

Subsistence less controversial than thought

Associated Press

Juneau — State Attorney General Norman Gorsuch says the Alaska subsistence hunting and fishing law's definition of rural residents is vulnerable to

court challenge, but there are fewer problems with the statute than the public believes.

Misinformation and misinterpretation are at the heart of the controversy over the 1978

law giving rural residents first crack at the state's fish and game, Gorsuch said.

In an opinion prepared for Gov. Bill Sheffield, Gorsuch says "State regulations and statutes provide a framework for implementing the subsistence law in a manner consistent" with the Alaska National Interest Lands Conservation Act (ANILCA).

"Many 'problems' which have been perceived with the framework actually arise from misinformation and misinterpretation," he said in the opinion, which is to be sent to the new boards of fish and game.

"Providing the public with correct information on the law would dispel the impression that these 'problems' exist," Gorsuch wrote.

Contrary to popular perception "the subsistence law is constitutional; does not provide for exclusive use, does not permit harm to fish and game resources, will not dilute advisory committee effectiveness nor create regional council regulatory authority," Gorsuch said.

In addition, the law does not result in courts managing resources, permit waste, contain racial criteria, guarantee a particular harvest to particular individuals, authorize subsistence harvests to be regulated without triggering priority, require "precipitous" regulatory change, threaten the limited entry system nor allow commercial sale of subsistence harvested fish.

The attorney general also said the law "cannot be amended consistent with ANILCA to define subsistence uses by economic needs."

Among problems that do exist, the attorney general said, is "the current definition of 'rural,' which is vulnerable to equal protection and vagueness challenges."

Gorsuch contended the definition could be amended or even repealed "since the definition of rural is not required by either state or federal law."

"ANILCA requires only that subsistence uses be rural customary and traditional uses, not that 'rural' be defined," he

said.

Another problem, "is the authorization and use of a workable system to avoid disrupting harvest opportunities for those whose uses are no longer classified by the boards as subsistence users," he said.

"The personal use category established by the Board of Fisheries is a potential solution, though its relation to sport and commercial uses needs to be resolved."

"For example, Cook Inlet is a highly populated area where all four categories of fishery — subsistence, sport, commercial and personal use — occur. Examining the appropriate application of the personal use category in Cook Inlet could develop a model not only for Cook Inlet but for other areas in the state," he wrote.

Sheffield announced recently that the fish and game panels will be charged with studying and improving the controversial subsistence law, a job he once promised would be handled by a task force.