

Abood subsistence bill would preserve rural preference, reopen Tier 2 hunts

by Jim Benedetto
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The final draft of a bill which could solve the subsistence controversy has been released by State Sen. Mitch Abood's office. Sen. Abood is chairman of the Senate State Affairs Committee, which has held several rounds of hearings and teleconferences around the state in the past few months.

The main points of the 15-page bill are the preservation of the subsistence preference for rural Alaskans with a customary and traditional dependence on important fish and game stocks; the reopening of Tier 2 hunts to urban hunters; the retention of the eight criteria used by the Department of Fish and Game defining customary and traditional use; and granting ADF&G the flexibility to allow "other persons" in local communities the responsibility to issue subsistence permits.

"(S)ubsistence 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.

"...Whenever it is necessary to restrict subsistence fishing or subsistence hunting on land or water subject to state jurisdiction to protect the continued health and viability of a fish stock, game population, or other wildlife population, assure sound management, assure the maintenance of a fish stock or game population on a sustained-yield basis, or protect continued future subsistence fishing or subsistence hunting, 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," section 5 of the bill reads.

The bill also directs the ADF&G to conduct studies and gather information to insure that the "sound management of fish and wildlife, including allocation among different uses, is done on a biological basis."

The bill has been reviewed by attorneys of the Legal Services Department of the Alaska Legislature, who found no conflict between the bill and the State Constitution.

According to Sen. Abood's office, the bill is considered to be in draft form, and will be used as a vehicle for comment from the public.

An aide for Sen. Abood told the *Tundra Times*, "We realize there still may be some changes. At least now we have a substantial foundation for a vehicle to solve the problem. We believe the bill is fair, constitutional and in accordance with federal law."

One portion of the bill which may be controversial deals with the "targeting" of certain species in certain areas which the Boards of Fish and Game may determine are not important customary and traditional stocks. These species, which may include game animals such as Bison, or Dall Sheep in certain areas, could then be exempted from the subsistence preference. The bill also allows the Boards of Fish and Game to "shift subsistence use of a game population to another population" if it is a suitable alternative. Such a situation might arise if a game population important to local subsistence activity was no

longer available in adequate numbers to provide for the needs of the subsistence users.

The bill would similarly allow the Boards to designate certain areas as primarily subsistence use or not. Such judgements would be made on the basis of data collected by the ADF&G Subsistence Division.

Another area of potential disagreement with the bill states, "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." Proponents of the bill say there are already problems in several areas of the state where homesteaders have swelled the ranks of potential subsistence users, and that this section of the bill would not necessarily preclude them from subsistence use, but only gives the boards the authority to do so.

The State Affairs bill also provides a 'sliding scale' of subsistence preference. If the dependence on a certain resource is high, e.g., caribou in Anaktuvuk Pass, then the subsistence

preference can be "potentially exclusive" of other consumptive uses when a resource shortage occurs. If the dependence is low, e.g., Brown Bear in Angoon, the preference may be less, and need not be potentially exclusive.

The bill also would establish a procedure for administrative appeal, which would have to be exhausted before legal actions could be brought against the regulation.

Observers say that when the Legislature convenes in Juneau next month, lawmakers will be under some pressure to adopt some solution to the subsistence controversy before June 1, the deadline set by the federal government, if the state wishes to keep control of fish and wildlife management out of federal hands.

Some lawmakers would also like to make the subsistence issue disappear before the various election campaigns of the '86 political season get underway.

The controversy over subsistence originally arose when the federal

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government informed the state that subsistence users would have to have first priority access to the fish and game resources of the state. At risk was the State of Alaska's autonomy in regulating its own fish and game resources. This led to a 1978 state law giving subsistence users first priority when restrictions were needed to insure a sustained yield of the resource.

Sportmen's groups unhappy with the law succeeded in getting an initiative on the ballot in 1982 which would have repealed the subsistence preference. Voters in the state cast their ballots overwhelmingly against the repeal of the 1978 law.

But several Alaska Supreme Court decisions earlier this year (*Madison* and *Eluska*), struck down the regulations as unconstitutional, effectively making every Alaska resident a subsistence user.

Gov. Sheffield introduced legislation that would have changed the 1978 law by defining a subsistence user as a rural resident, thus conforming to federal statute. The bill made it

through the House, but never made it to the floor of the Senate, expiring in the State Affairs Committee when the 120-day session closed.

The Alaska Game Board met in emergency session in June to draw up the regulations now in effect. The regulations were necessary to insure sustained yield, as many hunts were pushed from Tier 1 to Tier 2 status by virtue of the fact that few game stocks could survive a harvest by every court-qualified subsistence user.
