

Federal rule to clarify subsistence jurisdiction

by *Tundra Times* staff

Despite efforts by Alaska's Congressional delegation to derail them, the Dept. of Interior will publish regulations to assume control of subsistence fisheries in some navigable waters of the state.

At the same time, Lt. Gov. Fran Ulmer has sent out her third draft of a concept to deal with the subsistence fish and game management conflict that has state and federal lawmakers and agencies tied in knots. That conflict is the result of a state supreme court decision which struck down the state subsistence protection law. This put the state out of compliance with federal law, triggering the imminent takeover of subsistence fisheries by the Interior Department.

In a cover letter dated March 29, Ulmer notes that the current draft concept is similar to one circulated in January, except that:

- the concept of "reasonable opportunity" to participate in a subsistence hunt or fishery has been defined in more detail;
- opportunities for subsistence hunting and fishing for educational purposes by eligible applicants in eligible communities have been strengthened;

- the rules for subsistence "proxy" hunting have been revised to better accommodate actual needs and prevent abuse of the privilege;

- a provision has been added requiring the boards of game and fisheries to utilize local knowledge in the development of regulations, and, if necessary or appropriate, contract with local people to provide the information.

An Advance Notice of Proposed Rulemaking which proposes a modification of the scope and applicability of federal subsistence management in Alaska was published in the Federal Register April 4. The Advance Notice, prepared by the Department of the Interior and the Department of Agriculture, responds to the Ninth Circuit Court's recent decision in *Alaska v. Babbitt* (the *Katle John* case). In that case the Court held that public lands subject to the subsistence priority include navigable waters in which the United States has a reserved water right. Those waters, which are identified in the Advance Notice, include navigable waterways within and adjacent to the boundaries of National Parks, Forests, Refuges and other specified land units in Alaska.

The Advance Notice also addresses two other issues that are the subject of rulemaking petitions and related litigation. The three primary parts of the Advance



• Federal rule to clarify subsistence jurisdiction

1

Notice are these:

1. In accordance with the *Katte John* decision, the Advance Notice proposes to modify the interpretation that the Federal Subsistence Board had operated under since 1990, when the Federal program for subsistence management in Alaska went into effect. Under this previous interpretation, the Board's management authority did not extend to navigable waters in most parts of Alaska and therefore did not affect subsistence fishing for most of the inland waters of Alaska. Under the contemplated new rule, the Board's jurisdiction would include management of subsistence fishing in specified navigable waters.

2. The Advance Notice also proposes

to delegate the authority of the Secretaries of Interior and Agriculture to take action if hunting, fishing, or trapping activities taking place in Alaska off public lands result in a failure to provide subsistence priority on public lands. The Board is directed to exercise this authority only sparingly and after full consultation with the State of Alaska.

3. The Advance Notice further proposes that the Board maintain jurisdiction over public lands in conservation system units which have been selected by, but have not yet been conveyed to, the State of Alaska or Alaska Native corporations. Because of over selection, many of these lands may never be conveyed and will

ultimately remain under Federal management.

"The rulemaking process gives all Alaskans ample opportunity to comment on this proposed rule," said Mitch Demientieff, chairman of the Federal Subsistence Board. "We hope that citizens will participate in this public process by giving us their ideas on how to meet the court's mandates."

"Given the *Katte John* decision, we had to move ahead with this notice," said Deborah L. Williams, Special Assistant to the Secretary for Alaska. "But we hope, first and foremost, that the State of Alaska will craft a solution to subsistence that would allow the Federal government to return

management of all subsistence hunting and fishing management to the State."

The Federal Register also announces that there will be hearings to take public comment on the Advance Notice proposals. Exact times and locations will be announced locally.

To obtain copies, inquire about, or to make comments on the Advance Notice, call or write: Mitch Demientieff, Chairman, Federal Subsistence Board, c/o Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, or call (907) 786-3888.

The comment period on the Advance Notice will close on June 14, 1996.