

PRESENTATION TO THE SPECIAL COMMITTEE ON
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by
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Thank you for the opportunity to address the Special Committee on Subsistence as you begin your hearings. It is my understanding that the Committee desires some background on the development of Alaska's subsistence statutes and of their interpretation by the Subsistence Section. Accordingly, I have prepared a brief summary of the legislative history leading to passage of Alaska's "subsistence law," chapter 151, Session Laws of Alaska, 1978 Alaska Legislature, Second Session). I also am prepared to describe the operation of the statute's various sections based upon the language chosen by the Legislature and the written legislative history.

Virtually since statehood, the Alaska Legislature has demonstrated its concern for the continuation of subsistence opportunities. In 1961, the House passed a resolution urging amendments to the federal Migratory Waterfowl Act which would have allowed spring hunting of migratory waterfowl; the House emphasized the importance of this harvest to residents of northern and western Alaska. See 1961 Alaska Sess. L., House Resolution No. 29 April 3, 1961). In 1963, the Senate requested the Secretary of the Interior to rule formally "that migratory waterfowl may be taken in Alaska by persons who have been traditionally or are otherwise dependent on them for subsistence." 1963 Resolutions of Alaska, Senate Resolution No. 50 (March 26, 1963).

More recently, the Legislature in 1976 authorized the Board of Game to adopt subsistence hunting regulations -- including subsistence hunting areas and other measures. 1976 Alaska Sess. L., ch. 269. In its findings, the Legislature stated:

[T]raditional dependence on fish and game resources is a continuing and necessary way of life in many areas of the state and ... the protection of subsistence usage of these resources is essential to the health, safety and general welfare of the citizens of the state in those areas.

1976 Alaska Sess. L., ch. 269, §1.

In the Tenth Alaska Legislature, Second Session, several bills were introduced addressing subsistence use of fish and game. See, e.g., HB 772, HB 915; see also HB 718, HCR 93, HJR 48. House Bill 960 ultimately became the legislative vehicle which was enacted as chapter 151 of the 1978 Alaska Session Laws. In addition to the original House Bill 960 by the Special Committee on Subsistence, substitutes were offered by the House Resources and Finance Committees. Eventually a Senate Resources Committee substitute was adopted after amendment from the floor. Although four different versions of HB 960 were considered, it is notable that the language of Sections 1 (Intent), 4 (Board of Fisheries responsibilities) and 5 (Board of Game responsibilities) remained essentially unchanged during the legislative process. The thrust of Section 3 (Duties of the Subsistence Section) also remained substantially the same, although the specific language varied among the substitutes. The bill was approved by the Governor July 12, 1978, and became effective on October 10, 1978.

Before I describe the operation of the statute's various sections, there are three fundamental matters which deserve special attention. First, nothing in either the language or the legislative history of chapter 151, 1978 Alaska Session Laws, indicates that the subsistence "priority" means exclusive use. The "Intent" section of the statute recognizes other beneficial uses,

see 1978 Alaska Sess. L., ch. 151, §1, and the provisions dealing with the Boards' responsibilities contemplate continued resource use other than subsistence. 1978 Alaska Sess. L., ch. 151, §§4, 5. In addition, the Letter of Intent accompanying House Bill 960 implicitly recognizes that uses other than subsistence will continue to be part of fish and game management planning. See 1978 House Journal 1154, 1155 (May 12, 1978) (Letter of Intent, Rep. Nels A. Anderson, Jr., Chairman, Special Committee on Subsistence) (May 12, 1978).

Nor is there any indication that the priority was intended to guarantee a particular harvest or harvest level. In 1978, the Legislature had before it House Bill 915 which would have established "that fish, wildlife and plant resources may be utilized, developed, and conserved for other beneficial uses only if there is adequate provision in law and in fact for the full satisfaction of the needs of subsistence users." HB 915, §1 (10th Alaska Legislature, Second Session) (emphasis added). In addition, HB 915 would have limited the authority of the Boards of Fisheries and Game by providing, in part:

[N]o regulations permitting the taking of fish [or game] for beneficial uses other than subsistence may be adopted unless provision exists under law or regulations whereby subsistence users of the fish [or game] may fully satisfy their needs.

HB 915, §§2,3 (10th Alaska Legislature, Second Session). Of course, the Legislature did not adopt HB 915; instead, the amended version of HB 960, which became law, implicitly recognizes the validity of beneficial uses other than subsistence. See 1978 Alaska Sess. L., ch. 151 §§1, 4, 5.

Second, both the statutory language and the legislative history emphasize that the biological integrity of Alaska's fish and game resources must not be impaired by the subsistence priority. The statute expressly recognizes the importance of monitoring and regulating harvests "so that the viability of fish and game resources is not threatened and so that resources are conserved in a manner consistent with the sustained-yield principle." 1978 Alaska Sess. L., ch. 151, §1. The "sustained yield principle" is a mandatory standard in the Alaska Constitution, and it is reiterated in three different sections of chapter 151. See 1978 Alaska Sess. L., ch. 151, §§1, 4, 5. The statute does not require the Boards of Fisheries and Game to permit subsistence harvesting if it would jeopardize or interfere with maintenance of sustained yield.

Third, the "subsistence law" does not preclude the Boards or the Department from using any of their usual management tools. Chapter 151 establishes certain procedural requirements for the Board of Game in considering proposals for subsistence hunting regulations. However, the statute does not limit the management techniques available to the Boards. Nor does the statutory priority for subsistence mandate the use of extraordinary measures; well-established approaches--such as open and closed seasons, bag limits, designation of harvest methods and means, or controlled use areas -- and combinations of such techniques are not affected by chapter 151.

With these points in mind, I wish to describe how the various sections of the statute operate. The structure of chapter 151 and the mandatory functions of the Subsistence Section suggest that the Legislature expected the Boards of Fisheries and Game to proceed on a case by case basis rather than by abstract

and potentially arbitrary line drawing. The statute contains a definition of "subsistence uses", but determinations of other matters are left for the Boards. To help them in this process, chapter 151 requires the Subsistence Section and other divisions of the Department to conduct a variety of research functions. See 1978 Alaska Sess. L., ch. 151, §§3, 9. The statute also provides, in part, that the Section shall:

[A]ssist the Department, the Board of Fisheries, and the Board of Game in determining what uses of fish and game, as well as which users and what methods, should be termed subsistence uses, users, and methods.

This deliberate, information-based approach is reinforced by the legislative Letter of Intent, which suggests that the contours of the subsistence priority should be determined by the Boards based not upon arbitrary definitions or criteria without supporting evidence but rather upon the results of careful research and data gathering:

This bill is intended to provide a coordinated plan for clarifying what subsistence use of fish and game is and for documenting subsistence uses so that they can be integrated into fish and game management planning.

... [T]here is an obvious need for the gathering of information about subsistence hunting and fishing and the making of informed recommendations to the Boards of Fisheries and Game. ... A division of subsistence given the tasks set forth in section four would have the information to make recommendations as to the needs of the subsistence users.

1978 House Journal 1154-1155 (May 12, 1978).

For purposes of this discussion, I shall assume that the Subsistence Section and the management divisions of the Department have done their homework and that the Boards have sufficient information to evaluate the regulatory

proposals before them.

Here is what the statute requires the Boards to do. If regulations allowing a subsistence harvest would jeopardize or interfere with maintenance of the resource on a sustained yield basis, then the Boards should not adopt such regulations. However, if there is a harvestable "surplus", the Boards have three basic choices under chapter 151, sections 4 and 5.

First: If the population of resources is large enough that the demands of all users can be met, then no priority measures need be adopted for subsistence. See generally 1978 House Journal 1154, 1155 (May 12, 1978).

Second: Whenever it is necessary to restrict the taking of fish or game either to assure maintenance of the resource on a sustained-yield basis, or to assure that subsistence users may continue to take fish or game, subsistence use must be accorded a priority. (The Letter of Intent indicates that sport or commercial use should be restricted before subsistence use. However, elimination of such uses is not suggested.) Id.

Third: If additional restrictions are necessary, three criteria must be used in restricting subsistence use. These are listed in the statute:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

The three resource situations I've just described (i.e., no restrictions, some restrictions, more restrictions) illustrate the essence of the subsistence provisions mandated by the legislature. The Letter of Intent describes the following legislative objectives:

These two sections, which are virtually identical for the [Board] of Fisheries and the Board of Game, are intended to statutorily set out the priority given to subsistence use of fish and game resources. ... [T]hese sections set forth a priority of users if restrictions are needed because of the unavailability of resources. The priority list is an attempt to insure that those with the most dependence upon the fish and game resources are the last to be restricted.

1978 House Journal 1154, 1155 (May 12, 1978)

The sections just described are the most prominent operational provisions of the statute. In addition, the Legislature modified the authority of the Game Board and established procedural requirements to be used by the Board in considering regulations specifically addressed to subsistence hunting. See 1978 Alaska Sess. L., ch. 151, §§ 6-9. These measures are consistent with the legislative intent that regulation of resources should occur "with as much input as possible from the affected users." 1978 Alaska Sess. L., ch. 151 §1. The hearing requirements and time limits are self-explanatory. See 1978 Alaska Sess. L., ch. 151, §7. The statute also establishes particular mechanisms for local residents and advisory committees to initiate Board consideration of subsistence hunting regulations. See 1978 Alaska Sess. L., ch. 151, §6. In addition, certain information gathering efforts are required of

the Department when these subsistence hunting regulations are being considered. See 1978 Alaska Sess. L., ch. 151, §9.

The remaining portions of the subsistence statute are definitions of subsistence hunting, subsistence hunting area, subsistence fishing, subsistence uses, family and barter. The Letter of Intent suggests that some of these definitions were broadened in order to allow activities which already were "customary and traditional" among Alaskans. See, e.g., 1978 House Journal 1154, 1156 1157 (May 12, 1978) (discussion of §§12, 16, 17).

I hope this brief overview of statutory evolution and of the Subsistence Section's understanding of the law have provided useful background as the Special Committee on Subsistence begins its hearings. It is interesting that the legislative Letter of Intent accompanying House Bill 960 anticipated the importance of this Committee's work on a variety of matters affecting subsistence. See 1978 House Journal 1154, 1157 (May 12, 1978). As this Committee continues its work, the Subsistence Section would be pleased to provide additional information and assistance.