

PROPOSAL XX – 5 AAC 99.021. Definition. Add a statewide definition of “noncommercial” as it applies to the barter of fish and game taken in subsistence fisheries, hunts, and trapping as follows:

...

(b) In addition to the definitions in AS 16.05.940, in 5 AAC 01–5 AAC 02, and in 5 AAC 84–5 AAC 92, unless the context requires otherwise,

(1) (A) For the purposes of barter of fish, shellfish, and game or their parts taken for subsistence uses, “noncommercial” means the exchange must:

(i) be of approximately equal value at the time of the exchange, as determined by the participants in the exchange, and not compiled over time; and

(ii) not provide direct or indirect profit to either participant in the exchange; and

(iii) for purposes of this subsection, “profit” means an advantageous gain or benefit to either party involved;

(B) the following are prohibited from engaging in barter of fish and game or their parts taken for subsistence uses:

(i) individuals or businesses holding a license under A.S. 43.70 to engage in the commercial sale of the food items or nonedible items provided by the barter exchange; and

(ii) individuals or businesses licensed to engage in providing the services provided by the barter exchange.

ISSUE: Alaska Statute [AS] 16.05.940(33) recognizes barter of subsistence-taken fish and game as a customary and traditional (C&T) use. No regulations prohibit the barter of finfish or shellfish taken in subsistence fisheries. In January 2012, the Alaska Board of Game (board) modified 5 AAC 92.200 to allow the barter of most game taken for subsistence purposes. Under AS 16.05.940(2), “barter means the exchange or trade of fish or game, or their parts, taken for subsistence uses (A) for other fish or game or their parts; or (B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.” As defined in AS 16.05.940(33), subsistence uses are “the noncommercial, customary and traditional uses of wild, renewable resources.” The board requested that the department, in collaboration with the Division of Alaska Wildlife Troopers, propose a definition of “noncommercial” as it applies to AS 16.05.940(33), to guide enforcement of 5 AAC 92.200 so that barter transactions of subsistence resources do not develop into commercial activities. The proposed definition is based on contrasts between noncommercial activities and commercial activities, with the latter understood to involve marketing of goods and services to produce a profit. In contrast, the goal of traditional barter of subsistence resources is to distribute them equitably within and between communities. Because it applies to subsistence uses of both fish and game, we propose that the definition of “noncommercial” be adopted by the Joint Board as part of Chapter 99, *Subsistence Uses*.

Barter exchanges do not include cash: exchanges of subsistence resources for cash are classified as “customary trade,” which is defined by Alaska state law as “the **limited, noncommercial** exchange, for **minimal** amounts of cash, as restricted by the appropriate board, of fish or game resources...” (A.S. 16.05.940 (8); emphasis added). Thus, by statutory definition, customary

trade is already noncommercial; furthermore, the Board of Fisheries and Board of Game have authority to restrict customary trade to ensure that it occurs for minimal amounts of cash.

WHAT WILL HAPPEN IF NOTHING IS DONE? Regulations regarding the kinds of exchanges of game that are permissible as barter under 5 AAC 92.200 and of fish taken in subsistence fisheries will be unclear.

WILL THE QUALITY OF THE RESOURCE HARVESTED OR PRODUCTS PRODUCED BE IMPROVED? The quality of the resource harvested or products produced will be unaffected by this proposal.

WHO IS LIKELY TO BENEFIT? Alaskans who customarily obtain subsistence resources through barter. Enforcement officers will benefit from a clear, concise definition that applies to all subsistence resources, fish, shellfish, and game.

WHO IS LIKELY TO SUFFER? No one.

OTHER SOLUTIONS CONSIDERED? None.

PROPOSED BY: Alaska Department of Fish and Game and Alaska Wildlife Troopers
