

Ruling may mean subsistence permits

by Geoff Kennedy
for the Tundra Times

People who are "customary and traditional" subsistence users may be required to apply for a permit in order to continue hunting in Alaska, according to a decision issued Wednesday by Superior Court Judge Beverly Cutler.

In a decision expected to affect the statewide subsistence debate, the Palmer judge also said that state law cannot be amended to meet federal subsistence requirements and that compliance can be obtained only with a constitutional amendment.

Ruling that the state Supreme Court's Dec. 22 decision did not entirely erase Alaska's subsistence law, Cutler said the state law can be "severed" from the rural residency requirement determined to be unconstitutional. This leaves in place the subsistence priority, according to the decision.

Cutler was responding to a motion by the state to determine whether the Supreme Court last December threw out all of Alaska's subsistence law or only that part which provided a subsistence priority for rural residents.

Her decision means that subsistence users will still have preference over other users of fish and wildlife in times of scarcity. In addition, except for the rural preference provisions, the state subsistence law will remain in effect.

The state Supreme Court said the law unfairly discriminated against those who live outside rural areas. The court gave the state until next Sunday, July 1, to replace that law.

After the Legislature failed to do so, Gov. Steve Cowper called them back into special session today.

'Clearly there will be some confusion and difficulty in determining who actually are subsistence users and who are not.'

—Judge Beverly Cutler

While lawmakers deliberate, state fish and game officials will have to devise new subsistence regulations.

In rejecting arguments that the Supreme Court threw out the entire subsistence law, Cutler admitted her decision would put an extra burden on state officials.

"Clearly there will be some confusion and difficulty in determining who actually are subsistence users and who are not," she said.

But the state can devise regulations to permit subsistence uses to continue and to manage fish and game for other uses as well, she said.

Cutler proposed regulations for applying for subsistence permits. That paperwork process shouldn't be that much of a burden, she said.

"Alaska already has a system in place for all residents to apply for Permanent Fund dividends," Cutler said.

However, Gov. Steve Cowper said in a press conference Thursday that the Cutler decision may cost the state \$1 million dollars and require dozens of new workers to administer. And it

SUBSISTENCE

could mean so many new subsistence users that urban sport hunters and commercial fishers could be disqualified, he added.

The court decision will require the state to determine which individuals, not which communities, will be entitled to subsistence preference, said Assistant Attorney General Tom Koester.

The decision also means local residents will have subsistence priorities when fish and game are so scarce there's not enough just for subsistence users, Koester added.

The Joint Boards of Fisheries and Game will have to develop criteria for determining individuals' "customary and traditional" uses, said Norman Cohen, the deputy commissioner of the Alaska Department of Fish and Game.

The boards also will have to determine where non-rural Alaskans, such as the Kenaitze on the Kenai Peninsula, have customarily and traditionally relied on subsistence, he said. In addition, the boards will have to set up an application process for determining which individuals may or may not qualify for subsistence, Cohen said.

The decision also means the state may have to call off the following fall hunts:

Unit 4 deer (NE Chichagof Is.), Unit 1D moose (Haines), Unit 5A moose, Unit 11 Mentasta caribou, Unit 12/13 Nelchina caribou, Unit 15C English Bay goats, Unit 13 moose

(Copper River), Unit 15 moose and Unit 16 moose (Matsu Valley).

"Whether any of the above listed hunts will occur this fall or not is a question which we can't answer for certain at this time," Cohen said. "It depends upon how quickly the boards can meet and the administrative determinations of eligibility made."

One legislator welcomed the Cutler decision.

"I'm pleased," said Rep. Lyman Hoffman, D-Bethel. However, he expressed some reservations about paperwork requirements for subsistence users.

But Hoffman said he has received assurances from state officials that the state may not have to impose such requirements on rural residents.

The decision may enhance chances for a constitutional amendment during the special session because it reduces lawmakers' incentives to oppose such an amendment, he said.

"People may say it isn't worth it," Hoffman said.

The recent decision by federal officials that navigable waters belong to the state even if they run through federal lands leaves subsistence fishing intact, Hoffman said. And the Cutler decision reaffirms subsistence rights on both federal and state lands, he said.

Rural subsistence opponents don't have that much left to oppose, Hoffman said.