

Subsistence, part II: What federal management would mean

by **Laury Roberts Scandling**

Tundra Times Juneau correspondent

Last week's first of two parts on subsistence focused on the present bill being considered. This week, the Tundra Times looks at what would happen if the federal government intervened in fish and game management, and reviews the history of subsistence in state law.

Legislation which could redeem subsistence hunting and fishing regulations languished in a Senate Committee last week. The bill has become the crucible for resolution of a long simmering — and often boiling — dispute over who should get the first crack at fish and game. The measure (HB 288) has stalled while Sen. Rick Halford (R-Chugiak) strengthens language which would tie the subsistence privilege to income level.



Federal law requires that traditional subsistence practices be given top priority in regulation of fish and game.

Tundra Times photo

As the bill was left last week in Senate Judiciary, anyone who has income below 130 percent of the federal poverty level (\$17,875 for a family of four) could qualify for subsistence rights.

Judiciary Chairman Sen. Pat Rodey (D-Anchorage) has promised that the bill, which was originally introduced by the governor and passed by one vote in the House last year, would not be held hostage. And, he told the *Tundra Times* previously that Halford's amendment — which is contrary to Congressional intent in the 1980 Alaska National Interest Lands Conservation Act (ANILCA) — would probably not survive a floor vote of the Senate.

Sen. Halford did not return several phone calls from the *Tundra Times*.

The Bush Caucus, the House leadership, and the governor's office is hoping that the remainder of the bill, fleshed out by the Senate Resources Committee, will make it through the Senate to become law (*see last week's story for a brief analysis of the measure*).

If Halford's amendment — or any other needs-based criteria — becomes part of state law, the federal government will intervene June 1 in wildlife management. The ANILCA requires that traditional community-centered subsistence practices, based on custom and dependence, be given top priori-

ty in regulation of fish and game on federal land in Alaska — or about 60 percent of the state. Halford has said that may not be such a bad deal and has noted that marine mammals in the state are already managed by the federal government.

In spite of an apparent lack of readiness, nearly 10 federal agencies are determined to take over management of fish and game on federal lands if there is no acceptable state law in place by June 1, an arbitrary deadline set by Interior Assistant Secretary Bill Horn. Horn did not return several phone calls from the *Tundra Times*.

The U.S. Fish and Wildlife Service is the lead agency scrambling to prepare for the possibility of having to patrol 255 million acres. "Because of the short time frame there can be no guarantee that early seasons can open as usual," said George Sura, public affairs officer for Fish and Wildlife. "We would have to guarantee subsistence hunting, although every effort would be made to provide sport and commercial hunting and fishing, too. There are so many unknowns."

Time is critical, but the feds are also worried about money. There is no funding in the current federal budget for such a massive management plan. In

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fact, according to the governor's office, Congress has never reimbursed the state for half of the expenses incurred in subsistence management, as was promised in ANILCA.

Fish and Wildlife agents have visited state Fish and Game to look at program information and costs. However, the state's role in all of this has yet to be figured out.

"I think it's likely sustained yield management will suffer," said Fish and Game Deputy Commissioner Dennis Kelso. "They just can't do what the state is doing, especially if they expect the state to keep doing research without being allowed to make management calls."

The state and federal government have not discussed any contractual arrangements yet, although an attorney general's opinion on the subject is being drafted.

"There would be a great deal of confusion," said Jim Ayers, legislative liaison to the governor. "Very few people would be hunting and fishing. There would be boundary and regulatory disputes because there would be two different categories of regulations (state and federal)."

The Boards of Fisheries and Game are caught in the middle of the fracas. They must set out regulations as soon as possible for the upcoming seasons, but no one knows under what circumstances: according to a new and demanding law, under court order, or under federal stewardship.

"I'm extremely disappointed," said Game Board Chair Brenda Johnson of Nome. "We went through this last year and had to meet in emergency session for 16 hours a day for two weeks. Can we really give the attention we need to all the regulations in such a short time?"

However, if the Senate Resources version of the bill favored by Native leaders goes on the books, the boards

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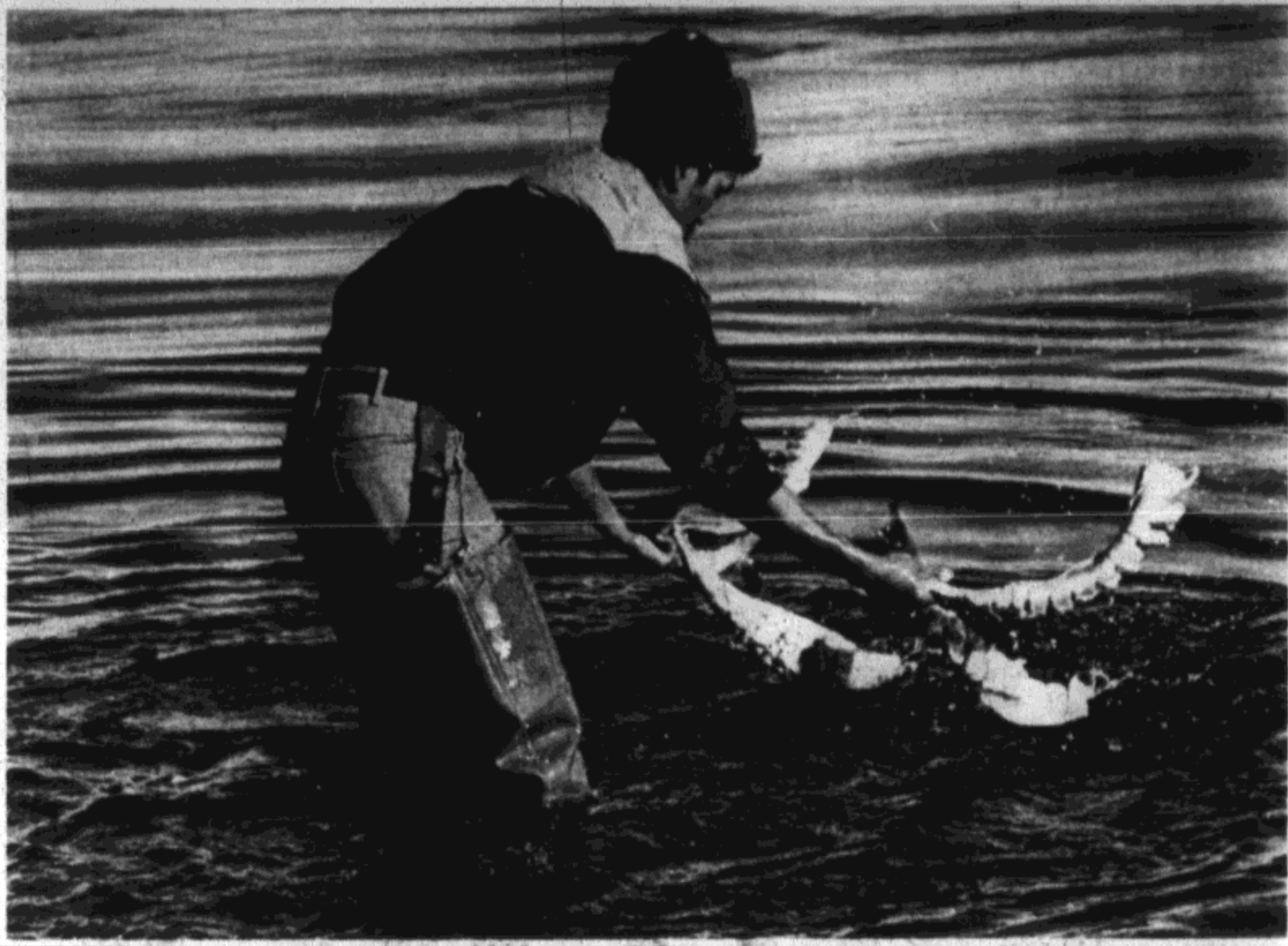
can give priority to subsistence under reliable authority. The boards since 1978 have been providing rural residents the first chance to take wildlife when harvests had to be restricted.

Before that time no regulatory preference was given for traditional taking of fish and game. However, in 1976 the western Arctic caribou herd collapsed, precipitating the need to allocate resources. (In a doomed effort, then-Gov. Jay Hammond tried to persuade the federal government to declare the Northwest Arctic a disaster area.)

The boards decided to allocate hunting permits based on three criteria: local residency, dependence on the resource, and customary use, which would become the foundation of the subsistence priority.

It was the first time the boards had regulated a hunt based on someone's traditional need for the resource. Sportsmen were unhappy. The Tanana

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If the federal government takes over fish and game management in Alaska, U.S. Fish and Wildlife officials say they will have to guarantee subsistence hunting and fishing, and that efforts would also be made to provide sport and commercial opportunities as well.

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Valley Sportsmen's Association filed a lawsuit against the Board of Game. Ultimately the Alaska Supreme Court decided that the board could create such rules.

The Alaska Legislature in 1978 codified similar criteria confirming the board's authority via the state's new subsistence preference law. In 1980 Congress included like language in the ANILCA, stressing that "regulatory systems which employ income requirements not be imposed upon rural residents."

The eight years since the birth of that law have been disrupted by virulent controversy.

There might have been a chance to break up the brawl over subsistence when newly-elected Gov. Bill Sheffield appointed a task force on the issue in 1983. His move followed voter defeat of an initiative attempt to repeal from law the subsistence

priority.

But the task force membership was irreconcilably split and "doomed to begin with," according to one participant. Some sources within the Native community indicated that Native leaders let Sheffield know they just wanted the issue to cool down outside the legislative cauldron. The task force disbanded without ever issuing a report. The inertia culminated in the so-called *Madison* decision.

In February 1985 the Alaska Supreme Court ruled that the Legislature had intended that all Alaskans — not just rural residents — be considered subsistence users if they met the standards set out by the 1978 law. Shortly thereafter, the State Court of Appeals dismissed poaching charges against a man because no specific regulations provided for subsistence use of the resource: he had claimed he had taken the deer for subsistence purposes.

Board of Game held a marathon emergency session in June to hammer out new regulations to conform with court rulings. The board adopted a two-tier system. Under Tier I all Alaskans can hunt or fish for subsistence purposes. If a harvest is to be

restricted then sport, commercial, and other uses must be reduced before cutting back on subsistence.

Tier II activates the three usual criteria for determining who can take game if there isn't enough for all subsistence users. Predictably, a number of urban sportsmen got squeezed out of limited hunts previously allocated by lottery.

In the meantime the Senate State Affairs Committee, headed by Sen.

Mitch Abood (R-Anchorage), held a series of public hearings on the measure which had come over from the House. Some observers thought Abood's baliwick was a death sentence for the bill.

"What's significant is that Abood did not kill the bill," noted a Senate aide. "He established a record and decided it was a good idea to have a bill. So the debate now is not whether to have a bill, but what kind of bill."



The outcome of the latest round in the subsistence controversy could affect future generations.

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