

How Subsistence and Land Law Came Together

By DONALD MITCHELL

After years of public neglect and government indifference, "subsistence" in all its myriad forms has suddenly been propelled into the political limelight.

During 1977 the Alaska Public Forum addressed the issue of subsistence during its series of statewide town meetings. An interim committee of the Alaska Legislature chaired by Representative Nels Anderson of Dillingham, an announced candidate for governor, held hearings on subsistence which may result in the introduction of legislation by Anderson during the 1978 legislative session.

And, last month Governor Hammond and Fish and Game Commissioner Ron Skoog introduced a proposed administrative plan to, theoretically, regionalize fish and game management.

Why such a sudden frenzy of activity? Some might view it as a long overdue attempt to resolve a complex issue reaching to the very quick of Alaska's unique culture and economy. Others see this activity as an attempt by the State to reduce congressional interest in addressing the subsistence issue in pending (d)(2) legislation.

Section 17(d)(2) of the Alaska Native Claims Settlement Act directed the Secretary of the Interior to classify up to 80 million acres of Federal land in Alaska for inclusion in the National Park, Wildlife Refuge, Forest and Wild and Scenic River Systems. Congress gave itself until December 31, 1978 to act on the Secretary's recommendations, and over the past six years a number of (d)(2) bills have been introduced.

Last January Representative Morris Udall (D-Arizona), Chairman of the House Interior Committee, introduced H.R. 39, a bill which classified 114 million acres of Federal land into the four systems. A special Subcommittee on General Oversight and Alaska Lands chaired by Representative John Seiberling (D-Ohio), was created to study H.R. 39 and other (d)(2) legislation which had or would be introduced into the U.S. House of Representatives. In April Senator Lee Metcalf (D-Montana) introduced S. 1500, a companion bill to H.R. 39, in the United States Senate.

H.R. 39 was written in large measure by the Alaska Coalition, a group of Alaska and national conservation organizations. Several members of the

coalition, including the Alaska Chapter of the Sierra Club, felt the State had ignored the subsistence issue and had done a poor job of managing fish and game resources for subsistence users in the rural area of the State. Consequently, a federally administered subsistence management scheme was included as Section 701 of the bill.

Traditionally the State has been the primary manager of fish and wildlife on most Federal land in Alaska. The original version of H.R. 39, Section 701, transferred fish and game management lands to the Secretary of the Interior. The Secretary was instructed to establish "subsistence management zones" within the (d)(2) areas and a "regulatory subsistence board" within each zone. Subsistence was made the priority consumptive use of resources within zones. Subsistence users and their direct descendants would have been issued permits by the local boards authorizing them to continue to practice subsistence. The Secretary was instructed to research subsistence and periodically report to Congress.

In response to H.R. 39, Governor Hammond, Senator Stevens and Congressman Young started work on their own (d)(2) proposal. They primarily were concerned that H.R. 39 took back land which the State already had selected under the Statehood Act and that the bill prevented mineral and other development on much Federal land. Last spring Hammond, Stevens, and Young appeared on Anchorage television to outline their plan. A reporter asked how their proposal dealt with subsistence, and they responded that subsistence needed no special protection and none was included in their proposal.

However, by the time the plan was introduced in the Senate by Senator Stevens as S. 1787, a subsistence section had been added to the bill. Section 4304 continued the State's unfettered authority to regulate the taking of fish and game on all (d)(2) lands. But in a major concession to rural Alaskans, subsistence was designated as the priority use of fish and game resources, with a special preference for local residents.

Most persons familiar with the (d)(2)/subsistence issue viewed the Stevens' language as too little too late. But H.R. 39 contained an equal number of



technical pitfalls. For example, while the Stevens language maintained the State's authority to continue its outdated fish and game policies, H.R. 39 placed fish and game management under exclusive Federal control, but only within the "subsistence management zones." Outside the zones State regulatory authority continued as unchecked as under the Stevens bill.

By the time the Stevens bill was introduced in the Senate the House Subcommittee on General Oversight and Alaska Lands (GOAL) was working to improve H.R. 39. Last spring and

summer GOAL conducted the largest series of hearings on a single piece of legislation since the 1964 Civil Rights Act. Hearings were held in Washington, D.C., Atlanta, Chicago, Denver, San Francisco and Seattle, as well as in all of Alaska's major population centers. In addition, during August GOAL members and staff travelled extensively throughout the bush visiting such subsistence-dependent rural communities as Togiak, Chevak, and Anaktuvuk Pass.

In Fairbanks on August 20th GOAL held its final hearing on H.R. 39. It was clear from the comments

of representatives Udall and Seiberling their visit to the bush had been worthwhile. They said they had learned the major (d)(2) concern of rural Alaskans was subsistence, and that the State had done a poor job in the past of regulating fish and game resources on Federal land for the benefit of subsistence users. Many of whom are Alaska Natives to whom the Federal Government has a trust responsibility. Udall and Seiberling said subsistence management was an appropriate topic for Congress to address in (d)(2) legislation. In his testimony in

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Fairbanks, Governor Hammond recognized and encouraged Congressional attention to the subsistence issue:

"The allocation of resources to competitive consumers is a difficult problem at best. Thus, I would hope this Congress establishes the priority of subsistence use where there is a conflict on national interest lands. I believe this is a legitimate subject for legislation, and hope that this principle, which has been State policy for some time, is enacted into Federal law."

The Governor also stated there was "some justification" for the perception in rural Alaska that State regulation either favored urban hunters too much, or not favored rural hunters enough when difficult allocation decisions were made.

On September 15th, Secretary of the Interior Cecil D. Andrus appeared before GOAL in Washington, D.C. to outline the Carter Administration's amendments to H.R. 39. Secretary Andrus' subsistence proposal was different in concept from both H.R. 39 and the Stevens bill. He proposed the State be permitted to regulate fish and game on most (d)(2) lands but that it do so subject to a set of loose Federal guidelines. The guidelines included subsistence preference and a system of advisory boards which the State has never adequately funded. A subsistence user was defined as someone with a "customary and direct dependency upon the use of subsistence resources as the mainstay of (his) livelihood as of December 18, 1971," although this strict cutoff date was later modified. Subsistence could be stopped on (d)(2) lands "for reasons of...public use or enjoyment." Other than a report to Congress every two years no workable mechanism was created to see how well the State complied with the guidelines.

After receipt of the Andrus amendments, GOAL staff reviewed the testimony presented at the hearings and rewrote H.R. 39 to include many of the changes suggested by Secretary Andrus and others. On November 3rd a new bill known as the "H.R. 39 Committee Print" was adopted by a majority vote of GOAL members as the working document for section-by-section final consideration of the bill.

Title VII of the H.R. 39 Committee Print completely revises the subsistence section of the original bill. In concept it is similar to

the approach suggested by Secretary Andrus. The State may continue to regulate fish and game resources on all Federal lands in Alaska (not just on (d)(2) lands as contemplated by the Andrus amendments and the original bill) if it submits a management plan to the Secretary of the Interior which satisfies Federal guidelines. Guidelines include a local/regional/statewide administrative structure and a subsistence preference. Local boards would register subsistence users yearly. If the State refused to comply with its plan or changes requested by the Secretary, the Federal Government would reassume management authority so that subsistence users are protected. The local/regional/statewide boards would have authority to compel the Secretary to investigate a situation in which the State is doing a poor job. Every two years the Secretary must report to Congress on the status of subsistence in rural Alaska, including an evaluation of State management performance.

In mid-January, 1978, GOAL will begin a final review of the H.R. 39 Committee Print, and the subsistence section undoubtedly will undergo considerable modification. The State views the concept of Federal guidelines and oversight as an unacceptable intrusion into an area of traditional State jurisdiction, and complains that because the guidelines give Alaska Natives special consideration it will not be able to develop an acceptable plan since the Alaska Constitution forbids discrimination on the basis of race. Urban sportsmen complain that their access to fish and game will be restricted. Many rural residents fear the cumbersome board structure and registration system are unnecessary and unworkable.

Consequently, in an attempt to escape Federal review of its activities, the State is offering its proposed plan to regionalize fish and game management as an example of its sudden commitment to solving the subsistence problem without outside interference. Additionally, interested individuals and groups are giving GOAL members and staff new ideas. And Representative Lloyd Meeds (D-Washington) and the Federal-State Land Use Planning Commission are rumored to be developing a completely new bill.

No one person or interest group has a complete solution to the subsistence problem. However, the GOAL staff approach to

State regulation and Federal oversight coupled with maximum participation by rural people in the decision making process seems sound in concept, if pre-

sently unwieldy in practical application.

As the final Congressional approach to subsistence continues to unfold during the development of

(d)(2) legislation, rural people can expect a continuing interest in subsistence, and new attempts within Alaska to resolve or exploit this crucial issue before December 18, 1978.