

ALASKA BOARD OF GAME
86-41-GB

FINDING OF EMERGENCY

The Board of Game finds that an emergency exists and that under AS 44.62.250 it is necessary for the immediate preservation of the general welfare to adopt emergency hunting regulations. This is necessary because in May 1986, the Legislature enacted House Bill 288, amending the state subsistence law. That bill was signed by the Governor on May 30, 1986. The legislation requires the Boards of Fisheries and Game to identify subsistence uses as the customary and traditional uses of rural Alaska residents, on a community or area basis, and to provide for those uses with a priority in certain situations. This new mandate necessitates emergency action in order for the regulations to be amended in time for all hunters to have the opportunities to harvest game this summer and fall as intended by the Legislature.

In February 1985, Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985), had held that the 1978 state subsistence law was not intended to identify subsistence uses as the customary and traditional uses of rural Alaska residents, nor were such uses to be identified and provided for on a community or area basis. Further, in April 1985, the Alaska Court of Appeals held in State v. Eluska, 698 P.2d 184 (Alaska App. 1985), that the Board of Game was required to adopt subsistence hunting regulations separate from the general hunting regulations, instead of accommodating subsistence uses in the general hunting regulations, as had been done in the past. Until separate subsistence regulations consistent with Madison were adopted, Eluska held that individuals who took game out of season could assert a "subsistence defense," created by the court in Eluska.

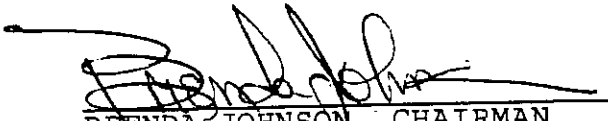
As a consequence of Madison and Eluska, the Board of Game in June 1985 comprehensively reviewed and amended the hunting regulations, to provide for subsistence uses as defined by Madison's interpretation and to ensure the enforceability of the regulations under Eluska.

In light of the recent legislation, a comprehensive review of the hunting regulations is again required, to maximize enforceability, and to make subsistence and other hunting opportunities for the coming seasons as consistent as practicable with the Legislature's intent. The Board of Game had to review the regulations establishing "Tier II" hunts, those which permitted no non-state resident participation, and the regulations about which public comment or Department of Fish and Game recommendations were received since the regulations were adopted in June 1985. The time necessary to publicize regulations and to administer the fall hunts is not long enough

to permit the board to consider the amendments at a regularly noticed meeting; the only mechanism available to restructure the hunts in greatest need of review after the recent legislation is emergency regulatory action.

The Board of Game at its next regular meeting will accept proposals on all hunting regulations. Public comment, both written and in person, will be taken as it is during all non-emergency Game Board meetings. Advisory committees and regional councils will have the opportunity to participate in the board process, as they do during all normal board meetings. The board acknowledges that the decisions it faced during its emergency meeting were made without the benefit of public comment, and may need amendment. The board anticipates modifying regulations (some included in these emergency regulations and some not included) in response to the recent legislation, in light of public testimony and comments from the advisory committees and regional councils at future meetings, and as more information becomes available over time.

Adopted: 6/4/86 4-0-3
 DATE VOTE


 BREND A JOHNSON, CHAIRMAN
 ALASKA BOARD OF GAME