

History of subsistence law steeped in statehood battle

By Paul Jenkins

The Associated Press

Alaska voters will be asked in November to decide one of the most complex, divisive issues in state history — the origins of which date back through years of confusion over how to preserve the tradition of living off the land.

The acrimonious fracas over the subsistence priority law centers on whether rural residents will continue to get first opportunity to hunt and fish near their homes, to subsist on the available natural resources despite competition from a swelling urban population.

Supporters of the law say the loss of that kind of lifestyle would destroy a centuries-old way of life.

Alaska — with bountiful supplies of big game and fish — is probably the only state where it's still possible to feed entire families year-round on Nature's bounty.

While that kind of reliance on wild food is more predom-

inant in rural areas, substantial numbers of urban residents historically also have filled their freezers with fish and game.

Thus the conflict — often almost irrationally bitter — is not simply one of sport hunting and fishing versus a rural, subsistence lifestyle. For many urban Alaskans, the taking of game and fish is an important aspect of their lifestyle also.

Advocates of the law contend its repeal would cripple state fish and game management by forcing federal government intervention to ensure subsistence rights on more than 70 million acres of federal land in Alaska.

Sen. Ted Stevens says Interior Secretary James Watt would have no choice but to step in because federal law mandates the preservation of the subsistence rights of rural residents.

"Watt doesn't like it, I don't like it. Nobody I know on the

federal scene likes it," says the Alaska Republican. "But he would be forced to."

Led most vociferously by sportsman spokesman Sam McDowell, opponents of the law say the threat of a federal takeover is "hogwash," because the government lacks the resources to take on the added responsibility.

"There's no way the federal government will come in here and take over management of species," says McDowell, who resigned as president of the Izaak Walton League to promote repeal of the subsistence law. "It's contrary to the policies of the Reagan administration."

"It should go back to what it was before 1978 — when subsistence was taken care of by the boards of Fish and Game."

Gov. Jay Hammond says the law is unworkable, but he's in the midst of a drive to head off repeal. He says a lack of

federal resources for management could spell trouble for hunters and fishermen trying to use federal lands.

"If you repeal the state subsistence law, the federal government is still obligated," he says. "They might simply slam the door shut."

The duality problem dates back years. Prior to statehood in 1959, the Alaska Game Commission could only advise the U.S. Department of Interior on hunting and sport fishing regulations.

The salmon fishery was covered by a separate federal statute, the White Act, which said the fishery could not be regulated in a manner which would hamper the taking of fish for personal use.

Even after statehood, Alaska was denied authority to regulate fish and game until its management program was approved by the interior secretary. The state's plan won approval early in 1960, even

though it contained no provisions for subsistence priorities.

In the late 1960s, conflicts began building in rural areas as aircraft began taking hunters farther afield.

Spurred by plans for the trans-Alaska oil pipeline, Congress in 1971 approved the Alaska Native Claims Settlement Act. It gave Natives almost \$1 billion and 44 million acres to extinguish aboriginal land claims, and claims of hunting and fishing rights.

Subsistence protection was not included in the act because the Interior Department already had authority to ensure it on federal lands, and state officials successfully argued it was unnecessary.

When the Marine Mammal Protection Act was passed in 1972, it allowed Alaska Natives to continue to hunt seals, wal-

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Historical 'facts' cloud issue of repeal

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ruses and other protected animals.

The next year, the Endangered Species Act also included exemptions for Alaska Natives and other rural residents.

But in 1975, a game crisis triggered a complex chain of events which spawned the current campaign. The Western Arctic caribou herd "crashed" — its population plummeting from 242,000 animals in 1970 to about 65,000.

The state quickly set a harvest limit of 3,000 bulls a year from the herd in an effort to meet subsistence needs but still protect the breeding population enough for recovery.

A subsequent state review of the situation became ammunition for opponents of the subsistence law. That report said the wastage of caribou in 1975-76 in an area hunted primarily by Natives was "of such magnitude that it could not be justified or tolerated biologically, socially, morally or ethically."

It said the waste included animals killed mistakenly, animals left to rot for unknown reasons, animals used for trap bait and others killed for fun.

"Allegedly, caribou are run down by snow machines and stabbed on occasion, or pursued by snow machine and shot with pistols or .22 auto-

matic rimfire rifles," the report said.

"The Natives shot them by the thousands," McDowell says. "You won't have any game herds in the state unless you repeal the state subsistence law."

But repeal opponents say the cause of the decline in the herd is unknown.

"Biologists said they did not have the slightest idea what happened," says Alaska Federation of Natives attorney Don Mitchell. "There were no restrictions on hunting that herd and it was not being monitored. If the herd had been managed, the herd might not have crashed. It was

not overhunting alone which caused the crash."

In the aftermath, hunting was limited to villages which normally harvested from the beleaguered herd. Permit priorities were established among even subsistence users in those communities. Criteria included community resources and the availability of other food sources.

Several sponsors of the current repeal initiative went to court to invalidate the guidelines.

They claimed the regulations were adopted illegally and exceeded the authority of the Board of Game — that the setting of priorities among

Alaskans violated the state's constitution.

The pertinent clause is Section 3, Article VIII: "Whenever occurring in the natural state, fish, wildlife and waters are reserved to the people for common use."

"They did not want the precedent of when allocation decisions are made, that they be made to communities and people most dependent on the resources," Mitchell said of the lawsuit's sponsors.

In 1977, Superior Court Judge James Blair of Fairbanks ruled the program invalid, saying the Board of Game probably had no authority to set a wildlife allocation system. (Continued on Page Five)

Definition of rural for subsistence brought fight

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The Alaska Supreme Court — without addressing the allocations' constitutionality — ruled the regulations were adopted in violation of necessary state procedures.

Meanwhile, the subsistence issue had resurfaced in Washington when Rep. Morris Udall, D-Ariz., introduced what would become the Alaska National Interest Lands Conservation Act (ANILCA). It contained provisions to protect the subsistence lifestyle of rural Alaskans.

A Senate bill introduced by Stevens also gave subsistence uses special consideration.

In the spring of 1978, the Alaska Legislature passed a subsistence priority law similar to the measures being considered in Congress.

Opponents of the current statute say lawmakers were stampeded by promises that if the state would adopt the law, similar provisions could be

left out of the federal legislation.

Supporters of the law pooh-pooh the notion.

The law basically says that when there are restrictions on the harvest of fish or game stocks, subsistence uses will have a priority over other uses. It also contains provisions to choose among subsistence users when further restrictions are needed.

Those provisions include local residency, availability of other resources and customary and direct dependence on the fish or game as the primary source of a user's livelihood.

It also sets out methods for the boards of Fish and Game to turn areas into subsistence-use-only zones.

"It makes it very clear that the state of Alaska will not condone commercial or sport take above the needs of those people who need that resource for their food," says state Sen. Nels Anderson, who as a

state representative was instrumental in the law's adoption.

But despite the state's new statute and lobbying efforts to head off a subsistence provision in ANILCA, federal lawmakers included subsistence protection in the legislation signed in 1980.

Alaska retained fish and game management rights on all land in Alaska, including vast federal holdings. But before it could assume those responsibilities it had to bring state law into compliance with federal law — which specifically called for a restriction of subsistence uses to rural residents.

Under ANILCA, if those conditions were not met, the Interior Department was

directed to take over those responsibilities on federal land.

The boards of Fish and Game in April moved to bring the state into compliance by setting eight criteria to identify "customary and traditional" subsistence uses by rural Alaskans, and mandating that only rural residents could qualify for those uses.

To qualify as a subsistence

user a person would have to live in a rural area, defined as an area outside the road system of a borough, municipality or other community with a population of 7,000 or more.

The move excluded from subsistence hunting and fishing about 85 percent of the state's residents, who live in urban areas.

And the fight was on.