

Subsistence Debate Continues

Sustaining our way of life — that's what subsistence is all about. But now, something seemingly simple to understand is constantly debated in state and federal halls.

Basically the latest questions revolve around which Alaskans can have priority use of fish and game and which government — federal or state — is going to manage those resources. Currently, the state Legislature is wrestling with this issue and several bills attempting to solve the legal questions surrounding subsistence are being considered.

Here's what happened to bring all this about.

In 1978 the Alaska Legislature, recognizing that there might not be enough fish or game for the entire human population, enacted a state subsistence law. That law required that subsistence uses of fish and game resources be given a priority

subsistence issue was thoroughly debated during the months preceding the 1982 election. But despite the well-financed antisubsistence effort, Alaskans supported the subsistence priority by resoundingly defeating the repeal initiative.

Throughout the 1982 debate, all Alaskans, both those who supported the 1978 law and those who opposed it, assumed that the subsistence priority they were arguing about was limited to hunting and fishing by residents of rural Alaska. No one thought the law provided a subsistence priority for those residents of urban areas such as Anchorage.

However, in 1985 the Alaska Supreme Court decided that this was just what the wording and legislative history of the 1978 law meant. In *Madison v. Alaska Department of Fish and Game* the court did not say that it would be unconstitutional for state law to give a subsistence priority to the bush; it just said that is not what the 1978 law did in fact. Based on this interpretation of the Legislature's intent eight years ago, the court rules that, once customary and traditional use of a particular fish stock or game population has been established in a particular area, all Alaskans must be afforded a subsistence priority over other user groups.

With that decision Governor Sheffield and members of the boards of fisheries and game immediately recognized that the *Madison* decision could seriously disrupt the normal hunting and fishing activities of urban Alaskans if something wasn't done and that state law was not totally out of compliance with the requirement of ANILCA. Therefore, the governor asked the Legislature to go back and amend the 1978 law to define subsistence as a rural activity and to limit the priority to hunting and fishing by residents of rural Alaska.

The state House of Representatives held a series of statewide hearings on the subject in 1985 and passed a bill to limit the subsistence uses to the bush. But the state Senate took no action prior to the adjourn-



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when any fish stock or game population was not large enough to accommodate harvests for all uses. In other words, sport and commercial uses would be stopped first, and subsistence uses would be cut last, if it became necessary to limit human "taking" to preserve any species. The Board of Fisheries and Board of Game were to adopt regulations implementing this law, and they did so defining subsistence uses as limited to residents of rural Alaska — both Native and non-Natives. In 1980 the U.S. Congress, in ANILCA, established a federal subsistence priority for rural and Native people which takes precedence over state law on all federal lands in Alaska.

Then in 1982 a small, but vocal group of urban Alaskans who had opposed enactment of the 1978 subsistence law obtained enough signatures to place an initiative to repeal the law on the general election ballot. As you may recall, the

ment of the 1985 session.

The result of inaction by the Senate was that the Board of Game had to implement the *Madison* decision by establishing Tier II subsistence hunts from which most urban hunters were excluded. Sport fisheries were not similarly disrupted, but only because no one attempted to fish for salmon with set nets in rivers usually used by sport fishermen.

However, several weeks ago crim-

inal charges were dismissed against a person caught snagging salmon on a Kenai Peninsula River, on the grounds of subsistence. This decision establishes a precedent that snagging and set-net fishing for Cook Inlet salmon stocks normally harvested by sport fishermen in freshwater rivers is protected by the *Madison* subsistence priority.

Now the stage is set for intervention by the federal government. Assistant Secretary of the Interior William Horn has informed the state of Alaska that if state law is not brought back into compliance with ANILCA's rural subsistence priority by June 1, the Interior Department will step in and adopt its own subsistence regulations on all federal lands which total about 61 percent of all land in Alaska.

With all these events, most agree that the 1978 subsistence law needs to be amended. The question is how, and there are varying solutions. AFN President Janie Leask and AFN Counsel Don Mitchell testified before the Senate State Affairs Committee in early February that the best way to solve the problem is to limit the definition of subsistence uses to hunting and fishing by rural Alaskans. Already, Leask said, the state House has approved such a priority. In addition, a statewide poll conducted in December by Hellenthal and Associates on behalf of AFN, found that 60 percent of those surveyed — urban and rural residents — support a rural subsistence priority much as they did in 1982.

"A clear majority of Alaskans believe that the subsistence way of life in rural Alaska should be protected by state law — and that the best way to do so is to establish a rural subsistence priority," Leask said.



Eskimo whalers maneuver their skin boat through the sea ice.

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