fishing or hunting regulation. An aggrieved person must exhaust ~~this~~ administrative remedy before bringing a legal action challenging the adoption or repeal of the regulation.

* Sec. 4. AS 16.05.330 is amended by adding new subsections to read:

(c) The Board of Fisheries and the Board of Game may adopt regulations, under the Administrative Procedure Act (AS 44.62), providing for the issuance and expiration of subsistence permits to areas, villages, communities, groups, or individuals as needed for authorizing, regulating and monitoring the subsistence harvest of fish and game. The boards shall adopt these regulations when the subsistence preference requires a reduction in the harvest of a fish stock or game population by nonsubsistence users, or when special seasons, bag limits or other provisions are necessary, to provide a reasonable opportunity for subsistence takings. A permit program need not be established in any particular area of the state or for any particular fish stock or game population unless circumstances warrant.

(d) With the assistance of the department, the boards shall provide reasonable public notice of the following information to users of a group, community, village, or area subsistence permit:

- (1) the terms of the permit;
- (2) the fish stocks and game populations authorized to be taken under the permit;
- (3) the subsistence use areas covered by the permit.

The Board of Fisheries and the Board of Game may use village and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act) and community, postal, media, or other services appropriate for providing notice.

(e) The commissioner shall administer subsistence permit programs that may be established. The commissioner may appoint state employees or other persons to take applications and issue permits and tags. A person appointed by the commissioner, may administer oaths for permit and tag applications. The commissioner or the appropriate board may require a report from persons using a permit concerning the time, manner, and place of taking fish and game, the kinds and quantity taken, and other information helpful in administering the fish and game resources of the state. Except for state employees, a person appointed by the commissioner under this subsection is entitled to compensation of \$50 per year or \$1 for each permit or tag issued, whichever is greater.

* Sec. 8. AS 16.05.940(22) is amended to read:

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

* Sec. 6. AS 16.05.940(23) is amended to read:

(23) "subsistence uses" means the nonwasteful, customary and traditional uses by a resident of rural [IN] Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family

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consumption; in [FOR THE PURPOSES OF] ~~this paragraph,~~ "family" means [ALL] persons related by blood, marriage, or adoption, and a [ANY] person living in [WITHIN] the household on a permanent basis;

- * Sec. 7. AS 16.05.940 is amended by adding new paragraphs to read:
 - (28) "fish stock" means a species, subspecies, geographic grouping or other category of fish manageable as a unit that, at any time during any season of the year, may be found in water subject to state jurisdiction;
 - (29) "game population" means a group of game animals of a single species or subgroup whose members in whole or in part use, or may be found at any time or during any season of the year in or on, land, air, or water subject to state jurisdiction;
 - (30) "nonwasteful" means making reasonable use of a harvested fish or game animal or most of its parts;
 - (31) "resident of rural Alaska" means a state resident engaged in customary and traditional subsistence use as a way of life and who is domiciled outside the road connected area and outside of a community with a population of 7,000 or more, as determined by the Alaska Department of Community and Regional Affairs;
 - (32) "subsistence hunting" means the nonwasteful taking of game animals by a person qualified under AS 16.05.258 for subsistence uses by methods and means defined by the Board of Game.

- * Sec. 8. AS 16.05.251(b), 16.05.255(b), and 16.05.257(h) are repealed.
- * Sec. 9. This Act takes effect June 1, 1986.



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1 IN THE SENATE *SCS HB 288* BY THE STATE AFFAIRS COMMITTEE
2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fishing and hunting; and provid-
7 ing for an effective date."

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

9 * Section 1. AS 16.05.251(a)(6) is amended to read:

10 (6) classifying as commercial fish, sport fish, personal
11 use fish, subsistence fish, or predators or other categories essential
12 for regulatory purposes;

13 * Sec. 2. AS 16.05.251(a)(7) is amended to read:

14 *uni* (7) (protecting, maintaining, and improving watersheds
15 [WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
16 ment, conservation, protection, use, disposal, propagation, and stock-
17 ing of fish; add DNR consultation

18 * Sec. 3. As 16.05.251(a) is amended by adding new paragraphs to read:

19 (12) designating and regulating special fishing areas,
20 including personal use areas, trophy management areas, catch-and-
21 release areas, and ~~children's~~ *by age* fishing areas, and designating stocks in
22 those areas for which special management is appropriate;

23 (13) regulating commercial, sport, subsistence, and personal
24 use fishing as needed for the conservation, development, and utiliza-
25 tion of fisheries.

26 * Sec. 4. AS 16.05.255(a)(7) is amended to read:

27 (7) protecting, maintaining, and improving watersheds
28 [WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
29 ment, conservation, protection, use, disposal, propagation, and

stocking of game; *DNR consultation*

* Sec. 5. AS 16.05.255(a) is amended by adding a new paragraph to read:

maybe

(10) regulating [^{*they*} sport hunts and ^{*hunting*} subsistence hunts] as needed for the conservation, development, and utilization of game [and nongame] species.

* Sec. 6. AS 16.05 is amended by adding new sections to read:

Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION ^{*of*} FISH AND GAME.

(a) The Board of Fisheries and the Board of Game shall

(1) identify the fish stocks and game populations, or portions of stocks and populations, that are important to the subsistence economy and culture of the area in which they are located; and

(2) estimate the amount of fish and game needed from each stock or population identified under (1) of this subsection to provide a reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

(b) Consistent with sustained yield, ^{*and*} sound management [and the maintenance of healthy fish stocks and game populations] the boards shall determine

(1) whether there exists a harvestable surplus of the stocks and populations identified under (a)(1) of this section; and

(2) how much of the surplus is needed to provide a reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

(c) The boards shall adopt subsistence fishing and subsistence hunting regulations for each stock and population for which a harvestable surplus is determined to exist under ~~this section~~ ^{*section 16.05.258*} If a surplus is not sufficient to accommodate consumptive uses of the surplus, but is sufficient to accommodate subsistence uses of the surplus, then subsistence uses shall be accorded a preference over other consumptive

16.05.258

Fish Subsistence
 Stocks and game populations, or portions of stocks and populations that are not identified, under A(1) of this section, as important to the subsistence of

1 uses, and the regulations shall provide a reasonable opportunity to
 2 satisfy subsistence uses of the surplus, and may provide opportunities
 3 to satisfy other consumptive uses of the surplus. If it is necessary
 4 to restrict subsistence fishing or subsistence hunting in order to
 5 assure sound management or protect future subsistence fishing or
 6 subsistence hunting, then the preference shall be limited, and the
 7 boards shall distinguish among subsistence users, by applying the
 8 following criteria:

- 9 (1) customary and direct dependence on the fish stock or
- 10 game population as the mainstay of livelihood;
- 11 (2) local residency; and
- 12 (3) availability of alternative resources.

13 (d) The boards may adopt regulations consistent with this sec-
 14 tion that authorize taking for nonsubsistence uses a stock or popula-
 15 tion identified under (a)(1) of this section.

16 (e) A board may provide that a fish stock or game population not
 17 identified under (a)(1) of this section may not be taken under subsis-
 18 tence regulations, but may be taken under other regulations. *Both*
 19 Board of Fisheries may shift subsistence use of a fish stock to a
 20 suitable prior or contemporaneous stock of the same or a different
 21 species that is readily available. The Board of Game may shift sub-
 22 sistence use of a game population to another population if a suitable
 23 alternative population of the same or a different species is readily
 24 available.

25 (f) The subsistence preference shall provide a reasonable oppor-
 26 tunity for subsistence fishing or subsistence hunting. The preference
 27 may vary, may be graduated, and may be balanced against the degree of
 28 economic and traditional dependence on the resource in question. If
 29 dependence on the resource in question is high, the preference shall

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1 provide a full opportunity for satisfaction of subsistence uses, in-
2 cluding potentially exclusive subsistence use when a resource shortage
3 occurs. If dependence on the resource in question is low, the prefer-
4 ence may provide a lesser opportunity for satisfaction of subsistence
5 uses and need not be potentially exclusive. As the degree of depen-
6 dence varies, the degree of the preference may vary accordingly.

7 (g) Takings authorized under this section are subject to reason-
8 able regulation of seasons, catch or bag limits, and methods and
9 means.

10 (h) The implementation of a subsistence preference under this
11 section does not affect the eligibility of active duty military
12 personnel, while stationed in the state for more than 30 days, to
13 fish, hunt, or trap on military installations and facilities in the
14 state under 10 U.S.C. 2671.

Board's consultation w/ the department

15 (i) The [commissioner] of fish and game] shall adopt regulations
16 defining "maintenance of healthy populations of fish and game," "sound
17 management principles," and "sustained yield." *define harvestable surplus*

18 Sec. 16.05.259. ADMINISTRATIVE APPEALS. [The Board of Fisheries

19 and the Board of Game, acting jointly, shall establish by regulation
20 an appeal procedure for persons aggrieved by the adoption or repeal of
21 a fishing or hunting regulation.] An aggrieved person must exhaust
22 administrative remedies before bringing a legal action challenging the
23 adoption or repeal of the regulation.

24 * Sec. 7. AS 16.05.330 is amended by adding new subsections to read:

25 (c) The Board of Fisheries and the Board of Game may adopt
26 regulations providing for the issuance and expiration of subsistence
27 permits for areas, villages, communities, groups, or individuals as
28 needed for authorizing, regulating and monitoring the subsistence
29 harvest of fish and game. The boards shall adopt these regulations

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1 when the subsistence preference requires a reduction in the harvest of
2 a fish stock or game population by nonsubsistence users, [or when
3 special seasons, bag limits or other provisions are necessary,] to
4 provide a reasonable opportunity for subsistence takings. [A permit
5 program need not be established in any particular area of the state or
6 for any particular fish stock or game population unless circumstances
7 warrant.]

8 (d) With the assistance of the department, the boards shall
9 provide reasonable public notice of the following information to users
10 of a group, community, village, or area subsistence permit:

11 (1) the terms of the permit;

12 (2) the fish stocks and game populations authorized to be
13 taken under the permit;

14 (3) the subsistence use areas covered by the permit.

15 (e) The Board of Fisheries and the Board of Game may use village
16 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska
17 Native Claims Settlement Act) and community, postal, media, or other
18 services appropriate for providing notice under (d) of this section.

19 (f) The commissioner shall administer subsistence permit pro-
20 grams that may be established. The commissioner may appoint state
21 employees or other persons to take applications and issue permits and
22 tags. A person appointed by the commissioner may administer oaths for
23 permit and tag applications. The commissioner or the appropriate
24 board may require a report from persons using a permit concerning the
25 time, manner, and place of taking fish and game, the kinds and quanti-
26 ty taken, and other information helpful in administering the fish and
27 game resources of the state. Except for state employees, a person
28 appointed by the commissioner under this subsection is entitled to
29 compensation of \$50 per year or \$1 for each permit or tag issued,

whichever is greater.

* Sec. 8. AS 16.05.940(22) is amended to read:

(22) "subsistence fishing" means the nonwasteful taking of, fishing for, or possession of fish, shellfish, or other fisheries resources by a resident domiciled in a rural area of the state for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

*See 39.9.75.30
for legend
copy*

* Sec. 9. AS 16.05.940(23) is amended to read:

(23) "subsistence uses" means the nonwasteful, noncommercial, customary and traditional uses [IN ALASKA] of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL] persons related by blood, marriage, or adoption, and a [ANY] person living in [WITHIN] the household on a permanent basis;

* Sec. 10. AS 16.05.940 is amended by adding new paragraphs to read:

(28) "fish stock" means a species, subspecies, geographic grouping or other category of fish manageable as a unit [that, at any time during any season of the year; [may be found in water subject to state jurisdiction;]

(29) "game population" means a group of game animals of a single species or subgroup whose members in whole or in part ^{are} manageable as a unit [use, or may be found at any time or during any season of the year; in or on, land, air, or water subject to state jurisdiction;]

(30) "nonwasteful" means making reasonable use of a

** wanky waste sections*

1 harvested fish or game animal or most of its parts;]

2 (31) "rural area" means a community or area of the state in
3 which the ~~taking~~ ^{noncommercial and consumption} of fish or game ^{subsistence} [for personal or family consumption] is
4 a significant characteristic of the economy of the community or area;

5 (32) "subsistence hunting" means the nonwasteful taking of
6 ^{hunts for on possession of} game ~~animals~~ by a resident domiciled in a rural area of the state for
7 subsistence uses by means defined by the Board of Game.

8 * Sec. 11. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

9 * Sec. 12. This Act takes effect June 1, 1986.

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1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2

SENATE BILL NO.

Military

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to fishing and hunting; and provid-
7 ing for an effective date."

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

9 [* Section 1. FINDINGS AND INTENT. (a) Sound management of fish and
10 wildlife is more likely to be achieved if the management of fish and wild-
11 life, including allocation among different uses, is done on a biological
12 basis, rather than on the basis of land ownership.]

13 (b) Maintaining healthy populations of fish and wildlife is important
14 to the state because ^{resources are held in common by all citizens} healthy populations provide opportunities for a sub-
15 sistence life style, for trophy and other sport hunting and fishing, for
16 commercial fishing and for wildlife viewing.]

17 (c) To assure that these opportunities remain reasonably available it
18 is necessary

19 (1) that there be an equitable balance among sport, commercial,
20 subsistence, and nonconsumptive ^{uses} [needs];

21 (2) that, when all consumptive uses of fish and game cannot be
22 accommodated without harming the resource, there be a reasonable preference
23 for subsistence use of fish stocks and game populations that are important
24 to subsistence uses;

25 (3) that the Board of Fisheries and the Board of Game have the
26 authority, flexibility, and information needed to maintain sustained yield,
27 healthy populations, and ^{reasonable} opportunities for subsistence, sport, commercial
28 and other consumptive and nonconsumptive uses of fish and game; and

29 (4) that the Board of Fisheries and the Board of Game have

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Repeal of
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1 authority to establish subsistence permit programs.

2 * Sec. 2. AS 16.05.094 is amended to read:

3 Sec. 16.05.094. DUTIES OF DIVISION OF SUBSISTENCE HUNTING AND
4 FISHING. The division of subsistence hunting and fishing shall

5 (1) compile and analyze existing data and data gathered in
6 future studies, and conduct studies to gather information, including
7 data from subsistence users, the public, other divisions of the de-
8 partment

9 role of Sect 2. AS 16.05.050 (14) amended
10 of the : by adding two new sections:
11 clearly

12 (14) Make recommendations to the Boards of
13 wi: Fish and Game regarding adoption, amendment
14 are: and repeal of regulations
15 (15) Provide info to Boards of F & G as needed
16 st: for them to carry out their statutory
17 ter mandated duties!

18 (C) the customary and traditional subsistence uses of
19 fish and wildlife by species, stock, and population in each area
20 of the state;

21 (D) the areas used for subsistence harvest, and areas
22 formerly used for subsistence harvest, according to

- 23 (i) fish stock and wildlife population; and
24 (ii) subsistence user population;

25 (E) the areas, watersheds, flyways, and other habi-
26 tats, whether or not within the state, used by fish and wildlife
27 that are subject to subsistence uses; in identifying these habi-
28 tats, the division shall seek the assistance of other divisions
29 of the department, and other state or federal agencies having

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1 jurisdiction over fish and wildlife;

2 (F) the effect, if any, that subsistence use of each
3 species, stock, or population has on the maintenance of healthy
4 populations, on the sustained yield of these species, stocks, or
5 populations, on other subsistence users, and on sport or commer-
6 cial users whether or not in the state; in identifying these
7 effects, the division shall seek the assistance of other divi-
8 sions of the department and other state or federal agencies
9 having jurisdiction over fish and wildlife;

10 (2) quantify or estimate the amount, nutritional value, and
11 extent of dependence on food acquired through subsistence hunting and
12 fishing according to

13 (A) species, stock, or population of fish and wild-
14 life;

15 (B) population of customary and traditional subsis-
16 tence users; and

17 (C) subsistence use area;

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

20 (4) assist the department, the Board of Fisheries, and the
21 Board of Game in determining what uses of fish and game, as well as
22 which users and what methods, should be termed customary and tradi-
23 tional subsistence uses, users, and methods;

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

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

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Sub. Section*

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1 the division shall consult with appropriate divisions of the depart-
2 ment and, when appropriate, with other state or federal agencies
3 having jurisdiction over fish and wildlife; recommendations must be
4 approved by the commissioner;

5 (7) participate with other divisions of the department and
6 with other departments of state and federal government in the prepara-
7 tion of statewide, [AND] regional, or area management plans affecting
8 fish and wildlife and their habitats so that those plans recognize
9 [REORGANIZE] and incorporate the needs of subsistence users of fish
10 and game.]

11 * Sec. 3. AS 16.05.251(a) is amended to read:

12 (a) The Board of Fisheries may adopt regulations it considers
13 advisable in accordance with the Administrative Procedure Act (AS 44.-
14 62) for

15 (1) setting apart and designating fish reserve areas,
16 refuges and sanctuaries in the waters of the state over which it has
17 jurisdiction, subject to the approval of the legislature;

18 (2) managing fish reserve areas, refuges and sanctuaries;

19 (3) establishing open and closed seasons and areas for the
20 taking of fish;

21 (4) [(3)] setting quotas, bag limits, harvest levels,
22 escapement levels, and sex, [AND] size, age, and other limitations
23 pertaining to [ON] the taking of fish [in waters subject to state
24 jurisdiction;]

25 (5) [(4)] establishing the means and methods, [such as] gear,
26 tackle and vessels employed in the pursuit, capture, and transport of
27 fish;

28 (6) [(5)] establishing marking and identification require-
29 ments for means used in pursuit, capture, possession, tagging, and

fish in categories necessary for mgt.
such as

1 transport of fish;

2 (7) [(6)] classifying^V as commercial fish, sport fish,
3 personal use fish, subsistence fish, [indigenous fish, exotic fish,
4 nonindigenous fish, hatchery fish, or predators or other categories
5 essential for regulatory purposes; a fish stock may be the subject of
6 more than one classification;]

7 (8) protecting, maintaining and improving watersheds [(7)
8 WATERSHED] and habitars [HABITAT IMPROVEMENT], ~~and~~^{and} for the management,
9 conservation, protection, use, disposal, propagation, and stocking of
10 fish; [watershed and habitat regulations may be adopted under this
11 paragraph only after consultation with the Department of Natural
12 Resources;] ?

13 (9) [(8)] investigating and determining the extent and
14 effect of disease, predation, and competition among fish in the state,
15 and exercising control measures considered necessary to the resources
16 of the state;

17 (10) [(9)] ~~[prohibiting and]~~ ^{or prohibiting} regulating^V the live capture,
18 possession, transport, or release of [NATIVE OR EXOTIC] fish or their
19 eggs;

20 (11) [(10)] establishing seasons, areas, quotas and methods
21 of harvest for aquatic plants;

22 (12) [(11)] establishing the times and dates during which
23 the issuance of fishing licenses, permits and registrations and the
24 transfer of permits and registrations between registration areas is
25 allowed; however, this paragraph does not apply to permits issued or
26 transferred under AS 16.43;

27 (13) designating and regulating special fishing areas,
28 including personal use areas, trophy management areas, catch-and-
29 release areas, and children's fishing areas, and designating [species]
^{stocks}

1 in those areas for which special management is appropriate;

2 § (14) establishing a procedure for administrative appeal of
3 board decisions; and] *There is an ^{existing} appeal procedure.*

4 § (15) regulating commercial, sport, subsistence, and personal
5 use fishing as needed for the conservation, development and utiliza-
6 tion of fisheries. §

7 * Sec. 4. AS 16.05.255(a) is amended to read:

8 (a) The Board of Game may adopt regulations it considers advis-
9 able in accordance with the Administrative Procedure Act (AS 44.62)
10 for

11 (1) setting apart and designating } *Authority to do this* game reserve areas,
12 refuges and sanctuaries in the water or on the land of the state over
13 which it has jurisdiction, subject to the approval of the legislature;

14 (2) managing game reserve areas, refuges and sanctuaries; *game game*

15 (3) establishing open and closed seasons and areas for the
16 taking of game;

17 *talk to dept* (4) [(3)] establishing the means, [AND] methods, marking, ①
18 and identification requirements] employed in the pursuit, capture,
19 possession, tagging and transport of game;

20 (5) [(4)] setting quotas, bag limits, harvest levels, and
21 sex, age, [AND] size, and other limitations on, and game population
22 goals pertaining to, the taking of game;]

23 (6) [(5)] classifying game as game birds, song birds, big
24 game animals, fur bearing animals, predators or other categories;

25 (7) [(6)] methods, means, and harvest levels necessary to
26 control predation and competition among game in the state;

27 (8) protecting, maintaining, and improving watersheds [(7)
28 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
29 ment, conservation, protection, use, disposal, propagation and

SB 8001 ① *This, if adopted would subject every staff management technique to APA procedures (Aerial wolf hunting etc.)*

New authenticity.

1 stocking of game; watershed and habitat regulations may be adopted
2 under this paragraph only after consultation with the Department of
3 Natural Resources; }

4 (9) [(8)] prohibiting the live capture, possession, trans-
5 port, or release of native or exotic game or their eggs;

6 (10) [(9)] establishing the times and dates during which the
7 issuance of game licenses, permits and registrations and the transfer
8 of permits and registrations between registration areas and game
9 management units or subunits is allowed;

10 (11) regulating sport hunts and subsistence hunts as needed
11 for the conservation, development, and utilization of game and nongame
12 species. *redundant* *not needed*

13 * Sec. 5. AS 16.05 is amended by adding new sections to read:

14 Sec. 16.05.258. METHODS OF DETERMINING CUSTOMARY AND TRADITIONAL
15 SUBSISTENCE USE AND ALLOCATING FISH AND GAME. (a) The Board of
16 Fisheries and the Board of Game, acting jointly, *OR separately as decided by the Board* shall:

17 (1) *Determine* [estimate] the amount of fish and game needed to provide
18 a reasonable opportunity [for rural residents] to continue to engage in
19 a customary and traditional subsistence way of life; determinations
20 shall be based on research, analysis, comments, and recommendations of
21 the [subsistence division]; *Department of Fish and Game and public.*

22 (2) identify [and designate] the areas used for subsistence
23 harvest, and areas formerly used for subsistence harvest, according to
24 fish stock and game population, and according to subsistence user
25 population; the zones may overlap where different groups of subsis-
26 tence users have customarily and traditionally used the same areas;

27 (3) identify fish stocks and game populations that custom-
28 arily and traditionally have been used by, and are important to, rural
29 residents for subsistence use. *Redundant again, see (1)*

This section is the Dept's responsibility. Board is not qualified.

over

(b) The Board of Fisheries or the Board of Game shall assess the biological status of, respectively, the important subsistence fish stocks and the important subsistence game populations in the use zones, and shall determine whether a surplus may be harvested during a regulatory year consistent with the sustained yield principle, sound management principles, and the maintenance of healthy fish stocks, and [game populations] or other [wildlife populations]

(c) After identifying the important subsistence fish stocks or game populations, the appropriate board shall determine the amount of harvestable surplus of the stock or population that will provide a reasonable opportunity to engage in customary and traditional subsistence uses of the stocks or populations.

(d) The Board of Fisheries and the Board of Game shall adopt regulations, in accordance with the Administrative Procedure Act (AS 44.62), for subsistence fishing and subsistence hunting unless adoption of the regulations could jeopardize or interfere with the maintenance of fish stocks, game populations, or other wildlife populations on a sustained-yield basis, or could be inconsistent with sound management principles or with the maintenance of healthy fish stocks, game populations, or other wildlife populations. The regulations may be the same as, different from, or in addition to regulations governing other consumptive uses of the stocks or populations.

(e) Except as otherwise provided in this chapter or in other state or federal laws, subsistence fishing and subsistence hunting [on land or water subject to state jurisdiction] is accorded a [subsistence] preference over other consumptive takings and uses of fish, game, or other wildlife. [This preference is not a preference over nonconsumptive takings and uses of fish, game, or other wildlife, such

1 as catch-and-release fishing if the fish stock is substantially
2 unrelated to customary and traditional subsistence needs, or over the
3 taking, capture, tagging, or transport of fish, game, or other
4 wildlife for biological or management purposes, or over nonconsumptive
5 uses of game in areas, such as national parks, that are open only to
6 subsistence hunting.] Whenever it is necessary to restrict subsistence
7 fishing or subsistence hunting ^{bag limits and methods and means} ~~on~~ ^{beyond reasonable regulations on seasons,} land or water subject to state
8 jurisdiction] to protect the continued health and viability of a fish
9 stock, ^{or} game population, [or other wildlife population,] ^{or} assure sound
10 management, assure the maintenance of a fish stock or game population
11 on a sustained-yield basis, or protect continued future subsistence
12 fishing or subsistence hunting, the preference may be limited by
13 applying the following criteria:

14 (1) customary and direct dependence on the fish stock or
15 game population as the mainstay of livelihood;

16 (2) local residency; and

17 (3) availability of alternative resources.

18 (f) Each board may adopt regulations under this chapter that
19 authorize taking for nonsubsistence uses a stock or population iden-
20 tified as important for subsistence use, to the extent that the non-
21 subsistence uses do not jeopardize or interfere with sound management
22 principles, sustained yield, the maintenance of healthy populations,
23 or the opportunity for taking these resources for [customary and
24 traditional] subsistence uses under this chapter.

25 (g) The boards, acting jointly, shall adopt regulations that
26 establish criteria that the boards must consider when defining and
27 identifying customary and traditional subsistence uses and [if appro-
28 priate,] customary and traditional subsistence use areas. The regula-
29 tions may include, but need not be limited to, the following criteria:

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

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

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

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

(5) the means of storing fish or

tions, but not e

(4) [(6) [a] edge of fishing generation;

(5) [(7) [a] the products of

within a definab

barter, sharing,

significant commercial enterprises; an

villages or towns, with a historical

users and encompasses individuals, families, or groups who meet the

criteria described in this subsection]; and

(c) [(8) [a] use pattern that includes reliance for subsistence

purposes on a wide diversity of the fish and game resources of an area

and provides substantial economic, cultural, social, and nutritional

elements of the [subsistence user's] life of area residents.

(h) If the appropriate board determines that (1) a particular

fish stock or game population is not a customary and traditional

(7) lack of a developed cash economy ~~for~~ the area which could provide all residents of a reasonable opportunity for participation.

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1 subsistence resource or not a significant source of subsistence use
2 and (2) subsistence is not the best use of that fish stock or game
3 population, the board may provide that the fish stock or game popu-
4 lation may not be taken under subsistence regulations, but may be
5 taken under other regulations. The Board of Fisheries may shift
6 subsistence use of a fish stock to a suitable prior or contempora-
7 neous stock of the same or a different species. The Board of Game may
8 shift subsistence use of a game population to another population if a
9 suitable alternative population of the same or a different species is
10 available.

11 [(i) Each board may adopt regulations, under the Administrative
12 Procedure Act (AS 44.62), that prohibit the taking of fish or game for
13 subsistence uses by persons who have not qualified previously for
14 subsistence takings.]

15 (j) The subsistence preference shall provide a reasonable oppor-
16 tunity for subsistence fishing or subsistence hunting. The preference
17 may vary, may be graduated, and may be balanced against the degree of
18 economic and traditional dependence on the resource in question. If
19 dependence on the resource in question is high, the preference shall
20 provide a full opportunity for satisfaction of subsistence needs,
21 including potentially exclusive subsistence use when a resource
22 shortage occurs. If dependence on the resource in question is low,
23 the preference may be less and need not be potentially exclusive. As
24 the degree of dependence varies, the degree of the preference may vary
25 accordingly.

26 [Sec. 16.1
27 and the Board
28 procedure for
29 or hunting r.

New Section requiring aggrieved
persons to request Board to
change or reconsider regulation
before challenging regulation
in court. - Retain requirement for
exhaustion of any appeals procedure that may

heries
appeal
ishing
this

1 administrative remedy before bringing a legal action challenging the
2 adoption or repeal of the regulation.]

3 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

4 (c) The Board of Fisheries and the Board of Game may adopt
5 regulations, under the Administrative Procedure Act (AS 44.62), pro-
6 viding for the issuance and expiration of subsistence fishing permits,
7 subsistence hunting permits, and combination subsistence fishing and
8 hunting permits as needed for authorizing, regulating and monitoring
9 the subsistence harvest of fish and game. The boards shall adopt
10 these regulations when the subsistence preference requires a reduction
11 in the harvest of a fish stock or game population by nonsubsistence
12 users, or when special seasons, bag limits or other provisions are
13 necessary, to provide a reasonable opportunity for subsistence tak-
14 ings. A permit program need not be established in any particular area
15 of the state or for any particular fish stock or game population
16 unless circumstances warrant.

17 (d) Each board may establish programs [to] ^{for}issuance ^{of} subsistence
18 permits. [to individuals, groups, communities, villages, or areas].
19 Nothing in this section shall be construed as altering other require-
20 ments of state or federal law for licenses, permits, stamps, tags, or
21 seals.

22 (e) With the assistance of the department, the boards shall
23 provide reasonable public notice of the following information: [to users
24 of a group, community, village, or area subsistence permit:]

25 (1) the terms of the permit;

26 (2) the fish stocks and game populations authorized to be
27 taken under the permit;

28 (3) ^{to residents of} the subsistence use areas covered by the permit.]

29 (f) The Board of Fisheries and the Board of Game may use village

1 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska
2 Native Claims Settlement Act) and community, postal, media, or other
3 services appropriate for providing notice under (e) of this section.]

4 (g) [The commissioner shall administer subsistence permit pro-
5 grams t The commissioner may appoint state
6 employe For purposes of administration permits and
7 tag. of distribution and sale of permits nister oaths
8 for pe ~~state~~ parallel - dept of revenue appropriate
9 board administration. ncerning the
10 time, he kinds and
11 quanti histering the
12 fish: employees, a
13 person on is entitled
14 to compensation of tag issued,
15 whichever is greater.]

16 [(h) A person who holds a limited entry permit may not engage in
17 subsistence fishing for a species of fish authorized under the limited
18 entry permit unless the person proves to the satisfaction of the
19 commissioner's appointee that

20 (1) the limited entry permit was not and will not be used
21 during the season in which the subsistence fishing occurred or is to
22 occur;

23 (2) the species of fish was not taken under the limited
24 entry permit for personal or family consumption; or

25 (3) if a species of fish taken under the limited entry
26 permit was used or kept for personal or family consumption, the person
27 needs additional subsistence fish of the same species for reasons
28 approved by the department.]

29 [* Sec. 7. AS 16.05.930(e) is amended to read:

1 (e) This chapter does not prevent the traditional trade or
2 barter of fish and game taken by subsistence hunting or subsistence
3 fishing, except that the commissioner may prohibit the trade or barter
4 of subsistence-taken fish and game by regulation, emergency order, or
5 otherwise, if a determination on the record is made that the trade or
6 barter is resulting in a waste of the resource, damage to fish stocks
7 or game populations, or circumvention of fish or game management
8 programs.]

9 * Sec. 8. AS 16.05.940(22) is amended to read:

10 (22) "subsistence fishing" means the nonwasteful taking of,
11 fishing for, or possession of fish, shellfish, or other fisheries
12 resources [by a person qualified] *Resident at a rural subsistence area as determined by the boards*
13 uses with gill net, seine, fish wheel, long line, or other methods and
14 means defined by the Board of Fisheries;

15 * Sec. 9. AS 16.05.940(23) is amended to read:

16 (23) "subsistence uses" means the nonwasteful, customary and
17 traditional uses by a resident of rural [IN] Alaska of wild, renewable
18 resources for direct personal or family consumption as food, shelter,
19 fuel, clothing, tools, or transportation, for the making and selling
20 of handicraft articles out of nonedible by-products of fish and wild-
21 life resources taken for personal or family consumption, and for the
22 customary trade, barter, or sharing for personal or family consump-
23 tion; in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL]
24 persons related by blood, marriage, or adoption, and a [ANY] person
25 living in [WITHIN] the household on a permanent basis;

26 * Sec. 10. AS 16.05.940 is amended by adding new paragraphs to read:

27 (28) "fish stock" means a species, subspecies, geographic
28 grouping or other category of fish manageable as a unit [that, at any
29 time during any season of the year, may be found in water subject to

1 state jurisdiction];

2 (29) "game population" means a group of game animals of a
3 single species or ^{geographic} subgroup [whose members in whole or in part use, or
4 may be found at any time or during any season of the year in or on,
5 land, air, or water subject to state jurisdiction];

6 (30) "nonwasteful" means making reasonable use of a har-
7 vested fish or game animal or most of its parts;

8 (31) "resident of rural Alaska" means a state resident,
9 [engaged in customary and traditional subsistence as a way of life];

10 (32) "subsistence hunting" means the nonwasteful taking of
11 ^{Remove} game animals by a person qualified under AS 16.05.258 for subsistence
12 ^{includ} ^{bias.} uses by methods and means defined by the Board of Game.

13 * Sec. 11. AS 16.05.251(b), 16.05.255(b), and 16.05.257[h] are re-
14 pealed.

15 * Sec. 12. This Act takes effect June 1, 1986.

16

→ domiciled in a rural area of the state that is determined to be a customary and traditional subsistence use area by the Boards of Fisheries and Game under AS 16.05.258.

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The Alaskan Subsistence Myth

Everyone can agree that earlier white men were not always forthright and fair in their dealings with Alaska's natives. But does this mean we should now overcompensate for our ancestors' sins?

By Ron Dalby

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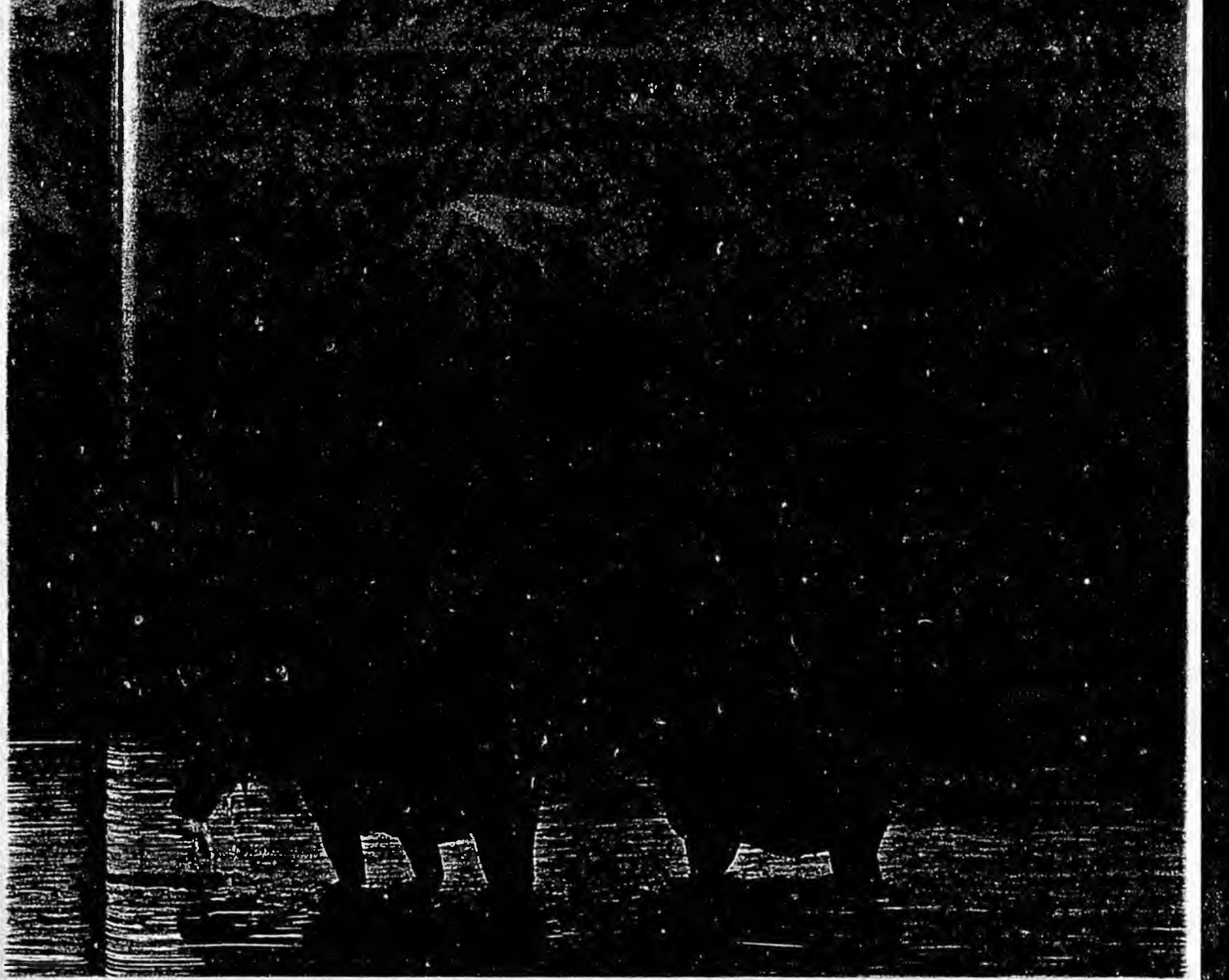
Few things are more contentious in Alaska than the use of the word "subsistence." Except for temporarily ambivalent newcomers, everyone in Alaska is either for or against subsistence. How they feel depends largely on the culture from which they have descended. Native groups adamantly support subsistence as the expression of their own interests. Other groups don't see the situation quite the same way.

Defining subsistence is the core of the

problem. The Alaska Legislature, with the help of the political winds, has decided on a bland, safe statement concerning traditional and customary uses of naturally occurring resources; the statement leaves a lot to be desired. Both the state and federal governments are keenly aware of the potential political backlash if a stronger definition is adopted.

There is no middle ground to be taken when defining subsistence; one side or the other must win.

BY ERVIN AND PEGGY BAUER



ALASKAN SUBSISTENCE MYTH

continued from page 73

the other is going to be extremely displeased with the still-unknown final determinant. Both sides are potent political forces.

The dictionary defines "subsistence" as "the act, state, or a means of subsisting." "Subsist" is defined as "to exist; to be sustained, nourished, etc.; live." Combining the two, we can view subsistence as a means of existing, a means of sustaining, a means of nourishing, or a means of life.

Considering that subsistence in Alaska refers to millions of pounds of fish and game each year, the definition is far-reaching in its impact. The potential for fraud is massive. Alaskan native groups, for example, have convoluted subsistence into meaning a lifestyle, which is obviously the most favorable interpretation for their goals.

Two other words that reappear in any subsistence discussion are "tradition" and "customary." The former is defined as "communal custom or usage." "Customary" is defined as "commonly practiced."

Customs and traditions are not created overnight. Every culture adopts its own only after generations of experience.

Archaeologists talk in terms of 10,000 years when discussing the development of the native cultures in Alaska. Most of us are used to reading such numbers and hardly give them a second thought. Think, though, of 10,000 years as 500 generations, quite an adequate length of time for developing customs and traditions. Then look at the white man's history in America. It's been about 10 generations since the Declaration of Independence was signed. In that sense, the white man in North America has few traditions when matched against an Eskimo culture that was active at the time the pyramids were built in Egypt. Then again, maybe the white man does in fact have a traditional subsistence culture.

Accepting, for the moment, the concept of subsistence as a lifestyle going back 100 centuries or more for the Eskimo, an immediate reaction is that subsistence is a bona fide claim. But wasn't the white man of 10,000 years ago also practicing subsistence? If you take one of the cultures back 10,000 years, it's only fair to do the same for the other. Only during the past few centuries has white man's technology become a cultural factor in Western civilization.

That technology was necessary for the survival of European society. Long before Alaskan native cultures faced, or would face, the problem, Europeans ran out of range. A barely inhabited New World discovered at the end of the Middle Ages was indeed fortunate for Europeans; they needed to expand. Technology transported their culture westward, beginning a 500-year saga of conflict with the scattered bands of peoples populating the Americas.

Columbus called the people he met Indians, assuming his navigation to be better than it really was. But who were these Indians, and how did they get here? Most scientists agree that the first men in the Americas came across a Bering Sea land bridge that existed during the Ice Age, probably following roving herds of game.

Their tools for making a life in the world were few and crude. Weapons were of stick and stone. Killing animals to sustain life was an all-consuming occupation. One

killed animals to sustain life and nourish the body. From the time of the crossing until the relatively recent contact with the white man, this was the native culture in Alaska. Subsistence was indeed a lifestyle.

Archaeologists suggest that in Alaska it was an all-pervasive lifestyle because little evidence exists indicating war or other social contact between native groups within the region. This is diametrically opposed to most native cultures elsewhere in the Americas. Cultures that flourished in milder climates had time to war and to socialize between feuds. Alaskan natives did not have that luxury except, to a certain extent, in milder southeastern Alaska.

Think for a moment what this subsistence lifestyle must have been like. If you were a coastal Eskimo, you spent long days on the frozen ocean waiting for a seal to come within range of your crude spear. Or you spent days trying to herd caribou into a killing pen so that your arm's-length weapons could be effectively used. Each animal killed provided food, clothing, and other necessities. Little was wasted. The more that was wasted, the sooner another animal would have to be acquired for the table.

Five hundred years ago, the subsistence lifestyle took every waking moment of every day. If you didn't work at it all day, every day, you died. There was no middle ground.

Farther inland, the Athapaskan Indians faced a slightly different environment but a similar challenge. Again, subsistence was a lifestyle, as a man's entire being was required to provide the necessary nourishment and materials for survival.

The men that followed Columbus came to settle a wild land and make it productive. As always when two cultures confront each other, one gives way more than the other, although neither remains unchanged. Slowly, over four centuries, the Indian and the Eskimo yielded much to the white man's ways. Some changes were forced, but many were eagerly embraced.

By the time Western civilization reached Alaska, most white men were more or less out of the habit of eliminating native tribes just because they were there. (The early Russians in the Aleutian Islands were an exception.) To be sure, natives were treated as second-class citizens in every sense of the word, but at least they weren't subject to politically inspired military campaigns

Where Greed May Lead

In 1971, the U.S. government enacted the Alaska Native Claims Settlement Act. Part of that legislation specifically stated that Alaskan natives had to surrender all future aboriginal claims in exchange for 44 million acres of land and \$982 million. Ever since native leaders agreed to accept the money and the land, they have been screaming that it isn't enough. The only persons so far enriched by the scheme are the lawyers paid to grab more through the court system for the native corporations organized to manage the land and the money.

Approximately 75,000 natives (persons having one-quarter or more Alaska-native blood) qualified under the terms of ANCSA. Thus, each pro-rated share of the settlement was 587 acres of land and more than \$13,000. Natives got first choice of the 90-plus percent of Alaska that was then federally owned.

The world's population is now past the four billion mark and is expected to double in 75 years or less. It's absurd for anyone in today's world to be entitled to nearly 600 acres of ground because of an ancestor's chance choice of campsite, and then to scream that it's not enough.

Recently, another idea has generated headlines—that Indian/Eskimo bands should become sovereign nations. They then could enter into treaties with the United States, thus controlling their own destinies. That is a preposterous argument. Anyone who accepts it is unwittingly suggesting that we carve up the entire country into isolated mini-nations centered around localized cultural/racial majorities. Instead of a single powerful nation able to shape our own destiny, we would become little more than a collection of economic and social basket cases.

Perhaps we should give one group a chance to make it as a separate nation

—the village of Venetie. The villagers have done a lot of complaining recently. Cast them adrift without state police services, without state-supported educational services, without qualified wildlife managers, and most of all, without state and federal welfare programs. Let them maintain their own airport, and allow them unrestricted access to the game on their lands. Two years from now, when they've shot all the animals and failed as a Third World country, ask them how they like it.

The issue of native sovereignty is a thorn in everyone's side, natives and others alike. It's a no-win proposition for all but the lawyers who argue any ridiculous position as long as their outrageous fees are met. Alaska's native peoples have much more pressing needs for their money, realistic problems that could be solved with the money indiscriminantly thrown at lawyers.

How many Indian and Eskimo children could have used money paid in legal fees for a college scholarship? How many natives in small villages suffer from a lack of local medical care—care that could be provided by building clinics and hiring doctors with some of the money used to buy lawyers?

And, perhaps most important of all, how many native corporations are in financial trouble—1991, when the corporations go public as mandated by the ANCSA, is only five years away. The millions squandered for legal battles will loom large when some of the fiscally troubled corporations are forced to sell out to private investors because they are financially unable to prevent a takeover. The Alaska natives' title to their lands now exists in the form of corporate stock, stock which soon can be sold by the owners to anyone wishing to buy it. When the stock is sold, the land is gone forever.

aimed at their extinction.

Limited, sporadic contact with European cultures began during the 18th century for Alaskan natives. Initially, the food-gathering clans that met the great sailing ships were reasonably content with their first experiences with an "advanced" culture. After all, these fair-skinned men brought trading objects that warmed a hunter's heart: steel knives, pots, and guns. Subsistence, though still fitting the natives' earlier idea of a lifestyle, became a little easier. This continued as more ships visited Alaska and the products they carried got better all the time. No longer was it necessary to be within arm's length of an animal to kill it. Bears could be challenged from safe distances. Just as automation had an impact on the manufacturing world, machines began reducing the amount of time it took to "earn a living" in Alaska.

Not all contact between Alaskan natives and white men went so smoothly, however. Besides a treasure trove of useful objects, the white man also brought disease, alcohol, and other social ills to the North. Our conscience and various vocal native groups won't let us forget that.

Still, it would be hard to think of village life in Alaska today as anything remotely resembling the past. Airplanes, jet boats, snowmobiles, and all manner of mechanical contrivances have eliminated the subsistence burden. Why walk when you can ride? Why spend two weeks stalking caribou when you can fly out and fill an airplane with meat in a couple of hours? Subsistence as a lifestyle in the 1980s is hard

to justify. One is forced to look closely at whether this is used as the only means of maintaining life.

The situation is more problematic when you realize that a remote northern Alaska village of 400 people imported 212,000 cans of soda pop in 1976. It has been pointed out that a village that can afford to pay air freight for 80 tons of soda and the resulting dental bills can certainly afford a sim-

Airplanes, jet boats, snowmobiles, and all manner of mechanical contrivances have eliminated the subsistence burden.

ilar tariff on protein. Now ask yourself again if a subsistence lifestyle is necessary as a means of nourishing, of existing, or of sustaining. This is the key question.

The problem of subsistence began to confront Alaskans seriously as America reached the height of its liberal thinking during the 1960s and early 1970s. After World War II, many Americans led the good life, materially at least. But as this more comfortable way of living became more prevalent, our national conscience began bothering us. There were some people in the United States who didn't enjoy the same burgeoning prosperity. One group

many persons zeroed in on was the American Indian and, by association, the Eskimo—the descendants of the nonwhite groups who met Columbus.

Probably one of America's failings on the international scene is its national conscience. In the case of American natives, it just took us a little longer to see what lay on our doorstep. But when we did see it, we outdid ourselves with pangs of grief in the form of land grants and monetary awards to the native groups within our borders. Not that some of this wasn't justified; the white man's record in the New World is not unblemished. In keeping with our growing tradition of assistance, however, we may have overdone it with the Alaska Native Claims Settlement Act of 1971.

On December 18, 1971, President Nixon signed ANCSA into law. With a stroke of his pen, approximately 75,000 natives (only one-quarter native blood was all it took to qualify) gained fee-simple title to 44 million acres of land and \$982 million. Overnight, the natives of Alaska came to own more land than is held in trust by all the other Indian tribes in the United States. It works out to more than \$13,000 and nearly 600 acres of land per person, by far the most generous settlement ever granted. Historically, there is no precedent.

As all landowners may do, native groups holding title may restrict access and activities, and even create their own law enforcement. It is their land, and much of it is the best Alaska has to offer. Under the provisions of ANCSA, natives were able to se-

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lect the lands they wanted from the more than 90 percent of Alaska that was then federally owned.

In recent years, the hue and cry over land use and ownership has assumed even greater dimensions. In 1980, at the urging of President Carter, Congress enacted legislation setting aside huge tracts of Alaska that covered nearly as much land as the state of California. These areas are administered by various departments of the National Park Service, Bureau of Land Management, and the Forest Service. In about half of this restricted land, hunting is outlawed, with one exception. Alaska natives who have "traditionally" used this ground have more or less free rein to practice their "customary" lifestyle. In simple terms, they have exclusive rights to shoot game animals in several national parks in addition to exclusive rights on the 44 million acres they already own.

The old adage that "possession is nine-tenths of the law" is a strong factor in the current battle over subsistence. The native groups own the land, land that is the source of the subsistence lifestyle they say they must practice.

Natives comprise about 15 percent of Alaska's population. There is considerable concern about such a minority owning and having exclusive access to a disproportionate share of the available resources. There are more than four billion people in the world today, a population that will double within 75 years. It's tough to argue logically that 75,000 people should be entitled to 600 acres of ground each, in addition to

special privileges on federal land otherwise closed to hunting for most Americans, just because of an ancestor's chance choice of campsite. Why should one special group be allowed as much as 100 percent of an available resource?

Separate laws govern subsistence gatherers in Alaska. Are these laws really necessary?

The time it takes in modern Alaska to gather enough wildlife to live on has been drastically reduced in the past couple of centuries. Thus, living a strictly subsistence lifestyle can either provide much more game than a person so engaged requires, or give the individual a lot of free time to pursue this lifestyle. And many who practice a subsistence lifestyle also collect a significant share of the various welfare monies available to those whose income is not up to a certain standard. Because this standard is based entirely on measurable quantities of money, there may well be a certain unfairness in paying someone cash and food stamps when this person and his family are eating a balanced diet, living in a government-built house, and spending their lives on land deeded to them.

In light of this problem and the enactment of separate laws governing those who fish and hunt for subsistence, consider just the sportfishing and sport-hunting regulations and their respective bag limits. Assume a subsistence family to be four people: husband, wife, and two children.

Taking the bag limits—which vary depending on the units hunted—for only one of the four family members, we find that it

is possible to take one moose, one to 10 caribou (unlimited caribou in one unit), one to three black bears, one to three Dall sheep, one or two mountain goats, one to five deer, and various other big-game animals. To this, add bag limits of five to 15 grouse and 10 to 20 ptarmigan daily for an eight-month-long season. In the fall, add seven to 10 ducks and six snow geese daily. There are also no closed seasons or limits on snowshoe hares in most parts of Alaska. The amount of meat available to a single hunter reaches astronomical proportions under sporting regulations alone.

Consider the hunter who, during the appropriate seasons, bags only one moose, one caribou, one black bear, 45 ducks, and 100 other birds and small-game animals. After butchering, that's at least 1,500 pounds of edible meat—almost one pound for each person in the family per day. And this is only a fraction of one family member's legal limit of game.

Sportfishing limits are also quite generous. Freshwater fishermen can take at least 30 fish or more each day if they seek more than a single species. There are many places in Alaska where it is possible to catch three or more kinds of fish in a single body of water. Even if the fish are small, this can easily be 15 pounds of fish a day. By only using a part of the allowable bag limits under sporting regulations for one person, it is possible to provide each member of a four-person family a pound of meat and a pound of fish daily. How many of us purchase 3,000 pounds of meat and fish annually to feed our family? →

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Until now, rod-and-reel combos not only *looked* like toys, they *fished* like toys. No wonder serious fishermen wouldn't be caught dead with one.

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As a last note, using the bag limits available to the entire family, enough meat/fish protein should be available to support a large dog team, another of the reasons advanced by subsistence users seeking special status, though many now ride snowmobiles instead of sleds.

Not everyone can hunt each of the animals listed because they don't range everywhere in the state. And not everyone is going to catch a limit of fish every time out, either. Still, when the sporting regulations are balanced with the types of fish and game available in the various regions of the state, 3,000 pounds per family per year is not at all unrealistic for the true practitioner of a subsistence lifestyle. All one has to do is part with a few dollars for the required licenses. Subsistence regulations are redundant and encouraged only by special interest groups looking for an easy way out.

Earlier we noted that a subsistence lifestyle occupied all of a man's time and energy 500 years ago. Restricting subsistence users to sporting regulations would tend to make subsistence a similar lifestyle once again. Those choosing such a lifestyle should be willing to spend the hours necessary to practice their way of life.

Native special interest groups, however, are fighting to continue the confusing overregulation that makes it easier for their members to get away with more than a fair share of dwindling or finite natural resources. This may be a key thought in the

entire subsistence argument. With the world's population escalating past the four billion mark, what gives a minority of a population in any area the right to a disproportionate share of the resources?

Sportsmen in Alaska generally agree that subsistence has been grossly mishandled by the state and federal governments. Most Alaskans supplement their diets with the fish and game they collect in their limited spare time. Why should a declared subsistence user with unlimited time to fish and hunt be allowed mass killing methods, more liberal bag limits, and greater access to land, all under the guise of a single word?

There are problems with implementing a sporting-regulations-only system in Alaska. It couldn't happen overnight; instead, it would require considerable conditioning. The end, however, could well justify the means. And if the declared subsistence hunter failed for any reason, he or she could then fall back on the welfare system, much as would anyone else laid off from a job or otherwise unable to work.

Limiting welfare payments to subsistence users is a powerful argument. People living in free housing on free land and who gather more than enough food to meet their needs are obviously in a different league than those to whom a welfare check is a sole means of support. More succinctly, if subsistence provides life's necessities, why should taxpayers living in the money economy fund the luxuries, especially when the choice of a subsistence lifestyle is made by

the individual? Subsistence is a job rewarded materially, not with money that can be exchanged for those materials.

Subsistence users are after the best of both worlds. They can have the personal satisfaction of providing for their own daily needs, yet someone else provides them with the money necessary to fit into another culture that they say is not theirs. This dualism, recognized or otherwise, is a fact of life in rural Alaska.

Few people have the option of choosing the best of two worlds; in fact, many don't have a chance to gain the best of one. Yet small groups in Alaska and elsewhere in the country are demanding and getting everything they want from our modern industrial society while claiming they belong to and practice another culture. Given the choice, there's probably no one who would decline the opportunity to have the best of two worlds.

There are no easy answers. Everyone can agree that earlier white men were not always forthright and fair in their dealings with natives. But are we now overcompensating for our past? Those natives who currently benefit say that all they receive is still not enough as they battle in court for more. Those who realize only higher taxes and limited access to land as a result are beginning to realize that the cost is far too much. It might be worth noting that the latter group is by far the larger in terms of numbers. And numbers are political power in a democracy.



PICK OF PICKUPS

continued from page 75

and body design are all similar. Two and four-wheel-drive are available (75 percent of all mini sales nationwide are 2x4s).

There is a new 2.5-liter, four-cylinder fuel-injected gas engine as standard for the Comanche/Cherokee/Wagoneer. It produces a maximum of 117 hp at 5,000 rpm compared with 105 hp in the old four-banger. Options include GM's 2.8-liter V6 (110 hp) and the 2.1-liter turbocharged diesel engine (85 hp) introduced in early '85. A four-speed manual transmission is standard, with a three-speed automatic and five-speed manual optional (the diesel gets only the five-speed).

Selec-Trac or Command-Trac 4x4 is available, as are options like Trac-Lok limited slip rear axle, power steering, larger gas tank (23.5 gallons), skid plates, and a maximum 2,205-pound payload (larger than that of either Ford or Chevy's minis).

AMC uses uni-frame construction with the two side beams welded directly to the cab floor pan. Two lateral cross members in the rear of the Cherokee frame were replaced by an "X" cross member to create more torsional rigidity. The box is bolted on. The result is a mini with the longest wheelbase of any domestic or import (119.7 inches), and a pickup box that is the industry's widest (43.8 inches) and matches the Chevy S-10 for longest (88 inches).

There are three trim levels: Custom (base), X, and XLS, with interior and exterior sport decor groups. Cruise control, power windows and door locks, tinted glass, intermittent windshield wipers, and tilt steering wheel are all optional.

Miles per gallon? EPA ratings are a re-

spectable 24 city/27 highway for the 2x4 four-cylinder engine; it's 23/26 in the 4x4 version. The 2x4 diesel with the five-speed rates 28/31 mpg.

The venerable J-10 and J-20-series full-size Jeep pickups have changed little for '86. A new instrument panel and column-mounted controls (lights, beams, wipers) have been incorporated. The 4.2-liter six-cylinder gas engine is standard in the J-10, as usual, with the 5.9-liter V8 optional. The bigger engine is standard in the J-20.

Order the optional Selec-Trac full-time 4x4 system (in the J-10 only) this year, and you can also add the Trac-Lok limited slip rear differential.

Chevrolet (GMC)

Chevy's changes for 1986 are mostly under the skin, looking toward a re-skin of the full-size truck line next year. There's a new V6 engine, a reworked four-cylinder power plant, and a new, more efficient generator.

The S-10 (GMC S-15) first.

Both gas engines have been improved. The 2.5-liter four-cylinder standard power plant incorporates new lightweight pistons for cooler operation and valve seat changes to promote durability. Chevy's 2.8-liter V6 version is now electronically fuel-injected

to create economy while still boosting the horsepower by 9 percent to 125 hp at 4,800 rpm.

A new Delcotron generator has been added—smaller and lighter, as well as having a higher charging rate and being more durable. Also added was a redesigned instrument panel with a new cluster group, relocated instruments and controls, and trim plates.

Insta-Trac allows shifting to or from the 4x4 high setting at any speed. Both 2x4 and 4x4 come in the regular cab or Maxi-Cab series.

There are long and short-bed models (108.3 and 122.9-inch wheelbases, respectively) and a four-speed manual transmission standard, as well as an optional five-speed manual and four-speed automatic. A third engine is the 2.2-liter diesel—30 mpg in the city compared with the L-4's 24 mpg.

Fully 46 different models—count 'em, 46!—of Chevy's full-size C-Series (2x4) and K-Series (4x4) can be ordered. All of the gas engines this year feature a new five-ribbed poly-vee generator accessory belt drive. It's more flexible and durable and

Toyota minis now offer gas turbocharging, independent front suspension for 4x4s.



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SUBSISTENCE

Miscellaneous

(FILE 3)

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

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

July 8, 1985

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

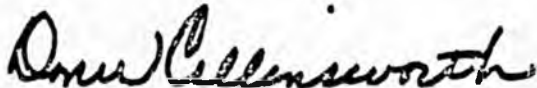
Dear Representative Fuller:

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

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

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

Sincerely,



Don W. Collinsworth
Commissioner

Enclosure

Replacement for A & B

PERMIT HUNTS 1985 EMERGENCY MEETING — ALASKA BOARD OF GAME

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

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

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

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

TIER I - ^{only} This situation exists when harvest opportunity must be limited to Alaska residents. Under the Madison decision all Alaska resident hunters may qualify as subsistence hunters.

If the board finds that subsistence uses are substantially impaired:

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

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

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

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

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

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

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

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

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

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

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

HUNTS AVAILABLE TO ALL HUNTERS

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

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

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

Sheep

NOTICE

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

PERMIT HUNTS — 1985

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

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

F = fall hunt S = spring hunt

* = subsistence opportunity provided in new April 1-15 hunt.

PERMIT HUNTS — 1985

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

NOTICE

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

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

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

GOATS

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

SHEEP

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

Schedule of Events—Tier II Hunts

Sheep

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

All Other Species

Tier II and I newspaper and applications ready for printing	July 9
50,000 papers, 110,000 applications ready for mailing	July 15
Mail/deliver to all vendors and F&G offices	July 24
Available to public—10 days	post mark deadline August 5
Deadline for our receipt	August 12
Time to score applications	August 22
Select winners	August 26
Send permits	Sept. 5
Hunters receive permits	Sept. 15
Season open no earlier than - Sept. 21	

DRAFT REGULATIONS FOR TIER II

06/12/85

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

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

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

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

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

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

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

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

- (A) great dependence, 20 points;
- (B) moderate dependence, 15 points;
- (C) slight dependence, 10 points;
- (D) no dependence, 0 points.

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

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

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

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

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

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

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

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

(A) greatly available: 0 points;

(B) moderately available: 5 points;

(C) slightly available: 10 points;

(D) not available: 15 points.

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

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

1. NAME: _____
Last First Middle Initial

2. MAILING ADDRESS: _____
P.O. Box/Street

_____ City/Town State Zip

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

_____ Street or Property Description

_____ City/Town or Closest Community

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

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

OR

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

Animal _____ Game Management Unit, Subunit, or Area _____

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

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

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

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

19__ 19__ 19__ 19__ 19__ 19__ 19__ 19__ 19__ 19__

8. HOW DIRECTLY DEPENDENT ARE YOU ON HUNTING THIS GAME POPULATION AS A PRINCIPAL MEANS OF SUPPORT FOR YOURSELF AND/OR YOUR FAMILY? (Principal means of support means that harvesting this animal is important because the harvest of wild resources is the primary way you feed yourself and/or your family.) [CHECK ONLY ONE]

1. Greatly dependent 3. Slightly dependent
2. Moderately dependent 4. Not dependent

9. FOR YOUR USUAL HUNTING AREA HOW AVAILABLE ARE OTHER KINDS OF BIG GAME AND/OR FISH WHICH ARE REASONABLE SUBSTITUTES FOR ANIMAL LISTED IN THIS APPLICATION ?

1. Not available 3. Moderately available
2. Slightly available 4. Greatly available

10. IS YOUR INCOME LARGE ENOUGH TO PURCHASE FOOD AND OTHER ITEMS AS REASONABLE ALTERNATIVES TO TAKING WILD FISH AND GAME? [CHECK ONLY ONE]

- YES NO

(Please keep in mind your assets, debts, family or household size, and other obligations. "Reasonable alternatives" are things which can be used instead of wild fish and game.)

11. I AM AT LEAST TWELVE (12) YEARS OLD AND QUALIFY FOR A RESIDENT ALASKA HUNTING LICENSE.

- YES NO

For Tier II caribou hunts, no more than 2 individuals from a single household may apply. For other Tier II hunts, no more than 1 individual from a single household may apply.

12. WHICH ONE OF THE FOLLOWING STATEMENTS APPLIES TO THIS APPLICATION? [CHECK ONLY ONE]

a. This application is for caribou hunting. No more than two members of my household are applying for this permit.

b. This application is not for caribou hunting. I am the only member of my household applying for this permit.

WARNING: Making false statements on this application is a class A misdemeanor, punishable by a fine of not more than \$5,000 and/or imprisonment of not more than one year.

CERTIFICATION

I, _____, do hereby certify that all of the information contained in this application is complete, true and correct to the best of my knowledge. I further acknowledge that I am responsible for the truthfulness of the information.

SIGNED: _____ DATE: _____

Telephone Number _____

7/1 11/3
DRAFT 53 7/1

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

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

Conditions

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

7/1 11 5 00

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

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

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

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

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

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

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

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

7/1 113 37

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

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

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

Checklist

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

* * * * * Mailing Instructions * * * * *

(yet to be determined)

Don V. Collinworth, Commissioner

ITEM E

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



Alaska Department of Fish & Game

NEWS

FOR IMMEDIATE RELEASE

MAY 29, 1985

GAME BOARD SCHEDULES EMERGENCY MEETING

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

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

-MORE-

MAY 29, 1985

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

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

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Don W. Collinsworth, Commissioner

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Alaska Department of Fish & Game

NEWS

FOR IMMEDIATE RELEASE

MAY 23, 1985

EMERGENCY SUBSISTENCE SALMON REGULATION TO BE ISSUED

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

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

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

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

-MORE-

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

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

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

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

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STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
PUBLIC COMMUNICATIONS SECTION
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Alaska Department of Fish & Game

NEWS

FOR IMMEDIATE RELEASE

May 16, 1985

Hunting Regulations Delay Announced

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

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

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

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Alaska Board of Game
#85-38-GB

Findings on Madison Requirements

April 4, 1985

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

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

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

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

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

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

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

April 4, 1985

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

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

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

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

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

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

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

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

Brenda Johnson, Chairman
Alaska Board of Game

Adopted 04/04/85
Anchorage, Alaska

ALASKA JOINT BOARD OF FISHERIES AND GAME
RESOLUTION #85-14-JB

WHEREAS, the Alaska Board of Fisheries and Alaska Board of Game have been delegated responsibility and authority by the Alaska Legislature to regulate the taking of fish stocks and game populations for the maximum benefit of all of the people of Alaska; and

WHEREAS, prior to the decision of the Alaska Supreme Court in Madison v. Alaska Department of Fish and Game the boards developed procedures which provided adequate regulatory flexibility, both to protect opportunities for subsistence hunting and fishing in rural communities and areas, and to provide hunting and fishing opportunities for recreational, commercial, and other uses; and

WHEREAS, it is unclear to what extent the boards may restrict subsistence harvest after the Madison ruling and as a result, substantial and significantly disruptive reallocations of opportunities to harvest fish stocks and game populations may be necessary. For example:

1. The commercial gill net fishery which is an important component of the Prince William Sound economy may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to accommodate both the historic commercial fishery and other users.
2. Sport fishing for king and other species of salmon on the Kenai and Naknek rivers and in the Susitna drainage may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to prevent that result.
3. Non-subsistence hunting, including commercial guiding activities may be significantly restricted and, in many cases, eliminated. Prior to the Madison decision the Board of Game had adequate regulatory flexibility to accommodate these users reasonably.

WHEREAS, prior to the Madison decision the State of Alaska was in compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). As a result of the Madison decision the federal government may now take control over game populations on public lands and fish stocks on public lands and within navigable waters; and

WHEREAS, if the State of Alaska is no longer in compliance with ANILCA, the state will lose the ongoing million dollar per year federal appropriation for the state's public participation system which is essential to the success of the state's regulatory and management activities; and

WHEREAS, the Alaska Board of Fisheries and Board of Game strongly believe that the potential restrictions, closures, reallocations and loss of funding described above are not in the best interest of the fish and wildlife resources and the people of Alaska;

NOW THEREFORE BE IT RESOLVED, that the Alaska Board of Fisheries and Board of Game meeting in joint session respectfully, but strongly urge the Alaska Legislature to enact legislation during the current legislative session which returns to the boards the regulatory authority and flexibility which they exercised before the Madison decision; and

THEREFORE BE IT FURTHER RESOLVED, that the Alaska Board of Fisheries and Alaska Board of Game have reviewed SB 231 and HB 288, the legislation introduced by the Governor to accomplish this purpose, and urge that this legislation be enacted into law as expeditiously as possible.

Ron Jolin, Chairman
Alaska Board of Fisheries and Game

Adopted March 26, 1985
Anchorage, Alaska
VOTE: 13/1

ALASKA BOARD OF FISHERIES FINDINGS
SUBSISTENCE REGULATIONS FOR THE 1985 FISHING SEASON
#85-111-FB

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 in the review process, and implement the court's decision in Madison in the interim, the board requests that the commissioner take the following actions:

- 1) Authorize by emergency regulation, access by all Alaska residents to existing Tyonek, Port Graham, and English Bay subsistence fisheries. Existing bag and possession limits, time, gear, area regulations, and overall guideline harvest will not be changed 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 interest of the public given the inadequate opportunity for public comment, and uncertainty about 1985 participation levels.
- 2) During 1985, continue the following presently authorized personal use fisheries in Cook Inlet as personal use fisheries:

The spring Kasilof River salmon gill net fishery, the Kasilof and Kenai River, China Poot, and Bear Creek sockeye salmon dipnet fisheries, 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.

- 3) Change the Kenai River fall coho set gill net personal use fishery by emergency regulation to a subsistence fishery, as required by Madison, and manage it under the regulations used during the 1981 season, except the current reporting requirements will apply. Any Alaska resident may participate in this fishery.

- 4) Change the Kachemak Bay coho salmon set gill net personal use fishery, by emergency regulation, to a subsistence fishery, as required by Madison, and manage it under the regulations developed for the court ordered fishery. Any Alaska resident may participate in this fishery.
- 5) Allow, by emergency regulation, access by all Alaska residents to the Iliamna/Lake Clark, Naknek River, and Angoon subsistence salmon fisheries. The bag and possession, time, area, gear, and overall harvest guidelines of each of these fisheries shall remain as described in the 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. During 1985, continue the Naknek River personal use fishery.
- 6) By emergency regulation, combine the Copper River subsistence and personal use salmon fisheries into a subsistence fishery. Retaining the existing regulations as to bag and possession limits, time, area, gear, and overall harvest guidelines, with regulations that now apply to the personal use fishery applying to the dip net fishery, and those that now apply to the subsistence fishery applying to the fishwheel 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 the different historical harvest patterns for each gear type. 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. Any Alaska resident may participate in either the fishwheel or the dipnet fishery.

The board hereby calls for proposals from the public on all subsistence and personal use regulations to be considered at the 1985 fall/winter finfish meeting. Any petitions concerning subsistence, personal use, or associated sport and commercial fisheries will be accepted and scheduled for the 1985 fall/winter board meeting. The board will consider all

March 27, 1985

proposals to establish, eliminate or modify any or all subsistence or personal use regulations and any changes in commercial or sport fishery regulations required by such regulations.

Ron Jolin, Chairman
Alaska Board of Fisheries

Adopted March 26, 1985
Anchorage, Alaska

VOTE: 4/0

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Effect of amendments. — The 1983 gauge subsection (a) and added subsection amendment rewrote the existing language (b). of this section and designated that lan-

Sec. 16.05.255. Regulations of the Board of Game. (a) The Board of Game may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

(1) setting apart game reserve areas, refuges and sanctuaries in the waters or on the lands of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of game;

(3) establishing the means and methods employed in the pursuit, capture and transport of game;

(4) setting quotas and bag limits on the taking of game;

(5) classifying game as game birds, song birds, big game animals, fur bearing animals, predators or other categories;

(6) investigating and determining the extent and effect of predation and competition among game in the state, exercising control measures considered necessary to the resources of the state and designating game management units or parts of game management units in which bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improve- ment, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institu- tions and state, federal, or other agencies to promote game research, management, education, and information and to train persons for game management;

(9) prohibiting the live capture, possession, transport, or release of native or exotic game or their eggs;

(10) establishing the times and dates during which the issuance of game licenses, permits and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed.

(b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regu- lations will jeopardize or interfere with the maintenance of game resources on a sustained-yield basis. Whenever it is necessary to restrict the taking of game to assure the maintenance of game resources on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restric- tions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources. (§ 3 ch 206 SLA 1975; am § 5 ch 151 SLA 1978)

Cross references. — For validity of regulations of former Board of Fish and Game, see sec. 41, ch. 206, SLA 1975 in the Temporary and Special Acts.

Editor's notes. — For legislative intent, see § 1, ch. 151, SLA 1978, in the 1978 Temporary and Special Acts and Resolves.

Legislative history reports. — For report on ch. 151, SLA 1978 (HB 960), see 1978 House Journal, p. 1154.

Opinions of attorney general. — Neither the Board of Game nor the Department of Fish and Game has jurisdiction

over domestic animals. August 29, 1979, Op. Att'y Gen.

Permitting authority over live game, that is, nondomestic animals, rests with the Board of Game as implemented by the Department of Fish and Game. August 29, 1979, Op. Att'y Gen.

For discussion of compatibility of state subsistence-use law with federal standards as set forth in Alaska National Interest Lands Conservation Act (16 U.S.C. § 3115 et seq.), see 1991 Op. Att'y Gen. No. 11.

NOTES TO DECISIONS

Establishment of quotas must be in accordance with the Administrative Procedure Act (AS 44.62). *State v. Tanana Valley Sportsmen's Ass'n*, Sup. Ct. Op. No. 1716 (File No. 3433), 583 P.2d 854 (1978).

Applied in *Gottardi v. State*, Sup. Ct. Op. No. 2154 (File No. 4436), 615 P.2d 626 (1980).

Sec. 16.05.256. Nonresident and nonresident alien permits. Whenever it is necessary to restrict the taking of big game so that the opportunity for Alaska residents to take big game can be reasonably satisfied in accordance with sustained yield principles, the Board of Game may, through a permit system, limit the taking of big game by nonresidents and nonresident aliens to accomplish that purpose. (§ 3 ch 74 SLA 1982)

Sec. 16.05.257. Subsistence hunting regulations. (a) The Board of Game, at its regularly scheduled annual meeting and other meetings held under authority of AS 16.05.300(a), shall consider and may adopt regulations providing for subsistence hunting in a game management unit or subunit or a portion of a unit or subunit upon

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

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

May 22, 1985

REPLY TO:

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M E M O R A N D U M

TO: Robert Sundberg Don W. Collinsworth
Commissioner Commissioner
Department of Public Safety Department of Fish & Game

All Criminal Division Offices
Department of Law

FROM: Daniel W. Hickey DW91
Chief Prosecutor

SUBJECT: Subsistence Defense for Fish and Game Violations -
Enforcement Criteria in Light of State v. Eluska

The purpose of this memorandum is to provide enforcement personnel and prosecuting attorneys with a set of guidelines that will have to be followed in fish and game prosecutions in light of the subsistence defense created by the Alaska Court of Appeals in State v. Eluska, ___ P.2d ___, Op. No. 210 (Alaska App. April 12, 1985).

A. The Court Decision

In Eluska, the court of appeals ruled that the Board of Game had failed to comply with the legislative mandate set out in AS 16.05.255(b) that specific regulations be adopted providing for subsistence uses and a subsistence priority for the taking of game. As a result, the court established a "subsistence defense" meaning that in areas where specific subsistence regulations have not been adopted conduct that would otherwise involve the illegal taking or possession of game is justified as a "subsistence use" if: (1) the person believed that he or she was taking the game in question for subsistence uses; and (2) the person was not aware of and did not consciously disregard a substantial and unjustifiable risk that his or her taking was not a subsistence use of the game taken.

Because of the Board's failure to adopt regulations, the court was unwilling to make the defense an affirmative defense which would put the burden of proving it on the

defendant. Instead, the court held that once the defense is raised (and that it may be raised prior to trial), the state has the burden of proving beyond a reasonable doubt that the taking or possession was not a subsistence use. Given the fact that neither the board nor the legislature has come up with a workable definition of subsistence, this will be virtually an impossible burden to meet. What this means in effect is that a resident of the state who asserts that his or her taking or possession involves a subsistence use cannot be convicted unless the state can prove beyond a reasonable doubt that either (1) the regulation allegedly violated did not restrict the taking of game, or (2) any such restriction placed an absolute priority on subsistence uses and was necessary to protect sustained yield.

Prior to the court of appeals decision in Eluska, the Alaska Supreme Court in Madison v. Department of Fish and Game, ___ P.2d ___, Op. NO. 2911 (Alaska February 22, 1985), struck down a regulatory scheme designed to identify eligibility for subsistence fishing in Cook Inlet and to allocate fish resources among subsistence, commercial, personal use and sport fishermen. The court held that under AS 16.05.940(23), which defines "subsistence uses," all Alaskans were initially eligible for all subsistence hunting and fishing. The court additionally held that AS 16.05.251(b) establishes a priority for subsistence use over all others. In other words, to the extent that an insufficient number of fish exist to accommodate all potential users, subsistence use is to be allowed at the expense of sport, personal or commercial use. Governor Sheffield introduced a bill in response to the Madison decision that would have clarified and restricted subsistence taking. That bill was passed by the House of Representatives but not by the Senate and remains pending before the legislature.

AS 16.05.251(b), pertaining to fish, and AS 16.05.255(b), pertaining to game, are parallel provisions. Considering Eluska and Madison together, the conclusion to be drawn is that a "subsistence use" defense is now available for many hunting and subsistence fishing violations committed by Alaska residents.

Any Alaska resident, whether from a rural or urban area, can potentially and successfully assert a "subsistence defense" if the State has not adopted specific subsistence regulations consistent with Madison and Eluska and if the person reasonably believed he took the fish or game for "customary" or "traditional" uses. Unless and until remedial regulatory or legislative action is taken, a serious enforcement problem exists, and it is likely that there will be a significant increase in fish and game harvests, particularly around urban areas.

The Madison and Eluska decisions have had a serious effect on the State's ability to enforce fish and game violations under circumstances where someone can assert a subsistence use defense. The State has filed a Petition for Rehearing in Eluska seeking to have the court's opinion modified. That petition has recently been denied and we are now preparing a petition to the Supreme Court. However, unless the court reverses the decision or until the situation is addressed by the boards or the legislature, the guidelines described below are required.

B. Fisheries Violations

Throughout most of the state, the Board of Fisheries has already authorized subsistence fishing by regulation. The Department of Law has advised the Commissioner of Fish and Game to exercise his authority under 5 AAC 01.015 and the authority delegated to him by the Board of Fisheries to issue subsistence permits for taking salmon in areas where subsistence harvests have been historically authorized and conducted. If that is done and announced publicly, Fish and Wildlife officers and prosecutors will enforce all fishing regulations relating to taking or possessing salmon and other species.

Until that announcement is made, enforcement of fishing regulations relating to taking or possessing salmon will be limited to sport fishing violations, violations committed in subsistence fisheries currently authorized in regulations and commercial fishing violations.

C. Game Violations

Until regulations are adopted which comply with Eluska, the following guidelines will apply to all game violations:

1. Violations Occurring in National Parks and Monuments

All game violations occurring in national parks and monuments should be referred to appropriate federal authorities (U.S. Fish and Wildlife Service and the United States Attorney's

1/ It is important to note that "sport fishing" is defined in AS 16.05.940(21) as fishing primarily by rod and reel for personal use, while "subsistence fishing" is defined in AS 16.05.940(22) as fishing primarily by nets and other efficient methods. It is subsistence fishing that is given special protection in AS 16.05.251(b).