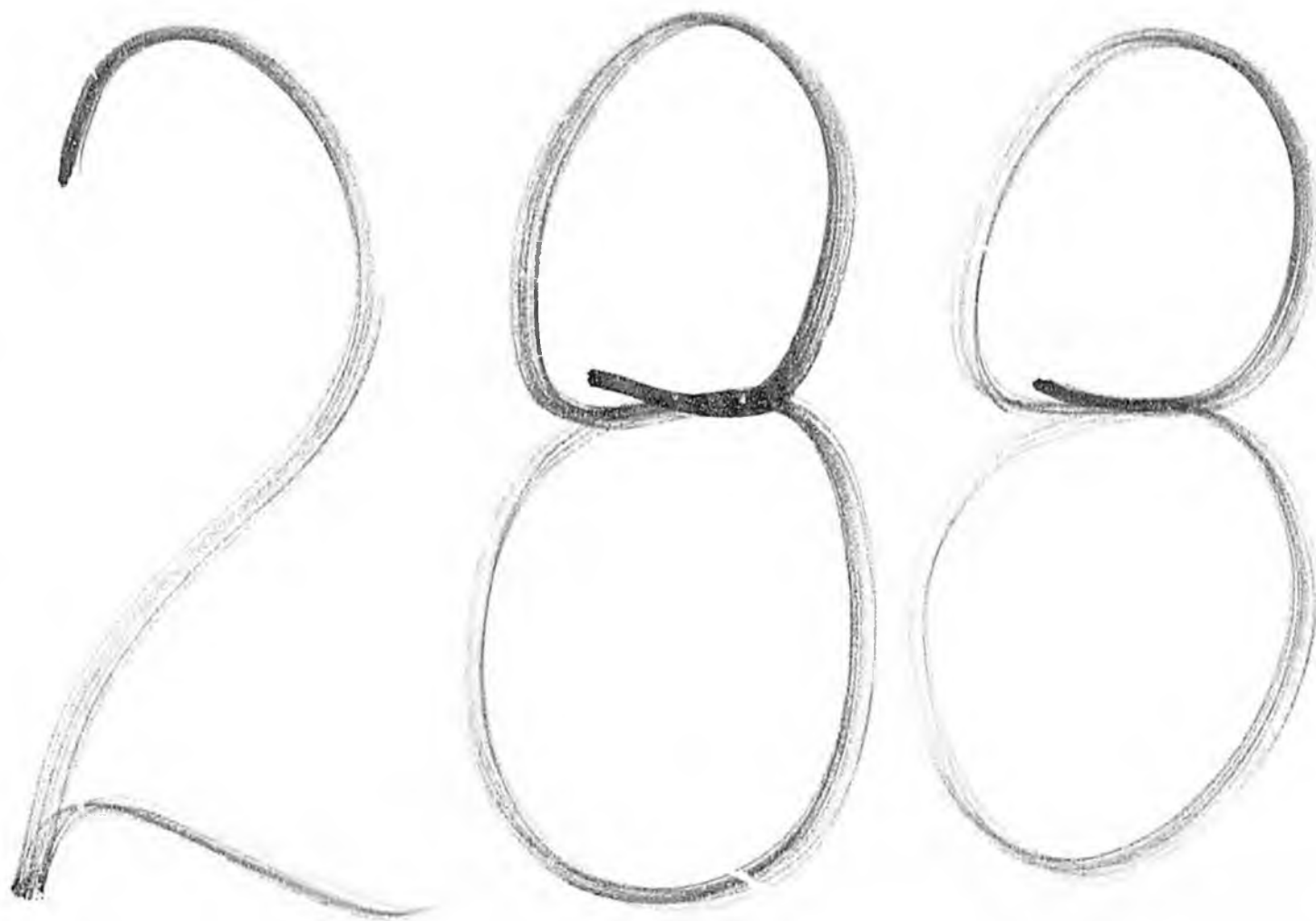


H B



STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	4/18/85	7pm
House Resources	3/25/85	8:30 AM
" "	3/26/85	8:30 AM
" "	4/2/85	8:30 AM
" "	4/9/85	8:30 AM

COMMITTEE REPORT
HOUSE

4/19

(7)

FURTHER:

Refer

4/15/85

Date: _____

The Committee on JUDICIARY has had HB 233

"An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 233 (JUD) same title
 new title
- and recommends reports it back with individual recommendations
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Handwritten signatures]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Handwritten signatures and notes] do not pass

[Handwritten signature]

CHAIRMAN

Peterson

A M E N D M E N T

Offered in the HOUSE

TO: CSHB 288(Res)

Page 2, after line 24, insert a new bill section to read:

"* Sec. 3. AS 16.05.940(22) is amended to read:

(22) 'subsistence fishing' means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, hook and line held in the hand, hook and line with the line attached to a pole or rod that is held in the hand or closely attended, or other means defined by the Board of Fisheries;"

Renumber remaining bills sections accordingly.

M. M. Miller

Memo: To House Judiciary Committee

From: Mary Bishop
1555 Gus's Grind
Fairbanks 99701
Phone: 455-6151

Date: 18 April 1985

Regarding: CSHB - 288

The recent finding by the appeals court in the Eluska case have made the situation even more difficult for the Boards of Fish and Game. In particular please consider footnote 6 on pages 7,8 of court decision.

I have attached April 12 Memorandum to Commissioner Collinsworth from AG's office.

I urge the Judiciary Committee to consider participation in the review suggested in the last paragraph of that memo. I also hope you will immediately encourage a State Supreme Court review of the Eluska case as is also suggested.

brought in
Submitted by Jenny King
for Mary Bishop

MEMORANDUM

bst - file - subsistence
11-25
State of Alaska

TO: Hon. Don Collinsworth
Commissioner
Department of Fish and Game
Juneau

FROM: Norman C. Gorsuch
Attorney General

By: Sarah Elizabeth McCracken ^{SEM}
Assistant Attorney General
Natural Resources-Anchorage

DATE: April 12, 1985 12 1985

FILE NO: 122-369-84

TELEPHONE NO: 276-3550

SUBJECT: State v. Eluska
(subsistence deer
hunting in Kodiak);
Court of Appeals
No. A-210

Enclosed for your review is the decision issued today by the Court of Appeals in the Eluska case, dealing with subsistence deer hunting in Kodiak.

In a nutshell, the court holds that the deer regulations (six month season, seven deer bag limit) for Kodiak do not on their face comply with the subsistence law, and remands the matter to the trial court to determine whether the seasons and bag limits restrict subsistence use, i.e. whether they constitute "any significant impairment" of subsistence uses.

The court also holds that the 1978 law required the board to take action to specifically provide for subsistence hunting and to grant subsistence uses a priority. The court holds that the board may not restrict subsistence hunting at all in an area in which sport or commercial hunting is permitted, and that even if sport and commercial hunting are totally prohibited at all times in an area, the board is still prohibited from restricting subsistence hunting unless the board specifically finds that unrestricted hunting would jeopardize sustained yield.

In the Eluska case, a doe deer was taken in mid-May. The fact that there was a six month long season and seven deer bag limit did not on its face satisfy the legislative mandate that the board specifically adopt subsistence regulations.

The court formally recognizes a "subsistence defense" and sets up a procedure whereby a defendant would have to make a preliminary showing, before trial, that that person believed in good faith that he or she was engaging in subsistence hunting as defined by statute. If the defendant makes a preliminary showing then the state is given an opportunity to establish

"that the regulations did not in fact restrict to the taking of game, i.e. it was a regulation of time, place and manner that did not significantly impact or impair subsistence use or,

(2)

Don Collinsworth Memo
Re: State v. Eluska

April 12, 1985
Page 2

alternatively, that any restriction on subsistence use recognized the subsistence priority and was intended to protect sustained yield."

The court interprets the term "restriction" to mean "any significant impairment of subsistence uses." If, after hearing the evidence, the court is convinced that a jury could not find guilt beyond a reasonable doubt, the case must be dismissed. If reasonable men and women could differ, the defense is then submitted to the jury with appropriate instructions.

I suggest that the Department of Fish and Game, interested Board of Game members, and the Department of Law meet in the very near future to discuss the implication of the case, and the best course of action to take. There is no right of appeal to the supreme court, but there is a procedure for requesting the supreme court to review the decision. The state has 15 days (until April 29) in which to file such a request for discretionary review.

SEM:csd

cc: Col. Robert Henderson
Dennis Kelso
Stephen Behnke
Lewis Pamplin
Larri Spengler
Board of Game
Sue McLean

(2)

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 288 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taking of fish and game
7 for subsistence and personal use; and providing
8 for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. FINDINGS. The legislature finds that

11 (1) the taking of fish stocks and game populations for personal
12 and family consumption and related uses is essential to the health, safety,
13 and general welfare of Alaskans domiciled in rural communities or rural
14 areas in which the taking of fish and game for such uses is a significant
15 part of the economy of the community or area; and

16 (2) the taking of fish stocks and game populations for personal,
17 sport, and commercial uses is also of economic and recreational importance
18 to Alaskans who reside anywhere in the state.

19 * Sec. 2. AS 16.05.251(a) is amended to read:

20 (a) The Board of Fisheries may adopt regulations it considers
21 advisable in accordance with the Administrative Procedure Act (AS 44.-
22 62) for

23 (1) setting apart fish reserve areas, refuges and sanctu-
24 aries in the waters of the state over which it has jurisdiction,
25 subject to the approval of the legislature;

26 (2) establishing open and closed seasons and areas for the
27 taking of fish;

28 (3) setting quotas, bag limits, harvest levels, and sex and
29 size limitations on the taking of fish;

1 (4) establishing the means and methods employed in the
2 pursuit, capture and transport of fish;

3 (5) establishing marking and identification requirements
4 for means used in pursuit, capture and transport of fish;

5 (6) classifying as commercial fish, sport fish, personal
6 use fish, or predators or other categories essential for regulatory
7 purposes;

8 (7) watershed and habitat improvement, and management,
9 conservation, protection, use, disposal, propagation and stocking of
10 fish;

11 (8) investigating and determining the extent and effect of
12 disease, predation, and competition among fish in the state, exercis-
13 ing control measures considered necessary to the resources of the
14 state;

15 (9) prohibiting and regulating the live capture, posses-
16 sion, transport, or release of native or exotic fish or their eggs;

17 (10) establishing seasons, areas, quotas and methods of
18 harvest for aquatic plants;

19 (11) establishing the times and dates during which the
20 issuance of fishing licenses. permits and registrations and the
21 transfer of permits and registrations between registration areas is
22 allowed; however, this paragraph does not apply to permits issued or
23 transferred under AS 16.43;

24 (12) personal use fishing.

25 * Sec. 3. AS 16.05.940(23) is amended to read:

26 (23) "subsistence uses" means the customary and traditional
27 noncommercial uses [IN ALASKA] of wild, renewable resources by a
28 resident domiciled in a rural area of the state for direct personal or
29 family consumption as food, shelter, fuel, clothing, tools, or

1 transportation, for the making and selling of handicraft articles out
2 of nonedible by-products of fish and wildlife resources taken for
3 personal or family consumption, and for the customary trade, barter,
4 or sharing for personal or family consumption; in [FOR THE PURPOSES
5 OF] this paragraph [,]

6 (A) "family" means all persons related by blood,
7 marriage, or adoption, and any person living within the household
8 on a permanent basis;

9 (B) "rural area" means a community or area of the
10 state in which the taking of fish or wildlife for personal and
11 family consumption is a significant characteristic of the economy
12 of the community or area;

13 * Sec. 4. AS 16.05.940 is amended by adding a new paragraph to read:

14 (28) "personal use fishing" means the taking, fishing for,
15 or possession of finfish, shellfish, or other fishery resources, by
16 Alaska residents for personal use and not for sale or barter, with
17 gill or dip net, seine, fish wheel, long line, or other similar means
18 defined by the Board of Fisheries.

19 * Sec. 5. This Act takes effect immediately in accordance with AS 01.-
20 10.070(c).

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 17, 1985

Honorable John G. Fuller
Chairman, Alaska Legislative Council
Pouch V
Juneau, Alaska 99811

Re: HB 288 (Subsistence and
personal use)

Dear Representative Fuller:

You have asked what the immediate effect of HB 288 would be on fishing opportunities of Alaskans. Under Madison v. Alaska Department of Fish and Game, P 2d _____, Op. No. 2911, (Alaska, Feb. 22, 1985), all Alaskans would be eligible for subsistence fishing, anywhere subsistence fishing is authorized in the state. Passage of HB 288 would return the situation to the way it was immediately before the Madison decision was issued. In other words, the bill would validate the regulations passed so far by the boards, and would not result in any instantaneous change of fishing opportunities which were available under those regulations.

In areas where the board had addressed the identification of subsistence uses under the eight criteria in 5 AAC 99.010, some people would qualify for subsistence uses and some would not. For example, in the Cook Inlet area, the board examined the uses of salmon, and determined that the evidence showed that only people domiciled in Tyonek, English Bay, and Port Graham were eligible for subsistence uses. Therefore, if HB 288 were to pass, people in those three communities would be eligible for subsistence fishing as authorized by regulation near their communities, and people from other Cook Inlet communities would be eligible for the personal use fisheries the board had established.

In other areas of the state, such as Southeast Alaska where the board had not yet gone through the procedures in 5 AAC 99.010 to identify subsistence uses, all Alaskans would be able to continue to participate in subsistence fishing until the board applied the procedures. For example, people in Ketchikan would be able to continue subsistence fishing as authorized by the Southeast regulations. It is possible that after the board

Hon John G. Fuller
Chairman, Alaska Legislative Council
Re: HB 288

April 17, 1985
Page 2

examines the uses in Ketchikan it will determine that they are not rural uses qualifying under the eight criteria. If the board determines that, the board will establish by regulation, personal use fishing opportunities for those individuals. On the other hand, when the board assesses the uses of a smaller community, such as Hydaburg, the board may determine that the uses qualify as subsistence and will continue to authorize subsistence fishing for the residents of the community.

Attached is a May 4, 1982 memorandum from the Attorney General to Milstead Zahn, Executive Director, Boards of Fisheries and Game, AG File No. 366-639-82, on the effects of the joint boards' adoption of 5 AAC 99.010. In that provision, the boards had for the first time in regulation specified that subsistence uses were customary and traditional uses by rural Alaskan residents which could be identified by eight criteria. The memorandum evaluates the question of whether the passage of that regulation in itself meant that the Department of Fish and Game should modify the way it distributed subsistence fishing permits. The memorandum concludes that the department should not unilaterally restrict the issuance of subsistence permits to particular people, absence specific, situation by situation regulatory action by the boards. The memorandum emphasized that the implementation of the subsistence law is an ongoing process, rather than something that can be completed instantaneously, and that people could not be precluded from subsistence fishing unless the board considered authorizing personal use fishing opportunities for them.

If you have any other questions, please do not hesitate to ask.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: *Larri Irene Spengler*
Larri Irene Spengler
Assistant Attorney General

LIS:rn

Attachment

Phillips #1

IN THE SENATE

BY THE RULES COMMITTEE
BY REQUEST OF THE
GOVERNOR

Amendments for NB 388

~~SENATE BILL NO. 231~~

IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - FIRST SESSION
A BILL

For an Act entitled: "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. FINDINGS. The legislature finds that

(1) the taking of fish stocks and game populations for personal and family consumption and related uses is essential to the health, safety, and general welfare of Alaskans domiciled in rural communities or rural areas in which the taking of fish and game for such uses is a significant part of the economy of the community area; and

(2) the taking of fish stocks and game populations for personal, sport, and commercial uses is also of economic and recreational importance to Alaskans who reside anywhere in the state

* Sec. 2. AS 16.05.251(a) shall be amended to read:

(a) The Board of Fisheries shall in accordance with the Administrative Procedures Act (AS 44.52) adopt regulations permitting the taking of fish resources, unless it determines that such taking will jeopardize the maintenance of such resource on a sustained yield basis. At such times, and under such circumstances that it is necessary to restrict the taking of fish to maintain fish stocks on a sustained yield basis, the Board may allocate the use of these resources among beneficial uses. Except for regulations adopted under (b) of this section, allocations shall be calculated to achieve conservation of the resource, be fair and equitable, and no use shall receive an excessive share of the resource with regard to the intended purpose of the use.

the customary trade, barter, or sharing for personal or family consumption, for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

* Sec. 4. AS 16.05.940 is amended by adding a new paragraph to read:

(28) "personal use fishing" means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources by Alaska residents for personal or family consumption, for food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft out of nonedible by-products of fish resources taken for personal or family consumption and for the customary trade, barter, or sharing for personal or family consumption. The taking of fish for personal use shall be with gill net, seine, fish wheel, long line, or similar means defined by the Board of Fisheries.

* Sec. 5. AS 16.05.940 is amended by adding a new paragraph to read:

(30) priority use shall mean a use of fish resources that is not exclusive but shall be preferred. When necessary to assure maintenance of fish stock on a sustained yield basis or to assure continuance of subsistence use of such resource priority use shall mean that reasonable restrictions on a step by step basis shall be imposed on all beneficial uses of fish resources including subsistence use. Subsistence use restrictions shall be the last imposed in each step by step restriction.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.070(c).

Consistent with the above, the Board shall adopt regulations for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of fish;

(3) setting quotas, bag limits, harvest levels, and sex and size limitations on the taking of fish;

(4) establishing the means and methods employed in the pursuit, capture and transport of fish;

(5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;

(6) classifying as commercial fish, sport fish, personal use fish, or predators or other categories essential for regulatory purposes;

(7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation and stocking of fish;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) prohibiting and regulating the live capture, possession, transport, or use of native or exotic fish or their eggs;

(10) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

(11) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43;

(12) personal use fishing.

* Sec. 3. AS 16.05.943(23) is amended to read:

(23) "subsistence uses" means the customary and tradition uses by rural [IN] Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for

A M E N D M E N T

Offered in the HOUSE

TO: CSHB 288(Res)

Page 1, after line 18, delete section 2 and insert new bill sections to read:

"* Sec. 2. AS 16.05.251(a) is amended to read:

(a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.-62) for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of fish;

(3) setting quotas, bag limits, harvest levels, and sex and size limitations on the taking of fish;

(4) establishing the means and methods employed in the pursuit, capture and transport of fish;

(5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;

(6) classifying as commercial fish, sport fish, [PERSONAL USE FISH,] or predators or other categories essential for regulatory purposes;

(7) watershed and habitat improvement, and management,

conservation, protection, use, disposal, propagation and stocking of fish;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(10) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

(11) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43 [;

(12) PERSONAL USE FISHING].

* Sec. 6. AS 16.05.940(23) is amended to read:

.23) "subsistence uses" means the customary and traditional [NONCOMMERCIAL] uses in Alaska of wild, renewable resources [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in this paragraph

[(A)] "family" means all persons related by blood,

marriage, or adoption, and any person living within the household on a permanent basis;

[(B) "RURAL AREA" MEANS A COMMUNITY OR AREA OF THE STATE IN WHICH THE TAKING OF FISH OR WILDLIFE FOR PERSONAL AND FAMILY CONSUMPTION IS A SIGNIFICANT CHARACTERISTIC OF THE ECONOMY OF THE COMMUNITY OR AREA;]

* Sec. 7. Section 1 of this Act and AS 16.05.940(28) are repealed.

* Sec. 8. Sections 1 - 4 of this Act takes effect immediately in accordance with AS 01.10.070(c).

* Sec. 9. Sections 5 - 7 of this Act take effect January 1, 1986."

Pettyjohn #1

An Act entitled: "An Act relating to the taking of fish and game for subsistence; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. FINDINGS. The legislature finds that

(1) the continuation of the opportunity for non-wasteful subsistence uses by many Alaskans is important and in many cases essential to their physical, traditional, cultural, and social existence, and that in certain instances no practical alternative resources or means are available to replace food, supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(2) in order to protect subsistence users, and in order to protect sport and commercial uses of fish and wildlife, and in order to maintain healthy fish and wildlife populations available to subsistence, sport and

commercial users, it is necessary for the Board of Fisheries and the Board of Game to have authority, ~~only for the 1985, fishing and hunting seasons and until March 31, 1986, to regulate subsistence fishing and hunting in the manner in which they were regulated in 1984.~~

(3) conservation of fish and wildlife during the 1985 season and thereafter will be furthered if the legislature is unhurried in its consideration of complicated social, political, and biological questions related to subsistence; by March 31, 1986 the legislature should be able to consider, after statewide hearings, more complicated subsistence issues that cannot be adequately considered in the remaining days of the first session of the fourteenth legislature.

* Sec. 2. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.258. SUBSISTENCE CRITERIA. Until March 31, 1986, and in accordance with the Administrative Procedure Act (A.S. 44.62), the Board of Fisheries and the Board of Game may adopt regulations in order to identify customary and traditional subsistence uses by Alaskans by using the criteria set forth in the regulations in effect in 1984 and found at 5 AAC 99.010 and 5 AAC 01.597 and those criteria are hereby established for the 1985 fishing and hunting seasons.

* Sec. 3. For the 1985 fishing and hunting seasons, the

Commissioner of Fish and Game shall use his authority, in AS 16.05.060, to issue emergency regulations in order to provide for subsistence as it occurred in 1984; provided however, that in this instance a biological emergency need not exist as is otherwise required by AS 16.05.060.

* Sec. 4. Until March 31, 1986, only subsistence uses specifically recognized and authorized by the Board of Fisheries or Game have any legal standing.

* Sec. 5. This Act shall take effect immediately in accordance AS 01.10.070 (c).

Contents - HB 288
April 18, 1985

CASHB 286 (Resources)

HB 288

Letter of Intent for CSSHB 288 (res)

Draft minutes 4/9/85 House Resources

Draft minutes 4/2/85 House Resources

3/26/85 minutes House Resources

3/25/85 minutes House Resources

State v. Eluska, No 456, Court of Appeals opinion

Madison v. Alaska Federation of Natives, Reply Brief of
Appellant/Cross-Appelles dated 5/30/85

Madison v. Alaska Dept of Fish & Game & Alaska Board of
Fisheries, Brief of Appellees/Appellants dates 1/26/84

Madison v. Alaska Dept of Fish & Game and Alaska Board of
Fisheries, Brief of Intervenor/Amicus Curiae dated 12/27/83

Madison v. Alaska Dept of Fish & Game & Alaska Board of
Fisheries, Brief of Appellant/Cross Appellee, 10/5/83

Letter of Intent for CSHE 288 (Res)
an act relating to the taking of fish and game for subsistence and
personal use
by the House Resources Committee
4/15/82

The purpose of this bill is to authorize the Alaska Board of Fisheries and the Alaska Board of Game to adopt regulations identifying "subsistence uses" of fish stocks and game populations as the boards did from May 30, 1982 until February 22, 1985.

Pursuant to this bill the boards will limit the identification of "subsistence uses" of fish stocks and game populations to the taking of such stocks and populations by Alaska residents who are domiciled in rural communities and rural areas in which the taking of fish stocks or game populations for personal and family consumption is a significant characteristic of the economy of the community or area, as determined by the boards.

This limitation of the definition of "subsistence uses" recognizes that Alaska is unique, and unlike any of the other forty-nine states, the economy of many rural communities and rural areas in Alaska is significantly dependent participation by the residents of these communities in the taking of fish stocks and game populations for personal and family consumption. Further, the Legislature finds that the general health and welfare of these citizens is significantly tied to their participation in these activities.

The boards will be authorized to adopt regulations for identifying customary and traditional uses by Alaska residents of those rural communities and rural areas. It is the intent of the Legislature to preserve the approach to implementing the state's subsistence law embodied in 5 AAC 99.010, (as adopted by the Joint Boards of Fisheries and Game on May 30, 1982), for identifying subsistence uses on a community or area basis.

The Legislature finds that implementing the subsistence law is consistent with the intent of the definition of subsistence hunting and fishing and personal use fishing contained in House Bill 288 when criteria such as those outlined below are used to identify customary and traditional uses of the resource:

- (1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;
- (2) a use pattern recurring in specific seasons of each year;
- (3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;
- (4) the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;

*Sustaining
basic stocks
to #1 priority
see stat. in
16 for the pro*

Letter of Intent for CSHB 238 (Res)
by the House Resources Committee (Continued)

(5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

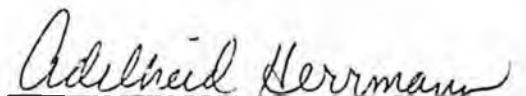
(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing, and gift-giving; customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

This legislation establishes that the commercial sale of fish and game taken for personal and family consumption is prohibited, but does not preclude the sale of handicraft articles made from the non-edible by products taken for such uses. Accordingly, the Legislature intends that barter, sharing and customary trade of fish or game taken for personal and family consumption be of a non-commercial nature. This restriction however, does not apply to the existing limited sale of animal furs by subsistence users of the resource.

The bill also establishes a statutory definition of "personal use fishing." Although sport, commercial and personal use fishing are not afforded a statutory priority over each other, the inclusion of a definition of "personal use" is to indicate that the intent of the Legislature is to delegate to the Alaska Board of Fisheries adequate regulatory authority to provide all persons engaged in sport, commercial, and personal use fishing a reasonable opportunity to participate in the harvest of Alaska's fish stocks.



Adelheid Herrmann, Co-chairman
House Resources Committee
4/15/85

EXCERPT FROM MINUTES

HOUSE RESOURCES
STANDING COMMITTEE
April 8, 1985
5:30 p.m.

Members Present: Rep. Adelheid Herrmann, Co-Chair, Rep. Bettye Cato, Rep. Roger Jenkins, Rep. John Sund, Rep. Dick Schultz, Co-Chair, Rep. Drue Pearce, Rep. Kay Wallis

Joined By: Rep. Jack G. Fuller, Rep. Peter Goll, Rep. Randy Phillips

COMMITTEE CALENDAR

HB 288

WITNESS REGISTER

Rep. Peter Goll
Pouch V
Juneau, AK 99811
465-4925
Position Statement: Supports HB 288

Lynn Levengood
Fairbanks, AK
Position Statement: Opposes HB 288

Jim Fry, Sr.
Siana, AK
Position Statement: Opposes HB 288

Ivan (Hank) Avery
Savoonga, AK
Position Statement: Opposes HB 288

Byron Haley
Fairbanks, AK
Position Statement: Opposes HB 288

James Martinez
Klawock, AK
Position Statement: Supports HB 288

Harvey Samuelson
Dillingham, AK
Position Statement: Supports HB 288

David Wiley Stevenson
Copper Center, AK
Position Statement: Opposes HB 288

Roxy Estes
Cordova, AK
Position Statement: Supports HB 288

Louis GJosund
Homer, AK

Position Statement: Opposes HB 288

Chris Nevison
Fairbanks, AK

Position Statement: Supports HB 288

William Shee
Yakutat, AK

Position Statement: Opposes HB 288

Pete Schaeffer
Kotzebue, AK

Position Statement: Supports HB 288

Ralph Andy Johnson
Soldotna, AK

Position Statement: Opposes HB 288

Constance Griffith
Ketchikan, AK

Position Statement: Supports HB 288

Roland Quimby
Fairbanks, AK

Position Statement: We should look at the resource not the users.

Woodrow Morrison, Jr.
1736 Davis
Juneau, AK

Position Statement: Supports HB 288

Leo Land
Haines, AK

Position Statement: Supports HB 288

Jeff Parker, Attorney
Kenai River Sports Fishing Asso.
Anchorage, AK

Position Statement: Concerned about user group definitions.

Dave Rector
Homer, AK

Position Statement: Does not support HB 288 unless "rural" is defined.

Otto Florshutz
Sitka, AK

Position Statement: Supports HB 288

Mark Jensen
Juneau, AK

Position Statement: Opposes HB 288

DRAFT

Armin Koenig
Cordova, AK
Position Statement: Supports HB 288

Doug Fredericks
Slana, AK
Position Statement: What about impacts on sport hunting, fishing and related industries.

Charles Derrick
Fairbanks, AK
Position Statement: Opposed to HB 288

Arthur Stites
P.O. Box 3188
Salamatof, AK
Position Statement: Opposed to HB 288

Joe Hotch
Klukwan, AK
Position Statement: Supports HB 288

Robert Rausch
Juneau, AK
Position Statement: Opposes HB 288

Raymond Pete
Bethel, AK
Position Statement: Opposes HB 288 unless urban and rural areas are more defined.

Bob Hunter
Alaska Sportsfishing Asso.
Anchorage, AK
Position Statement: Would like a temporary measure until the issue can be resolved.

Walter Sampson
Kotzebue, AK
Position Statement: The Legislature should recognize the real subsistence users, when considering a bill such as this.

Hugh Dugan
Fairbanks, AK
Position Statement: Not enough time in session to consider this bill, the Attorney General lawyers have been wrong in every subsistence case.

D. W. (Bill) Dean
Gastineau Channel Fishery Advisory Committee
Juneau, AK
Position Statement: Opposes HB 288

William Miller, President

Dot Lake Village Council
Dot Lake, AK
Position Statement: Opposed to HB 288

Jimmie Ricks
Soldotna, AK
Position Statement: Speaking for Gene Madison, Opposed to HB 288

Tcm Johnson
Cordova, AK
Position Statement: Supports HB 288

Vernita Billas
Fairbanks, AK
Position Statement: Supports HB 288

Ron Sommerville
Alaska Outdoor Council
Juneau, AK
Position Statement: Opposed to HB 288

Otto Kelcher
Homer, AK
Position Statement: Was happy with subsistence law as it was.

Chet Cheshier
Cordova, AK
Position Statement: Voluntarily pays 2% gross to aquaculture association to build up runs.

Unknown
Cordova, AK
Position Statement: Supports HB 288

Jack Lentfer
Juneau, AK
Position Statement: Opposes HB 288 until the definition of subsistence is refined.

Terry McClare
Mentasta, AK
Position Statement: Opposes HB 288, feels there should be a separation of fish and game.

Unknown
Box 967
Slana, AK
Position Statement: Opposes HB 288, feels there should be a separation of fish and game.

Alfred McKinley
816 Dixon
Juneau, AK (Originally from Hoonah)
Position Statement: Supports HB 288

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA,)	
)	
Appellant,)	File No. A-210
)	
v.)	<u>O P I N I O N</u>
)	
DAVID ELUSKA,)	
)	
Appellee.)	[No. 456 - April 12, 1985]
_____)	

Appeal from the District Court of the State of Alaska, Third Judicial District, Kodiak, Roy H. Madsen, Judge.

Appearances: Sarah Elizabeth McCracken, Assistant Attorney General, Anchorage, and Norman C. Gorsuch, Attorney General, Juneau, for Appellant. Michael J. Wall, Assistant Public Defender, Kodiak, and Dana Fabe, Public Defender, Anchorage, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

SINGLETON, Judge.

The state appeals the district court's dismissal of misdemeanor charges against David Eluska. Eluska was charged with possessing illegally taken game in violation of 5 AAC 81.320(6)¹ and 5 AAC 81.140(a).²

1. For the 1982-83 season, 5 AAC 81.320(6) limited the deer season in Game Unit 8 to the period between August 1 and January 31 and imposed the following bag limits:

(Footnote Continued)

Eluska sought dismissal of the charges on the ground that 5 AAC 81.320(6) was unenforceable against him because he was a subsistence hunter and the regulation failed to adequately provide for subsistence hunting. See AS 16.05.255(b); AS 11.81.220; AS 44.62.030.¹ Acting District Court Judge Roy H. Madsen found that the deer was taken to satisfy the subsistence needs of Eluska and his family and that the regulations which

(Footnote 1 Continued)

Aug. 1 - Jan. 31 Seven deer; however, antlerless deer may be taken only from September 15 - January 31

2. 5 AAC 81.140(a) provides:

Possession and Transportation. (a) No person may possess, transport, or place into the possession of another, any game or parts of game that the person has taken in violation of AS 16 or a regulation promulgated thereunder.

3. Alaska Statute 44.62.030 provides:

Consistency between regulation and statute. If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

Alaska Statute 11.81.220 provides:

All offenses defined by statute. No conduct constitutes an offense unless it is made an offense

- (1) by this title;
- (2) by a statute outside this title; or
- (3) by a regulation authorized by and lawfully adopted under a statute.

"Offense" is defined in AS 11.81.900(b)(33) as:

conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation.

prohibited him from taking the deer failed to provide adequately for subsistence uses as required by the enabling statute. AS 16.05.255(b). Consequently he concluded that the regulation was invalid as applied to Eluska and dismissed the case. The state appeals, contending that (1) adequate regulations had been promulgated providing for subsistence use of game; (2) Eluska lacked standing to challenge state game regulations because his possession of game was unlawful even if taken for subsistence uses; and (3) Eluska lacked standing to challenge the state game laws because he had not exhausted his administrative remedies. (This last argument was first made during oral argument.) We agree with Judge Madsen's conclusion that the state regulations applicable to Game Unit 8 do not on their face make adequate provision for subsistence hunting. We therefore recognize "subsistence use" as a defense to the charges brought against Eluska. In light of the substantial uncertainty regarding the proper resolution of the issues presented in this case at the time it was argued to the trial court, we have decided to remand the case to the trial court to give the parties an opportunity to litigate Eluska's subsistence defense as we define it in this opinion.

DISCUSSION

In 1978 the legislature substantially amended several fish and game statutes to reflect a policy favorable to subsistence hunting. The substantive changes were prefaced by the following statement of intent:

The legislature finds that there is a need to develop a statewide policy on the utilization, development and conservation of fish and game resources, and to recognize that those resources are not inexhaustible and that preferences must be established among beneficial users of the resources. The legislature further determines that it is in the public interest to clearly establish subsistence use as a priority use of Alaska's

fish and game resources and to recognize the needs, customs and traditions of Alaskan residents. The legislature further finds that beneficial use of those resources by all state residents should be carefully monitored and regulated, with as much input as possible from the affected users, 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.

§ 1, Ch. 151, SLA 1978 (1978 Temporary and Special Acts and Resolutions).

Prior to the 1978 amendments, AS 16.05.255 did not mention subsistence, but provided in part:

Regulations of the Board of Game. (a) The Board of Game may make regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

. . . .

- (2) establishment of open and closed seasons and areas for the taking of game;
- (3) establishment of the means and methods employed in the pursuit, capture and transport of game;
- (4) setting quotas and bag limits on the taking of game

The statute was amended in 1978 by adding a new subsection:

(b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of game resources on a sustained-yield basis. Whenever it is necessary to restrict the taking of game to assure the maintenance of game resources on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

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

(3) availability of alternative resources.⁴

On May 14, 1983, when the deer season in Game Unit 8 was completely closed, Eluska was found in possession of a freshly killed doe. He was prosecuted pursuant to 5 AAC 81.320(6) and 5 AAC 81.140(a). Eluska argued and the trial court found that application of 5 AAC 81.320(6) to Eluska would be inconsistent with the requirements of AS 16.05.255(b) because the regulations governing hunting in Game Unit 8 made no specific provision for subsistence use. Eluska argued that nothing short of regulations which expressly distinguish between subsistence and sport hunting will satisfy section (b) of AS 16.05.255. On appeal, the state argues that the regulation need not expressly provide for subsistence uses and that the regulation in this case makes adequate provision for subsistence hunters. The clear language of the statute, the state continues, provides that the Board shall adopt regulations "permitting" the taking of game for subsistence uses, not that it must adopt special "subsistence regulations." Thus, where a hunting season can accommodate hunting opportunities for all user groups without infringing upon the continuation of subsistence uses, that season is consistent with the state's subsistence law and need not be specially designated as a "subsistence" season. It was incumbent upon Eluska, the state concludes, to show that a six-month season and a seven-deer limit was insufficient to

4. The legislature also established a section on subsistence hunting and fishing within the Department of Fish and Game, and provided a procedure for creating "subsistence hunting areas," where subsistence is the only use. See AS 16.05.090(c) (creating a subsistence section within the Department of Fish and Game); AS 16.05.094 (defining the duties of the subsistence section); AS 16.05.257 (providing for the creation of "subsistence hunting areas"); AS 16.05.240(23) (defining "subsistence uses").

meet "subsistence uses" before he could prevail on his motion to dismiss.⁵ Since there is nothing in the record indicating that there were insufficient deer in Game Unit 8 to meet all needs, including both sport hunting and subsistence uses, the state contends it was unnecessary for the Board to adopt any specific subsistence regulations, and therefore the trial court erred in finding that prosecution of Eluska under 5 AAC §1.320(6) and 5 AAC 81.140(a) was inconsistent with the enabling statute.

We believe that the parties' reliance on AS 44.62.030 obscures rather than illuminates the present controversy. The regulations in question are similar to regulations which were passed before the enactment of AS 16.05.255(b) and were apparently enacted under the authority granted in AS 16.05.255(a). They are clearly not inconsistent with the first subsection of the statute. Given the substantial burden that a party challenging an administrative regulation on inconsistency grounds must sustain, we are satisfied that Eluska has not proved that 5 AAC 81.320(6)

5. The state finds support for its position in a series of attorney general opinions and in the legislative history of the Alaska National Interest Lands Conservation Act (ANILCA) P.L. 96-487, 94 Stat. 2371 (1980), particularly in section 804 (codified at 16 U.S.C. § 3114 (1982)). The state points out that the federal statute was intentionally patterned after Alaska's subsistence law and provides virtually identical language to that found at AS 16.05.255(b). H.R. Rep. No. 96-97, Part 2, 96th Cong., 1st Sess. 191 (1980). The legislative history of section 804 specifies that:

If a particular fish or wildlife population in a particular area is sufficient to sustain harvest by all persons engaged in subsistence and other uses, restrictions on taking for nonsubsistence uses are not required by this section.

Id. at 193. But see Madison v. Alaska Department of Fish and Game, P.2d _____, _____ n.13, Op. No. 2911 at 23-24 n.13 (Alaska, February 22, 1985) (rejecting an interpretation of the terms "customary and traditional" derived from ANILCA).

and 5 AAC 81.140(a) are on their face necessarily inconsistent statutory requirements of subsection (a), since, as the state pair is at least conceivable that sufficient deer existed on Kodiak Island to meet all subsistence needs despite the bag limits, seasons and other restrictions set by the regulations. But cf. Madison v. Alaska Department of Fish and Game, ___ P.2d ___, ___ n.9, Op. No. 2911 at 12 n.9 (Alaska, February 22, 1985) (holding Board of Fisheries regulations defining subsistence fisheries inconsistent with AS 16.05.940(22), (23), and 16.05.251(b), which define "subsistence fishing" and "subsistence uses," and require the Board to adopt regulations permitting subsistence fishing).

This conclusion does not resolve the case, however, because we agree with the trial court that a proper resolution of this case requires consideration of AS 16.05.255(b) as well as AS 16.05.255(a). We must determine what the 1978 legislative enactment required the Board to do and then determine whether the Board properly carried out the legislative mandate. Finally, if the Board has not followed the legislative directive, we must determine what effect its failure would have on Eluska's prosecution. Having considered the record and the parties' arguments, we conclude that by enacting subsection (b) of AS 16.05.255, the legislature required the Board of Game to adopt specific regulations "permitting" the

6. The state's suggestion that the regulations "permitted" subsistence hunting to the extent that they did not prohibit it outright exhibits a misunderstanding of the statute. As the supreme court pointed out in Madison, ___ P.2d at ___, Op. No. 2911 at 15-17 (in discussing the two-tier regulation established in the statute), the Board may not restrict subsistence hunting at all in an area in which sport or commercial hunting is permitted. Even if sport and commercial hunting are totally prohibited at all times in an area, the Board is still prohibited from restricting subsistence hunting unless the Board specifically finds that unrestricted

(Footnote Continued)

see page 16
"restriction" means "an
-sufficient impairment
-subsistence uses
i.11

taking of game for subsistence uses. No such regulations were governing Game Unit 8. Consequently, we are required to recog-
"subsistence" defense to prosecutions under regulations adopted in accordance with AS 16.05.255(a) in order to carry out the legislative intent.

(Footnote 6 Continued)

subsistence hunting would interfere with sustained yield. Id. In the absence of evidence that all other hunting was prohibited in an area and that in addition subsistence hunting was restricted solely for sustained-yield purposes, any attempt to punish a subsistence use as a violation of a hunting regulation is suspect.

In reaching these conclusions we stress that we do not decide nor do we read Madison as deciding bright line rules for differentiating between subsistence uses, sport uses, and commercial uses. In fact the supreme court pointed out that a commercial fisherman might well be a subsistence user when he fishes for personal consumption. By the same token many men and women who think of themselves as sport hunters may well find that their taking satisfies the statutory definition of a "subsistence use." AS 16.05.940(23). It may be that most "sport hunting" qualifies as "subsistence hunting." We express no opinion on this question. It was precisely because the legislature believed that the rights of the various groups could only be determined through an understanding of the history of hunting in Alaska that the Board was given the power to interpret the statute and to promulgate regulations establishing a reasoned basis for distinguishing subsistence uses from sport uses and commercial uses. The Board's default in meeting this obligation leaves us with the problem faced today.

Finally, we do not read the supreme court's discussion of the legislative history regarding the use of the term "customary and traditional" as constituting an implicit finding that the statute is somehow void as a discrimination against outsiders and newcomers. See Madison, P.2d at ___, Op. No. 2911 at 20-21. We assume that the Board will be able to adopt regulations adequately answering the questions left open by this case and Madison without violating state and federal equal protection guarantees. See Zobel v. Williams, 457 U.S. 55, 60-61, 102 S. Ct 2309, 2312-13, 72 L.Ed.2d 672, 677-78 (1982) (when a state distributes benefits unequally between past residents and newcomers the distinctions it makes are subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment); cf. Alaska Constitution art. VIII (establishing limitations on state regulation of hunting and fishing).

I. Legislative Mandate

We believe the Board's duty to publish regulations pursuant to AS 16.05.255(b) to have been mandatory. See Sisters of Providence in Washington, Inc. v. Department of Health and Social Services, 643 P.2d 970, 977-78 (Alaska 1982); Mukluk Freicht Lines, Inc. v. Nabors Alaska Drilling, Inc., 516 P.2d 408 (Alaska 1973); United States Smelting, Refining and Mining Company v. Local Boundary Commission, 489 P.2d 140 (Alaska 1971). Our conclusion that the legislature intended a mandatory responsibility is based on two factors. First, the legislature uses the word "shall" which is mandatory language. See 1A C. Sands, Sutherland Statutory Construction § 25.04 (4th ed. 1972); 2A C. Sands, Sutherland Statutory Construction § 57.03 (4th ed. 1973). Second, the language of the statute, construed in light of its legislative history, demonstrates a legislative intention to have the Board of Game pass meaningful subsistence regulations. While the statute does not specifically state whether the regulations must be separate and clearly distinguishable from the regulations adopted pursuant to AS 16.05.255(a), it does require that provision for subsistence hunting must be made somewhere in the regulations.⁷

When Chapter 151, SLA 1978 was being considered in the legislature, the Special Committee on Subsistence issued a letter of intent which provided in part:

7. Cf. Madison, ___ P.2d at ___, Op. No. 2911 at 7, 16-17 (state may no longer allocate for subsistence uses at its discretion pursuant to AS 16.05.251(a), nor may state permit sport or commercial hunting in any area where subsistence hunting is restricted; even in those areas where sport and commercial hunting are totally prohibited, subsistence hunting may not be restricted unless the Board finds that

(Footnote Continued)

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. This bill also provides a legislative framework for the State's policy of recognizing subsistence as the priority use of fish and game.

* * * *

Sections six and seven: These two sections, [AS 16.05.251(b) and .255(b)] which are virtually identical for the Boards of Fisheries and the Board of Game, are intended to statutorily set out the priority given to subsistence use of fish and game resources. While there are presently regulations for subsistence fishing, there is no mechanism for the promulgation of subsistence hunting regulations except with the creation of subsistence hunting areas pursuant to A.S. 16.05.257. Section seven would allow for these regulations so that subsistence hunting could be distinguished by separate regulations from sports hunting. Further, these 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.

If there is a need to restrict the taking of fish or game in order to avoid damaging the fish stocks or game populations, or in order to assure that subsistence users may continue to take fish or game, it is the intent of the Committee that sports or commercial use be restricted before subsistence use. If these restrictions are inadequate, restriction of subsistence use as well is authorized based upon the dependence on the resource, the local residence of the subsistence users, and the availability of alternate resources. It is the intent of the Committee that decisions and determinations by the Board of Fisheries and the Board of Game will be subject to complete public scrutiny and that reasons will be given for any action or any failure to act.

Letter of Intent, Special Committee on Subsistence, 2 House Journal 1154, 1155 (1978).

(Footnote 7 Continued)

limitation on subsistence hunting is necessary for sustained-yield purposes).

The Committee's letter is entitled to substantial weight in determining the legislative intent in enacting the statutes. See Madison, ___ P.2d at ___, Op. No. 2911 at 18-19; 2A C. Sands, Sutherland Statutory Construction § 48.07 (4th ed. 1973). It indicates that the legislature intended the statute to change the existing system which did not provide a mechanism for establishing separate subsistence regulations.

II. Board's Inaction

The Board of Game has not promulgated a specific regulation governing subsistence hunting in Game Unit 8, nor has it made specific provisions for a subsistence defense or exception to prosecutions under regulations adopted pursuant to AS 16.05.255(a). The time that has elapsed from 1973 to the present has provided more than adequate opportunity for the Board to carry out its statutory responsibility. Consequently, we conclude that the Board has failed to carry out its responsibilities and, under the authority of United States Smelting, 489 P.2d at 141-42, dismissal of Eluska's prosecution might have been justified. We believe the supreme court's comments regarding the Local Boundary Commission in United States Smelting are particularly appropriate to this situation:

In our view the Local Boundary Commission has had sufficient time to discover sensible principles pertaining to the changing of local boundaries. Permitting continued failure on the commission's part to promulgate standards for changing local boundary lines can no longer be justified by the need for further experience. Since under AS 44.19.260(a) the legislature required the commission to develop standards in order to recommend boundary changes, and the commission had not developed standards prior to the Nome annexation proceedings, we hold that the commission lacked the power to recommend the Nome boundary changes in question. To do otherwise would be to condone the commission's nonobservance of a

valid legislative prerequisite to the exercise of the commission's discretion in matters of local boundary changes.

489 P.2d at 142 (footnotes omitted).

III. "Subsistence" Defense

We decline to affirm the dismissal of the prosecution, however, because we believe the statute interpreted in light of its legislative history suggests an alternate remedy which adequately balances the rights of Eluska and those similarly situated to engage in subsistence hunting and the state's legitimate interest in protecting the fish and game resources of the state. In the absence of specific regulations governing subsistence hunting applicable to Game Unit 8, we hold that Eluska was entitled to rely on a "subsistence" defense to prosecution under regulations implementing AS 16.05.255(a). We are guided in this decision by our supreme court's decision in Frank v. State, 604 P.2d 1068 (Alaska 1979). Frank was convicted for illegally taking and transporting a moose. He defended on the ground that the moose was necessary for a funeral potlatch which was an expression of religious belief and that prosecution operated to abridge his freedom of religion. The supreme court agreed and ordered dismissal of the complaint. Having found that the use of moosemeat in funeral potlatches was a necessary requirement of Frank's religious beliefs and having concluded that the state failed to prove a countervailing public policy, the court adopted the exemption in question. While Eluska's rights are based on a statutory protection of subsistence hunting, rather than a constitutional protection of religious freedom, we believe the same approach is in order.

In the absence of appropriate regulations,⁸ we believe that the best way to accommodate Eluska's statutory right to subsistence hunting and the state's right to reasonably protect the state's game resources is to judicially recognize a defense for subsistence hunting. We therefore hold that when the trial court concludes, as a matter of law, that hunting occurs in an area in which the state has not adopted regulations pursuant to AS 16.05.255(b) providing for subsistence uses and recognizing the subsistence priority, conduct which would otherwise be a violation of a regulation adopted pursuant to AS 16.05.255(a) restricting hunting is justified as a "subsistence use" if the person whose conduct is alleged to have constituted hunting in violation of the regulation believed he or she was taking the game for subsistence uses (see AS 16.05.940(23)) and was not aware of and did not consciously disregard a substantial and unjustifiable risk that his or her taking was not a subsistence use of the game taken. (See AS 11.31.900(a)(3) defining the mental state "recklessly.") We use the term "defense" as it is defined in the revised criminal code, AS 11.31.900(b)(15):

"defense", other than an affirmative defense, means that

(A) some evidence must be admitted which places in issue the defense; and

8. The defense recognized in this opinion exists only to the extent that the state has not adopted detailed regulations providing for subsistence hunting within an area. Such regulations when and if adopted would have the additional effect of guarding against abuses and would aid in record keeping to determine the true impact of subsistence hunting upon game management. See Frank v. State, 604 P.2d 1068, 1075 (Alaska 1979). Where the state has adopted valid regulations recognizing the subsistence priority they would be controlling and the defense recognized here would no longer apply. Whether given regulations are valid is of course a question of administrative law for the court not a question of adjudicative fact for the jury. Cf. Madison, _____ P.2d at _____, Op. No. 2911 at 13-15; Kelly v. Zamarello, 426 P.2d 906, 917 (Alaska 1971).

(B) the state then has the burden of disproving the existence of the defense beyond a reasonable doubt.

In order to permit a pretrial dismissal of charges where appropriate⁹ and avoid delay in presenting such a defense, we will require a

9. We recognize that a statute which defines an offense in terms which require reasonable men and women to guess at its meaning is constitutionally invalid. *State v. Rice*, 626 P.2d 104, 109-10 (Alaska 1981). A statute which clearly defines an offense may nevertheless be constitutionally infirm, if exceptions or defenses are recognized but their scope is unclear. A potential subsistence user must be able to determine before he or she hunts whether the hunt will comply with the law before he or she can be subjected to criminal prosecution for his or her hunting. Uncertainty regarding a person's rights may discourage him or her from subsistence hunting thus indirectly accomplishing a result which the legislation sought to prevent. We address the problem of "fair notice" in three ways. (1) We depart from ordinary practice and permit a defendant to obtain a pretrial judgment of acquittal in an appropriate case. While summary judgments are recognized in the civil rules we have never recognized such a procedure before in criminal cases. Nevertheless, we believe it appropriate in this type of case to insure that subsistence hunters are not put to the cost and uncertainty of a jury trial in those cases in which the state will clearly be unable to disprove the subsistence defense. The pretrial judgment of acquittal will thus serve the screening function served by a grand jury proceeding or preliminary hearing in felony cases. (2) We establish a mens rea of recklessness to insure that only those who recklessly hunt in bad faith will be subject to prosecution. (3) Finally, we define the exception as a defense rather than an affirmative defense to insure that the state must prove guilt beyond reasonable doubt by convincing a jury that the hunting in question was not a subsistence use. We stress that our recognition of the defense is required by the state's failure to comply with the statutes by adopting appropriate regulations. Should the state remedy this deficiency then the defense would no longer be applicable.

We have considered making the defense one for the court by analogy to entrapment. See *Yates v. State*, 681 P.2d 1362, 1363-64 (Alaska App. 1984). Since the purpose of the defense is to substitute for regulations which would give guidance to those to be affected, a strong argument can be made for judicial decisions on a case-by-case basis that would have precedential value. See *Yates* at 1364, citing *People v. Moran*, 463 P.2d 763, 769 (Cal. 1970) (Traynor, C.J., dissenting). Nevertheless, we are satisfied that juries are in a particularly appropriate position to evaluate the subsistence defense. We have also considered and rejected making "subsistence use" an affirmative defense. AS 11.81.900(b)(1). We are satisfied that an affirmative defense would inappropriately distribute

(Footnote Continued)

party intending to rely upon a subsistence defense to make a preliminary showing a reasonable time before trial. In a pretrial order the court may establish procedures, including time limits, for raising the defense. Failure to give notice of the defense before trial or in the manner prescribed in the pretrial order may, unless excused for good cause, result in the forfeiture of the defense. See Alaska R. Crim. P. 12(b)(3), 12(e), and 16(f)(3). See also Davis v. United States, 411 U.S. 233, 93 S. Ct. 1577, 36 L.Ed.2d 216 (1973).

A defendant desiring a pretrial dismissal of the prosecution may make a preliminary showing which should consist of some evidence, which may be in affidavit form, that he believed in good faith that, under all of the circumstances which he understood to exist, his hunting constituted a subsistence use of the animal or animals taken.¹⁰

(Footnote 9 Continued)

the burden of proof in light of the Board's failure to enact regulations giving appropriate guidance as it was required to do by AS 16.05.255(b).

10. Subsistence use is defined in AS 16.05.940(23) as follows:

"subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis.

"Customary" and "traditional" are not further defined in the statute and therefore must be given their common meanings. AS 01.10.040. "Customary" means according to custom, the usual way of doing something. See Oxford American Dictionary 156 (1980). "Traditional" means according to tradition, a custom handed down from generation to generation

(Footnote Continued)

The statute only requires the state to provide for subsistence hunting. If the state has enacted regulations making adequate provision for subsistence hunting then the defense we have recognized would not exist. Consequently, if the defendant has made his preliminary showing, then the state should be given an opportunity to establish, if possible, either that the regulations which defendant allegedly violated did not in fact "restrict" the taking of game, AS 16.05.255(b), because, e.g., it was a regulation of time, place and manner that did not significantly impact or impair subsistence use or, alternatively, that any restriction on subsistence use recognized subsistence priority and was intended to protect sustained yield. (We interpret the term "restriction" to mean any significant impairment of subsistence uses AS 16.05.255(b).)

If, after hearing the evidence, the court is satisfied that a reasonable jury could not find guilt beyond reasonable doubt, i.e., there must be a reasonable doubt whether the defendant's taking constituted a subsistence use, the prosecution should be dismissed. If reasonable men and women could differ, the defense should be submitted to the trier of fact with appropriate instructions setting out the statutory definition of

(Footnote 10 Continued)

especially without writing, a long established custom or method of procedure. Id. at 728. But see Madison, ___ P.2d at ___, Op. No. 2911 at 20: "customary and traditional" should be defined in accordance with legislative history. The words "customary and traditional" serve as a guideline to recognize historical subsistence use by individuals, both native and non-native Alaskans. In addition, subsistence use is not strictly limited to rural communities.

subsistence use,¹¹ the requisite mens rea,¹² and the appropriate burden of proof. AS 11.81.900(b)(15)(B).¹³

Since the issues presented by the defense of subsistence involve mixed questions of fact and law which have not been addressed by the trial court, it is necessary for us to remand this case for further proceedings.

This case is REMANDED to the superior court for trial of Eluska's subsistence defense.¹⁴

11. See note 10 supra.

12. "Reckless." See note 9 supra.

13. See note 9 supra.

14. The opinion in this case was undergoing final editing at the time the supreme court issued its decision in Madison. The draft has been adapted to reflect our understanding of Madison. We recognize that future litigation will serve to clarify and refine both this decision and Madison.

IN THE SUPREME COURT FOR THE STATE OF ALASKA

GENE MADISON, et al.)

Appellant,)

ALASKA DEPARTMENT OF FISH AND)
GAME and ALASKA BOARD OF)
FISHERIES,)

Appellees,)

vs)

THE ALASKA FEDERATION OF)
NATIVES,)

Intervenor.)

Supreme Court Nos.
6824/7181
Superior Court No.
3KN-81-542 Civil

ALASKA DEPARTMENT OF FISH AND)
GAME, et al.,)

Appellants,)

vs)

LOUIS GJOSUND, et al.,)

Cross-Appellees.)

Supreme Court No.
7410
Superior Court Nos.
3HO-80-92 Civil
3HO-77-11014 Homer

MERIT APPEAL FROM THE SUPERIOR COURT, STATE OF ALASKA
THIRD JUDICIAL DISTRICT
JUDGE VICTOR CARLSON

REPLY BRIEF OF APPELLANT/CROSS-APPELLEES

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Filed in the Supreme Court
in Anchorage of the State
of Alaska this 30 day of
1984.

MA
Andrews
~~ROBERT B. BACON~~
Clerk of Court *David A. Lampert*

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATUTES RELIED ON.....	iv
REGULATIONS RELIED ON.....	ix
STATEMENT OF ISSUES.....	1
ARGUMENT	
LEGISLATIVE INTENT.....	2
ADMINISTRATIVE REVIEW.....	10
RURALNESS ISSUE.....	13
THE PUBLIC MEETINGS ISSUE.....	16
EQUAL PROTECTION.....	17
DUE PROCESS.....	19
IMPARTIALITY.....	22
PERSONAL USE FISHERY.....	23
THE <u>GJOSUND</u> DECISION.....	23
CONCLUSION.....	24

TABLE OF AUTHORITIES

CASES:

<u>Alaska Transportation Commission v Grandia,</u> 602 P2d 402 (Alaska 1979).....	17
<u>Aleknagik Native's Limited v Andrus,</u> 648 P2d 496.....	22
<u>Doe v State,</u> 487 P2d 47 (Alaska 1971).....	17
<u>Green v State,</u> 462 P2d 994 (Alaska 1969).....	20
<u>Ketchikan Gateway Borough, Alaska v Breed,</u> 639 P2d 995 (Alaska 1981).....	15
<u>Lynch v McCann,</u> 478 P2d 835 (1970).....	6
<u>Marks v City of Anchorage,</u> 500 P2d 644 (Alaska 1972).....	15
<u>Towne v Eisner,</u> 245 U.S. 418, 425 (1918).....	2
<u>Tyonek v Alaska Board of Fisheries,</u> 3AN 80-3073.....	5
<u>Woodards v State,</u> 604 P2d 250 (Alaska 1979).....	15

STATUTES:

AS 01.10.040.....	6
AS 16.05.094.....	21
AS 16.05.251(b).....	2,12
AS 16.05.251(b)(1), (2) & (3).....	24
AS 16.05.940(17).....	1,2,3,12,21
AS 16.05.940(17) pre-1978.....	3
AS 16.05.940(26).....	1,2,3,12
AS 44.62.310.....	16

AS 44.62.312..... 16
AS 44.62.330(9)(40)..... 22
AS 44.62.630..... 22

REGULATIONS:

5 AAC 01.597(a)(1-10)(b)(c).....4,5, 7, 8, 12,16
5 AAC 99.020..... 14

STATUTES RELIED ON

AS 01.10.040

Words and phrases. Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Technical words and phrases and those which have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise, shall be construed according to the peculiar and appropriate meaning.

AS 16.05.094:

Duties of section of subsistence hunting and fishing. The section of subsistence hunting and fishing shall

(1) compile existing data and conduct studies to gather information including data from subsistence users, on all aspects of the role of subsistence hunting and fishing in the lives of the residents of the state;

(2) quantify the amount, nutritional value, and extent of dependence on food acquired through subsistence hunting and fishing;

(3) make information gathered available to the public, appropriate agencies, and other organized bodies;

(4) assist 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;

(5) evaluate the impact of state and federal laws and regulations on subsistence hunting and fishing and, when corrective action is indicated, make recommendations to the department;

(6) make recommendations to the Board of Game and the Board of Fisheries regarding adoption, amendment and repeal of regulations affecting subsistence hunting and fishing;

(7) participate with other divisions in the preparation of statewide and regional management plans so that these plans reorganize and incorporate the needs of subsistence users of fish and game.

AS 16.05.251

Regulations of the Board of Fisheries.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

AS 16.05.940

Definitions. In this chapter

(17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence use with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(26) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as resources for direct personal or family

consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis.

AS 16.05.94J - pre-1978

"Subsistence fishing": the taking, fishing for or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means as defined by the Board.

AS 44.62.31J

Agency Meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivision, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the

motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void.

AS 44.62.312:

State policy regarding meetings. (a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the

people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions.

AS 44.62.330:

(a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under AS 44.62.330 - AS 44.62.630. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under AS 44.62.330 - 44.62.630 is limited to named functions of the agency

(40) Board of Fisheries

AS 44.62.633:

Impartiality. The functions of hearing officers and those officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. These officers, except to the extent required for the disposition of ex parte matters authorized by law, shall not engage in interviews with, or receive evidence or argument from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communications with these officers shall be served upon all parties.

REGULATIONS RELIED ON

5 AAC 01.597

CHARACTERISTICS OF SUBSISTENCE FISHERIES.(a) The Board of Fisheries finds that certain customary and traditional practices and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses. Based on testimony to the board, the following characteristics are those that should be evaluated in the identification of subsistence fisheries:

- (1) a long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g., regulatory action or fluctuations in resource abundance;
- (2) a use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use;
- (3) a use pattern associated with specific stocks and seasons;
- (4) a use pattern based on the most efficient and productive gear and economical use of time, energy and money;
- (5) a use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual;

- (6) a use pattern occurring in locations with easiest and most direct access to the resources;
- (7) a use pattern which includes a history of traditional modes of handling, preparing and storing the product without precluding recent technological advances;
- (8) a use pattern which includes the intergenerational transmission of activities and skills;
- (9) a use pattern in which the effort and products are distributed on a community and family basis including trade, bartering, sharing and gift-giving; and
- (10) a use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.

(b) The board will identify established geographic communities which may be participating in a subsistence system. The board will then apply all of the characteristics in (a) of this section to the communities and to subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority.

(c) For purposes of this section, a "community" is generally considered to be several households of full-time residents who all reside in a specific geographic area because of common interests. (Eff. 4/14/82, Reg. 82)

5 AAC 99.020 Definitions.

In this chapter, "rural" means outside the road connected area of a borough, municipality, or other community with a population of 7,000 or more, as determined by the Alaska Department of Community and Regional Affairs. (Eff. 5/30/82, Reg 82)

STATEMENT OF ISSUES

The issues under consideration have been set out in the Opening and Responsive Briefs of the parties. This Reply will deal with the points raised in the State and Intervenor's briefs. The argument heading in this Reply refers to the issue discussed under that heading. All arguments in this reply have been dealt with and described in the Statement of Issues in the Opening and Responsive Briefs.

ARGUMENT

"A word is not a crystal, transparent or unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and time in which it is used." Mr. Justice Holmes in Towne v Eisner, 245 US 418, 425 (1918)

I. LEGISLATIVE INTENT

Gjosund and Madison (hereinafter Plaintiffs) will try to clarify the primary issues in this case and deal with the legal arguments countering and supporting these issues in subsequent parts of this reply.

With time for reflection and a renewed and hopefully clearer examination of the heart of this controversy, it appears that much has been done about nothing. If this Court, independent of the Board's interpretation, examines AS 16.05.251(b) and AS 16.05.940 (17) and (26), this conclusion will result. It will not be because of any reference to newly discovered insights into applicable legal standards, but by macroscopic view of the acknowledged history and bias of the Board of Fisheries in dealing with subsistence fishery issues. (Intervenor's brief, page 3, 18 and 37 through 46 and Plaintiff's opening brief.)

Plaintiffs will attempt to minimize repetition by referencing to earlier briefs.

Plaintiff's position regarding the subsistence legislation is that the intentions of the state legislature were permissive, protective and inclusive. The legislature wanted to maintain and protect the status quo regarding subsistence uses in the state of Alaska. The subsistence bill also reflects a delineation and expansion of uses by including some uses, such as barter and trade, which were not included in the pre-1978 subsistence use definition. To argue that inclusion of the words 'customary and traditional use' instead of 'personal use' was intended to be restrictive, narrowing and exclusive ignores the plain and simple meaning of the words used as well as every legislative and legislator's statement of intent.

An objective view of legislative intention shows an intention to maintain and protect the usual uses by 'all Alaska residents,' 'native and non-native' by setting out in particular what those usual uses are. Subsistence use now means and includes, in particular, uses for food, shelter, clothing, tools or transportation and what had been excluded before, customary trade and barter. (Compare AS 16.05.940(17)(26) with the pre-1978 AS 16.05.940(17)).

The new legislative statement is more inclusive than the

former, which contained means and uses in one statute, and excluded sale and barter from personal use. The subsistence law was passed to force the Board, by statutory enactment, to protect subsistence use. The legislature felt that the 1973 policy statement of the Commissioner of Fish and Game was neither adequate nor sufficient legal justification for protecting subsistence uses because the Board had failed to protect subsistence users where competition existed in the fishery with other user groups.

" There are other individual examples of the failure of the Board to protect subsistence use in light of competing uses. In summary, however, the subsistence law was passed to enable the Board to provide for subsistence use during times of resource shortage and intense competition and to make certain that the Board took care of subsistence use prior to allowing other uses of these important economic resourcesIn the same way reliance upon the 1973 policy statement of the Commissioner and Board was not deemed adequate. First, this policy did not provide the legal justification for protecting subsistence uses and, in the generally held view in rural Alaska, was only a policy statement which the Board could point to without implementing it with any substantive measures. Be that as it may, all the subsistence law did was to codify this policy in order that its intent be enforceable rather than subject to the whims of the resource managersWhile this is only one example of the Board of Fisheries proclivities when 'left with its own devices' it is a clear indication of what fate is in store for subsistence users in highly intensive competitive fisheries and hunting situations, where there is no protection guaranteed by statute". (page 44, 45 - Draft Report of Special Committee on Subsistence. G file #2, page 13-221, Appendix BB) (emphasis

added)

The cases involving the Board of Fisheries (except the first Gjosund case (1977)) arose subsequent to the passage of the subsistence bill in 1978. These cases evidence the Board's approach to the Cook Inlet subsistence fishery.

The legislature must have been aware of the Cook Inlet Management Plan adopted by the Board in 1977, which omitted any consideration of subsistence. That plan was the subject of KPECA v State, 628 P2d 897 (Alaska 1981) and was another impetus to upgrading the 1973 policy into legislation.

Tyonek v Alaska Board of Fisheries, 3An 80-3073, occurred after 1978 when the Board was fully aware of the particular wording and direction of the subsistence bill. However, they completely ignored the village of Tyonek which, for the past 15 years, had not been able to fish legally for King Salmon. After the stock recovered, the sports and commercial users were allowed to fish. Obviously Tyonek would be considered a subsistence user without any discussion. However, court action was still necessary. Through a Superior Court Order the Board enfranchised the village of Tyonek, its residents, and all timber and logging workers and state and school district employees working in the area. In other words anyone who moved to or near Tyonek was now, at least after the Court order, a subsistence user.

The record before the Board and before this court shows a long time continual, usual, common, historical use by plaintiffs of the salmon in Cook Inlet.

The entire foundation for the Board's actions, and the position of Intervenor and the State, is that the division of subsistence uses from subsistence methods into two separate statutes, together with the language 'customary and traditional uses', justifies every action the Board has taken in excluding the plaintiffs in these cases. That change supposedly authorized the Board to adopt 5 ACC 01.597 i.e.

Characteristics for Subsistence Fisheries. These criteria confuse what is a very simple legislative statement.

Customary and traditional should be interpreted according to their common and approved usage. They have not acquired any peculiar meaning and no further statutory definition, judicial interpretation, or construction of these words has been set out. Taken in their very simple form or dictionary definition, they are adjectives meaning 'usual' and/or 'conventional'.

Alaska Statute 01.17.040 states as follows:

"Words and phrases: Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Technical words and phrases and those which have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise shall be construed according to the peculiar and appropriate meaning." (For interpretation see Lynch v McCann, 478 P2d 835, (1970))

Customary and traditional should be accorded their common and approved usage. i.e. dictionary definition and general understanding of those words. These words are not terms of art from which the legislature intended 5 AAC 01.597(Q)(1-10)(b)(c) to emerge.

Intervenor's brief (page 24) and the State's brief (page 21), both refer to a quote of Representative Anderson discussing the subsistence bill in the Alaska State Legislature as support for their understanding of the legislative intent. The language is much more consistent with plaintiffs' position. Since it has already been quoted twice, one additional time can't be too harmful.

"The two words are used in this context to put some guidelines around the uses of Alaska's freedom of resources. What we were afraid of, it was brought to our attention by people who were concerned that this would leave the field of the definition wide open. That newcomers just coming to the State of Alaska would automatically be able to establish not only residency in thirty days, but be able to go out and state they have a customary and traditional use of Alaska's fish and game resources. The use of 'customary and traditional' use also is in recognition of a historical use of fish and game for food, shelter, fuel, clothing, tools, transportation, etc. This is not only in conformance with aboriginal uses, but also those that have come in, those who come in later. They have... the non-native people in the State of Alaska have established customary and traditional uses of Alaska's fish and game resources for subsistence purposes. And in order to give the Board of Fish and Game (sic) more clarification in the area, we have come up with the (inaudible) of 'customary and

traditional' rather than leaving the section wide open. The design is not to be restrictive but to provide guidelines and that is basically what I feel and many...many members felt it was necessary in retaining those two words 'customary and traditional'." (emphasis added).

Representative Anderson's points indicate that the statute wanted to 'put some guidelines around the use of Alaska's freedom of resources' and that the 'design was not to be restrictive.' 'Customary and traditional use' is recognition of historical use 'of those (Alaskan residents) that come in later'...'the non-native people.' 'Customary and traditional' are used to give the Board more clarification. The State and Intervenor are now arguing that plaintiffs pre-1978 use of salmon is no longer subsistence use because the Board has developed 10-criteria (plus two community criteria) which do not include the plaintiffs. In fact they were adopted to exclude them. (See discussion of Knik hearings in plaintiff's brief at page 21-23).

5 AAC 01.597(b) & (c) are examples of over-extension of the Board's authority and are exactly why the legislature felt a need to adopt a subsistence bill. Subsistence users had to be protected from the Board. However, the Board has again pursued its own course and found a means to subvert the intentions of the subsistence bill. 5 AAC 01.597(b) states.

"The Board will identify established geographic communities which may be participating in a subsistence system. The Board will then apply

all the characteristics in (a) of this section to the communities and to subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority."

The Board has developed an exclusion mechanism for any individuals, families, or groups of families from consideration as subsistence users unless they live in an 'identified established geographic community which may be participating in a subsistence system.' Where does the subsistence bill authorize or offer a hint as to what this regulation means? The Board then goes on in subparagraph (c) to state:

"for purposes of this section, a "community" is generally considered to be several households of full time residents who all reside in a specific geographic area because of common interest."

The intention of this regulation is clear. It is to exclude anyone in Cook Inlet who does not live in a model native rural village and completely controvenes the legislative intent.

Intervenor (page 26 and 27) and the State (page 20) use two quotes attributed to Representatives Miller and Huntington describing hunters flying in to rural areas to hunt and take meat from the subsistence users. These quotes emphasize, (and its a point we do not disagree with), that the people in the place of the subsistence resources should have a say about the use of resources in the area they live in. Assumedly

Intervenor and State accept these quotes as supporting their case. It is our position, illustrated by the record, that plaintiffs in Madison and Gjosund live where the fish are, and the Board has in fact excluded them from subsistence fishing, instead of protecting and permitting their subsistence fishery, because of threats to the resource by people from other areas. I assume Representatives Miller and Huntington wanted the area users protected from, and not excluded by, the fly-in hunters or fishermen.

II ADMINISTRATIVE REVIEW

One point connected to the discussion and argument above relates to the continual flux of positions, arguments and rationales that this case seems to birth. As an example, the Intervenor and State briefs are apparently now disagreeing with both Judge Carlson's and Judge Jones' standard of review of administrative action. The Superior Courts, in both cases, deferred to the Board's interpretations and resultant promulgations of subsistence criteria and refused to substitute their judgment for that of the Board. Intervenor and the State argued 'judicial deference' at the Superior Court level. It appears that they are now arguing that the Superior Court and this Court should substitute their judgment in the first stage of analysis for the Board's interpretation of the intentions of the subsistence bill (Intervenors brief, page 21; State's

brief, page 19) and defer to the Board regarding the enactment of the criteria regulations.

Plaintiff's position is that Judge Jones in Gjosund would have found that the criteria were not an accurate reflection of the intention of the statute and voided those criteria if he had substituted his judgment for that of the Board. The same could be argued for Judge Carlson. If the State and Intervenor are stipulating that the Superior Court erred in arriving at their conclusion regarding the administrative review issue all parties are now in agreement.

Plaintiffs have consistently argued that the courts should substitute their judgment for the Board's. The Board has predictably misintrepreted the intention of the subsistence statute and has over-extended and distorted the words 'customary and traditional' to the point where the criteria are incomprehensible to the public and tailored to fulfill the Board's pre-set intentions to close Cook Inlet to subsistence.

This Supreme Court must view the events and arguments in this case in a continuum. Individual elements of the issues may hold a certain attractiveness or reasonableness, however, when viewed in process from 1973 through 1983, the picture becomes much clearer.

The fact that subsistence use and gear prior to 1978 was set out in one statute and subsistence use and gear subsequent

to 1978 is set out in two statutes is nothing more than an intention to keep the same gear criteria to identify methods of harvest, and to amplify and exemplify subsistence uses separately. The uses set out in AS 16.05.940(26) are the particular and usual subsistence uses. The statute both expands on, and particularizes personal use by the existing users by including barter and specifying other uses that had heretofore been general. Substituting the words 'usual' in paragraph (26) for the words customary and traditional would make much more sense than substituting all of the characteristics contained in 5 AAC 01.597(a)(b) & (c) for customary and traditional.

In Gjosund, Judge Jones deferred to the Board of Fisheries' adoption of the criteria, however, he found that the criteria were only effective when determining priorities between and amongst subsistence users under subparagraphs (1), (2), & (3) of 16.25.251(b). Judge Jones determined that the Board's interpretation, insofar as excluding the plaintiffs in Gjosund, was unsound at the pre-priority level. He found that the plaintiffs in Gjosund were subsistence users of Cook Inlet Salmon stocks in accordance with AS 16.05.251(b) & AS 16.05.940(17)(26) and that they could not be restricted unless there was a factual showing that the salmon stocks were jeopardized.

"RURALNESS" ISSUE

Although this issue was not brought up in plaintiffs' opening brief, it has been assumedly and subtly included in Intervenor's and State's briefs. It appears as a new criteria, undefined and absolute, called 'ruralness'. How and under what conditions it has been injected into the Cook Inlet drama is unclear. However, it seems that both Intervenor and State have accepted, and are now arguing, that the subsistence legislation includes the term 'rural' as a prerequisite to subsistence use. They also must then argue that the legislative intent was to define rural so the public and the Board could identify and know that it was a pre-condition to subsistence use. The State and Intervenor argue that rural is as integral to the subsistence legislation as customary and traditional. However, if that is so, why did not the legislature set out rural, as it did customary and traditional.

Plaintiffs were never presented with the question of whether they were rural or not. In fact rural is now a conclusion without a defined origin. If the legislature was going to use a rural versus non-rural subsistence use discrimination, then one must assume that because of the history and source from which the subsistence bill arguably originated, (i.e. ANILCA, according to the Intervenor and the State; page 32, & 30 of their briefs respectively), then the

state legislature would have said what they were in fact doing. They would have defined rural and described its application to the issue. However, the state subsistence legislation does not include a rural versus non-rural standard.

One federal standard for rural in Alaska designates Fairbanks, Ketchikan, Anchorage, and Juneau as urban and all else rural. (see Federal Register January, 1981, Statement of Secretary of Interior) The State Board of Fish and Game became aware of the problem and tried to resolve it by adopting a definition of rural in 1982. (5 AAC 99.020, Attachment E) stated:

"In this chapter 'rural' means outside the road connected area of a borough, municipality, or other community with a population of 7,000 or more as determined by the Alaska Department of Community and Regional Affairs."

The Board apparently realized that defining 'rural' exposed their errors more than it hid them and repealed this regulation in 1983.

No opportunity to respond to the rural criteria in proceedings before the Board was ever noticed nor was this standard anticipated in the state subsistence bill or the Board's action. A rural standard without notice and definition poses serious constitutional questions. What and where are the rural/non-rural borderlines and what is the delineation of, and factors identifying 'ruralness'? Are these Borough or City

boundaries, population or census district boundaries, or life style characteristic delineations? (See Ketchikan Gateway Borough, Alaska v Breed, 639 P2d 995 (Alaska 1981)), (persons similarly situated must be treated alike.) Obviously persons residing on opposite sides of a border boundary must be distinguished by something other than an arbitrary line. Questions arise of vagueness and due process, in light of the fact that no regulatory definition of rural existed at the time the Board excluded plaintiffs, (See Woodards v State, 604 P2d 250, (Alaska 1979), and Marks v City of Anchorage, 500 P2d 644 (Alaska 1972)).

Also raised are procedural and substantive due process questions regarding notice and hearing in conjunction with plaintiffs' due process argument in their brief.

Rural or area categorizations are not unconditionally repugnant. Plaintiffs feel that their situation is the same as that referred to by Representatives Miller and Huntington. They live where the subsistence resources and uses are located and they live where the customary and traditional i.e. historical, conventional, usual, uses have and do exist. Plaintiffs have never had an opportunity to respond or relate to the rural criteria since it appears to have developed in the conclusions of the Board and briefs of Intervenor and State and not in the subsistence legislation or regulations.

THE PUBLIC MEETINGS ISSUE

Intervenor takes no position on the question of violations of the public meetings provisions except to imply that this issue only relates to actions prior to the adoption of 5 AAC 01.597.

The State responds by saying that the issue is moot. However, plaintiffs refer this Court to our brief (page 26 through 30) and point out that the policies and regulations adopted in the December 1980, Board meeting were in violation of AS 44.62.310 & 312. That illegality, by acknowledgment of the State, has not been, nor could it be, remedied by the subsequent public notices and meetings on subsistence issues, especially when the policy was formulated at an illegal closed meeting and all subsequent policies, with certain minor deviations, mirror the policy originating from the closed meeting. Until such time as there is a replay and representation of what in fact took place at those closed meetings, so the public will have an opportunity to confront and participate in the presentations and deliberations, claims of mootness and remoteness do not vitiate the original and acknowledged stains.

Without relinquishing our claim that the issue is not moot, plaintiffs offer that an exception to the mootness doctrine exists in public interest situations. The Board's

violation of the public meetings laws can be reviewed by this court, especially if it is a matter of public concern and capable of evading review. (See Doe v State, 487 P2d 47 (Alaska 1971); Alaska Transportation Commission v Grandia, 602 P2d 402 (Alaska 1979))

It is rare that issues of violations of notice or public meetings can be pursued both through trial and appellate stages within the period of time between public meetings. In this case the record of the Board's proceedings mandates an independent review by this court of the actions of the Board at the illegal public meeting to determine how much of the Board's subsequent policy and regulations on Cook Inlet subsistence uses were tainted.

EQUAL PROTECTION

The State's description of Gjosund's equal protection questions lumps equal protection with due process by confusing the constitutional distinctions between the two. They also, (State's brief page 40), refer consistently to the fact that the Board has identified subsistence fishing only in 'rural' communities. As earlier indicated, 'rural' has never been clearly identified, defined, or applied.

The Board has apparently used some notion of 'ruralness' to set up a class of residents of the idealized rural native village community model as subsistence users as opposed to the

class of people which plaintiffs belong (who cannot tell whether they live in a rural or non-rural area because no definition exists), and who have otherwise historically fished by subsistence means and used salmon for their family and personal consumption and nevertheless have been excluded from subsistence fishing.

The Intervenor misstates our case. It matters little whether state or agency legislation sets up classifications. If the classifications are arbitrary and unrelated to the object of the legislation and do not treat all persons similarly circumstanced alike it is an equal protection issue.

Plaintiffs' claim is that the regulatory scheme, i.e. the ten plus criteria, has set up two classifications of Alaskan residents and that these classifications are not substantially related to the purposes of the statute and discriminate against plaintiffs without any reason.

There is no legitimate purpose or distinction to setting up a class of subsistence users in Port Graham, English Bay and Tyonek, which class includes all residents of that area whether they be natives, non-natives, school district employees, transient cannery workers, or timber employees, and setting up an excluded class of all other persons residing on Kachemak Bay in or near Homer or Kenai or any place on the entire shoreline of Kachemak Bay or Cook Inlet i.e. Halibut Cove, Bear Cove,

Fritz Creek, Clam Gulch, Aurora Lagoon, Ninilchik, etc.

The class exclusion does not suit the purposes of the legislation nor does it further the purposes of permitting the taking of fish for subsistence uses and "of recognizing the needs, customs, traditions, of all Alaskans" and "maintaining fish stock on a sustained yield basis."

As indicated earlier, the plaintiffs have all been fishing for lengths of time up to 50 years by the use of set gill nets. They are residents of the general Kenai Peninsula Borough area, have fished in the localities closest to where they live, have used the fish for family and personal consumption and have participated in other subsistence activities (i.e. coaling, gardening, gathering, clamming, etc.) To argue that this is not an equal protection issue overlooks the obvious.

DUE PROCESS ISSUES

The plaintiffs' due process claims are on pages 41-47 of their brief and will only be discussed here to counter specific arguments raised by Intervenor and State. Intervenor claims that Judge Carlson's remand of plaintiffs' Count IV, (Intervenor's brief, pages 35-37), somehow postpones what Intervenor acknowledges is a close substantive due process question. i.e. whether plaintiffs' right to due process of law was violated by exclusion of their use as a subsistence user.

This issue will be addressed in the reply brief to amplify

our claim that the Board acted arbitrarily in an aspect other than those set out in plaintiffs' opening brief. The inclusion of rural as a prerequisite to subsistence use inclusion is one more cumulative step in our claim. As indicated earlier in the reply brief, no definition, discussion, or elements of 'ruralness' were set out by the Board for plaintiffs' to confront or respond to. This is a cumulative element in the Board's behavior patterns which plaintiffs' claim have resulted in violations of fundamental principals of liberty and justice and is another arbitrary administrative action 'shocking to the universal sense of justice.' See Green v State, 462 P2d 994, (Alaska 1969).

The remand order on Count IV is lacking integrity when compared with the simultaneous order of Judge Carlson denying plaintiffs' Motion for Summary Judgment on Counts III and IV on 30 August 1982. By denying plaintiffs' motions, he was finding that no violations of due process or equal protection existed, therefore a remand is inappropriate.

Judge Carlson's remand suggested that proposals be resubmitted to the Board. Plaintiffs did in fact submit another round of proposals. The result and record before the Board were the same.

The Board had the same record before it as this Court does, i.e. testimony on behalf of Kenai area plaintiffs and the

Kenai Kenaitze reports, testimony and reports of Kachemak Bay subsistence group and Larry Smith; affidavits presented to the court in Madison and Gjosund; and proposals requesting establishment of subsistence use fisheries. The Board responded as it had done in the past.

At the time those proceedings took place this appeal was moving through the court system and to date nothing has in fact changed. The remand to the Board was an empty remand. No standards were set nor were instructions or directions given to the Board. The Superior Court merely said "proceed as you had in the past" and the Board followed that instruction and did not acknowledge any subsistence uses in Cook Inlet or Kachemak Bay other than Port Graham, English Bay, and Tyonek.

The obligation to research and provide information on plaintiffs subsistence use (in addition to plaintiffs' contributions to the record) is with the Division of Subsistence (see AS 16.05.094) and this data should be before the Board prior to any action. The Braund report (G File #2 Appendix M, revised November 1982) concludes that there are numbers of subsistence users both on the east shore of Cook Inlet and along the borders of Kachemak Bay. Assumedly the Board had, or should have had, this information and the Board still retained its stubborn stance.

Plaintiffs claim that the record in this case demonstrates

that confronting the Board again would be a futile gesture and that judicial action is plaintiffs' only hope for a remedy (see Aleknagik Native's Limited v Andrus, 648 F2d 496).

IMPARTIALITY

Plaintiffs aver, contrary to Intervenor's position, that ample record exists to determine that the Board has acted arbitrarily, discriminatorily, and with prejudice. Alaska Statute 44.62.630 states as follows:

Impartiality: The functions of hearing officers and those officer participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. These officers, except to the extent required for the disposition of ex parte matters authorized by law, shall not engage in interviews with, or receive evidence or arguments from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communications with these officers shall be served upon all parties."

This section applies to the Board of Fishery. (See AS 44.62.330(a)(40)). It further supports plaintiffs' claim that the public meeting law deviation is a serious breach which cannot be rectified without a full and complete statement and avowal of the events that occurred during that closed meeting.

This section also relates to plaintiff's due process claims. Remand to the Superior Court and/or the Board for

trial/hearing would be superfluous. Very little could be added to the record that is not there already. Additionally the tenuous state of the Board's composition and existence, in light of the conflict between the governor and the legislature regarding confirmation of appointments of Board members, together with recently proposed legislation aimed at reorganizing Board member representation, changes the complexion of plaintiffs' position again.

PERSONAL USE FISHERY

Questions of the personal use fishery must be decided on the basis of statutory interpretation and due process standards. Judge Carlson's decision specifically did not consider any record of the Board's personal use hearings and those records were not a part of the record on appeal. It is deceitful to suggest or imply that the personal use fishery involved only a name change and minor shift in location on the 'use scale.' The personal use fishery moved the pre 1980 subsistence users from first consideration to last consideration.

THE GJOSUND DECISION

In reviewing and trying to discredit the Gjosund decision, Intervenor raises the spectre of catastrophe 'to tens of thousands of Alaskans who live in the bush.' This is not the case and Intervenor misinterprets what Judge Jones did.

Judge Jones deferred to the Board's adoption of the criteria but determined that the criteria 'kick in' when a priority selection was necessary. The court firstly found that the plaintiffs were subsistence users of the Southern District salmon based upon the legislative definition and history of use of the Gjosund plaintiffs. He found that the criteria would come into effect when and to the extent that jeopardy to the sustained yield of fish stocks took place and that the criteria were applicable to the need for further restrictions, based upon AS 16.05.251(b)(1), (2), & (3), to distinguish between different types of subsistence users.

It is offered that if Judge Jones had determined that he could substitute the court's judgment for that of the Board in interpreting the statutes, (as the Intervenor and State now concede is the law) then Judge Jones would most likely have voided the criteria if they were to be used to exclude plaintiffs as subsistence users. Judge Jones found that the statute was clear and no further criteria was needed to find that plaintiffs were subsistence users.

CONCLUSION

Plaintiff again asks this Supreme Court to review the subsistence statutory scheme and the state legislative record and independently determine if, in fact, that scheme was meant to be restrictive, narrowing and as complex as the Board,

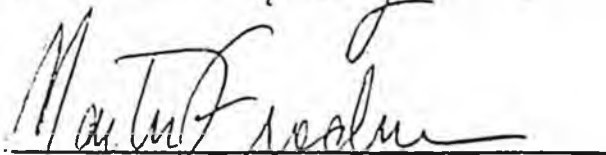
Intervenor, and State suggest. We also ask this court to examine how, when and where 'ruralness' enters into any of the legislative enactments or Board deliberations to the point where plaintiffs were put on notice of a rural prerequisite for subsistence inclusion.

Plaintiffs offer that they, in their community and together with their families, reside near, and have been subsistence fishing in and around Cook Inlet for periods of time up to 50 years. They live in the area and are the persons intended to be included under subsistence use by the legislature. We also claim that the convolutions undertaken to exclude plaintiffs fatally taints the Board's actions regarding the Cook Inlet subsistence fishery.

Plaintiffs submit that the Board has violated the equal protection and due process rights of the plaintiffs.

We request this court to make such findings and to order that the plaintiffs' use of the salmon moving in and through Kachemak Bay and Cook Inlet is a subsistence use as intended by the State legislature.

SIGNED AND DATED this 29 day of May, 1984.


Martin Friedman


Arthur Robinson

IN THE SUPREME COURT FOR THE STATE OF ALASKA

GENE MADISON, LUCY CASEY, KEN McGAHAN,) SR., ANDY JOHNSON, MARGIE KIVI, J.W.) WARE, DICK FRANCIS, DAN GROLESKE, KEN) JORDON and SHIRLEY DEVAULT,) Appellant,)	Supreme Court Nos.) 6824/7181) Superior Court No.) 3KN-81-542 Civil)
v.))
ALASKA DEPARTMENT OF FISH AND GAME,) and ALASKA BOARD OF FISHERIES,) Appellees,)	APPEALED FROM THE) SUPERIOR COURT,) THIRD JUDICIAL) DISTRICT, HONORABLE) VICTOR D. CARLSON)
and))
THE ALASKA FEDERATION OF NATIVES,) Intervenor.))
<hr/>	
ALASKA DEPARTMENT OF FISH AND GAME,) RONALD SKOOG, ALASKA BOARD OF FISHERIES) Appellants,)	Supreme Court No.) 7410) Superior Court Nos.) 3HO-80-92 Civil) 3HO-77-11014 Homer)
v.))
LOUIS GJOSUND, DORA MULCH, and KACHEMAK) BAY SUBSISTENCY GROUP, INC.,) Cross-Appellees.)	APPEALED FROM THE) SUPERIOR COURT,) THIRD JUDICIAL) DISTRICT, HONORABLE) PAUL B. JONES)

BRIEF OF APPELLEES/APPELLANTS

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Filed in the Supreme Court in
Anchorage of the State of Alaska
this 25 day of January, 1984.

ROBERT B. BACON
Clerk of Court

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.	iii
AUTHORITIES PRINCIPALLY RELIED UPON	vii
I. JURISDICTIONAL STATEMENT	1
II. ISSUES PRESENTED FOR REVIEW.	1
III. STATEMENT OF THE CASE.	3
IV. COURSE OF PROCEEDINGS IN THE TRIAL COURT	15
V. ARGUMENT	17
A. Summary	17
B. The Criteria for Identifying "Subsistence Uses" of Cook Inlet Salmon Are Consistent with the Intent of the Subsistence Law, and Are Reasonable.	18
1. Standard of review	18
2. Intent to narrow definition.	20
3. Criteria consistent with intent, and reasonable	26
4. Conclusion	32
C. The Board's Violation of the Public Meetings Law while Developing the Criteria in December 1980 Is Moot.	33
D. The Board May Use the Criteria to Identify "Subsistence Uses" of Cook Inlet Salmon, Regardless of the Biological Status of the Target Stocks	36
E. The Classifications Described by and Resulting from the Application of the Criteria Do Not Violate Equal Protection.	39
1. Equal protection standards	39
2. The classifications described by the criteria	40

	<u>Page</u>
3. The classifications resulting from the application of the criteria.	41
F. The Board Is Authorized to Establish "Personal Use Fishing" as a Category for Regulatory Purposes.	44
G. The Board Has Not Violated Plaintiffs' Substantive Due Process Rights by Not Authorizing "Subsistence Fishing" Opportunities for Them, but instead Authorizing "Personal Use Fishing".	46
VI. CONCLUSION	52

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Borkowski v. Snowden, 665 P.2d 22 (Alaska 1983)	6
City and Borough of Juneau v. Thibodeau, 595 P.2d 626 (Alaska 1979)	41-42
Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980)	40, 41
Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027 (Alaska 1972)	35
Green v. State, 462 P.2d 994 (Alaska 1969).	46
Hood v. State, Workmen's Compensation Board, 574 P.2d 811 (Alaska 1978).	27
Jefferson v. Asplund, 458 P.2d 995 (Alaska 1969).	36
Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971)	19, 20, 25, 26, 44, 46
Kenai Peninsula Fisherman's Cooperative Association v. State, 628 P.2d 897 (Alaska 1981)	4, 41, 47, 50-51
Ketchikan Gateway Borough, Alaska v. Breed, 639 P.2d 995 (Alaska 1981).	40
Pan American Petroleum Corporation v. Shell Oil Company, 455 P.2d 12 (Alaska 1969).	25
Rose v. Commercial Fisheries Entry Commission, 647 P.2d 154 (Alaska 1982).	40, 41
State v. Aleut Corporation, 541 P.2d 730 (Alaska 1975).	19
State v. Bundrant, 546 P.2d 530 (Alaska 1976)	23
State v. Tanana Valley Sportsmen's Association, Inc., 583 P.2d 854 (Alaska 1978).	41
University of Alaska v. Geistauts, 666 P.2d 424 (Alaska 1983)	34
Weaver Brothers, Inc., v. Alaska Transportation Commission, 588 P.2d 819 (Alaska 1978).	27

<u>Constitution</u>	<u>Page</u>
Alaska Const. art. I, § 1	39
Alaska Const. art. I, § 7	46
Alaska Const. art. VIII, § 4.	38
Alaska Const. art. VIII, § 17	40

Federal Statutes

Pub. L. No. 96-487 (1980)	30
16 U.S.C. § 3111-3136	30
16 U.S.C. § 3113.	30
Sec. 703, H.R. 39, 95th Cong., 2nd Sess. (1978)	30, 31

State Statutes

Ch. 131, SLA 1960	3, 20
Ch. 199, SLA 1975	24
Ch. 269, SLA 1976	24
Ch. 151, SLA 1978	5
AS 16.05.221(a)	3, 50
AS 16.05.241.	47
AS 16.05.251(a)	2, 3, 6, 13, 14, 37, 39, 45, 50, 52
AS 16.05.251(a)(2).	3
AS 16.05.251(a)(3).	3
AS 16.05.251(a)(4).	3
AS 16.05.251(a)(6).	44
AS 16.05.251(b)	2, 6, 12, 22, 37, 38, 39, 48, 50
AS 16.05.257.	23

<u>State Statutes (cont.)</u>	<u>Page</u>
AS 16.05.260.	8
AS 16.05.940(5)	3
AS 16.05.940(21).	3
AS 16.05.940(22).	6, 19, 20
AS 16.05.940(23).	6, 20
AS 22.05.010.	1
AS 44.62.310.	33
AS 44.62.310(f)	34

State Regulations

5 AAC 01.580(a)	42
5 AAC 01.597	1, 10, 13, 15, .17, 19, 29, 41, 42
5 AAC 01.597(a)(3).	39, 50
5 AAC 21.363.	3
5 AAC 77.001.	14, 44, 49
5 AAC 77.001(a)	45
5 AAC 77.001(b)	14, 45
5 AAC 77.015.	47
5 AAC 77.530(a)	15, 50
5 AAC 77.546.	14, 36, 47, 50
5 AAC 77.547.	14, 36, 47, 50
5 AAC 99.010.	15
5 AAC 99.010(b)	15

State Rules

Alaska Appellate Rule 202	1
-------------------------------------	---

<u>Federal Legislative Materials</u>	<u>Page</u>
H.R. Rep. No. 1045, 95th Cong., 2nd Sess. (1978)	31
H.R. Rep. No. 97, 96th Cong., 1st Sess. (1979)	31
S. Rep. No. 413, 96th Cong., 1st Sess. (1979)	31
126 Cong. Rec. H10546 (daily ed., Nov. 12, 1980) (statement of Rep. Udall)	32

State Legislative Materials

Recording of Proceedings, 9th Leg., 2nd Sess., tape 130H, index nos. 527-1276 (1976)	24
House Journal, 10th Leg., 2nd Sess. 1155 (1978)	23

Other Authorities

2A C. Sands, <u>Sutherland Statutory Construction</u> , §48.13 (4th ed. rev. 1978)	21
<u>Webster's New Collegiate Dictionary</u> (1981)	23
D. Kelso, "Legal Issues in Federal Protection for Subsistence on Proposed National Interest Lands," (unpublished) (1976), reprinted in H.R. Rep. No. 16, 95th Cong., 1st Sess. 273 (1977)	33

AUTHORITIES PRINCIPALLY RELIED UPON

State Constitutional Provisions

Alaska Const. art. I, § 1, cl. 2 (in pertinent part)

that all persons are equal and entitled to equal rights, opportunities, and protection under the law; ...

Alaska Const. art. I, § 7 (in pertinent part)

No person shall be deprived of life, liberty, or property, without due process of law.

Alaska Const. art. VIII, § 17

UNIFORM APPLICATION. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Federal Statutes

16 U.S.C. § 3113

DEFINITIONS. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term --

(1) "family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "barter" means the exchange of fish or wildlife 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.

Sec. 703, H.R. 39, 95th Cong., 2d. Sess. (1978) (the version of H.R. 39 passed by the House of Representatives in 1978).

As used in this Act, the term "subsistence uses" means the noncommercial (except as provided under paragraph (2)) customary and traditional utilization within the State of wild, renewable resources for --

(1) direct personal or family use for food, shelter, fuel, clothing, tools, or transportation;

(2) the making and selling of handicraft articles (including clothing), but only out of nonedible byproducts of fish and wildlife taken for such personal or family use; or

(3) customary trade, barter, or sharing among subsistence users for personal or family use.

State Statutes

AS 16.05.221(a)

For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

AS 16.05.251

REGULATIONS OF THE BOARD OF FISHERIES. (a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of fish;

(3) setting quotas and bag limits on the taking of fish;

(4) establishing the means and methods employed in the pursuit, capture and transport of fish;

(5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;

(6) classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes;

(7) engaging in biological research, watershed and habitat improvement, fish management, protection, propagation and stocking;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote fish research, management, education and information and to train persons for fish management;

(10) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(11) establishing seasons, areas, quota and methods of harvest for aquatic plants;

(12) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Sec. 4, ch. 131, SLA 1960 (formerly AS 16.05.940(17))

"Subsistence fishing": the taking, fishing for or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means as defined by the Board.

AS 16.05.940(22) (prior to renumbering, AS 16.05.940(17))

"subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, line line, or other means defined by the Board of Fisheries.

AS 16.05.940(23) (prior to renumbering, AS 16.05.940(26))

"subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption; for the

purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living with the household on the permanent basis.

AS 44.62.310(a)

All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the aforementioned bodies.

AS 44.62.310(f)

Action taken contrary to this section is void.

State Regulations

5 AAC 01.597

CHARACTERISTICS OF SUBSISTENCE FISHERIES.

(a) The Board of Fisheries finds that certain customary and traditional practices and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses. Based on testimony to the board, the following characteristics are those that should be evaluated in the identification of subsistence fisheries:

(1) a long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g., regulatory action or fluctuations in resource abundance;

(2) a use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use;

(3) a use pattern associated with specific stocks and seasons;

(4) a use pattern based on the most efficient and productive gear and economical use of time, energy and money;

(5) a use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual;

(6) a use pattern occurring in locations with easiest and most direct access to the resources;

(7) a use pattern which includes a history of traditional modes of handling, preparing and storing the product without precluding recent technological advances;

(8) a use pattern which includes the intergenerational transmission of activities and skills;

(9) a use pattern in which the effort and products are distributed on a community and family basis including trade, bartering, sharing and gift-giving; and

(10) a use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.

(b) The board will identify established geographic communities which may be participating in a subsistence system. The board will then apply all of the characteristics in (a) of this section to the communities and to subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority.

(c) For purposes of this section, a "community" is generally considered to be several households of full-time residents who all reside in a specific geographic area because of common interests.

5 AAC 77.001(a)

The Board of Fisheries finds that

(1) before the enactment of the state's subsistence priority law in ch. 151, SLA 1978, an individual could fulfill his personal use needs for fish under subsistence fishing regulations;

(2) the state's subsistence priority law changed the definition of subsistence in a manner that now precludes some individuals from participating in customary and traditional subsistence fisheries and efficiently harvesting fish for their personal use;

(3) there presently are areas of the state with harvestable surpluses of fish in excess of both spawning escapement needs and present levels of subsistence, commercial and sport uses; and

(4) it is necessary to establish a new fishery classified as "personal use" because

(A) since the sale of fish is not appropriate or permissible, this fishery cannot be classified as commercial;

(B) since the use is not a rural customary and traditional use this fishery cannot be classified as subsistence; and

(C) since the gear for this fishery is often different from that historically associated with sport fishing, this fishery should not be classified as a sport fishery, to prevent confusion among the public.

5 AAC 77.001(b)

It is the intent of the board that the taking of fish under 5 AAC 77 will be allowed when that taking does not jeopardize the sustained yield of a resource and either does not negatively impact an existing resource use or is in the broad public interest.

5 AAC 99.010

JOINT BOARDS OF FISHERIES AND GAME SUBSISTENCE PROCEDURES. (a) In applying a subsistence priority, the Board of Fisheries and the Board of Game

will provide for conservation and development of Alaska's fish and game resources according to the following procedures:

(1) each board will assess the biological status of fish or game resources and determine whether a surplus may be harvested during a regulatory year consistent with the conservation and development of the resources on the sustained yield principle and compatible with the public interest;

(2) each board will identify subsistence uses of fish or game resources, recognizing that subsistence uses are customary and traditional uses by rural Alaska residents for food, shelter, fuel, clothing, tools, transportation, making of handicrafts, customary trade, barter and sharing.

(b) Customary and traditional subsistence uses by rural Alaska residents will be identified by use of the following criteria:

(1) a long-term consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

(2) a use pattern recurring in specific seasons of each year;

(3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;

(4) the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;

(5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a

definable community of persons, including customary trade, barter, sharing, and gift-giving; customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

(c) After identifying subsistence uses based upon the criteria set out in (b) of this section, each board will determine the approximate amount of fish or game necessary to provide fully for reasonable opportunities to engage in these customary and traditional uses.

(d) Each board will adopt regulations that provide an opportunity for the subsistence taking of fish or game resources in amounts sufficient to provide for the customary and traditional uses identified in (b) of this section, and consistent with sound conservation and management practices. In no instance may the subsistence taking jeopardize or interfere with the maintenance of a specific fish stock or game population on a sustained-yield basis.

(e) Each board will, in its discretion, adopt regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish or game resources on a sustained yield basis, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in (d) of this section.

(f) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting non-subsistence harvest before subsistence uses are restricted. If all available restrictions for

non-subsistence uses have been implemented and further restrictions are needed, each board will reduce the take for subsistence uses in a series of graduated steps, by giving maximum protection to subsistence users who

(1) live closest to the resource;

(2) have the fewest available alternative resources; and

(3) have the greatest customary and direct dependence upon the resource.

(g) In no event, however, will a board allow uses which will jeopardize or interfere with the conservation and management of fish stocks or game populations on a sustained-yield basis.

I. JURISDICTIONAL STATEMENT

This is a consolidated appeal from two third judicial district superior court cases. The final judgments in Madison, et al. v. Alaska Department of Fish and Game and Alaska Board of Fisheries, 3KN-81-542 Civil (hereinafter, "Madison"), were entered on March 5, 1982 and January 26, 1983, by Judge Victor D. Carlson. The final judgment in Gjosund, et al., v. Alaska Department of Fish and Game, et al., 3HO-80-92 Civil and 3HO-77-11014 Homer (hereinafter, "Gjosund"), was entered on November 19, 1982, by Judge Paul B. Jones. This court has jurisdiction to consider this consolidated appeal pursuant to Alaska Appellate Rule 202 and AS 22.05.010.

II. ISSUES PRESENTED FOR REVIEW

The state intends to address the issues raised in this appeal in the context of the following questions: 1/

1. In enacting the subsistence law, did the legislature intend "subsistence fishing" to mean fishing by individuals who reside in rural areas of the state which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the area, rather than

1/ Plaintiffs list seven questions in their statement of issues, but the briefing in their argument sections does not entirely adhere to those seven questions, nor to the argument headings. The state submits that its list of questions subsumes all issues plaintiffs raise and brief from their appeal in Madison, as well as the issue that the state is appealing in Gjosund.

all fishing for personal use?

2. Is the Board of Fisheries' determination that "subsistence uses" of salmon in Cook Inlet can be identified on a community basis by the application of the ten criteria in 5 AAC 01.597 consistent with the intent of the subsistence law, and reasonable?

3. Did the promulgation in December 1981 of 5 AAC 01.597, codifying the ten criteria used to identify "subsistence uses" of salmon in Cook Inlet moot a violation of the public meetings law which occurred when the criteria were first formulated in December 1980?

4. Is the Board of Fisheries authorized by AS 16.05.-251(b) to identify "subsistence uses" of salmon in Cook Inlet in order that only fishing for those uses will be provided for as "subsistence fishing," regardless of the biological status of the target stocks?

5. Are the classifications determined by the ten criteria of individuals eligible and individuals ineligible to participate in "subsistence fishing" in Cook Inlet a reasonable means to accomplish a legitimate state purpose?

6. Is the Board of Fisheries authorized by AS 16.05.-251(a) to established "personal use fishing" as a category for regulatory purposes?

7. Has the Board of Fisheries treated plaintiffs fairly by not authorizing "subsistence fishing" opportunities for them, but instead authorizing "personal use fishing"?

III. STATEMENT OF THE CASE

This appeal in its most general perspective is about fishing. More particularly, about the different kinds of fishing that occur in the waters and tributaries of Cook Inlet. "Commercial fishing" is defined as fishing for profit; "sport fishing" is defined as taking fish for personal use, primarily by hook and line. AS 16.05.940(5) and (21). Before 1978, "subsistence fishing" was defined as taking fish for personal use, with, among other gear, gill nets. Sec. 4, ch. 131, SLA 1960. All three kinds of fishing occur in Cook Inlet. These lawsuits arose because the legislature in 1978 narrowed the definition of "subsistence fishing."

The Alaska Board of Fisheries ("board") is established in AS 16.05.221(a) to promote the "conservation and development" of state fisheries. Before 1978, the board had the discretion to determine whether and how much of a fish stock should be allocated to various uses. In AS 16.05.251(a), the legislature delegated to the board the authority to adopt regulations "the board considers advisable" on twelve different subjects, including establishing seasons, areas, quotas and bag limits, and methods and means. AS 16.05.251(a)(2), (3) and (4).

Under its discretionary authorities, in 1977 the board adopted a salmon management plan for upper Cook Inlet to address the annual allocation controversy involving sport fishing and commercial fishing. The plan, now 5 AAC 21.363, reflects the

board's determination that salmon stocks which move through Cook Inlet between July 1 and August 15 would be managed primarily for commercial uses, and those moving through the inlet before and after those dates would be managed primarily for sport uses. See Kenai Peninsula Fisherman's Cooperative Association v. State, 628 P.2d 897 (Alaska 1981).

There was no need to address "subsistence fishing" in Cook Inlet, authorized as fishing with set gill nets for personal use, in the plan, because it was viewed as a minimal presence. Between 1971 and 1977, there were an average of only 87 "subsistence fishing" permits issued annually, with an average yearly total catch for the fishery for that period of 405 salmon. (G File 4, at 21) 2/ The area open to the "subsistence fishing" included most of the east side beaches in the northern district and central district (near Kenai) of Cook Inlet and the north shore of Kachemak Bay and the Homer spit in the southern district, all of which are relatively accessible by road. (G File 4, at 24, 29, and 70) 3/

Between 1978 and 1980, "subsistence fishing" experienced substantial growth in Cook Inlet. This was partly due to commercial fishermen obtaining "subsistence" permits after

2/ The Madison and Gjosund records on appeal will be identified by "M" and "G".

3/ For a map of the Cook Inlet fishing districts, see M File 3, Exhibit S.

August 15, when commercial fishing was precluded under the upper Cook Inlet management plan, and partly due to increased publicity about the availability of "subsistence fishing." (G File 4, at 19 and 22) The number of permits rose in 1978 to 323, and in 1979 it jumped to 1,161. In 1980, permits began to be issued on a household, rather than individual, basis, but still the number of permits increased to 1,331. The amount of salmon harvested by "subsistence fishing" increased as well, to 3,735 fish in 1978, 9,923 fish in 1979, and 14,775 fish in 1980. (G File 4, at 21)

Over the same period, the board instituted restrictions on "subsistence fishing." The east side beaches in the northern and central districts were closed to "subsistence fishing," except for a small open section, and in the southern district, the north shore of Kachemak Bay and the Homer spit were closed. (G File 4, at 25, 30 and 70) Beginning in 1980, permits were issued on a household, rather than an individual, basis, and the limits were modified from 50 fish per permit to 25 fish for head of the household plus 10 additional fish for each dependent. (G File 4, at 26, 27 and 70) The board also reduced the gear length in all three districts from the previously authorized 50 fathom total to 20 fathoms, and finally to 10 fathoms. (G File 4, at 26, 27 and 70)

In the meanwhile, the Alaska legislature in 1978 had enacted ch. 151, SLA 1978, the subsistence law, which made important changes in the statutes authorizing the board's activities, including the definitional change which brought about

these lawsuits. The legislature amended the definition of "subsistence fishing" so that it no longer meant the taking of fish for personal use with, among other gear, gill nets. Under the new definition, "subsistence fishing" means the taking of fish for "subsistence uses," with, among other gear, gill nets. AS 16.05.940(22). A definition of "subsistence uses" was established, which is more restrictive than simply "personal use."

'[S]ubsistence uses' means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption [for specified purposes] ...

AS 16.05.940(23). (Emphasis added.) Thus, under the statutory definitions, simply fishing by gill net for personal use is no longer "subsistence fishing." Rather, "subsistence fishing" would be taking fish with gill nets for "customary and traditional uses."

The subsistence law also removed the board's discretion to determine whether or not to allocate salmon to "subsistence fishing." In AS 16.05.251(b), the legislature mandated that the board authorize "subsistence uses," unless sustained yield would be jeopardized, and also mandated that if a relative resource shortage occurred, "subsistence uses" would be the last to be restricted. (The board retains its discretion under AS 16.05.-251(a) to make allocation decisions regarding other fishing activities.)

Although the subsistence law was enacted in 1978, the board did not modify its authorization of "subsistence fishing" in Cook Inlet for the 1979 or 1980 seasons in response to the

law. As noted earlier, the board had promulgated restrictions, but they were in response to the growth of what was still being called "subsistence fishing" in Cook Inlet, rather than in response to the new definitions provided by the subsistence law.

During the summer of 1980, three lawsuits were directed at the board's actions in Cook Inlet, all alleging noncompliance with the subsistence law. 4/ (See, G File 3, Exhibit A)

Realizing that the "subsistence fishing" that it was authorizing in Cook Inlet was still simply taking fish with set gill nets for personal use, under the old statutory definition, in December 1980 the board began examining the uses of salmon in Cook Inlet, so that in the future it would authorize as "subsistence fishing" only that subset of fishing for personal use that involved "customary and traditional uses." It considered the report of the subsistence section (now the division of subsistence) of the Alaska Department of Fish and Game on a year long study on Cook Inlet, which detailed the number of fish taken, number of people participating, trends, etc. (M File 2, Volume 3, at 1-43) 5/ It listened to the explanation of the results of a survey taken by the division of subsistence of Cook Inlet

4/ The three cases were Tycnek v. Alaska Board of Fisheries, JAN-80-3073, Gjosund v. Alaska Department of Fish and Game, 3HO-80-92 Civil (the first phase of the Gjosund case on appeal here) and Francis v. Alaska Department of Fish and Game, 3KN-80-546 Civil.

5/ Hereinafter, the board transcripts contained in M File 2 will be designated by volume and page number alone.

"subsistence" permit holders. Volume 3, at 106-121. It was given a history of territorial and state "subsistence" regulations in Cook Inlet by the Department of Fish and Game. Volume 7, at 7-24. It also heard a presentations on behalf of Native groups. 6/

The local advisory committees, which are established by the board under AS 16.05.260, were asked to report on the uses of resources in their areas. 7/ Additionally, the board heard testimony on uses of resources in Cook Inlet from at least 18 other individuals, mostly from small and large communities and isolated areas on the shores of Cook Inlet, but from areas farther away as well. 8/

6/ There was a report by the North Pacific Rim (a nonprofit Native corporation) subsistence coordinator, explaining a survey which she had conducted of English Bay and Port Graham's use of resources, Volume 7, at 104-115, and by the president and chief of the Kenaitze Indians, accompanied by his resource and research person, who also presented the results of their information gathering activity on the use of resources by the Kenaitze Indians. Volume 7, at 171-201.

7/ Reports were received from the Anchorage committee, Volume 5, at 66-92, the Seward committee, Volume 5, at 93-107, the Homer committee, Volume 7, at 34-64, the Central Peninsula committee, Volume 7, at 70-78, and the Port Graham committee, Volume 7, at 87-93.

8/ The board heard testimony from individuals from North Kenai, Volume 4, at 74-99, from the Kenai Peninsula Fishermen's Cooperative, Volume 5, at 2-26, from the Cook Inlet Drift Association, Volume 5, at 26-32, from Tyonek (three witnesses), Volume 5, at 50-66, from the Isaac Walton League and Sports and Game Preservation Association, Volume 6, at 56-81, from the Parks Highway area, Volume 7, at 2-7, from a commercial fisherman from Bristol Bay, Volume 7, at 64-69, from English Bay, Volume 7, at 93-104, from the Homer Kachemak Bay Subsistence Group, Volume 7,

Thus, the board received a mass of information about the uses of salmon in Cook Inlet. The task remained to identify which uses were "customary and traditional uses" that must be provided for under the subsistence law. In order to facilitate that identification, the chairman of the board appointed a committee, which consisted of board members and staff of the Department of Fish and Game. Its meetings were announced at the board meetings, and were held during recesses in the board meetings. Volume 3, at 122-126.

This committee drafted ten criteria which could be used to identify "subsistence uses" of salmon in Cook Inlet, and presented them to the board for full review and consideration. Volume 11, at 2. The board generally concurred that the ten criteria restated in a manageable framework what had been discussed in the board meeting during the preceding two weeks. Volume 11, at 5. The board analyzed the proposed ten criteria in detail, and concluded that they formed a common thread which could be used to identify "customary and traditional uses" of salmon in Cook Inlet. Volume 10, at 8-54. 9/ The ten criteria

at 115-155, from the west side of Cook Inlet, Volume 7, at 155-162, from Seldovia, Volume 7, at 201-211, from a Cook Inlet commercial fisherman, Volume 7, at 211-214, from Anchorage, Volume 7, at 224-228, from a commercial fisherman, Volume 7, at 228-237, from Resurrection Bay, Volume 8, at 9-29, and from Kenai, Volume 8, at 58-76.

9/ The contents of Volume 11 precede the contents of Volume 10 chronologically; this is clear because both contain precedings from December 19, 1980, and Volume 10 begins at 7:00 p.m., while

were set out in the findings and policy regarding subsistence uses of Cook Inlet salmon. (M File 3, Exhibit H)

The criteria included a long term pattern of resource use by an identifiable community. Such uses targeted on specific stocks relatively close and accessible to the community. Efficient and economical methods of harvest were used, as well as traditional modes of preparing and storing the harvest. Skills were passed from one generation to the next, and sharing of the harvest product occurred on a community basis. Finally, there was a reliance on a wide range of resources. See 5 AAC 01.597.

The criteria have the effect of restricting the identification of "subsistence uses" of Cook Inlet stocks to fishing with set gill nets for personal use by residents of the rural communities around Cook Inlet which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the community. (See unchallenged finding of fact entered in both Madison (M File 1, at 56, ¶ 10), and Gjosund (G File 2, at 258, ¶ 18).) This determination was certainly not agreeable to some witnesses who had testified to the board on behalf of sportsmen's groups. These witnesses argued that "subsistence uses" should encompass all personal use of the resource, the ultimate "use" being

Volume 11 ends with a statement that the meeting would reconvene after dinner at 7:00 p.m. Volume 10, at 1, and Volume 11, at 20.

consuming the fish. 10/

In the spring 1981 meeting, further testimony on uses of salmon in Cook Inlet was received from the Cook Inlet area advisory committees. 11/ Much of it favored the ten criteria, although the view of the estimated 800 people who attended the Anchorage advisory committee meeting was that the term "subsistence uses" should apply to any personal consumption of noncommercially caught fish.

Seven witnesses were called by board members. Two represented political and sportsmen's groups, which advocated the view that all personal use of fish was "subsistence use." 12/ Other witnesses, some representing a Native group and a commercial fishing group, spoke directly to the ten criteria, and two

10/ This was advocated in the December 1980 meeting by a representative of the Isaac Walton League and the Sports and Game Preservation Association, Volume 6, at 66-81, and by the Isaac Walton League, Volume 14, at 50-78, the Sports and Game Preservation Association, Volume 14, at 78-94, and the Alaska Sports Council, Volume 14, at 94-106.

11/ Advisory committees testifying were from Seward, Volume 20, at 102-110, mentioning the ten criteria, from English Bay and Port Graham, Volume 20, at 110-115, praising the ten criteria, from Homer, Volume 20, at 115-129, employing the ten criteria in its analysis, from the Matanuska Valley, Volume 20, at 129-133, from the Central Peninsula, Volume 20, at 134-138, from Anchorage, Volume 20, at 138-151, and from Kenai/Soldotna, Volume 21, at 230-232.

12/ Testifying were Dale Bondurant, from Alaskans for Equal Fishing and Hunting, Volume 20, at 163-168, and Sam McDowell, from the Isaac Walton League, and the Alaska Fisheries Resource Committee, Volume 20, at 182-191.

of the witnesses praised the criteria and urged their use by the board. 13/ Additionally, extensive written comments were received, and a long period of time was allotted for the board to review those. Volume 21, at 315.

After those deliberations, the board again embraced the criteria as a mechanism to identify "subsistence uses" in Cook Inlet. Volume 22, at 318-334 and Volume 29, at 6-16. The final wording was adopted on April 6, 1981. (M File 3, Exhibit I)

At the spring 1981 meeting, the board applied the ten criteria to the uses of salmon in Cook Inlet, and concluded that the uses in Tyonek, English Bay, and Port Graham were "customary and traditional uses." The board also concluded that, on the evidence before it, no communities on the Kenai Peninsula (other than English Bay and Port Graham) satisfied the criteria. The board developed findings of fact regarding subsistence fishing in Cook Inlet, reflecting those determinations. (M File 3, Exhibit L)

The Board was not required by AS 16.05.251(b) to authorize the personal use gill net fishing which had been previously authorized as "subsistence fishing" on the Kenai Peninsula,

13/ Testifying were Chief Alex and Dr. Elizabeth Shadura, of the Kenaitze Indians, Volume 20, at 169-181, Chuck Robinson, on behalf of the Kenaitze Indians, speaking to the ten criteria, Volume 21, at 277-314, Don Mitchell, speaking on his own behalf, Volume 20, at 191-201; and Volume 21, at 202-228, urging the board to ratify the ten criteria, and Rodger Painter, Executive Director of the United Fishermen of Alaska, Volume 20, at 154-159, speaking approvingly of the ten criteria.

since "customary and traditional uses" had not been evidenced there. The board did not authorize under its discretionary powers contained in AS 16.05.251(a) any personal use set gill net fishing on the Kenai Peninsula for the 1981 season.

During the summer of 1981, the Gjosund plaintiffs filed a "petition" in the superior court in Homer, and the Madison plaintiffs filed a complaint in the superior court in Kenai. (G File 2, at 1-9 and M File 1, at 1-5) Both lawsuits challenged the validity of the ten criteria, alleging that they were inconsistent with the intent of the subsistence law. Also, both lawsuits alleged that there had been procedural irregularities in the adoption of the ten criteria, and that the board's actions had violated plaintiffs' due process and equal protection rights. Gjosund additionally asked that the board be held in contempt. The Alaska Federation of Natives ("AFN") intervened as a party in Madison. 14/

In December 1981, the validity of the ten criteria was upheld in Madison, with the granting of motions for partial summary judgment filed by the state and AFN on that claim. (M File 1, at 45-49) The ten criteria were then codified into the Alaska Administrative Code after the board adopted them again at its December 1981 meeting. 5 AAC 01.597.

In March 1982, the validity of the ten criteria as a

14/ AFN's motion to intervene and the order granting the motion are not a part of the record on appeal.

mechanism for identifying subsistence uses in a manner intended by the subsistence law was also upheld in Gjosund. (G File 2, at 221-245) However, Gjosund inexplicably further concluded that the board could not apply the criteria to identify what personal use set gill net fishing should be authorized as "subsistence fishing," unless it was necessary to do so because of the biological status of the target fish stock.

At the spring 1982 meeting, the board established a new category of fishing, "personal use fishing," to accommodate those activities which had formerly been termed "subsistence fishing," but which could no longer be so designated since the subsistence law had narrowed the definition to only those uses which were "customary and traditional." 5 AAC 77.001. The board specified that "personal use fishing" would not be authorized if sustained yield would be jeopardized, but other than that safeguard, maintained the flexibility to authorize "personal use fishing" whenever it would be "in the broad public interest." 5 AAC 77.001(b). Thus, "personal use fishing" joined "commercial fishing" and "sport fishing" as activities which can be regulated by the board in its discretion under AS 16.05.251(a).

At that same meeting, the board then authorized "personal use fishing" on the Kenai Peninsula for the 1982 season. A sockeye salmon fishery in June was established in the central district (near Kenai), 5 AAC 77.547, and a fall coho fishery was established in the southern district (near Homer), 5AAC 77.546, though the latter was superceded by the so-called "subsistence

fishing" authorized by the court in Gjosund. The harvest limits imposed on "personal use fishing" in these two locations were identical to the "subsistence fishing" limits previously in effect for those areas. 5 AAC 77.530(a).

In the spring of 1982, the board, together with the Board of Game, jointly adopted a procedural regulation which describes how "subsistence uses" will be identified and provided for under the subsistence law. 5 AAC 99.010. The joint regulation contains eight criteria which are to be used to identify "customary and traditional subsistence uses" throughout the state, and which are very similar to the ten criteria at issue here. 5 AAC 99.010(b).

In August 1982, the court in Madison upheld the authority of the board to establish and authorize "personal use fishing," and determined that the authorization of "personal use fishing" in June on the coho salmon in the central district of Cook Inlet was reasonable and fair, despite the fact that plaintiffs would have preferred a fall coho fishery. The court also refused to second-guess the board's determination that none of the communities on the Kenai Peninsula met the ten criteria. Instead, it remanded that claim to the board with instructions to consider any properly submitted proposals to authorize "subsistence fishing" under the ten criteria contained in 5 AAC 01.597. (M File 4, at 293-295; M File 6, at 361-369)

IV. COURSE OF PROCEEDINGS IN THE TRIAL COURTS

The state adopts AFN's description of the proceedings

in Madison and of the consolidation. Although AFN's description of the proceedings in Gjosund is accurate, some further detail may be useful.

On May 29, 1981, the Gjosund plaintiffs filed a "petition" in the superior court in Homer, setting forth five claims for relief. (G File 2, at 1-9) A preliminary injunction was issued on August 4, 1981, which ordered the opening of a personal use set gillnet fishery in the southern district, which the court termed a "subsistence fishery." In December 1981, plaintiffs moved for summary judgment on all five counts, and the state moved for partial summary judgment on count I, and to dismiss count II as moot. Oral argument occurred on those motions on February 16, 1982. (G File 2, at 254)

On March 8, 1982, the court issued a decision resolving counts I and IV, and part of count II. (G File 2, at 221-253) On June 22, 1982, the parties stipulated to the disposition of counts III and V, and the remaining part of count II. (M File 6, at 328)

On November 19, 1982, the court entered amended findings of fact and conclusions of law, and an amended final judgment, setting out the disposition of all the counts. (G File 2, at 254-261 and 265, ¶ 8; M File 6, at 328-330) The state was granted summary judgment on count I (the validity of the ten criteria). Plaintiffs were granted summary judgment on counts II (procedural aspects) and IV (the application of the ten criteria). The court refused to dismiss count II as moot, and counts

III (contempt) and V (subsumed by count IV) were dismissed according to the stipulation.

On December 13, 1982, the state filed a notice of appeal from the court's ruling on count IV. (G File 2, at 262)

V. ARGUMENT

A. Summary

The legislative history of the subsistence law clearly indicates that the legislature intended to narrow the definition of "subsistence fishing" to mean fishing by individuals who reside in rural areas of the state which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the area. To the extent that there is any question in that regard, the board's interpretation and implementation of the subsistence law, which is entitled to significant weight, resolve it.

In carrying out its delegated responsibilities under the subsistence law, the board determined that "subsistence uses" of salmon in Cook Inlet can be identified on a community basis by the application of ten criteria, and that determination is both consistent with the intent of the subsistence law and reasonable.

The promulgation by the board in December 1981 of 5 AAC 01.597, codifying the ten criteria used to identify "subsistence uses" of salmon in Cook Inlet, was a sufficiently new beginning to cure and moot a violation of the public meetings law which occurred when the criteria were first formulated in December 1980.

The board is authorized by the subsistence law to identify "subsistence uses" of salmon in Cook Inlet in order that only fishing for those uses will be provided for through "subsistence fishing," regardless of the biological status of the target stocks.

The classifications determined by the ten criteria of individuals eligible and individuals ineligible to participate in "subsistence fishing" in Cook Inlet are a reasonable means to accomplish the legitimate state purpose furthered by the subsistence law.

The board is authorized to establish "personal use fishing" as a category for regulatory purposes.

In not authorizing "subsistence fishing" opportunities for plaintiffs, but instead authorizing "personal use fishing" opportunities, the board has treated plaintiffs fairly.

B. The Criteria for Identifying "Subsistence Uses" of Cook Inlet Salmon Are Consistent with the Intent of the Subsistence Law, and Are Reasonable

1. Standard of review

Plaintiffs assert that the ten criteria which the board developed to identify "subsistence uses" of salmon in Cook Inlet are not consistent with the intent of the subsistence law. Plaintiffs' argument can be separated into two alternatives: 1) that the legislature did not intend the scope of what had been called "subsistence fishing" to be narrowed when it changed the definition of "subsistence fishing" and established the definition of "subsistence uses," or 2) that the legislature did intend

to narrow the scope, but that the board has not properly accomplished that result with the ten criteria.

The state contends that the 1978 amendments reflect a legislative intent to narrow the scope of "subsistence fishing," and that the method chosen by the board is both consistent with that intent and reasonable. The standard of review for each of the two questions is somewhat different.

There is no question that it is the court's job to construe statutes, and that the court is free to substitute its judgment for that of an administrative agency when reviewing a regulation which merely interprets a statute. However, it is also true that the court should give "consideration and respect" to the agency's construction, and substitute its judgment only if there are "weighty reasons" for doing so. Kelly v. Zamarello, 486 P.2d 906, 910-911 (Alaska 1971). Accordingly, this court should apply "the long-standing principle of statutory interpretation that special consideration will be given to the interpretations of the agency charged with administering the statute," State v. Aleut Corporation, 541 P.2d 730, 737 n.15 (Alaska 1975), when determining whether the legislature intended to narrow the scope of fishing classified as "subsistence fishing" when it amended the definition of that term in AS 16.05.940(22).

However, assuming the legislature did intend a narrower meaning, the question is whether or not the ten criteria as established in 5 AAC 01.597 are "consistent with and reasonably necessary to carry out the purposes of the statutory provisions"

and are "reasonable and not arbitrary." Kelly v. Zamarello,
supra, at 911. The court said:

when a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature, we should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute.

Id.

2. Intent to narrow definition

Before 1978, "subsistence fishing" was defined in terms of "personal use." Sec. 4, ch. 131, SLA 1960. Following the enactment of the subsistence law, it now is defined in terms of "subsistence uses," which in turn are defined as "the customary and traditional uses in Alaska of wild, renewable resources" for certain purposes. AS 16.05.940(22) and (23). Thus, "subsistence fishing" is now defined in terms of "customary and traditional uses," not just "personal use." On its face, it would seem that "subsistence fishing" now requires something other than merely catching fish to eat. If no change had been intended (as contended by plaintiffs), there would have been no need for the amendments.

The legislative history of the subsistence law supports this facial analysis and demonstrates that the legislature intended to narrow the scope of fishing which could be termed "subsistence fishing." In essence, the legislature determined that fishing for "subsistence uses" would include only fishing by

individuals who reside in rural areas of the state which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the area, and not merely the taking of fish for personal use.

For example, during the House debate on the bill that became the subsistence law, proposed Amendment No. 3 to the bill would have eliminated the qualifying words "customary and traditional" from the definition of "subsistence uses." (M File 3, Exhibit U, at 8) Representative Anderson explained that the two words were used "to put some guidelines around the uses of Alaska's ... resources." (Id. at 9) The remarks of Representative Anderson, floor manager for the bill, assume a special role in determining legislative intent. See 2A C. Sands, Sutherland Statutory Construction, § 48.13 (4th ed. rev. 1973).

The fear was that without those modifiers, the field of definition would be "wide open." (M File 3, Exhibit U, at 9) Representative Anderson further commented:

The use of "customary and traditional" also is in recognition of a historical use of fish and game for food, shelter, fuel, clothing, tools, transportation, etc. This is not only in conformance with aboriginal uses, but also those that have come in, those people who have come in later. They have ... the non-native people in the State of Alaska have established customary and traditional use of Alaska's fish and game resources for subsistence purposes. And in order to give the Board of Fish and Game more clarification in the area, we have come up with the (inaudible) of "customary and traditional" rather than leaving that section wide open.

(Id. at 9-10) Representative Anderson certainly intended "customary and traditional" to encompass something narrower than all

personal use. By not adopting Amendment No. 3 (id. at 16), the legislature answered part of the question put by Representative Cotton:

What is the difference between a sport fisherman who takes his fish home and eats it, and a subsistence fisherman who takes his fish home and eats it?

(Id. at 11) The answer is bound up in the historically significant role fish and game resources play in the social and economic life of certain rural areas of the state. In leaving the modifying terms "customary and traditional," the legislature showed that it intended something other than "personal use." 15/

A different provision of the bill requires the board in certain circumstances to distinguish among subsistence users, giving priority among them on the basis of customary and direct dependence upon the resource, local residency and availability of alternative resources. See AS 16.05.251(b). In discussing proposed Amendment No. 2, which eventually failed (id. at 7), but which would have deleted this requirement (id. at 1-2), Representative McKinnon asked what the difference was between those three criteria, and "subsistence uses" generally. (Id. at 4-5) Representative Anderson responded that in a very poor resource situation, sport and commercial fishing would be cut first, and

15/ Nor was it relying on gear type as the controlling definitional element. Representative Gruening, in the House debate, made it very clear that "there are two questions here," referring to "methods of taking" and "customary and traditional use." (M File 3, Exhibit U, at 12)

the:

last people that you are going to cut off are the subsistence people who have the greatest reliance on the resource.

(Id. at 5) (Emphasis added.)

The answer to Representative McKinnon's question is thus that "subsistence uses" are not defined in terms of individual dependence on the resources. This is relevant only in certain circumstances. (See discussion in section D.) Instead, "subsistence uses" are associated with all those living in rural areas in which the social and economic life of the area is reliant upon fish and game resources. That conclusion is supported by the letter of intent accompanying the subsistence law, which notes: "Presently, research is not being specifically directed toward the subsistence hunting and fishing economy of the state." House Journal, 10th Leg., 2nd Sess. 1155 (1978). "Economy" is defined most pertinently as "the structure of economic life in a country, area, or period ... an economic system." Webster's New Collegiate Dictionary 375 (1981). It is clear that the legislature intended the importance of fish and game to the economy of an area to be within the scope of "subsistence uses."

When a statute involves the same subject matter as a subsequent, but approximately contemporaneous statute, the legislative history of the first is indicative of the legislative intent of the second. State v. Bundrant, 546 P.2d 530, 545 (Alaska 1976). The subsistence law was preceded by AS 16.05.257,

the statutory basis for subsistence hunting areas. Ch. 199, SLA 1975; amended ch. 269, SLA 1976. In amending that statute in 1976, the legislature indicated that "subsistence uses" should not be considered to exist throughout all Alaska. For example, it found "that traditional dependence on fish and game resources is a continuing and necessary way of life in many areas of the state and that 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." Sec. 1, ch. 269, SLA 1976. (Emphasis added.)

The House debate on subsistence hunting area amendments in 1976 also indicates that proponents of the bill contemplated a limit to geographical scope. For example, Representative Miller, the floor manager for the House debate, indicated that "subsistence uses" which occurred in a particular area should not be subordinated to "pressures from outside sportsmen like myself." Recording of proceedings, 9th Leg., 2nd Sess., tape 130 H, index nos. 527-1276 (1976). Representative Huntington, the original sponsor of the bill which became chapter 199, SLA 1975, expressed concern about outside hunting pressure on people "in the area where they live." Id. He noted:

Now, the Nowitna River on the Yukon River above Ruby, 30 miles above Ruby, has been hunted for many years. It was one of the finest hunting rivers in the area, and it was destroyed by hunting, there is not doubt about that. The people were flown in from airplanes and they cut the moose down to practically zero in two-year's time.

Id.

In light of this legislative history, it appears clear that the legislature intended the 1978 amendments to narrow the scope of "subsistence fishing." To the extent that there is any remaining question in that regard, however, it is removed by the board's subsequent action interpreting and implementing the subsistence law. Since board determined that the legislature intended by the definitional change to narrow the scope of what would be called "subsistence fishing," this determination should be given "great deference":

When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings.

Pan American Petroleum Corporation v. Shell Oil Company, 455 P.2d 12, 22 (Alaska 1969).

Both Madison and Gjosund concluded that in developing the ten criteria to identify "subsistence uses" of salmon in Cook Inlet and in focusing upon rural communities around Cook Inlet which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the community, the board is acting consistently with legislative intent. (M File 1, at 57, ¶ 4; G File 2, at 260, ¶ 6)

There are no "weighty reasons" to overturn the board's determination. See Kelly v. Zamarello, supra, at 910-911. The

decision the board made was that "customary and traditional uses" amounted to something more than simply eating fish, and its decision is consistent with the amendments which occurred in 1978. In light of the ample legislative history supporting the board's determination, the court need not overturn it under a substitution of judgment analysis.

3. Criteria consistent with intent, and reasonable

The job of identifying which uses of fish and game resources are "customary and traditional" has been delegated to the board within specific guidelines. In fact, the legislature intended the words "customary and traditional" to give "a better handle for the board to work for in defining the range of subsistence." (M File 3, Exhibit U, at 12) (Emphasis added.)

Since the legislature delegated authority to the board to carry out the task of further clarifying the definition of "subsistence uses," its actions in that regard should be reviewed for consistency with the purposes of the statute, and for reasonableness. Kelly v. Zamarello, supra, at 911. This clarification concerns "administrative expertise" as to a "complex subject matter," and in such cases, the court will not substitute its judgment for that of the agency, as explained in Borkowski v. Snowden, 665 P.2d 22, 25 (Alaska 1983). That case involved an interpretation of a regulation for which the substitution of judgment test was used. The meaning of the term "findings" was at issue, as it appeared in the phrase "written findings on each issue shall be issued to the respondent." Id. at 26. The

interpretation of the term "findings" takes no particular expertise, unlike the clarification of the term "customary and traditional" as it relates to uses of Alaska's fishery resources. The legislature intended in the subsistence law to narrow the purview of "subsistence fishing." However, the legislature had established the board to deal with just such complex subject matter, and the board was delegated the task of selecting a mechanism to accomplish the legislature's intent, within the guidelines provided. As discussed, in developing criteria that identify "subsistence uses" with rural communities around Cook Inlet with historic reliance on fishing and hunting activities, the board is acting consistently with the intent of the subsistence law.

In formulating the ten criteria challenged in this appeal, and applying them on a community basis, the board is also acting reasonably. Some evidence of that is found in the adoption by the board in conjunction with the Board of Game of a joint regulation which sets out the procedures for identifying subsistence on a statewide basis. This regulation contains eight criteria, very like the ten in question here. 5 AAC 99.010(b).

Where an "agency decision concerns 'administrative expertise as to either complex subject matter or fundamental policy formulation, deference should be given to an administrative determination if it has a reasonable basis in law and in fact'." Weaver Brothers, Inc. v. Alaska Transportation Commission, 588 P.2d 819, 821 (Alaska 1978). See also Hood v. State Workmen's Compensation Board, 574 P.2d 811, 813 (Alaska 1978).

In this instance, the board decision clearly was based on its factual expertise, as well as being consistent with the law. Information 16/ presented to the board in December 1980 and

16/ That information is contained in the board record supporting the ten criteria in at least the following places:

1) long-term stability: Volume 4 at 84, 97; Volume 5 at 9, 47, 69-70, 85, 91-92; Volume 7 at 33, 53-54, 94, 110, 138, 139, 156, 160-162, 172; Volume 8 at 59-62, 75-76, 112, 113, 114-115, 116-117; Volume 10 at 18-19, 19-20, 32-35; Volume 12 at 77, 78, 81, 82; Volume 13 at 85-86; Volume 14 at 24-25, 31, 126-127; Volume 16 at 102-103; Volume 19 at 77, 78; Volume 20 at 103-104, 105, 108, 112, 115, 117-118, 123, 157, 170, 172-173; Volume 21 at 223-224, 278, 283-284, 296, 306; Volume 22 at 326;

2) community identification: Volume 1 at 70-71; Volume 5 at 22, 61-62, 85; Volume 7 at 33, 46-47, 64-65, 75, 87, 92, 100-101, 112-113, 115-116, 135-137, 144-146, 147, 154, 160-162, 179, 197; Volume 8 at 28, 59, 60, 75-76, 101-105, 107; Volume 12 at 79-80; Volume 13 at 86, 88; Volume 14 at 25-26, 27-28, 38-39, 114, 166, 168; Volume 19 at 77; Volume 20 at 158, 172, 177-198; Volume 21 at 203-205, 217-218, 220, 221, 225, 262-263, 267-268, 286, 288-289, 296, 301;

3) targeting on specific stocks: Volume 1 at 20-21, 33-37; Volume 7 at 19-20, 34-35, 36-37, 42-43, 44-45, 46-47, 57-58, 60, 63-64, 76, 87-89, 91, 96, 118, 141, 180-188, 228-229, Volume 8 at 59; Volume 12 at 29-30, 33-34, 96, 104; Volume 13 at 25-26, 32-38, 47; Volume 14 at 138, 217; Volume 18 at 269-273; Volume 21 at 234;

4) efficiency of harvest methods: Volume 3 at 41, 60, 92-93; Volume 4 at 85, 88; Volume 7 at 12, 34-35, 42-43, 46-47, 60, 76, 87-89, 92, 95-96, 96-98, 116, 121, 123-124, 180-188, 202; Volume 8 at 11, 14-15, 17; Volume 10 at 20-24; Volume 12 at 8, 31-32, 32-33, 92-96, 105; Volume 20 at 99, 104-105, 161-162, 196; Volume 21 at 236, 297;

5) proximity: Volume 3 at 40; Volume 4 at 79, 88-90; Volume 5 at 24-25, 75-76, 82, 84; Volume 7 at 42-43, 46-47, 49-50, 77, 99-100, 101-102, 103, 105-106, 126, 147, 150, 158, 180; Volume 12 at 41; Volume 14 at 43-44, 182-183; Volume 20 at 104-105, 171; Volume 21 at 297;

6) access relatively good: Volume 4 at 79, 85; Volume 5 at

spring 1981, regarding the uses of salmon in Cook Inlet included evidence that "customary and traditional uses could be distinguished from mere "personal use" by ten factors, which became the ten criteria of 5 AAC 01.597. 17/

The reasonableness of the board employing the ten criteria to identify communities 18/ in which "subsistence uses"

36, 41, 45, 76, 84; Volume 7 at 37, 39, 105, 126-127, 131, 132, 133, 213, 231-232; Volume 10 at 25; Volume 12 at 42, 44, 45-46, 52, 86; Volume 14 at 182-183; Volume 21 at 297;

7) relationship to historical methods of preparation: Volume 3 at 18, 21-22, 61; Volume 5 at 55-56, 59-61, 85, 91-92; Volume 7 at 53-54, 54-55, 76, 87-89, 91-92, 94, 158, 233; Volume 8 at 25; Volume 10 at 25-27; Volume 19 at 77; Volume 20 at 172; Volume 21 at 297-298;

8) inter-generational transmission: Volume 4 at 74, 87; Volume 5 at 59-61, 85, 91-92; Volume 7 at 53, 96; Volume 8 at 25, 58, 59, 75-76; Volume 10 at 27-30; Volume 13 at 86; Volume 14 at 126-127; Volume 17 at 153; Volume 20 at 112, 172; Volume 21 at 278;

9) community and family sharing: Volume 3 at 115; Volume 5 at 61-63; Volume 7 at 90, 117; Volume 8 at 27-28, 58; Volume 10 at 35-41; Volume 13 at 86; Volume 21 at 298; and

10) reliance on variety of resources: Volume 5 at 64-65, 75-76; Volume 7 at 87-89, 94, 101-103, 106, 116, 123-124, 147; Volume 10 at 41; Volume 13 at 27; Volume 20 at 172; Volume 21 at 216, 221, 283-284, and 299.

17/ Contrary to plaintiffs' assertions, the criteria are not racially based. Anyone living in a qualifying community in Cook Inlet, currently Tyonek, English Bay, and Port Graham, 5 AAC 01.580(a), may participate, regardless of race. Conversely, individuals living in communities in Cook Inlet for which the existence of "subsistence uses" of salmon under the ten criteria has not been demonstrated may not participate. Thus, the Kenaitze Indians, who live on the Kenai peninsula, are not authorized. (M File 3, Exhibit L, at 9)

18/ Plaintiffs assert that the method of applying the ten

occur is also evidenced by the fact that the federal subsistence law was clearly aimed at protecting communities reliant upon resources. In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. No. 96-487 (1980). "Subsistence uses" of Alaska's fish and game are protected by ANILCA Title VIII, 16 U.S.C. § 3111-3126. The definition of "subsistence uses" in ANILCA is virtually identical to the state definition, including the critical words "customary and traditional uses." 16 U.S.C. § 3113. The version of ANILCA that was under consideration by Congress in 1978 when the state subsistence law was passed also contains in its definition of "subsistence uses" the key words "customary and traditional." Sec. 703, H.R. 39, 95th Cong., 2nd Sess. (1978). The state legislature was aware of that definition when it was debating, and deciding against, removing the words "customary and traditional" from the state definition. (M File 3, Exhibit U at 8)

The legislative history of ANILCA and its precursors indicates that Congress was concerned about communities reliant upon resources in Alaska. There are references to the "more than

criteria in Cook Inlet, on a community-by-community basis, is a strategy of recent vintage, devised long after the criteria were formulated. In fact, the explanation accompanying the motion to adopt the ten criteria as the method of identifying "subsistence uses" of salmon for all of Cook Inlet in March 1981 emphasized the need to focus on "an identifiable community, subcommunity or group" rather than "a small group intermingled throughout the length and width of the Kenai peninsula with other individuals and groups." (Emphasis in original.) (M File 3, Exhibit R, at 1)

200 rural communities throughout Alaska" and "the economic importance of subsistence uses to the rural economy." H.R. Rep. No. 1045, 95th Cong., 2nd Sess. 18 (1978). Congress commented on the "subsistence-dependent villages in the area," and the tension over subsistence "between the rural and urban communities in the State." H.R. Rep. No. 97, 96th Cong., 1st Sess. 158 (1979). It was also intended that former residents of communities reliant on subsistence who were currently living in a larger population center would not be eligible to participate in "subsistence uses." Id. at 192.

Congress was concerned with the issue because "Alaska's more than 200 rural villages are unique in that they are the last communities in the United States in which a substantial number of residents are still dependent upon the harvest of renewable resources...." S. Rep. No. 413, 96th Cong., 1st Sess. 230-231 (1979). Additionally, Congress intended to protect "subsistence uses" which "have played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation." Id. at 269.

Those are but a few examples of Congress's concern with communities reliant upon resources. The clearest statement of that is included in the remarks of Representative Morris K. Udall, the chief sponsor of H.R. 39, just before ANILCA became law in December 1980:

It should also be noted that customary and traditional subsistence uses must be evaluated on a community or area basis rather than an individual basis.

126 Cong. Rec. H10546 (daily ed. Nov. 12, 1980) (statement of Rep. Udall). (Emphasis added.)

The fact that Congress was so concerned in enacting the federal subsistence law with communities reliant upon fish and game resources augments the evidence demonstrating that the board in adopting criteria which identified communities in Cook Inlet reliant upon fish and game resources was acting reasonably.

4. Conclusion

In providing guidelines for the board, the Alaska legislature created a definitional framework for "subsistence uses." The legislature thus avoided imposing a more rigid approach which would have entailed inherent risks identified by one commentator:

[S]ome content for the term "subsistence" must be agreed upon before a management scheme can be developed. This does not mean that such agreement should necessarily be in the form of a legislative definition. A too-rigid meaning ... could impinge on at least three other criteria: flexibility and assurances to both subsistence ... and nonsubsistence interests.

....

... An exhaustive statutory list of harvestable resources and permitted takers, methods, and uses not only would be difficult to generate but also would be too narrow and too rigid for practical administration. Use of animals and plants has varied widely among geographical regions, cultural groups and time periods. Harvesting methods have continued to evolve--particularly since introduction of high-powered hunting arms and motorized vehicles. Concentrations and locations of

resources, populations and users have also changed. These diverse factors will undoubtedly move rapidly in the future, and a legislative description of the uses intended to be permitted should provide both breadth and flexibility to deal with new conditions.

D. Kelso, "Legal Issues in Federal Protection for Subsistence on Proposed National Interest Lands," (unpublished) (1976), reprinted in H.R. Rep. No. 16, 95th Cong., 1st Sess. 273 (1977), at 407 and 412 (footnote omitted).

The board correctly determined that the legislature intended the definition of "subsistence fishing" to be narrowed by the 1978 amendments, and carried out its delegated responsibility to identify "subsistence uses" in a reasonable manner, consistent with the legislative guidelines of "customary and traditional."

C. The Board's Violation of the Public Meetings Law while Developing the Criteria in December 1980 Is Moot

A. explained in the statement of the case, the board in December 1980 gathered a great deal of information about the uses of salmon in Cook Inlet. In order to sort through that information, a committee was appointed, and its meetings were announced during the board meetings, and held during board recesses. (Volume 3, at 122-126) However, the state has stipulated that the committee meetings in December 1980 were conducted in violation of AS 44.62.310, which requires public meetings to be open. (M File 7, at 371-372)

Action taken contrary to the public meetings

requirement is void. AS 44.62.310(f). In University of Alaska v. Geistauts, 666 P.2d 424, 430 (Alaska 1983), the consequences of such voidness are discussed. The court concludes that the process which led to the void result must "begin anew." Id. Since that has already occurred three times since the violation in December 1980, the Madison court correctly concluded that count II, alleging procedural irregularities, was moot. (M File 4, at 296)

The first rehabilitation of the violation occurred in the same December 1980 meeting. After the committee reported to the board, with the first draft of the ten criteria, the board discussed the criteria and supporting reasoning in great detail. (Volume 10, at 8-54) The board concluded that the ten criteria accurately summarized the common threads that had appeared throughout the testimony and that had emerged from the information presented, and the full board then adopted the ten criteria. (M File 3, Exhibit H)

The second time the process began anew was in the spring 1981 meeting, which was not twice in regard to subsistence. The first notice was the board notice of proposed changes for March 1981, which stated in part:

The issues that will be before the board are the establishment of a subsistence salmon fishing permit system for Cook Inlet ...

(M File 3, Exhibit O) The second notice was the Cook Inlet subsistence fishing special notice, which stated in part:

The session will focus on the application of the State's subsistence law to salmon fishing in Cook

Inlet. The law sets a priority on certain customary and traditional uses of subsistence resources. The board intends to examine different methods for providing the priority in Cook Inlet.

(M File 3, Exhibit P)

As set out in the statement of the case, additional oral and written testimony was received during the spring 1981 meeting, and the board readopted the ten criteria, after slightly amending them. (M File 3, Exhibit I)

The third time the process began anew was in the December 1981 board meeting. The general legal notice for that meeting listed the subjects open for consideration, including the Cook Inlet subsistence fishery, which was noticed broadly. (M File 3, Exhibit W) The board could adopt, amend, repeal or take no action on the following:

set characteristics that describe or define subsistence uses and users that will be used by the board to identify subsistence fisheries; set locations open and closed to subsistence fishing; set fishing seasons, periods, gear requirements and restrictions; set conditions and requirements for obtaining subsistence fishery permits; set harvest limits; set fish marketing requirements.

(Id. at 3)

In addition to the general subject area being opened and noticed, a specific proposal in the board's proposal packet outlined the ten criteria already adopted by the board.

(M File 3, Exhibit X)

Alaska law is clear that courts should not decide issues not actually in controversy. Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027 (Alaska 1972).

Mootness precludes judicial determinations. Jefferson v. Asplund, 458 P.2d 995 (Alaska 1969). The consequence of the voidness resulting from the violation of the public meetings law during the December 1980 board meeting is that the process must "begin anew." Since that has occurred on three occasions since the violation occurred, the matter is moot, and the court should not consider it.

D. The Board May Use the Criteria to Identify "Subsistence Uses" of Cook Inlet Salmon Regardless of the Biological Status or the Target Stocks

As discussed, prior to the board's development and application of the ten criteria, the "subsistence fishing" which was authorized in Cook Inlet was simply fishing for personal use with set gill nets, under the pre-subsistence law definition of that term. After the board developed the ten criteria, and it determined that no communities on the Kenai Peninsula except English Bay and Port Graham had evidenced "subsistence uses" of Cook Inlet salmon. (M File 3, Exhibit L) Thus, "subsistence fishing" was not authorized. However, in 1982 the board did authorize "personal use fishing." 5 AAC 77.546 and 5 AAC 77.547.

The Gjosund court upheld the ten criteria as a mechanism to identify "subsistence uses" which is consistent with the intent of the subsistence law. (G File 2, at 260-261, ¶¶ 6-8) However, the court then concluded that the board could not apply the criteria to see if what had been authorized as "subsistence fishing" was still "subsistence fishing" under the new definitions supplied by the subsistence law unless the target fish

stocks were in such jeopardy that the fishing required restriction. (Id. at 261, ¶¶ 9, 10.)

In reaching this conclusion, the court misconstrued AS 16.05.251(b) by melding its three distinct statutory mandates to the board. In order to understand the misconstruction upon which the court's conclusion is based, it is necessary to understand how AS 16.05.251(b) operates.

The first sentence of AS 16.05.251(b) states:

The Board ... shall adopt regulations ... permitting the taking of fish for subsistence uses unless ... adoption of the regulations will jeopardize ... sustained-yield....

Thus, unless sustained yield is jeopardized, the board is required to allow opportunities for "subsistence uses." Identifying these uses is implicitly authorized in the requirement to provide for them. At the same time, the board may, under AS 16.05.251(a) allow opportunities for nonsubsistence uses, such as "personal use fishing."

The second sentence of AS 16.05.251(b) states:

Whenever it is necessary to restrict the taking of fish to assure ... sustained-yield ... or ... the continuation of subsistence uses of such resources, subsistence use shall be the priority use.

Thus, if increase in competition or decrease in harvestable surplus result in a relative resource shortage, restriction of some harvest opportunities may be necessary, and, if so, the priority for "subsistence uses" would come into play. The board can use any of the many management options available to it in imposing the needed restrictions on nonsubsistence uses and in

continuing to regulate "subsistence uses" in a way that protects the opportunity for "subsistence fishing." Of course, in extreme cases the option of precluding nonsubsistence uses would remain available.

The third sentence of AS 16.05.251(b) states:

If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Thus, a more serious resource shortage resulting from greater increase in competition or decrease in harvestable surplus may require still further restriction of harvest opportunities, even after only "subsistence uses" remain. At that point, the criteria listed in the statute would form a basis for distributing the allowable harvest among the participants in "subsistence uses."

The statutory mandate contained in AS 16.05.251(b) that sustained yield always be the paramount concern is consistent with the constitutional requirement contained in article VIII, section 4 of the Alaska Constitution. If the status of a fish stock is such that maintenance of sustained yield requires that all harvest cease, no use (including subsistence) may be allowed.

The first requirement of AS 16.05.251(b) is that the board authorize the taking of fish for "subsistence uses." The board has determined in the ten criteria that "subsistence uses"

of salmon in Cook Inlet are targeted on specific stocks during specific seasons. 5 AAC 01.597(a)(3). Thus, "subsistence fishing" must be permitted on those specific stocks during those specific seasons. No matter what the biological status of the stocks is, the board may wish to examine the fishing that has been called "subsistence fishing" to determine what segment of it is really "personal use fishing" that may be authorized reasonably on whatever stocks and in whatever seasons the board selects, under its discretionary authority in AS 16.05.251(a), rather than being mandated on specific stocks and in specific seasons.

It is implicit in the requirement that the board authorize "subsistence uses" that it have the authority to identify those uses. That task is separate from the later portions of AS 16.05.251(b) which come into play when the priority has been triggered and when the biological status of the target stocks is relevant. The Gjosund court confused the relevance of the biological status of the resource at the priority stage with the requirement that "subsistence uses" be provided at the first stage.

E. The Classification Described by and Resulting from the Application of the Criteria Do Not Violate Equal Protection

1. Equal protection standards

Although plaintiffs allege violation of both the state and federal equal protection clauses, their brief focuses only on the state test, which generally has been discussed in connection with article I, section 1 of the Alaska Constitution, providing

in part that "all persons are equal and are entitled to equal rights." See also Alaska Constitution art. VIII, § 17.

The equal protection guarantees are designed to ensure that those situated similarly with regard to the subject matter and purpose of a law will be treated equally under that law. Ketchikan Gateway Borough, Alaska v. Breed, 639 P.2d 995 (Alaska 1981). A classification must bear "a fair and substantial relationship to a legitimate governmental objective." Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1264 (Alaska 1980). However, equal protection does not demand absolute perfection in the classification system. Id. at 1267. As the court noted in Rose v. Commercial Fisheries Entry Commission, 647 P.2d 154, 160 (Alaska 1982):

The focus of our inquiry under Alaska equal protection analysis is whether the legislative classification is a reasonable means to accomplish a legitimate state purpose.

2. The classifications described by the criteria

The basic classifications at issue in this appeal are those individuals eligible to participate in "subsistence fishing," and those individuals who are not. As discussed above in section B, use of the ten criteria results in the identification of rural communities reliant upon fish and game resources. The board has determined that people residing in rural communities reliant on fish and game resources in the Cook Inlet area are differently situated with regard to fish and game resources than individuals residing elsewhere in the Cook Inlet area. Again, as discussed above in section B, this determination is consistent

with the intent of the subsistence law, and is reasonable.

Not only is the identification of "subsistence uses" in Cook Inlet as uses by residents of rural communities reliant upon fish and game resources reasonable, but it also bears a fair and substantial relationship to a legitimate governmental objective, as required by the equal protection test. Commercial Fisheries Entry Commission v. Apokedak, supra, at 1264. State v. Tanana Valley Sportsmen's Association, Inc., 583 P.2d 854, 859-860 n. 2 (Alaska 1978), acknowledged the critical importance in Alaska of preserving and protecting "subsistence uses," and in Kenai Peninsula Fisherman's Cooperative Association v. State, supra, at 903, the court noted that the subsistence law addressed the important issue on a statewide basis.

The classifications described by the ten criteria are "a reasonable means to accomplish a legitimate state purpose," and do not violate equal protection. Rose v. Commercial Fisheries Entry Commission, supra, at 160.

3. The classifications resulting from the application of the criteria

To the extent that plaintiffs challenge the specific results of the application of the criteria to their communities, and allege that they are "similarly situated" to those living in communities in Cook Inlet which are eligible under 5 AAC 01.597 for "subsistence uses," the equal protection issue is not ripe for review. A superior court decision which remands an issue for further proceedings is not a final judgment for purposes of appeal. City and Borough of Juneau v. Thibodeau, 595 P.2d 626,

629 (Alaska 1979). The Madison court remanded count IV, questioning the application of the ten criteria to the Madison plaintiffs, to the board with instructions to consider under 5 AAC 01.597, containing the ten criteria, any proposals to authorize "subsistence fishing" in Cook Inlet. (M File 4, at 293)

The remand occurred because plaintiffs were apparently claiming that they are similarly situated to those individuals residing in the qualifying Cook Inlet communities, English Bay, Port Graham, and Tyonek, with respect to their use of fish and game resources. See 5 AAC 01.580(a). However, on the evidence before it the board could not reach that conclusion, and neither could the Madison court. The board's findings of fact regarding subsistence fishing in Cook Inlet first discusses the communities of English Bay, Port Graham, and Tyonek, and measures them against the ten criteria, finding customary and traditional uses present. (M File 3, Exhibit L, at 1-9) Then, the board measures some of the other Cook Inlet communities against the ten criteria, and finds them all lacking on the evidence presented. (Id. at 9-10) The board's determination means that individuals residing in those communities are situated differently for the purposes of the subsistence law with regard to fish and game resources than individuals residing in English Bay, Port Graham, and Tyonek.

Specifically, the board finds that no showing had been made that a long-term, stable and reliable use pattern applied to

any community or subcommunity. The board finds that lack extremely important, viewing the other criteria which may have been demonstrated as less persuasive, in light of the absence of long-term, stable and reliable use patterns. The board acknowledges that some groups, such as the Kachemak Bay Subsistence Group, had shown the existence of a community of interest at the present time, but the board finds that the members were either too widely dispersed or were too heterogeneous to be considered identifiable as a community. The board acknowledges that in parts of Cook Inlet there was targeting on specific stocks, use of the most efficient and productive gear, reasonable geographic proximity to the town sites, and easy and direct access to the resource. However, the board points out that only the Kenaitze Indians had made an adequate showing of handling salmon by traditional modes (e.g., using all the parts of the fish, including the heads, fins, tails and eggs; drying, smoking). The board finds that no user concentration showed technique and skill transmittal within and between families, distribution throughout the entire user concentration, nor reliance on a wide range of wild resources taken in proximity to the community. (Id.)

The board did not close the door on further proposals seeking to demonstrate "subsistence uses" in Cook Inlet communities, and in fact stated:

As with all its determination, the Alaska Board of Fisheries will consider additional information from the public during its next regulatory proposal cycle, if such information is offered. In the event adjustments to the findings or regulations are necessary, appropriate changes can be

made at that time. However, no extension of eligibility ... is warranted on the present record.

(Id. at 10)

Since the board reasonably did not find on the evidence before it that plaintiffs were similarly situated to those residing in Cook Inlet communities authorized to participate in "subsistence fishing," and since the Madison court remanded this issue to the board, a violation of equal protection cannot be found in the board's application of the ten criteria.

F. The Board Is Authorized to Establish "Personal Use Fishing" as a Category for Regulatory Purposes

In 1982, the board established "personal use fishing" as a category which it can use in regulating fishing in the state. 5 AAC 77.001. This action is consistent with the board's statutory authorities and is reasonable, and thus, it should be upheld. Kelly v. Zamarello, supra, at 911.

AS 16.05.251(a)(6) authorizes the board to make regulations it deems necessary for "classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes." (Emphasis added.) Plaintiffs' assertion that the provision only authorizes the board to use categories established by the legislature is inconsistent with the language itself, which delegates that authority to the board.

Under AS 16.05.251(a)(6), the board may employ "other categories" only if to do so is "essential for regulatory purposes." In establishing the category of "personal use fishing," the board made specific findings on the necessity. The board

found that before the subsistence law, individuals could fulfill their personal use requirements by "subsistence fishing," but that now "subsistence fishing" is narrower in scope, and does not include all such previously authorized personal use fishing. The board found that "commercial fishing" was not the proper category for that activity, since the sale of fish is not involved. Further, "sport fishing" has become so associated with hook and line, rather than nets, that to classify personal use net fishing as sport fishing would be confusing to the public. Thus, it was necessary to establish "personal use fishing." 5 AAC 77.001(a).

Assuming the board is correct in its interpretation that the new definition of "subsistence fishing" is narrower than the previous one, it seems odd that plaintiffs would challenge the board's authority to establish "personal use fishing," since the category was established in order to provide for fishing which cannot now be called "subsistence fishing." Plaintiffs are incorrect in characterizing "personal use fishing" as a matter of "charity;" the board made clear that "personal use fishing" could be authorized whenever it "is in the broad public interest." 5 AAC 77.001(b). The board can thus authorize it in its discretion under AS 16.05.251(a), just as it does commercial fishing and sport fishing.

The board was authorized to establish "personal use fishing" as a category, since it is essential for regulatory purposes. Indeed, if it had not done so, there would be no mechanism for it to authorize fishing for personal use by set

gill nets by plaintiffs.

G. The Board Has Not Violated Plaintiffs' Substantive Due Process Rights by Not Authorizing "Suosistence Fishing" Opportunities for Them, but instead Authorizing "Personal Use Fishing"

Substantive due process, guaranteed in article I, section 7 of the Alaska Constitution, protects people against arbitrary governmental action, and encompasses "our traditional concept of fair play and substantial justice," "fundamental principles of liberty and justice," and "fundamental fairness." Green v. State, 462 P.2d 994, 996-997 (Alaska 1969). Thus, the board may not take arbitrary or unreasonable action. Kelly v. Zamarello, supra. Plaintiffs assert that they have been treated unreasonably; however, an examination of their allegations demonstrates that the board has not violated plaintiffs substantive due process rights, and has not treated them arbitrarily.

Plaintiffs first assert that they have been treated unreasonably because of the violation of the public meetings act which occurred during the December 1980 board meeting. As discussed above in section C, that violation has been cured, and is moot.

Plaintiffs next assert that they have been treated unreasonably because there was not a biological need to restrict the "subsistence fishing" that was authorized in Cook Inlet under the old definition. Plaintiffs refer to a report that purportedly confirms that "subsistence fishing" occurs in their part of the inlet, but that report speaks in the terms used in the years reported on, which were terms related to the old definition.

(G File 4, at 1-97) As discussed above in section D, the board may identify "subsistence uses," regardless of the biological status of the target stocks.

Plaintiffs third claim of unreasonable treatment is that the board in applying the ten criteria undertook an administrative function which the board is prohibited from engaging in under AS 16.05.241. That claim is based on a misconception that the board was granting and denying "subsistence fishing" opportunities to particular individuals. In fact, the board was identifying "subsistence uses," which can be participated in by anyone in Cook Inlet living in a community where "customary and traditional uses" exist. Kenai Peninsula Fisherman's Cooperative Association v. State, supra, at 901-902, noted that the board has no administrative powers, but simultaneously held that the board

has the power to make decisions effecting the utilization of fishery resources in this state.

Id. at 903.

What the board did in applying the ten criteria was to identify "subsistence uses" and provide for them. For the 1982 season the board also identified and provided for "personal use fishing," for which any Alaska resident qualifies. 5 AAC 77.015, 5 AAC 77.546, and 5 AAC 77.547. Kenai Peninsula Fisherman's Cooperative Association v. State, supra, states that the board is not prohibited from:

differential treatment of such diverse user groups as commercial, sports, and subsistence fishermen.

Id. at 904. Thus, in identifying "subsistence uses" and

providing for them pursuant to AS 16.05.251(b), the board is not improperly exercising administrative powers. In fact, although plaintiffs suggest that somehow the Department of Fish and Game should apply the criteria (brief of appellant/cross-appellee at 45-46), that task has been delegated to the board, not the department.

Plaintiffs fourth assertion is that the board has treated them unreasonably by allegedly excluding them from fishing opportunities. It is true that after the board identified and provided for "subsistence uses" for the 1981 season, it did not authorize any other fishing for personal use with set gill nets for that season. At that time, the board had not yet established "personal use fishing" as a category under which it could accommodate individuals such as plaintiffs.

Additionally, the board was very cognizant of its responsibility in weighing biological factors with the interests of different user groups and making a decision that would be in the greatest public interest. The board extensively discussed its reasons for not authorizing any fishing for personal use with set gill nets for 1981, other than "subsistence fishing." (Volume 28, at 42-72) The board expressed concern that the net fishing was too efficient, and involved too many people, so that even though it had historically existed, it might not be reasonable to allow a large number of people to continue to use the most efficient gear type. (Id. at 51) The board felt that if the more efficient set gill nets harvested the fish before they

reached their home streams, a few people could benefit disproportionately, whereas the maximum benefit to the maximum people could be provided by restricting the fishing to rod and reel (sport fishing), thus allowing more fish to reach their home streams. (Id. at 44-45) The set gillnet fishing was compared to snagging, which has also been discontinued:

I don't look at any differently then say, for instance, snagging in the sport fishery. For a long time snagging was -- was permitted in the sport fishery. The board came to a point where it was too efficient, there were too many people in it, there was harvesting at a higher rate than what the board felt was prudent as far as the conservation of the resource. And so, even though historically snagging had existed for a long time the board decided that it was just not something that could be justified as far as the conservation of the resource.

And so, I look at this net fishery in a similar fashion, and in order to live up to the mandates of the constitution to -- for providing the resources for the maximum use of its people you can no long -- when you get to a point where you have a limited resource you -- you cannot continue to allow the most efficient means of harvest.

(Id. at 44) The board noted net fishermen had alternative means to meet their protein needs, and that they would have access to the resource by use of rod and reel. (Id. at 48)

In light of those reasons, the board for the 1981 season did not authorize fishing for personal use with set gill nets, other than "subsistence fishing," in Cook Inlet.

However, by the time the board considered the matter again for 1982, it had established "personal use fishing" as a category it could employ. 5 AAC 77.001. The board authorized "personal use fishing" in both the southern and central districts

of Cook Inlet, under the same individual harvest limits that had been in effect for what was called "subsistence fishing" in those areas previously. 5 AAC 77.530(a), 5 AAC 77.546 and 5 AAC 77.547.

The Madison plaintiffs would like to fish on coho salmon in the central district of Cook Inlet in the fall. Instead, the board authorized a fishery on sockeye salmon in the central district in June. (M File 6, at 365-366, ¶¶ 17, 18) A consequence of the absence of "subsistence uses" is that the board retains the discretion to authorize "personal use fishing" on whatever stocks and in whatever seasons it determines best serve the public interest, just as it retains discretion for when and where to authorize commercial fishing and sport fishing. AS 16.05.251(a). Kenai Peninsula Fisherman's Cooperative Association v. State, supra, recognized that the board is authorized to make allocation decisions. The factors upon which those allocations are based may change over time, and the allocations may shift accordingly. Such allocations are consistent with the board's statutory authority. AS 16.05.221(a) and AS 16.05.-251(b).

Thus, the board must authorize "subsistence fishing" on the specific stocks and in the specific seasons with which the "subsistence uses" are associated. See AS 16.05.251(b) and 5 AAC 01.597(a)(3). On the other hand, the board has the latitude to direct "personal use fishing" to any stock or season, as long as its decision is reasonable and not arbitrary. Kelly v.

Zamarello, supra, at 911. The Madison court determined that the shift from the fall coho to the summer sockeye was reasonable and not arbitrary. (M File 6, at 368-369, ¶¶ 11, 12)

The plaintiffs finally assert that they have been treated unreasonably because particular board members allegedly had a biased attitude toward them. 19/ The incidents that plaintiffs rely upon to attempt to demonstrate the "unreasonable" attitude of particular board members all involve board action that plaintiffs did not like. The board did not authorize "subsistence fishing" for plaintiffs, but the criteria that the board used in that process were consistent with the intent of the subsistence law and reasonable, and under the remand to superior court, plaintiffs are free to submit proposals to the board and show why, under the criteria, they do in fact engage in "subsistence uses." See sections B, D, and E above.

It is true that no fishing for personal use with set gill nets was authorized for plaintiffs in 1981, but as the earlier discussion shows, the board based that action on resource

19/ AFN asserts that plaintiffs are alleging that the board as an institution suffers from unconstitutional bias. (Brief of intervenor/amicus curiae at 37-45.) That is not an accurate characterization of plaintiffs' allegations, which instead are directed at the attitudes of particular board members. For example, the contempt allegations in Gjosund were dismissed by stipulation "based upon a significant change in the membership and leadership of the [board]..." (M File 7, at 371) AFN asks that the purported issue be remanded to superior court to develop a record. In fact, the reason there is no record is that no such issue has been raised or briefed in either Gjosund or Madison.

and allocation concerns. However, before 1982, the board reconsidered, and authorized "personal use fishing" in which plaintiffs can participate.

The "personal use fishing" authorized by the board in the central district of Cook Inlet is on the summer sockeye, instead of the fall coho preferred by plaintiffs, but, as discussed above, that decision is within the discretion of the board and reasonable. AS 16.05.251(a). (M File 6, at 368-369, ¶¶ 11, 12)

Plaintiffs may not have made the decisions that the board made on these matters. That does not mean, however, that the board decisions were arbitrary, and, in fact, as the discussion shows, the decisions were reasonable.

Thus, the actions objected to by plaintiffs do not violate substantive due process.

VI. CONCLUSION

This appeal is not about mere semantics. It is about important legislative changes in the definition of "subsistence fishing" which are being put into effect in a reasonable manner consistent with the legislative intent to protect rural areas of the state which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the area. In Cook Inlet, "subsistence fishing" is now being authorized for rural communities reliant upon fish and game resources, and "personal use fishing" is being authorized for individuals, such as plaintiffs, who do not live in such reliant communities.

The state requests that the holdings of the Madison court be affirmed, that the holding of the Gjosund court which is the subject of this appeal be reversed, and that the request by AFN for a remand on an issue that is not at issue in this consolidated appeal be denied.

DATED: *January 26, 1984*

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: *Larri Irene Spengler*
Larri Irene Spengler
Assistant Attorney General

Winter King Charters

Ralph E. Lohse, Captain

Box 14

Cordova, Alaska 99574

(907) 424-7170

*Fish for
Winter Kings
Halibut
Rock Fish*

*Tackle furnished
or bring your own*

April 10, 1985

Representative M. Mike Miller, Chairman
House of Representative, Judiciary
Pouch V
Juneau, Alaska 99811

Dear Mr. Miller,

I believe that the subsistence issue is of utmost importance at this time. The detrimental effects of the Supreme Court's decision in the case of Madison vs. Alaska, on the communities and individuals involved in sport and commercial fishing, demands immediate attention to avert both short and long term financial disaster. (Not to mention true subsistence users.)

We need immediate action on the part of those in a position of power and leadership.

Please do all in your power to give House Bill #288 or similar legislation your attention and support.

Thank you.

Ralph Lohse

4/4/85

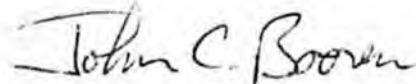
Dear Representative,

I would like to urge you to support HB-288 or any legislation that will keep the Alaska Board of Fish and Game as managers and regulators of our fish and game. I live in Cordova and fishing is my only means of making a living. I have four months to make a years waige and the Copper River fishery makes up to 70% of my income. If we loose any time fishing, especially the first part of the run, where 50% of the fish go up river in 2-3 weeks, it is definately going to make it hard, if not impossible, to make my financial ends meet.

Please support HB288 and please push to get the issue resolved this season. Fishing is scheduled to begin May 13, 1985.

Thank-you very much,

Sincerely,

A handwritten signature in cursive script that reads "John C. Booren". The signature is written in dark ink and is positioned above the typed name.

John C. Booren

Rep. Mike M. Miller

In light of the stand that the A.F.N. took last week in the House Resource Committee teleconference that if SB. 231 + H.B. 288 or similar legislation are not enacted into law A.F.N. will seek Federal Intervention to protect their rural subsistence way of life. The State of Alaska became a state so we could manage our resources ourselves. So far the Board of Fish & Game have been doing a good job of working with all user groups of all our renewable resources. Admittedly there are some problem areas, as there is with managing any resource. Regulations adopted by these boards are not set in cement they are open to proposals every year so those problem areas can be worked on. Anyone in the state can propose changes & present grievances with the boards. Re Allocations have been made every year to cope with increased pressure by different User groups. A Personal Use Fishery was implemented to give Urban residents access to the fish while still protecting the rural communities subsistence way of life. Please support SB. 231 & H.B. 288 as a permanent fix. I do not view them as a quick fix I feel these bills are a permanent & equitable solution allowing change where & when its needed and is imperative to the stability of the Fishing Industry and the State as a whole. The State of Alaska in my view is the greatest State in the Union. That's why I live here. Let's keep Alaska Great. Support SB. 231 & H.B. 288. We need the Stability Thank You

John Mehelich
Box 968
Cordova AK 99574

Mrs. Denny Kay Weathers
P.O. Box 837
Cordova, Alaska. 99574
Resident; Hawkins Island
Lot 6, Deep Bay VHF ch. 6

Dear Alaska State Legislators;

I am a homemaker & mother, I live (5) water miles Northwest of Cordova on the North end of Hawkins Island in the Deep Bay area.

I am strongly in support of Senate Bill # 231 and House Bill # 288, and urge all Senate and House Chairman and Co-Chairman to work as quickly as possible at resolving these major issues.

My personal reasons are as follows; Fishing is our only source of an income which in turn is our survival. Survival meaning we must purchase fishing and hunting license, shells, fuel to even go get game meat.

In order to make jelly, bread or even grow a hand full of potatoes it takes an income to purchase flour, sugar or seed potatoes, and much work to even try to grow a small kelp box garden, do to our poor gardening conditions in this area, compared to Anchorage, Palmer and Fairbanks with such good growing seasons.

You must take in to consideration, our moose and deer, in the Prince William Sound, Copper River and the surrounding Cordova area. All the moose and deer were transplanted here prior to Statehood. This makes a limit on all the game meat in this area, which is set up to ensure that our children will have moose and deer when they grow up. The Alaska Fish and Game regulate these rules to ensure future stocks, this is done in the best interest of the people.

If the State was to open subsistence hunting to all residents it would destroy all that the dept. of Fish and Game has worked so hard to protect for the future of all Alaskans.

As for the Copper River Red Salmon run; in 1982 my husband caught 2,865 red salmon, 1983 was 1,323 red salmon, 1984 was 741 red salmon. Each year we have been cut back on our take of the Copper River Red Salmon to ensure the brood stock and to assure that the subsistence fisherman get thier increased quota of Red Salmon each year.

My husband in 1982 paid \$57.30, 1983 paid \$26.46, 1984 \$14.82, this was just the Aquaculture asesment for Copper River Red Salmon and by the time the cannerys mached the \$.02 per fish it totaled \$98.58 paid out for our catch to ensure the preservation of our future Copper River Red Salmon through the Aquaculture. Please also note that the subsistence fisherman do not pay the \$.02 per fish nor do they quit fishing during the closers by the State of Alaska Dept. of Fish and Game. These closers are designed to give proper escapement to ensure the proper amount of brood stock escapement.

If the Copper River Fishermen have to cut back much more there will not be a Copper River Fisherman left.

Please understand , I beleave that subsistence is very important but not to the point of destruction-meaning our resources can not handle every resident becoming a subsistence user. Please study this issue with the up-most care, because rivers, streams, forests and fields can only provide just so much and when it's gone it's gone forever. The Alaska State Fish And Game have been slowly accomplishing a goal, why not leave it there at least they have some facts and figures and a future to work with.

To me subsistence means a need and a need means necessity which brings us back to subsistence which is the minimum food and shelter necessary to support life-not the want for the food.

I beleave hunting and fishing is still a privilege and honor that the State of Alaska provides by over seeing the resources and keeping them balanced.

People that have a good income, meaning average income or higher should be willing to purchase a hunting or fishing license and leave the subsistence to the person or persons that truly need it for the reasons of survival, not for the want or greed. Remember the key words to subsistence is in the Websters Dictionary. Thank you for your concerns and time on thhse important issues.

Denny Kay Weathers

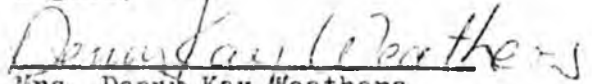
Mrs. Denny Kay Weathers
P.O. Box 837
Cordova, Alaska 99574
Resedent; Hawkins Island
Lot 6, Deep Bay VHF ch. 6

(Face Letter)

Dear Committee Chairman;

Could you please see that all the members of your committee recieve a copy of my letter in support of Senate Bill #231 and House Bill #288 to help ensure the safety and future of all our natural resourses and wildlife throughout all Alaska. Thank you all for your time and hard work, If I can be of any help to any one of our legislators with our fishing records please let us know.

Signed;


Mrs. Denny Kay Weathers

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P.O. Box 937
Cordova, Alaska. 99574
Resident; Hawkins Island
Lot 6, Deep Bay VHP ch. 6

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Denny Kay Weathers



Mr. & Mrs. Max Wiese



Box 47
Cordova, Alaska 99574
424-3667

29 March 1985

Rep. M. Mike Miller, Chairman
House Judiciary Committee
Juneau, AK

Dear Rep. Miller:

In regard to House Bill #288, I am concerned with the issue of who is to use and manage the fish and game resources of the state, specifically, of my area of Cordova, and the salmon of the Copper River. I was born and raised in Cordova, have fished for 2 of my 53 years, and depend entirely on the Copper River for my livelihood. I would like to see the management of our resources handled, so that I, and the many other residents of Cordova who also depend on the Copper River, will be ensured of our continued use of this resource.

Thank you for your time and consideration in this matter.

Sincerely,

Max Wiese

Max Wiese

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 8512

A RESOLUTION OF THE CITY OF VALDEZ, ALASKA
URGING IMMEDIATE PASSAGE OF SENATE BILL 231
AND HOUSE BILL 288, RELATING TO SUBSISTENCE
FISHERIES, BY THE ALASKA STATE LEGISLATURE

WHEREAS, the Supreme Court of the State of Alaska recently found the Alaska Board of Fisheries Regulation, 5 AAC 01.597 inconsistent with the Legislative intent to provide guidelines for the protection of subsistence fishing, and

WHEREAS, the court found the regulation exceeds the authority delegated to the Board because it operates too restrictively in nonsubsistence uses, and

WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and nonsubsistence fishery issues, and

WHEREAS, the economy of the City of Valdez is critically dependent on the revenue and employment resulting from the commercial and sport fisheries, and

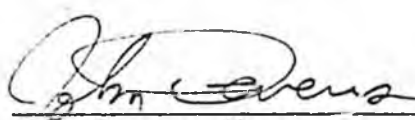
WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that

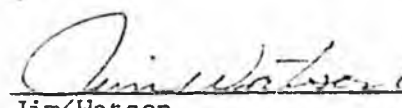
Section 1. There be immediate consideration and enactment of Senate Bill 231 and House Bill 288 as proposed by Governor Sheffield.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA this 1st day of April, 1985.

CITY OF VALDEZ, ALASKA


John Devens, Mayor

ATTEST:


Jim Watson
City Manager/City Clerk

Dear Mr. Miller :

My name is Dan Strickland. I am 31 years old and live with my wife Pamela in Cordova. We just had our first child, a son, 14 days ago. I came to Alaska 13 years ago and have worked for the Department of Fish and Game for 4 years, and as a commercial fisherman for 9.

I realize the complexity of a subsistence definition and the politics of relating this definition to fish and game management, from my work with the Eskimos and their marine mammal harvest, but I can hardly believe the recent Supreme Court decision making all Alaskans, rural and urban both, subsistence users with first priority.

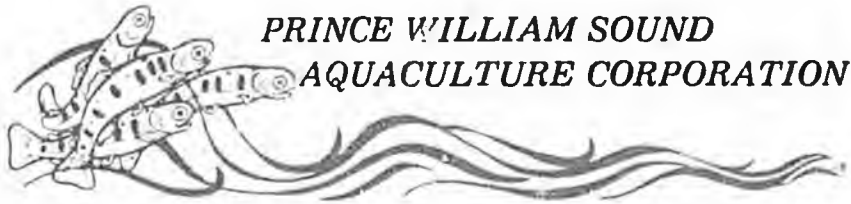
You know all the arguments pro and con I'm sure. I would just like to add my voice in support of Senate Bill #231 and House Bill #288.

With the support of the state of Alaska my wife and I have built a lifestyle for the last 9 years. Please, please, do not obliterate what we have struggled for for the last decade. Support passage of Senate Bill #231 and House Bill #288. Thank you very much.

Sincerely,



Dan Strickland
P.O. Box 1517
Cordova, Alaska 99574
424-5277



**PRINCE WILLIAM SOUND
AQUACULTURE CORPORATION**

A regional non-profit organization for the enhancement of fisheries.

*P.O. Box 1110
Cordova, Alaska 99571
(907) 424-7511*

March 26, 1985

Rep. M. Mike Miller, Chairman
House Judicial Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Rep. Miller:

The fishermen in Area E (Prince William Sound, Copper and Bering Rivers) have, since 1974, contributed \$2.5 million and their own voluntary time to the development of Prince William Sound Aquaculture Corporation (PWSAC) and the implementation of salmon enhancement programs by this Regional Aquaculture Association.

This form of "self help" resource development by the harvesting fishermen, which was created by the Alaska State Legislature in 1974, has set a responsible standard for enhancement that is without parallel in the rest of the United States. We project that our total enhancement program will generate annual revenues to the commercial fishery alone of \$20 million within ten years. Moreover, the Esther Hatchery will produce coho and chinook salmon fry to be stocked in nearby lakes, which we project will return 7500 coho and 6000 chinook salmon adults to the developing sport fishery near Whittier. Salmon from this hatchery will also be available to a future subsistence fishery.

PWSAC has actively supported the enhancement of sockeye and chinook salmon on the Copper River in cooperative research programs with the Alaska Department of Fish & Game since 1981. Funds expended to date represent \$1.6 million. These research studies have focused upon the development of an expanded hatchery program in the Upper Cooper River in fiscal year 1987. We, along with other groups, feel that more fish production will increase the share of fish for all users of the resource, commercial, sport and subsistence included.

The recent Alaska Supreme Court ruling on the subsistence issue, the Madison decision, has the potential to undercut the established gillnet fishery before we have an opportunity to implement our Regional Comprehensive Enhancement Plan. Our fishermen, processors, Cordova businesses and community in general, could suffer a devastating economic loss in the near and long term if this decision stands.

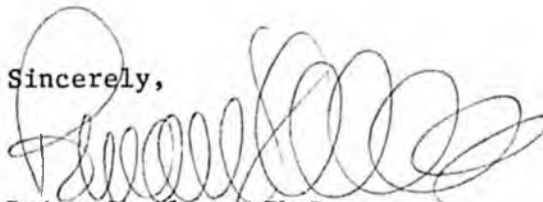
Page Two
Rep. M. Mike Miller
March 26, 1985

While the 1978 subsistence law provides for an appropriate priority use of resources by residents of Alaska who have traditionally relied on fish and game, it does not give the boards enough guidance to protect other traditional users, that is, sports and commercial fishermen.

We urgently need your help and support in order to see that Senate Bill #231 is enacted in this legislative session.

Thank you for your support.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brian J. Allee".

Brian J. Allee, Ph.D.
President

BJA/mbl

4/3/85

APR 9 1985

Dear Representative Miller,

I am writing to urge you, this session, to support HB#288 or whatever legislation you can devise to insure the Alaska Board of Fisheries and Game the power to regulate the Copper River fishing grounds this spring as it has in the past.

I am a Cordova resident and commercial fisherman, and 90% of my income is gained from the Copper River delta area. Loss of this income this spring would bring much hardship to my family and many others like us.

The town of Cordova's only industry is commercial fishing, and the good management of this resource is of prime importance to us all.

Sincerely, Rhoda deVillie

Box 254
Cordova, Alaska
April 1, 1985

8 1985

Representative Mike Miller, Chairman
House of Representative Judiciary
Alaska State Legislature
Fouch V
Juneau, Alaska 99811

Dear Representative Miller;

I am writing to request your support on HB 288 or any similar legislation that would give the Alaska Board of Fish and Game the power back to regulate and manage our fish and game resources. If not passed this could virtually destroy Cordova. Cordova's main industry is fishing and the only industry that is keeping Cordova alive today. We cannot depend on Tourism.

Many Cordova fishermen would lose their boats and their only way of making a living if they are not able to fish (gillnet). Does the state want to see this happen? Nearly all of the Cordova fleet is financed thru the state. What will this do to the state?

My husband has been in the fisheries since 1969. We make our home here in Cordova. This is our only means of employment, We are not young and certainly do not wish to lose our boat. We prefer to be employed and not on Welfare.

I urge you, along with all of Cordova, to please give this bill your support.

Sincerely,

Kathy Crow

Kathy Crow

APR 6 1985

March 30, 1985

Dear Rep. Miller,

I am writing to request your support of House Bill # 288 regarding the future of commercial fishing on the Copper River Flats; and thus, the future of the Cordova community. I have happily been a year round resident of Cordova for five years. I am not a permit holder, but have worked at fishing related as well as non-fishing related jobs. My experiences show me that all facets of employment in Cordova are heavily dependent on the success of our fishermen.

I urge you to take a close look at the problems we Cordovans are facing if these bills do not pass. How you vote is a decision only you can make, but a matter of such consequences deserves your attention. Thank you very much.

Sincerely,

Carol J. Roderick

Box 1532 Cordova, AK 99574

APR
8 1985

Dear Rep. Miller

I'm writing in regards to H.B. # 288, it's a necessity to me that this bill or something similar be passed. I'm a second generation fisherman of Cordova, and the family head of four. I have always made my living as a fisherman, and don't have an alternative resource should the Copper River be closed to commercial fishing. 70% of my income derives from the Copper River fisheries. I've invested heavily in my trade, depending on this fisheries without it it will be impossible for me to make my payments as well as support my family. Lack of support of this bill does not only hurt myself, and other gillnetters of this area, but will also be crucial to the economy of Cordova. Also, it would force us to leave our community in which we were reared, to try and seek employment elsewhere. I believe we need to keep our faith in the Board of Fish, where the sport, dipnetters and subsistence fisherman all had a fair and equal opportunity to the fish due them. We have always gone fishing in May - PLEASE HELP KEEP IT THIS WAY, and SAVE OUR COPPER RIVER FISHERY.

Thank YOU,
Mr. Kim Sagar

APR

April 4 1985
Monna Alwine
P.O. Box 609
Cordova, Alaska 995

To whom it may concern:

I am concerned about the situation that may develop in Cordova if adequate steps are not taken to ensure the commercial fisherman's livelihood. The ruling by the Alaskan Supreme Court on the subsistence use of salmon threatens Cordova's economy which is based entirely on the commercial fishing of salmon. The laws need to be changed or modified to protect this way of life. Subsistence use of salmon by all Alaskans, rural and urban, is a knife in the back to the commercial fisheries. The economic repercussions of the decline or total loss of the commercial fisheries in Cordova, would be felt by all Alaskans.

Is the right of all Alaskans to the salmon worth the complete demise of a way of life for the fisherman? I don't think so! I would appreciate anything you could do to protect our commercial fisheries.

Sincerely yours,
Monna Alwine



APR 2 1985



RAINBIRD FISHERIES, Inc.

P.O. Box 1065
Cordova, AK. 99574
March 31, 1985

M. Mike Miller, Chairman
House of Representatives Judiciary
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Sir:

I support Senate Bill #231 and House Bill #288 to give back the power to the Alaska Board of Fisheries and Game to manage our fishery resources. We urgently request your support as, if this legislation is not passed, this will have a very serious impact on the Town of Cordova.

It is most important that this issue be resolved during this Session; I thank you very much for your efforts.

Very truly yours,

A handwritten signature in cursive script, appearing to read "R. J. Shaw".

R. J. Shaw

F/V Belen-C
Joe and Belen Cook, Jr.
P. O. Box 215
Cordova, Alaska 99571
Phone (907) 424-3507

APR 2 1985

Dear Guy,

I am writing this letter because of my great concern of what has happened in the past month's dealing with substance.

I would just like to start by telling you a little about myself and family.

Both my husband and I work on our 28 ft coopper boat starting May 15 to Sept each year, salmon fishing on the Copper River Flats. I also do the bookkeeping for the business, I am also a member of the Inland Sea, Inland Sea Council as this was not our will way of the problems we have had in the past.

I was on the Board of Game Advisory Committee, which was first decided to bring before the Board of Fish having three user groups Substance Personal Use, and Commercial. Was very happy to see it pass, since I believe this to be an excellent way to manage the



F/V Belen-C
Joe and Belen Cook, Jr.
P. O. Box 215
Cordova, Alaska 99574
Phone (907) 424-3507

(2)

resource

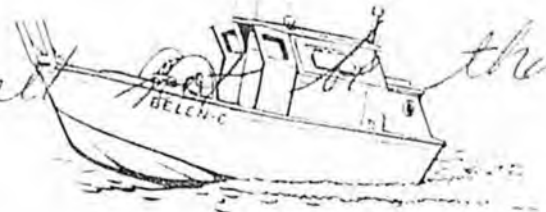
I do not want to give you the impression that I am only involved in fishing interests, because this is not the case! I am also on the Cordova Hospital Auxiliary, and The Homer's Resource Center, which I am a board member of.

My husband was born a commercial fisherman, and he was 13 years old and he is now 44 years old. Our livelihood depends on fishing, we depend on the Copper River Flats for 80 percent of our living and 15 percent on the Prince William Sound

Besides fishermen, the Community of Cordova also depends on fishing, thus H.B. 288 must pass and pass in this session.

If it is not simple if a fisherman cannot meet our obligations to our creditors, they in turn cannot meet theirs, which can cause great problems in the near future as far as economic hardship.

I am positive Cordova will be the only Community



F/V Belen-C
Joe and Belen Cook, Jr.

P. O. Box 215
Cordova, Alaska 99574
Phone (907) 424-3507

1/5/71

affected in this manner in Alaska
So I ask you again to support HB 288

Sincerely,

Joe Cook



APR 2 1985

Dear Legislator

3-31-85

I am writing in support of Governor Sheffield's subsistence bill.

I was raised in Anchorage since 1956 and my family relied heavily on sport caught moose, caribou and salmon. We never considered ourselves subsistence users. This food was incidental to our hunting and fishing. It was the sport and not the food which sent us to Alaska's wilds.

In 1972 my wife and I moved to the Adutian chain for four years. Here we witnessed people living a true subsistence lifestyle. Their wealth is their knowledge of the land and resultant ability to provide the majority of their needs from it. To these people the need for food, not sport, was the compelling factor.

In 1976 my family moved to Nabesna in the Copper River Basin. The majority of these people live in a more cash orientated economy. Subsistence is important to supplement their lifestyle.

The subsistence lifestyle is a part of Alaska's past and present which should be protected.

I would not favor a system of subsistence which "doles" out fish and game like welfare on a needs basis. The subsistence lifestyle deserves to be encouraged and lived with pride.

Under Governor Sheffield's bill, subsistence would be regulated as in the past based on rural residency. I feel this is a good solution as it is less need orientated. One of our subsistence groups our Alaska natives have traditionally shared

food within the community. Today their most successful hunters are those who can afford the use of snowmachines, outboards ect. To deprive these people subsistence opportunity thru a needs based program, would affect many others within this community.

The recent ruling by the Alaska Supreme Court creates a situation, which cheats the true subsistence user. The subsistence lifestyle needs to be protected by priority. To allow everyone to become a subsistence user cheats the true subsistence user, of his protection by priority. I further feel it is a joke to allow Anchorage and Fairbanks residents equality under subsistence as subsistence is a lifestyle that cannot coexist in a city environment. We must address this problem immediately to restore balance to our subsistence program. If we delay, we will create a new user group, the city subsistence user. I feel this would impact true subsistence, commercial fishing, sport fishing and sport hunting. It will be harder to solve in the future than now as undoubtedly some will not want to loose their new found subsistence rights.

The Copper River stands as an excellent example of a new user group being created under the pretext of subsistence. You can argue that the Copper River deplet fishing is done more for a weekend outing, rather than based on a need to put food on the table. Often more is spent on this recreational outing to catch these fish than if these [?] subsistence users had bought these fish from the market at home.

On the Copper River personal use was created to protect both the true subsistence users and commercial fisherman by giving a lower priority to recreational dipnetting. I have nothing against ~~recreational dipnetting~~ so long as it is called such and managed as such.

Today we are back at square 1 with Anchorage and Fairbanks recreational dipnetters having a priority over commercial fishermen and threatening the priority of the true subsistence users to this resource.

What is the future of the Copper River commercial fisherman and true subsistence users as our state population grows?

What is the future of our sport fishing, commercial fishing, sport hunting and subsistence users in other areas of the State of Alaska?

Will recreational gillnetting close the world famous Kenai sport fishery?

Please address this problem rationally, responsibly and quickly by passing governor Sheffield's subsistence bill.

Fred Dusen

STAR RT. Box 6700-E

WASILLA, ALASKA
99687

Dear Representitve Miller,

There appears to be considerable concern over the Salmon Fish allocation on the Copper River and other rivers as regards to the State supreme court rulling on Subsistance Fishing as haveing total piority over sport, and personal use and Comerical Fishermen. The Cordova Fishermen are concerned that they will be prohibited from comercial fishing the main run of the Copper river salmon which occures in the first ~~three~~ ^{four} weeks of from May 15th to about June 15th say.

If hhis run is allowed to go by with out any comercial fishing during those weeks or severly restricted, then in effect there will be no allocation to the comercial fishermen and there will be a sever economic impact on , not only the 450 fishermen but also on the emplyment in Cordova and the ^{Valdez and Seward and Whittier} investment in cannerys and boats and gear, in which the State of Alaska has loaned millions of dollars.

We as comercial Fishermen are being told that the pioritys for Salmon use on the Cooper river are first Subsistance Fishermen then personal use Fishermen, then Sport Fishermen, then last in line are the comercial Fishermens needs.

I feel this is a complete reversel of what the prioritys should be. The Comerical Fisherman has a greater economic need than dose any one including the subsistance Fisherman

The Cordova Comerical Fisherman

Has at least 150,000 dollars invested in Boats, licenses, and equipment, plus his home. His lifes work is tied up here. His total employment is here. Food production, and Cannery employment depend on his getting the opportunity to fish.

Now compare this need to a subsistance fishermans needs.

Or a personal use fishermans needs, and most certainly to a Sport Fishermans needs.

Can you in all honesty rank the comercial fisherman last in line for pioritys to th Cooper river run of Salmon?

If ever there was a term that would apply to Comercial Fishermen

If would have to be subsistance Fishing, all thier substance comes from this.

Comercial Fishermen are locked into one area to fish

Via the Limited entery program, If we are denied Fishing rights on the Cooper river, We can not relocate to Bristol bay say.

We have to stay here, as per the state limited entery law.

Sport fishermen on the other hand, can go any where, and fish for any snicie of fish. We as Comercial Fishermen if we do not have a limited entery permit for Herring, can not fish herring Or crab or as in the case of Halibut are allowed prehaps 6 days a year. often during conflicting seasons. As far as I know Subsistance Fishermen can go any where in the state and fish any species any time they are available.

None of them have any investment even slightly comparable to the

Comercial Fisherman.. investment, in Money, Time, and lifes work.
way of life,in any aspect you can think of.

We may well be a minority in Numbers, but we are by far the
Majority in food production, labor employment, and in economic
need.

In conclusion, No comercial Fisherman I know of wishes to
prohibit the Subsistance fisherman from fishing, Many of us

are natives them selves, no one wishes to deprive the native
who operated a Fish wheel one fish he needs.

There are only a very few of these,Its the man who works on the pipe
line and desires to call himx self a subsistance fisherman
or says that his Sport fishing needs are greater than our

Comercial Fishing needs, these are the Falacies we object to.

~~Sincerely yours~~

Please facilitate passage of Senit Bill No 231
and House Bill No 288

Sincerly yours

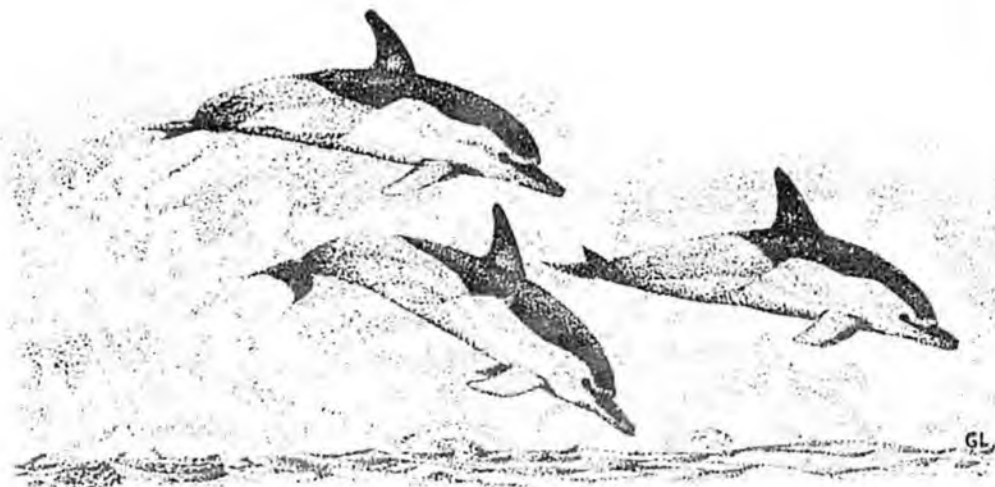
Stanley Samuelson

4-1-55

Dear Representative Miller,

I urge you to support HB 258
and Senate Bill 231. We are
Cedar fishermen and our livelihood
depends on our ability to commercially
fish the Copper River Flats.

Sincerely,
Mike. Alan Phillips



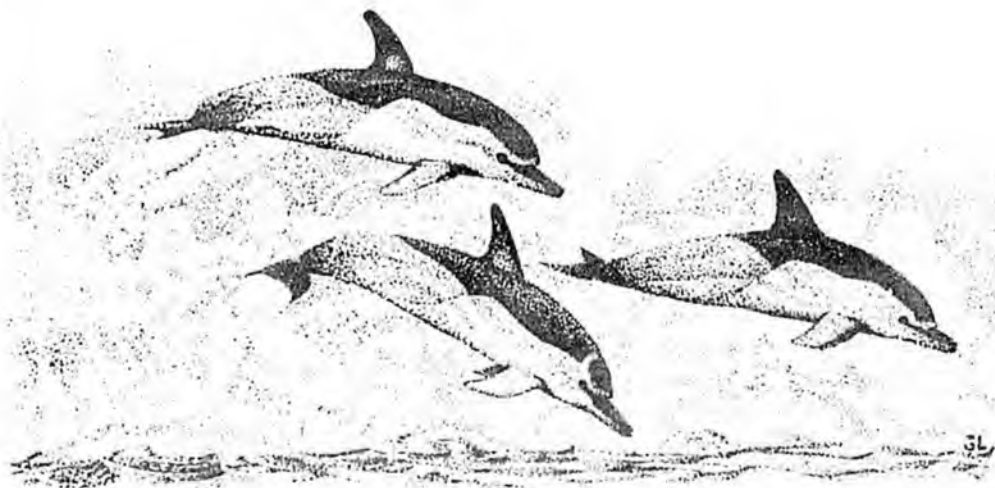
4-1-55

Dear Representative Miller,

I urge you to support HB. 258 and Senate Bill 231. We are Cordova fishermen and our livelihood depends on our ability to commercially fish the Copper River Flats.

Sincerely,

Mr & Mrs E. L. Chikwa
7304 116
Cordova, Alaska
99574



Box 993
Cordova, Al
99574
March 26, 1985

Dear Representative:

I'm writing to you on behalf of the Subsistence Fishing Order. I think that the Legislature should find some way to solve the fishing problem Alaskans are faced with. My father is a commercial fisherman, and without the money he makes during the fishing season, we may starve this winter.

I'm sincerely hoping that you'll give the matter at hand some thought and fast action.

Sincerely,
Adam Garland
age 14

Box 993

Cordova, Alaska, 99574

March 27, 1985

Dear Representative,

Please take immediate action,
concerning Senate Bill # 231 or House
Bill # 288.

Unless Susan's Game opens the
Copper River fishing by the beginning
of May, our family and the city of
Cordova will have no income to
sustain them. Cordova's only industry
is fishing.

My husband, age 42, has been fishing
in Cordova all of his life and the
early red run may be as much
as 90% of his yearly income.

It is hard to understand how it
could be allowed for people who
have regular jobs and or sources
of income to take fish they don't
need and put others out of work.

I am hoping that the Judiciary
and Finance Committees will waive
Senate Bill # 231 so this can be
resolved in time.

Thank you,
Kellie Galand

Rep. Miller,

4/1/85

2 1985

I urge you to read my
enclosure which expresses
my feelings much better than
I can.

I also urge you to support
Senate Bill # 231 / House Bill # 288.

Commercial fishing is my
living and I want to go on living.
Please help me and the rest
of the Copper River commercial
fishermen.

C. M. DeWitt

Main Trails & Bypaths.

We recently passed the opinion that sportsman anglers should not be allowed to fish salmon after the fish have entered their fresh-water spawning streams . . . and we were bitterly taken to task by at least one Anchorage resident whose opinion was that we were "far out of touch with Alaskans and especially South-Central and Western Alaska sport-fishing enthusiasts."

Well, Mr. Anchorageite . . . "we" (that's polite for editorial use to keep from using the big personal pronoun) have fished an awful lot of Alaskan rivers for more than half a century, and we've seen the changes in both regulations and the type of fisherman in Alaska. In years past, nobody except a few Natives took salmon out of spawning streams. It just wasn't done. There were markers at the mouths of streams beyond which commercial fishermen were not allowed, and, maybe because there were not too many of us sports fishermen, it was natural that since we didn't have to fish spawning salmon runs, we didn't.

The problem, reduced to simple terms, is largely with numbers and attitude. Now, we'll agree that it is great for folks to be able to go catch, with rod and reel, bright sockeye and bright silvers . . . even bright kings . . . for their annual stuffing of the freezer or the Sears canning equipment . . . but for folks to think pink-sided or black-joweled kings or silvers are "trophy" is kind of hard to swallow for a guy who grew up with bright sea fish. And for anybody to think a turned humpback or dog salmon is good fodder . . . that just shows they "don't know no better."

People ask this old-timer once in a while as to "What changes do we notice in Alaska, over the years?" Well, we'll have to be honest and say that the "new breed" of sports fishermen who've arrived in Alaska in recent years, and the biologists and the fish management programs that have resulted, are among the greatest . . . and most serious changes . . . we've noticed.



The question put to us by our outraged Anchorage reader deserves some discussion. Times have changed. A lot of people have changed. And it may be a good time to begin bringing out a lot of untouchable subjects and begin fashioning a little more thoughtful ethic among all fishermen . . . Native as well as White . . . and their administrators.

Our Anchorage complainer accused us of leaning to the Native subsistence fishermen and "against" non-Native fishermen . . . sportsmen. The answer to that criticism is yes and no . . . "yes," because we believe time-honored (and against the total fish run numbers, extremely small) traditional takings of spawning fish were . . . and note we said "were" . . . legitimate, and "no" because what is being lost in the shuffle of this whole "subsistence" fishing management problem is that there are probably more whites than there used to be Natives, qualified for "subsistence" fishing on spawning streams, plus the fact that for a variety of legal and economic reasons, there are now many more Natives than there were before . . . you don't have to be "half," you can be "quarter" . . . the collective Native health and living conditions have greatly improved . . . In many instances, it is more profitable to be Native . . . and, not insignificantly, there is no longer stigma in being non-white.

The old Native, in his fewer numbers, did not take much. The new Native, and his white neighbors privileged to have subsistence, are not only legally allowed salmon from spawning streams, but where in years past fishing in streams for salmon was discouraged for Natives in any great numbers and totally disallowed in any commercial sense, and prohibited altogether for whites, now a new generation of biologists and fish and game administrators

has abandoned all old stream-watching protection systems and has pumped headlong into political administration of fish stocks . . . for votes . . . trying to answer pressure from all gear groups and certainly answering to pressure from Native groups . . . and we hasten to emphasize here, a "new" kind of Native group . . . not the old-time folks who truly lived off the land, but the modern-day political corporations spawned by whites, themselves.

In actual administration practices for fish and game protection, no longer are stream watchmen put out for a few weeks or a few months at the mouths of important salmon streams to inhibit or prevent poaching of salmon above the markers. Any number of important fish runs are being gradually whittled down to dangerous stock levels by legal subsistence fishing. Many runs could be wiped out in a season, for all time, if a handy market should appear.

White rights? What rights does a pair of white school teachers pulling \$50 to \$100 thousand a year in wages have for "subsistence" so keve they can take from a spawning stream with a drag net or with other gear?

Sooner or later we are going to have to come to grips with the fact that the blood lines between Natives and whites have become blurred . . . even the political rights of inheritance for Native rights and for fish permits have become blurred.

Political fights, gear fights, and racial fights . . . plus the importation of new "sportsman" fishing ethics . . . have collided in places like the crowded Kenai River and the Russian. Probably only improved polteting and sharing rules will smooth things out on the Kenai, but there are other rivers where rules and regulations might be better adjusted before the fact. We need more ethic, more concern for preserving what we can of what used to be.

Let us understand that there are too many new whites, too many only partly native Natives, too many politicians and too many fish and game administrators controlled by politicians. It is a time for soul searching.

Kreaky, our bald-headed eagle at Angoon, was sure nice and white in the head and tail feathers in November, when this was being written. Probably fresh winter feathers, and he wasn't getting them so stained with spawning salmon. Incidentally, with the herring into winter holes, salmon runs over, and bottom fish moved out to deeper water, Kreaky was



making a meal the other day of a big starfish. He'll be after the unwary duck or sea gull soon.

Asked about subsistence fishing, Kreaky says, "At the best it's lousy, this subsistence fishing. Some years there are hardly any fish in the streams at all. Maybe one day there won't be any salmon. Hope there will still be herring . . . but if all the eggs get shipped to Japan . . . can we have herring without eggs?"

Robert G. Heming
Publisher

GILBERT L. URATA, D.M.D.

GENERAL DENTISTRY

BOX 518

CORDOVA, ALASKA 99574

APR 2 1985

March 26, 1985

Alaska State Legislature
Pouch 5
Juneau, Ak. 99811

Dear Legislator:

Am asking for your immediate support of Senate Bill 231 and House Bill 228 for the following reasons.

1) Subsistence merely means existence or an aid to existence. Not all people of Alaska need to catch fish in order to exist. Those that do, ought to have the opportunity to do so, those that don't should be restricted. The ADFG and Board of Fisheries have, and need to be allowed to continue to regulate such. Many residents of the state can't use 200 fish. The fish are not in prime condition as they are at the mouth of a river. Others waste or sell their subsistence fish, or are actually sport fishing, driving hundreds of miles for an outing while others indeed need the resource.

2) The state legislature is not qualified, able, and definitely lacks the time to regulate a fisheries. Therefore, give the proper agency the ADFG, the authority to do so. Shelving both of these bills will eventually undermine commercial fishing in all fishing districts in Alaska. Besides the Copper River and Cook Inlet regions, others will be invaded as access improves. The dipnetters and true subsisters have been getting their fair share of fish. They don't require expensive boats, gear, and permits. Look at Oregon and Washington. They allowed a judge to kill their fisheries, especially during difficult times with their other industries. How about the Stikine River? Fishing there is practically wiped out following Canadian fishing at the headwaters. When salmon survive the difficult cycle back to their spawning grounds, let em.

3) My final reason deals with the community of Cordova and others like it. Who's to pay for the vessels and permits? How are the banks to withstand the defaults? Who wants to foot our welfare checks? Class action litigation against the state, including legislators and the CFEC will undoubtedly follow. How can the state deny a resident the right to make a living he or she's had for a lifetime?

Please, urge for quick action on this matter. Passage must be concluded prior to May 1, 1985. The red season peak (highest priced reds in Alaska) lasts only 2-3 weeks starting in May. Most fisherman make their boat and permit payments from reds and use the silver season to survive the winter. Keep a historic way of life alive.

Cordially,



Gilbert L. Urata DMD

SUBSISTENCE

With the recent Supreme Court decision, the State now has the direction and opportunity to assure to All Alaskans the equal consideration to take fish and game for their own personal consumptive use. This decision supports the Constitution's provision that "Wherever occurring in their natural state fish, wildlife and waters are reserved to the people for common use." The court stressed that common 'use' and not priority 'users' was the main intent and should be the effect of the subsistence regulations. They found that all consumptive users, and not just rural residents, are eligible priority subsistence users.

Government and its laws should apply even handedly to All Alaskans and make sure that whatever criteria is used is not unjustly discriminatory in intent or effect. The Constitution does not on a whole and should not have severe restrictive provisions. This same need should be observed by any legislation and should be used to make sure that its clear intent is to protect and insure the equal and just consideration of All Alaskans.

But the same politics that supported the illegal discriminatory subsistence regulations are at work to speedily fix their court failure. Their main weapon, now as in the past, is their threats aimed at the majority of Alaskans. One such threat is that the over 200,000 sportfishermen will be severely impacted by the Supreme Court decision. The court, in fact, said that all personal consumptive users were to be given equal consideration. As most so-called sport fishermen eat the fish that they catch, any priority subsistence use must include them. And those 'pure sport fishermen' who catch and release are not harvesters of the resource, therefore have a negligible impact. With an annual harvest of well over 100,000,000 salmon, All Alaskan should be entitled to the equal opportunity to take fish for their own dinner table.

Another political threat used is that the federal government will deny our State the right to manage our fish and game unless the subsistence priority is based on rural residency. When the Feds mandate that the resource must be managed as they say, the State has in fact already lost the right of management authority. This restriction resulted from State politics that requested and supports such residency discrimination. When Ron Sommerville, Alaska's representative during early d-2 / ANILCA, opposed this federal mandated discrimination he was removed from his Washinton D.C. post. Governor Hammond admitted in a public meeting of the Boards of Fish and Game that Sommerville was removed because of Native pressure. His replacement, John Katz, has compromised the Alaskan public's constitutional rights on this and many other issues. For the State not to politically and judicially oppose this discriminatory action, which specifically denies equality to all residents of Anchorage, Fairbanks, Juneau and Ketchikan, shows a planned sell out of our rights. This plan includes the continued lobbying action of Larry Spengler, Attorney General office, supporting a priority subsistence use of Alaska's fish and game to be as discriminatory and restrictive as has been politically motivated. Alaska would be better served if our Attorney General would be motivated by a responsibility to assure that all residents are not discriminatorily restricted in their rights.

The history of Governor Sheffield's stern actions has been a well known threat to any state employee who would question these unconstitutional subsistence regulations. He fired Fish and Game Commissioner Ron Skoog and Game Division Chief Ron Sommerville because of their private personal stands against these regulations. And he then requested the resignations of all Board of Fish and Game members when they began questioning the balatare directions ordered by Larry Spengler. It is time that All Alaskans are again equal under the law, no matter where they reside, and that such equality is promoted by our State and is not necessitated by continued court challenges by its residents.

Dale Bondurant

Dale Bondurant
SR 1 Box 2516
Chugiak, Alaska 99567

APR 1 1985

ALASKA POWER SERVICES

P.O. BOX 822 • CORDOVA, ALASKA 99574
(907) 424-3300

March 25, 1985

M. Mike Miller, Chairman
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear M. Mike Miller:

I am writing this letter as a private business owner in the city of Cordova in support of HB#288. Alaska Power Services is solely dependent upon the commercial fisheries in Cordova, providing mechanical services and parts to the gillnet fleet of Cordova. If HB#288 is not acted upon by May 1, the survival of my business and many others in Cordova are doubtful this year. There are many resident's livelihoods at stake pending the decision of this bill. We urge that you make every effort to pass this bill as quickly as possible.

Business has dropped off sharply due to the confusion and uncertainty created by the Madison decision, whether or not the gillnet fleet will fish May 15 or not.

We, the owners and employees of Alaska Power Services urge you to act immediately on HB# 288 to ensure a stable economic base for Cordova and its work force.

Your cooperation in this important matter in Cordova is greatly appreciated.

Sincerely,

Charles E Maxwell

APR 1 1985

Dear Sir,

As a commercial fisherman who is very dependent upon the Copper River gillnet fishery for my livelihood, I am very concerned about the current threat by subsistence usage and possible loss of this fishery to commercial fishermen.

I think the problem lies with the definition of subsistence. As for us fishermen we really are completely dependent upon these fish. Our homes, vehicles, and vessels are centered around this fishery. We are the ultimate subsistence users. We are not casual users as seems to be the case with many urban up-river people who travel hundreds of miles to fish under the guise of subsistence.

I urge you to support SB 231 (and HB 228) and manage the Copper River fishery as has been done successfully under the Board of Fishes per Madison decision plan. This plan was agreed upon by the various factions involved: true rural subsistence users, sports

fishermen, and commercial fishermen.
Your support of this bill will help
keep our fishing industry which is very
important to the State of Alaska,
alive and healthy.

Sincerely

W. F. Fleming
Box 363
Cordova, Alaska

House Judiciary Comm.

Mr. MIKE Miller

SIR.

I ASK your Support on H.B. #288 or
any other Legislation that would put the
State Board of fish and game BACK IN POWER
To Regulate The Resources as they have in the
PAST.

The future of the Copper River
Commercial Fishermen is at stake and
also the Economy of Cordova.

Thank you

Paul Kettel
Box 489
Cordova, Al.

47 85

P.O. Box 1142
Coriova, Alaska 99574
March 24, 1985

House of Representatives
Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Sirs,

As a resident of Coriova, Alaska, and a Prince William Sound
Drift Gillnet permit holder I am urging your support of
SB 7288 and any similar legislation restoring the Alaska Board
of Fisheries and Game to their previous management position
of fish and game. The impact of the Madison Decision on my
community and myself is catastrophic. Please reinstate the
Board of Fisheries and Game as the managing body for our
fisheries.

Sincerely,

Karol R. Marx

Karol R. Marx

1127

Dear Sirs

3-21-85

I am writing to urge you to pass House bill
288 and give back to the board of fisheries the
flexibility to manage the resource for the
user groups.

Thank you
Jeff Davis

Cordova Chamber of Commerce

P.O. Box 99
Cordova, Alaska 99574
(907) 424-7260



March 20, 1985

Rep. Mike Miller, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Rep. Miller:

Cordova is a one industry town. We depend on commercial fishing.

I am enclosing a copy of a resolution passed March 19, by the Cordova Chamber of Commerce. The resolution urges support of SB 231 and HB 288.

The Cordova Chamber of Commerce backs these bills to protect our businesses and our way of life.

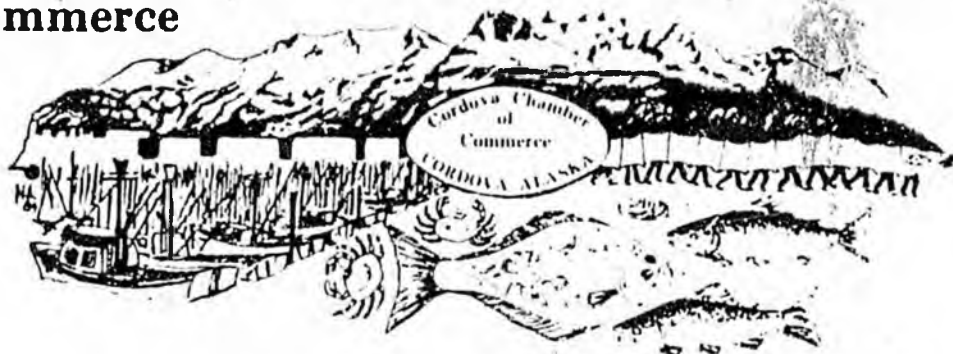
Sincerely,

CORDOVA CHAMBER OF COMMERCE

Margy Johnson
Margy Johnson
President

Cordova Chamber of Commerce

P.O. Box 99
Cordova, Alaska 99574
(907) 424-7260



March 19, 1985

R E S O L U T I O N

WHEREAS commercial fishing is the backbone of the economy of Cordova and other Prince William Sound Communities, and

WHEREAS the Madison Decision severely impairs the opportunity for commercial gillnetting on the Copper River Flats, and

WHEREAS a speedy resolution is necessary in order to allow the 1985 commercial gillnet fishing to start as scheduled, now therefore

BE IT RESOLVED that the Cordova Chamber of Commerce supports the passage of HB 288 and SB 231 and urges members of both the House and Senate to put their support behind these bills.

CORDOVA CHAMBER OF COMMERCE

Margy K. Johnson
President

M. Mike Miller, Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Chairman,

I live in Cordova and I run a small fish business, along with Tom Johnson also of Cordova. The whole of our business runs strictly off the Copper River red and king salmon run.

I'm writing to you now in the hopes that you will support House Bill #288. If this bill is not passed, I'm afraid the future of the people of Cordova and our children will be limited to handouts from the state welfare. I know this sounds drastic but everything in this small fishing town is centered around the commercial fishing fleet. Personally the affects on myself if this bill is not passed will be devastating as I have no other means from which I depend. I feel stuck between a rock and a hard spot as we who depend on commercial fishing are a minority. I only hope you will take our livelihoods into serious consideration.

Thank You for your time and effort.

Sincerely

Betty J. York

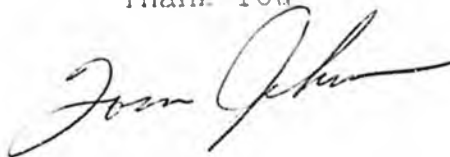
M. Mike Miller, Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Miller,

I was born and raised on the Copper River, and I have been a commercial fisherman for 19 years. Over the past few years the fishing time on the Copper River has been restricted time and time again due to escapement reasons and increasing pressures on the upper Copper River. Over 90% of my annual income is generated from gillnetting on the Copper River. I am also a partner in a small fishing co-op. We started this five years ago with 12 fishermen, and our operation has been selling fresh reds and kings to various restaurant markets throughout the country. The entire success of the operation is based on the early fishing we have had and solely relies on the Copper River.

I live in Cordova 12 months a year and 90% of what I buy is bought in Cordova. In my opinion the gillnet fleet cannot survive without utilizing the Copper River fisheries. Therefore I'm asking you to support House Bill #288. I feel that this would be devastating to the economy of Cordova, and I feel that the community itself would have a hard time surviving it if this bill is not passed.

Thank you





Box 1210 602 Railroad Avenue
Cordova, Alaska 99574
Phone: (907) 424-3237
or 424-3238

"The Friendly City"

March 20, 1985

Leonard V. Pingatore
Mayor

Richard J. Leland
City Manager

Donna M. Sherby
City Clerk

Council Members

Joe Gunderson
Phyllis Day
Oliver Osborn
Lew L. Cochran
R. L. Van Brocklin
John Wheeler

Representative Miller, Chairman
House Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Chairman Miller:

On March 13, 1985, Governor Sheffield introduced Senate Bill 231 and House Bill 288 relating to the taking of fish and game for subsistence and personal use. As you know, this was necessitated by the Supreme Court's findings in the matter of Madison et al versus the Alaska Department of Fish and Game and the Alaska Board of Fisheries. The intent of the proposed legislation is to provide definition and clarification to the Board of Fisheries' authority to manage Alaska's most valuable renewable resource.

We, in Cordova, have reviewed the proposed legislation with representatives of the commercial and sport fishing industry as well as those who participate in the personal use fisheries. While it is clear that additional work will be necessary to define the various fisheries and the role of the Board of Fisheries over the long term, we feel it is imperative that the Legislature enact the proposed legislation immediately to assure a fishing season in 1985.

On behalf of my colleagues and the City Council and all Cordovan's who depend on a well-managed fishery, I strongly urge your immediate passage of Senate Bill 231 and House Bill 288.

Sincerely,


LEONARD V. PINGATORE
Mayor

Enclosure: Resolution 85-9

CITY OF CORDOVA, ALASKA

RESOLUTION 85-9

A RESOLUTION OF THE CITY OF CORDOVA, ALASKA URGING IMMEDIATE PASSAGE OF SENATE BILL 231 AND HOUSE BILL 288, RELATING TO SUBSISTENCE FISHERIES, BY THE ALASKA STATE LEGISLATURE

WHEREAS, the Supreme Court of the State of Alaska recently found the Alaska Board of Fisheries Regulation, 5 AAC 01.597 inconsistent with the Legislative intent to provide guidelines for the protection of subsistence fishing, and

WHEREAS, the court found the regulation exceeds the authority delegated to the Board because it operates too restrictively in non-subsistence uses, and

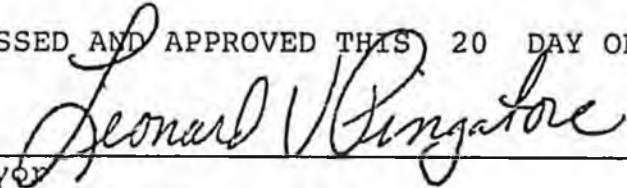
WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and non-subsistence fishery issues, and

WHEREAS, the economy of the City of Cordova is critically dependant on the Copper River Fishery, as is the State of Alaska dependant on the revenue and employment resulting from the commercial and sport fisheries, and

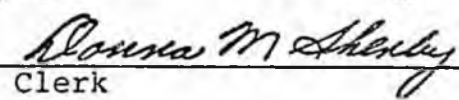
WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal use, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Council of Cordova, Alaska, recommend and urge the immediate consideration and enactment of Senate Bill 231 and House Bill 288 as proposed by Governor Sheffield.

PASSED AND APPROVED THIS 20 DAY OF March 1985.



Mayor



City Clerk

M. Mike Miller, Chairman

PAGE I

Addressing House of Representatives Judiciary

Dear Representative, as a Copper River Commercial Salmon Gillnet Fisherman and a ten year resident of Alaska, I urge you to support House Bill # 288 or similar legislation to save the Copper River Salmon Fishery, my profession, and the town of Cordova. Failure to stop unlimited subsistence usage by the Urban masses of the state will end the Traditional 70 year old Commercial Fishery on the Copper River, as well as take 75% of my yearly earned income away. As a Gillnet Fisherman for Salmon, the Copper River Fishery provides the bulk of my yearly catch, and supports my livelihood. Cutting off the Copper River Commercial fishing season would put a serious threat to the town of Cordova's very existence. Cordova's local economy depends on the revenue generated thru the Copper River Fishery. All local business would face the possibility of closing their doors in the event of No Commercial Fishing on the Copper River. Without this Fishery my profession as a Gillnetter would be seriously jeopardized. I rely totally on the income from Salmon Fishing. If the fishery is taken away from me, I have no way to make a living and have limited training in other fields of work. How would you as a legislator like it if a law was passed that basically eliminated politicians as a bread earning profession, thus forcing you to find another way to earn a living?

You would probably react the same way I am and make an effort to protect your way of life and career. My Career as a Drift Gillnetter is likely to be finished without the Copper River Fishery. I strongly urge you to support legislation that would return the power back to the Alaska Board of Fisheries and Game to regulate the resource. They have studied the Copper River Fish Stocks and have a set management plan. We must protect the resource above all else. Unlimited subsistence harvests would soon eventually wipe out the Copper River Salmon runs. I feel subsistence should be based on the individual's needs and traditional use basis. Those individuals who need the Salmon to help survive should be able to take what they can personally consume. For one individual to take 200 Salmon or a Family 500 Salmon when they cannot in all probability consume that many fish is absurd. That makes an under-the-table fish sale situation likely for illegally dealing with the surplus fish. It turns every subsistence fisherman into a commercial fisherman on the 200 fish quota system. How many families actually eat that many fish? There are only a few choices with that many fish, sell them, smoke them, or blatantly waste them! I myself eat a lot of Salmon annually. Including Canning, Smoking, and gifts to relatives,

(Cont.)

I have personal use of 30 to 50 Salmon at the most, and I am a professional Fisherman! There should be a personal use fishery for all resident Alaskans, but it should be regulated by need. Those residents who need the fish to subsist on would get them under House Bill #288. This Bill would also allow Traditional use groups, such as Commercial Fishermen, and Copper River Valley residents to be able to continue our set way of existence and help assure management of future stocks of Salmon. I have my whole life's investment tied up in the industry at age 32. I have State backing on a resident loan from the Alaska Commercial Fishing and Agriculture Bank. All in all I have over \$100,000 tied up in my fishing business. I live a modest existence and work hard and take many risks against the ocean just to get by on most years I have participated in this fishery. So it's not as easy or lucrative as many might seem to think about the life of an Alaskan Commercial Fisherman. It should be my constitutional right to be allowed to continue this traditional way to make a living. Why is my profession any different than anyone's **elses**? Give me a chance to earn a living! With Alaska's concern over falling oil revenues, the State should be concerned about enhancing its Commercial Fishing Industry, not pinching it out of existence and those who earn their livings from it.

Fishing Vessel

"NATAD"

Sincerely,

John C. Gregory

John C. Gregory

Copper River
Salmon DRIFT
GILLNETTER

Carol Emmett
P.O. Box 1472
Cordova AK 99574

Dear Rep. Miller

I am writing to support speedy passage
of Senate Bill #231 and House Bill #288
to save the Copper River Salmon fishery.

As a resident and employee in the city
of Cordova I have become very aware of
the large contribution the P.W.S. gillnetter
make to the economic base here.
I don't believe Cordova can survive
without healthy fisheries.

I believe that the State Fish and Game
Board have done a pretty good job of
preservation and growing numbers of
Salmon are any indication, and a return
to the system that has worked well
is the best solution.

As an Alaskan I ~~am in favor~~^{favor}
~~am in favor~~ ~~of~~ ~~the~~ ~~sub~~ ~~sistence~~
subistence for those who need it.
Has anyone considered an income ceiling
for subsistence permit holders?

We are all anxiously watching the
outcome of these bills as the future
of so many hang in the balance.

Sincerely
Carol Emmett
Bartender
Cordova.

Teklanika. Park officials hope to open the road as far as Toklat, at Mile 53, by May 25 and to Wonder Lake by early June.

\$10.

Any organization wishing to be included in *Outdoors Around Town* should send the appropriate information to The Anchorage Times Sports Department, c/o the outdoors writer, P.O. Box 48, Anchorage, 99518.

Monday, 12:10 p.m. Tuesday and 12:55 p.m. Wednesday.

Razor clam diggers are reminded that a sports fishing license is required for anyone 16 or older. The cost is \$10 for Alaska residents. The limit is 60

seen rolling off Deep Creek. But none had been reported caught. It's still awfully early for kings."

Some dip netting for boolligan has begun in Turnagain Arm, but again, sizeable runs aren't expected to start for another week or 10 days.

Legislature can prevent a fish-and-game subsistence crisis

No matter who says what about subsistence these days the message is one of panic.

Ever since February's so-called Madison decision — the Alaska Supreme Court ruling which gave subsistence-user rights to all state residents — every outdoor group in Alaska has been acting out the tale of Chicken Little and yelling "the sky is falling."

The popular scenario of what may happen runs as follows: because the decision eliminated any distinction between rural and urban subsistence use, every Alaskan now qualifies to be a subsistence hunter or fisherman.

As a result hordes of city people intend to descend upon the streams feeding Cook Inlet and catch every fish north and south of Anchorage. Unmitigated disaster will follow as the fish disappear. Tens of thousands of anglers will be unable to wet a line and everyone with a commercial interest will go broke. In short, chaos and consternation will prevail throughout southcentral Alaska.

Sport fishing groups are approaching apoplexy. They are worried sick their season will be shut down or curtailed because they are the first to be cut off if there is a shortage of fish stocks.

The guides are paranoid. They believe their season will be cut for the same reason and some have even begun to make application to subsistence fish with rod and reel.

The personal use fishing people believe a conspiracy exists to eliminate them.

Setnetters think they will be next in line and see their number of fishing days shortened by emergency closures.



Rising to the Bait

Dan Sisson

The drift fleet — next to last in the order of those to be cut — are wondering what or they too may face a limited season.

Even the natives — the original subsistence users who live in rural areas and have fished with little interference — are looking askance at the potential hordes who may compete with them.

The fisheries biologists fear they will have their carefully constructed management systems knocked into a cocked hat.

But if you think the fishing folk are running around claiming the end is near, you should talk to the game management people. Madison has absolutely paralyzed them. They realize that if everyone is a subsistence hunter and can shoot moose, caribou and bear anywhere, at anytime during the season — just because they need the meat — no intelligent game management is possible.

The moose will be exterminated regardless of sex because there simply aren't enough to go around. The 25-year effort to build up herd bulls in specific units will have been in vain. And just ponder what position big-game guides are in: if any type of hunting is to be eliminated non-resident and

guided hunts will be the first to go.

The most horrifying aspect of this looming crisis is the possibility of the federal government taking over management of the state's fisheries and game. A deputy undersecretary of the Interior Department, Bill Horn, has stated: "Our preliminary review of the Madison decision indicates that it put the state in a position of non-compliance. . . . It is possible someone could pursue the judicial remedy specified in the Alaska National Interest Lands Conservation Act and argue that we must take immediate action."

The implications of Horn's statement points to yet another dimension of the crisis: if the federal government — now facing an acute budget crisis — were to take over management of Alaska's fish and game resources where would they find the money?

Where would they find the expertise? Would the state's biologists — who often find themselves at loggerheads with federal policy — cooperate? Or would they find innumerable points of conflict?

If most people think there is potential chaos at present what would a forced return to the fish and game management policies of territorial days mean?

Even more frustrating is the complexity of the subsistence law. Rooted in federal, as well as state, law it is understood by only a few people — mainly lawyers who have studied it for more than a decade. The average sportsman doesn't comprehend it and can't be expected to. And this is part of the problem.

Most sportsmen want a quick fix and then want to go fishing. They don't have time to study the ra-

tionale of courts and judges or the opinions of attorneys general and they are light years from coming to grips with the will of Congress on subsistence.

Yet the scenarios listed above are all possible and some say even probable. If this is true then it is incomprehensible why anyone — especially a state legislator — would not want to accept a bill that returns subsistence to the pre-Madison status quo before anything drastic happens.

But the state senate appears to be running just that risk. Its leadership claims that a year's study — at least — is needed to address the problem. So it proposes to ignore the administration's efforts to restore the status quo by refusing to pass the only legislation proposed so far to avert the coming crisis.

Anyone who has taken even an elementary course in government knows that any law can be amended or changed as circumstances warrant.

The same is true of the subsistence bill now in the legislature. If passed, it would allow fish and game management personnel to proceed in an orderly manner. If further changes in the law are needed, they can be enacted at a later date. No crisis is necessary.

The irony of this situation is that if a real crisis does occur it will be a managed — even orchestrated — one, and the fishermen, guides and biologists should place the blame where it belongs and not tear one another apart.

Dan Sisson, an outdoors author and college instructor living on the Kenai Peninsula, is a contributor to *Field and Stream* magazine.

From Governor's office

5-2-85

ALASKA BOARD OF FISHERIES FINDINGS
SUBSISTENCE REGULATIONS FOR THE 1985 FISHING SEASON

The Alaska Board of Fisheries, meeting in Anchorage, Alaska on March 26, 1985, finds that the Alaska Supreme Court decision in Madison v. Alaska Department of Fish and Game will require a revision of certain subsistence, personal use, sport, and commercial fishing regulations. However, the board finds insufficient time exists before the smelt, herring, bottomfish, shellfish and salmon seasons to allow for an orderly, comprehensive review of all regulations which may be impacted, considering the need to provide an adequate opportunity for public comment and review. Therefore, to ensure an orderly process allowing the opportunity for all members of the public to participate, and implement the court's decision in Madison as possible in the interim, the board finds:

- (1) The board will, by emergency regulation, authorize the subsistence take of smelt, herring, shellfish and bottomfish as they were allowed under the 1978 subsistence regulations.
- (2) The board will, by emergency regulation, authorize access by all Alaska residents to existing Tyonek, Port Graham, and English Bay subsistence salmon fisheries in Cook Inlet. Existing bag and possession limits, time, gear and area regulations and overall guideline harvest will not be adjusted for the 1985 season. The board finds that such regulations promote an orderly harvest which will reasonably satisfy anticipated subsistence uses. Modification of these regulations at this time is not in the best public interest of the public given the inadequate opportunity for public comment at this time, and uncertainty about 1985 participation levels.
- (3) During 1985, the board will continue the following presently authorized personal use salmon fisheries in Cook Inlet as personal use fisheries:

the spring Kasilof gill net fishery,
the Kasilof and Kenai River sockeye dipnet fishery,
the China Poot hatchery sockeye fishery,
and the shellfish, herring, and smelt fisheries.

The board cannot reasonably modify or eliminate these fisheries without an opportunity for public comment, which is not possible under the present time frame.

- (4) The fall coho set gill net personal use fishery will however, by emergency regulation, be identified as a subsistence fishery, as required by Madison, and will be managed under the regulations used during the 1981 season, except that current reporting requirements will apply.
- (5) The Kachemak Bay salmon set gill net fishery will, by emergency regulation, be identified as a subsistence fishery, as required by Madison, and will be managed under the regulations

developed for the court ordered fishery. Alaska residents will be able to participate in both of these fisheries.

(6) The board will, by emergency regulation, allow access by all Alaska residents to the following existing subsistence fisheries:

Copper River (salmon)
Iliamna/Lake Clark (salmon)
Naknek River (salmon), and
Angoon (salmon).

The bag and possession, time, area, gear and overall harvest guidelines of each of these fisheries remain as described in existing regulations. The board finds such regulations are necessary to conduct an orderly fishery to provide a reasonable opportunity for subsistence needs. Modification of these regulations at this time is not in the best interest of the public given the inadequate opportunity for public comment at this time.

(7) As to the Copper River subsistence and personal use salmon fisheries, which will be combined into a subsistence fishery by emergency regulation, the board will retain existing regulations as to bag and possession limits, time, area, gear, and overall harvest guidelines, except that rather than separate regulations based on domicile, the regulations developed for those domiciled in the Copper Basin and other specified communities will be applied to the fishwheel fishery and those developed for those not so domiciled will be applied to the dip net fishery. The board finds these regulations to be necessary to conduct an orderly fishery and to provide a reasonable opportunity for subsistence needs. Further, the overall harvest guidelines, bag limits, and areas represent historical harvest. The dip net portion of this guideline represents a total harvest which was not taken during the 1984 season. The harvest limit is necessary to manage the downriver commercial salmon drift gill net fishery to ensure escapement for reproductive needs and the upriver subsistence fishery. The bag and possession limits, while different for dipnetters and fishwheel fishermen were developed by the board after extensive public testimony and information demonstrating that the differing bag limits reflected historical use by each group.

The board hereby calls for proposals from the public on all subsistence and personal use regulations to be considered at the fall/winter 1985 finfish meeting. The board will consider all proposals to establish, eliminate or modify any or all subsistence or personal use regulations any any changes in commercial or sport fishery regulations required by such regulations.

Ron Jolin, Chairman Board of Fisheries

March 27, 1985

TESTIMONY OF JANIE LEASK, PRESIDENT OF THE
ALASKA FEDERATION OF NATIVES, BEFORE THE
SENATE STATE AFFAIRS COMMITTEE ON THE
COMMITTEE SUBSTITUTE FOR HB 288

Mr. Chairman, members of the committee, my name is Janie Leask. I am president of the Alaska Federation of Natives. The board of directors of AFN is composed of a representative of each of the thirteen Native regional corporations formed under the Alaska Native Claims Settlement Act - a representative of each of the twelve Native regional nonprofit associations - and twelve representatives of IRA councils and other village organizations.

On behalf of AFN, I would like to express our appreciation for the opportunity to testify this morning on the Senate State Affairs Committee substitute for House Bill 288.

As you are aware, Alaska is unique in that it is the only one of the fifty states in which the health, safety, and general well-being of such a significant number of residents is dependent upon the continued harvest of fish, game, and other wild renewable resources for personal and family consumption. The economy of rural Alaska is dependent upon the continuation of these uses.

In 1978 the Alaska legislature recognized this reality by enacting the state subsistence law. The law requires the

Board of Fisheries and Board of Game to adopt regulations which afford subsistence uses a priority in situations in which the harvestable surplus of a fish stock or game population is not large enough to safely accommodate a harvest for all uses. In 1980 the Congress established a federal subsistence priority which operates in similar fashion.

In 1982 a small, but vocal, group of Alaskans who had opposed enactment of the 1978 law obtained enough signatures to place an initiative to repeal the law on the general election ballot. As a result, the subsistence issue was thoroughly debated during the months preceding the 1982 election. And by an overwhelming margin, urban and rural Alaskans joined together to vote against the initiative and in favor of retaining the subsistence priority.

Throughout the debate on the subsistence repeal initiative, all Alaskans - both those who supported the 1978 law and those who opposed it - assumed that the subsistence priority was limited to hunting and fishing by residents of rural Alaska. No one thought the 1978 law provided a subsistence priority for those of us who live in Anchorage and Alaska's other large urban centers.

However, early last year the Alaska Supreme Court decided that that was what the 1978 legislature had intended. In *Madison v. Alaska Department of Fish and Game* the Court held that once a customary and traditional use of a particular fish stock or game population had been

established in a particular area, all Alaskans - whether they live in Anchorage or Tuluksak - must be afforded a subsistence priority over other user groups.

The Governor and the members of the the Board of Fisheries and Board of Game immediately recognized that implementation of the Madison decision would seriously disrupt the normal hunting and fishing activities of urban Alaskans. As a result, Governor Sheffield asked the legislature to amend the 1978 law to limit the identification of subsistence uses of fish and game to hunting and fishing by residents of rural Alaska.

The House of Representatives held a series of statewide hearings on the subject and passed a bill to limit the identification of "subsistence uses" of fish and game to hunting and fishing by rural Alaskans.

Unfortunately, the Senate took no action prior to the adjournment of the 1985 legislative session.

Urban Alaskans suffered the consequences. The Board of Game was compelled to implement the Madison decision by establishing so-called Tier II subsistence hunts from which most urban hunters were excluded. Although sport fisheries on the Kenai Peninsula were not similarly disrupted, it was only because no one attempted to fish for salmon with set nets in rivers usually devoted to rod and reel fishing. However, several weeks ago criminal charges were dismissed against a person caught snagging salmon on a Kenai Peninsula river. This decision establishes the precedent that

snagging and set net fishing for Cook Inlet salmon stocks normally harvested by sport fishermen in freshwater rivers is protected by the Madison subsistence priority.

In addition to the disruption which the Madison decision has caused to normal hunting and fishing activities, because the state subsistence priority is no longer limited to hunting and fishing by rural Alaskans, Assistant Secretary of the Interior William P. Horn has informed the State of Alaska that its subsistence management program is no longer in compliance with the federal regulatory standards set forth in title VIII of the Alaska National Interest Lands Conservation Act. If the State program is not brought back into compliance with title VIII, the Board of Fisheries and Board of Game must begin adopting hunting and fishing regulations pursuant to federal - rather than state - law. And should they refuse to do so, the Secretary of the Interior will be compelled to adopt his own subsistence regulations.

Mr. Chairman, the events of 1985 have provided ample evidence that the 1978 statute should be amended. The question is how. The simplest way to solve the problems created by the Madison decision and bring the 1978 statute into compliance with ANILCA is to limit the definition of "subsistence uses" to hunting and fishing by rural Alaskans.

Last session individuals who have long been opposed to any subsistence priority attempted to convince legislators who represent urban districts that urban Alaskans oppose a

rural subsistence priority. The House rejected this argument - and for good reason.

A statewide poll recently conducted by Hellenenthal and Associates indicates that 60 percent of the Alaskans surveyed support a rural subsistence priority, including a significant majority of Alaskans who live in Anchorage and other urban areas. A copy of the statewide subsistence poll is attached to my written testimony. The poll is consistent with the vote of the people in 1982. The vast majority of Alaskans believe that the subsistence way of life in rural Alaska should be protected by state law - and that the best way to do so is to establish a rural subsistence priority.

Mr. Chairman, the legislature should enact acceptable subsistence legislation this session which contains the rural subsistence priority which all Alaskans support. However, if it does not, it is important to note that it is the residents of urban, not rural, Alaska who will again suffer the consequences. Native and non-Native Alaskans will continue to be protected by the federal rural subsistence priority.

Because the Senate State Affairs Committee substitute has only been available for public review and comment for a few hours my comments on sections of the bill dealing with matters other than the definition of "subsistence uses" must be of a somewhat cursory nature. However, during AFN's review of previous drafts many provisions appeared to

establish state regulatory standards inconsistent with the federal regulatory standards set forth in ANILCA.

Don Mitchell has had an opportunity to review the new bill and I would like for him to present AFN's comments on the technical aspects of the latest draft.

ALASKA PUBLIC OPINION RESEARCH

SURVEY

ALASKAN FEDERATION OF NATIVES (AFN)

DECEMBER 1985

ALASKA PUBLIC OPINION RESEARCH SURVEY

DECEMBER 1985

Prepared for

ALASKAN FEDERATION OF NATIVES (AFN)

Prepared by

Marc E. Hellenthal, Director

HELLENTHAL & ASSOCIATES, INC.
2200 Vanderbilt Circle
Anchorage, Alaska 99508
(907) 276-1001 or
(907) 277-2315

* * * * *

The research and studies forming the basis for this report were conducted pursuant to a contract between Alaskan Federation of Natives and Hellenthal & Associates, Inc. The author and publisher are solely responsible for the accuracy of statements or interpretations contained therein.

HELLENTHAL & ASSOCIATES, INC.

INTRODUCTION AND METHODOLOGY

This report presents an analysis of a survey of Alaska statewide adults. The survey measured properties of Alaskan residents' demographics and attitudes toward subsistence. Research typically involves estimating the characteristics of a designated population. Because of the costs of conducting a census of all items in a population, and the adequacy of sample results, sample statistics were used to make statistical inferences concerning population parameters.

Five hundred and fifty five (555) Alaskan adults were interviewed between November 14th and 22nd, 1985. Interviewing was conducted by telephone on a random digit basis. All Alaskan adults who are accessible by telephone, had an equal chance of being interviewed.

The sample used for this survey was stratified by geographic areas. The following number of interviews were conducted by geographic region: Southeast (House Districts 1 through 4) = 25; Cordova, Valdez, Kenai Peninsula (House Districts 5,6, and 7) = 99; Anchorage (House Districts 8 through 15) = 204; Mat-Su and Greater Fairbanks (House Districts 16 and 17) = 100; Fairbanks (House Districts 18 through 21) = 100; and Rural (House Districts 22 through 27) = 26. The results presented in this report were weighted to reflect the actual population of each geographic region.

At a 95% confidence level, the empirical proportions presented in this report can be projected, within plus or minus 4.16%, to the entire Alaskan population of adults — aged 18 and over. This means one can be 95% sure that the frequencies reported in this survey are within 4.2% of the true Alaskan adult population proportions.

The following is a presentation of certain specialized tables concerning Alaskan adults' perception of subsistence.

QUESTIONNAIRE:
SUBSISTENCE, POLITICAL AND GENERAL
FREQUENCIES

ALASKA STATEWIDE PUBLIC OPINION RESEARCH SURVEY

December 1985

HELLENTHAL & ASSOCIATES, INC.
2200 Vanderbilt Circle
Anchorage, Alaska 99508
(907) 276-1001 or
277-2315

Hello, I am _____ from HELLENTHAL & ASSOCIATES. We are conducting a State-wide public opinion research survey. Your telephone number was randomly selected. The questions I need to ask will take only 8 to 10 minutes. All of your responses will be completely confidential. (PAUSE AND PROCEED)

S1. Is this telephone number _____? (IF NO, TERMINATE WITH, "I'm sorry, I dialed the wrong number.")

S2. Is this a residence in which you live? (IF NO, TERMINATE INTERVIEW WITH, "I'm sorry, I need to talk with someone at a residence.")

S3. Are you 18 years old or older?

IF YES, THEN PROCEED TO QUESTION #1

IF NO, THEN ASK

Is there anyone home who is 18 years old or older?

IF YES, THEN ASK

May I speak with them? (PROCEED TO QUESTION #1 OR TERMINATE AND NOTE ON TELEPHONE CALL RECORD SHEET)

IF NO, THEN ASK

When will someone be home who is 18 or older? (TERMINATE AND NOTE ON TELEPHONE CALL RECORD SHEET)

1. What is the closest major intersection to your residence? (GET AS MUCH DETAIL AS POSSIBLE. LABEL EAST-WEST AND NORTH-SOUTH STREETS ON THE ANSWER SHEET AND PLACE AN 'X' IN THE PROPER QUADRANT.)

ASK IN ANCHORAGE AND FAIRBANKS ONLY

Do you live North or South of this intersection?

(ANCHORAGE: DOWNTOWN = NORTH; RABBIT CREEK = SOUTH)

Do you live East or West of this intersection?

(ANCHORAGE: MOUNTAINS = EAST; INLET = WEST)

AREA OF STATE	FREQUENCY	PERCENT
Southeast.....	81.....	14.6%
Valdez, Kenai, S. Anchorage.....	59.....	10.3%
Anchorage.....	224.....	40.4%
Mat-Su, Greater Fairbanks.....	50.....	9.0%
Fairbanks.....	76.....	13.7%
Rural.....	65.....	11.7%

HOUSE DISTRICT	FREQUENCY	PERCENT
One.....	21	3.9%
Two.....	14	2.5%
Three.....	11	2.0%
Four.....	35	6.2%
Five.....	33	6.0%
Six.....	11	2.0%
Seven.....	15	2.7%
Eight.....	43	7.7%
Nine.....	25	4.5%
Ten.....	30	5.3%
Eleven.....	25	4.6%
Twelve.....	25	4.6%
Thirteen.....	22	3.9%
Fourteen.....	25	4.6%
Fifteen.....	29	5.2%
Sixteen.....	43	7.8%
Seventeen.....	7	1.2%
Eighteen.....	17	3.1%
Nineteen.....	7	1.3%
Twenty.....	34	6.2%
Twenty-one.....	18	3.2%
Twenty-two.....	7	1.2%
Twenty-three.....	6	1.1%
Twenty-four.....	8	1.4%
Twenty-five.....	8	1.4%
Twenty-six.....	22	3.9%
Twenty-seven.....	15	2.7%

2. Are you presently registered to vote in the State of Alaska?

REGISTERED TO VOTE	FREQUENCY	PERCENT
Yes.....	447	80.5%
No.....	108	19.5%

3. Are you registered to vote as a (IF THEY ARE NOT REGISTERED TO VOTE, ASK "If you were to register to vote, would you register as a")

PARTY AFFILIATION	FREQUENCY	PERCENT
Democrat.....	120	21.6%
Republican.....	145	26.1%
Libertarian, or did you indicate.....	17	3.0%
No Party Affiliation (Non-Partisan)?.....	273	49.3%

4. In 1982, three years ago, did you vote in either the August 24th Primary or November 2nd General State Elections?

VOTE IN 1982 ELECTIONS	FREQUENCY	PERCENT
Yes.....	362	65.2%
No.....	193	34.8%

5. In 1984, last year, did you vote in either the August 28th Primary or November 6th General State Elections?

VOTE IN 1984 ELECTIONS	FREQUENCY	PERCENT
Yes.....	373.....	67.3%
No.....	182.....	32.7%

6. Do you consider yourself to be

RESPONDENT'S IDEOLOGY	FREQUENCY	PERCENT
1. Very Liberal.....	16.....	3.0%
2. Liberal,.....	112.....	20.2%
3. Moderate,.....	237.....	42.7%
4. Conservative, or.....	172.....	31.0%
5. Very Conservative.....	18.....	3.2%
(MEAN = 3.112)		

7. Would you say that you generally are

INTEREST IN CAMPAIGNS	FREQUENCY	PERCENT
1. Very interested,.....	119.....	21.4%
2. Somewhat interested, or.....	319.....	57.6%
3. Not very interested in political campaigns?.....	117.....	21.4%
(MEAN = 1.997)		

8. I am going to read to you a list of names of organizations. Please tell me whether your feelings toward each of them is VERY POSITIVE, POSITIVE, NEUTRAL, NEGATIVE, or VERY NEGATIVE — or if you don't know what they are. Are your feelings toward _____ (FILL IN ORGANIZATION) very positive, positive, neutral, negative, or very negative — or don't you know what it is?

ORGANIZATION	4 VERY POSITIVE	3 POSITIVE	2 NEUTRAL	1 NEGATIVE	0 VERY NEGATIVE	WHO?	MEAN
Alaskans for Sensible Fish and Game Management.....	7.3%	36.2%	17.2%	4.2%	0.9%	34.3%	2.682
Alaska State Department of Fish and Game.....	14.0%	51.5%	20.8%	9.2%	2.3%	2.2%	2.672
Oil Companies in Alaska.....	10.6%	50.0%	29.3%	7.2%	1.2%	1.7%	2.626
Alaska Sports Fisherman Association.....	8.2%	44.9%	21.3%	8.4%	0.7%	16.6%	2.616
Alaskans for Equal Hunting and Fishing Rights.....	9.4%	38.0%	19.2%	6.9%	1.9%	24.7%	2.612
Alaska Outdoors Council.....	6.9%	25.1%	15.2%	4.8%	0.9%	47.2%	2.611
Rural Alaska Community Action Program or RuralCap.....	3.0%	22.4%	19.3%	3.2%	0.3%	51.8%	2.512
Alaska Native Foundation (ANF).....	7.1%	32.8%	28.2%	10.1%	1.7%	20.1%	2.418
Alaskan Federation of Natives (AFN).....	6.1%	30.1%	32.1%	10.1%	1.4%	20.3%	2.370
Womens' Political Groups, such as NOW, in Alaska.....	5.5%	34.1%	30.2%	12.4%	3.1%	14.7%	2.311
United Tribes of Alaska (UTA).....	4.6%	20.5%	28.3%	9.5%	0.6%	36.6%	2.298
The Republican Party in Alaska.....	4.6%	28.0%	53.9%	10.0%	1.9%	1.6%	2.238
The Democratic Party in Alaska.....	1.9%	26.3%	52.1%	13.4%	3.4%	2.9%	2.101
Unions in Alaska.....	4.4%	23.3%	29.1%	27.5%	11.0%	4.6%	1.818
The Alaska Association of White Men.....	1.5%	7.4%	10.6%	10.6%	6.0%	63.9%	1.663

9. There is presently a bill before the Legislature that defines subsistence use as providing a priority for rural Alaskans, over urban Alaskans, in the taking of fish and game for personal consumption as food, clothing, fuel, or tools. Do you favor or oppose providing a priority for rural Alaskans in the taking of fish and game for subsistence use?

PRIORITY FOR RURAL ALASKANS	FREQUENCY	PERCENT
Favor.....	315.....	56.7%
Oppose.....	203.....	36.5%
DON'T KNOW.....	38.....	6.8%

10. Do you favor or oppose Alaskan Natives being allowed to regulate fish and game in their own areas?

NATIVES REGULATE IN OWN AREAS	FREQUENCY	PERCENT
Favor.....	222.....	40.4%
Oppose.....	269.....	48.4%
DON'T KNOW.....	64.....	11.6%

11. Do you favor or oppose Alaskan Native efforts for tribal self-government?

TRIBAL SELF-GOVERNMENT	FREQUENCY	PERCENT
Favor.....	266.....	48.0%
Oppose.....	195.....	35.1%
DON'T KNOW.....	94.....	16.9%

12. Do you favor or oppose Alaskan Native efforts for sovereignty?

NATIVE SOVEREIGNTY	FREQUENCY	PERCENT
Favor.....	160.....	28.8%
Oppose.....	282.....	50.9%
DON'T KNOW.....	113.....	20.3%

13a. Think now about the overall quality of hunting and fishing in Alaska during the last three years. Do you think the quality of hunting and fishing in Alaska has improved, stayed the same, or gotten worse over the past three years?

QUALITY OF HUNTING/FISHING	FREQUENCY	PERCENT
Improved.....	75.....	13.6%
Stayed the Same.....	236.....	42.5%
Gotten Worse.....	244.....	43.9%

13b. (IF "WORSE", ASK) Which of the following reasons do you think are most responsible for this change for the worse?

REASONS	FREQUENCY	PERCENT
There are more fishermen.....	186.....	33.5%
There are more hunters.....	179.....	32.2%
There are fewer animals.....	140.....	25.3%
There are more outside trophy hunters.....	137.....	24.6%
There are more restrictions on where one can hunt....	135.....	24.3%
There are more restrictions on where one can fish....	135.....	24.3%
There are fewer fish.....	100.....	18.0%

14a. Do you feel there is enough fish and game in Alaska for everyone to go hunting and fishing for whatever amount they want, or do you feel there should be regulations limiting the amount of fish and game any individual can take?

NON-REGULATION VS REGULATION	FREQUENCY	PERCENT
Whatever Amount They Want.....	28.....	5.0%
Regulations Limiting Amount.....	515.....	92.7%
DON'T KNOW.....	12.....	2.2%

14b. If a fish stock or game population is not large enough to allow everyone to fish or hunt, should rules limiting the amount of fish and game people can take be based on

REASONS	FREQUENCY	PERCENT
The customary and traditional uses of fish and game for personal consumption?.....	337.....	60.7%
Income or economic status of the household?.....	240.....	43.2%
Rural residency?.....	247.....	44.5%
How much people depend on fish and game?.....	402.....	72.5%
A person's race?.....	28.....	5.1%

15. Alaska's fish and game resources are used in three ways: subsistence use which is personal consumption by rural Alaskans for food, clothing, fuel, or tools; sports and recreational use; and commercial use. Please tell me which of these fish and games uses is most important for Alaska? How about 2nd most important? And least (3rd) important?

FISH AND GAME USES	1ST	2ND	3RD	DON'T KNOW	MEAN
Subsistence.....	47.7%	29.5%	20.8%	2.0%	1.725
Sports and Recreation.....	12.6%	31.6%	52.9%	2.8%	2.415
Commercial.....	37.9%	36.0%	23.4%	2.7%	1.851

16. How important would you say subsistence hunting and fishing by rural Alaskan residents for personal consumption is to the economies of rural communities? Would you say it is very important, somewhat important, neither important or unimportant, somewhat unimportant, or very unimportant?

IMPORTANCE OF SUBSISTENCE	FREQUENCY	PERCENT
Very Important.....	275.....	49.6%
Somewhat Important.....	166.....	29.9%
Neither Important or Unimportant.....	39.....	7.0%
Somewhat <u>Unimportant</u>	36.....	6.5%
Very Unimportant.....	16.....	2.9%
DON'T KNOW.....	23.....	4.1%

17. There has been some discussion in Alaska concerning subsistence fishing and hunting. Some people believe, if there is not enough fish or game for all Alaskan residents, a priority for the taking of fish and game should be given to rural Alaskans. Other people believe subsistence is not that important anymore and that all Alaskan residents should be treated the same. Do you think rural Alaskan residents should be given a priority or do you think all Alaskan residents should be treated the same?

RURAL VS ALL RESIDENTS	FREQUENCY	PERCENT
Rural Alaskan Residents.....	265.....	47.8%
All Alaskan Residents.....	275.....	49.5%
DON'T KNOW.....	15.....	2.7%

18. Some people say it is fair for rural subsistence uses of fish and game to be considered more important than commercial and recreational uses of fish and game? Do you think it is fair or not fair for rural subsistence uses to be considered more important than commercial and recreational uses?

RURAL	OTHER USES	FREQUENCY	PERCENT
Fair.....		301.....	54.3%
<u>Not</u> Fair.....		225.....	40.6%
DON'T KNOW.....		28.....	5.1%

19. Now I am going to read you a short series of statements. Please tell me if you STRONGLY AGREE, MILDLY AGREE, MILDLY DISAGREE, OR STRONGLY DISAGREE with each of the following statements: (IF AGREE OR DISAGREE SAY, "Is that strongly agree/disagree or just mildly agree/disagree?")

STATEMENTS	1	2	4	5	3	MEAN
	STRONGLY AGREE	MILDLY AGREE	MILDLY DISAGREE	STRONGLY DISAGREE	DON'T KNOW	
In Alaska there are people who need to hunt and fish in order to live.....	55.0%	35.8%	6.0%	2.7%	0.4%	1.656
In Alaska the supply of fish and game is limited and <u>no</u> Alaskan should be allowed to catch all the fish or take all the game they want.....	55.8%	27.6%	9.0%	4.1%	3.5%	1.780
People in Rural Alaska are more dependent on fish and game than Urban Alaskans.....	39.8%	40.0%	12.3%	4.1%	3.7%	2.010
Both Alaska natives and Alaska non-natives need to hunt and fish in order to live.....	32.5%	38.1%	19.3%	8.4%	1.7%	2.329
<u>Not</u> providing a subsistence priority for rural Alaskans harms those who want to live off the land.....	18.3%	37.0%	28.9%	6.1%	9.7%	2.675
<u>Not</u> providing a subsistence priority for rural Alaskans harms rural people who live off the land to the benefit of urban sports fishermen.....	16.5%	35.6%	25.4%	6.5%	16.0%	2.697

STATEMENTS (CONTINUED)	1 STRONGLY AGREE	2 MILDLY AGREE	4 MILDLY DISAGREE	5 STRONGLY DISAGREE	3 DON'T KNOW	MEAN
Rural Alaskans <u>should</u> have a priority to fish and hunt over Urban Alaskans.....	24.9%	26.7%	24.8%	16.4%	5.2%	2.790
<u>Not</u> providing a subsistence priority for rural Alaskans only invites the federal government to come into Alaska to regulate fish and game on federal land in Alaska.....	16.0%	29.2%	26.2%	11.1%	17.5%	2.872
All Alaskans are equal and no Alaskan should have a hunting and fishing priority over any other Alaskan.....	22.4%	27.6%	30.6%	15.8%	3.7%	2.899
<u>Not</u> providing a subsistence priority for rural Alaskans is a direct attack on Alaska tradition and Native Alaska Culture.....	17.9%	27.0%	30.6%	14.6%	9.7%	2.972
Unimproved land owned by Native Corporations should <u>remain</u> exempt from local property taxes.....	12.6%	23.0%	31.8%	20.9%	11.8%	3.253
Alaska natives receive a greater share of State Revenues than they should.....	10.1%	13.6%	36.0%	16.2%	24.0%	3.347
Alaska natives take more fish and game than they really need.....	9.2%	20.3%	27.7%	23.7%	19.1%	3.364
Those groups and people presently fighting subsistence laws are partially, at least, racially motivated against Alaskan Natives.....	6.3%	22.0%	29.5%	22.9%	19.4%	3.407
Alaska natives, in this day and age, no longer need to fish and hunt in order to survive....	6.1%	19.6%	39.1%	32.1%	3.2%	3.714
Improved land owned by Native Corporations <u>should be</u> exempt from local property taxes.....	5.6%	10.4%	33.9%	38.0%	12.1%	3.883

20. Now that you have heard some of the reasons for and against providing a subsistence priority for rural Alaskans. Let me ask you again, do you favor or oppose providing a priority for rural Alaskans in the taking of fish and game for subsistence use?

PRIORITY FOR RURAL ALASKANS #2	FREQUENCY	PERCENT
Favor.....	338	60.9%
Oppose.....	178	32.1%
DON'T KNOW.....	39	7.0%

21. Do you know any rural Alaska residents who live off the land by fishing and hunting?

KNOW ANYONE LIVES OFF LAND	FREQUENCY	PERCENT
Yes.....	290.....	52.2%
No.....	265.....	47.8%

22. Have you ever lived in rural, remote, primarily native areas of Alaska?

LIVED IN RURAL ALASKA	FREQUENCY	PERCENT
Yes.....	189.....	34.0%
No.....	366.....	66.0%

23. During the past 12 months, how many times did you, or someone else in your household, go hunting or trapping for game?

HUNTING LAST 12 MONTHS	FREQUENCY	PERCENT
1 to 3 Times.....	110.....	19.7%
4 to 10 Times.....	79.....	14.2%
11 or More Times.....	80.....	14.4%
NO HUNTER IN HOUSEHOLD/NONE.....	288.....	51.7%

24a. During a typical 12 month period or year, how many times do you, or someone else in your household, go hunting or trapping for game?

HUNTING TYPICAL 12 MONTHS	FREQUENCY	PERCENT
1 to 3 Times.....	123.....	22.2%
4 to 10 Times.....	92.....	16.6%
11 or More Times.....	102.....	18.4%
NO HUNTER IN HOUSEHOLD/NONE.....	237.....	42.8%

24b. Typically, do you, or someone else in your household hunt or trap

GAME	FREQUENCY	PERCENT
Duck or Geese?.....	126.....	22.7%
Moose, Caribou, bear, sheep, goat, Ptarmigan, rabbit, fox, etc.?.....	264.....	47.6%

24c. Typically, when you, or someone else in the household, goes hunting or trapping, do you hunt or trap

AREAS	FREQUENCY	PERCENT
In the Matanuska-Susitna Borough Anchorage or Chugach Mountain area?.....	117.....	21.1%
On the Kenai Peninsula?.....	100.....	18.0%
In the Fairbanks or Brooks Range area of Northern Alaska?..	94.....	16.9%
In Southeast Alaska?.....	84.....	15.1%
In Western Alaska or west of the Alaska Range?.....	66.....	11.9%
In Kodiak or the Aleutians Islands?.....	58.....	10.5%
In the Copper River, Wrangell, or Valdez area?.....	54.....	9.7%

25. During the past 12 months, how many times did you, or someone else in your household, go fishing?

FISHING LAST 12 MONTHS	FREQUENCY	PERCENT
1 to 5 Times.....	147.....	26.4%
6 to 10 Times.....	72.....	12.9%
11 to 20 Times.....	94.....	16.9%
21 or More Times.....	130.....	23.4%
NC FISHERMEN IN HOUSEHOLD/NONE.....	113.....	20.4%

26a. During a typical 12 month period or year, how many times do you, or someone else in your household, go fishing?

FISHING TYPICAL 12 MONTHS	FREQUENCY	PERCENT
1 to 5 Times.....	139.....	25.1%
6 to 10 Times.....	92.....	16.5%
11 to 20 Times.....	110.....	19.7%
21 or More Times.....	142.....	25.4%
NO FISHERMEN IN HOUSEHOLD/NONE.....	74.....	13.3%

26b. Typically, when you, or someone else in the household, goes fishing, do you fish

AREAS	FREQUENCY	PERCENT
On the Kenai Peninsula?.....	248.....	44.7%
In the Matanuska-Susitna Borough, Anchorage or Chugach Mountain area?..	197.....	35.5%
In Southeast Alaska?.....	127.....	22.8%
In the Fairbanks or Brooks Range area of Northern Alaska?.....	97.....	17.4%
In the Copper River, Wrangell, or Valdez area?.....	73.....	13.2%
In Kodiak or the Aleutians Islands?.....	62.....	11.1%
In Western Alaska or west of the Alaska Range?.....	59.....	10.6%

27. In 1971, the U.S. Congress passed a law which set up village and regional corporations whose stock is owned only by Alaska natives. Under the current law, in 1991, village and regional corporation stock may be bought by non-natives. Alaska natives want to amend the law so that the native shareholders of each corporation, by a majority vote, may decide whether the corporation's stock can be sold to non-natives after 1991. Do you favor or oppose amending the law to allow village and regional corporation shareholders to decide whether stock can be sold to non-natives after 1991?

AMENDING STOCK LAW	FREQUENCY	PERCENT
Favor.....	357.....	64.4%
Oppose.....	156.....	28.1%
DON'T KNOW.....	42.....	7.5%

28. What type of residence do you live in? Is it a.....

HOUSING TYPE	FREQUENCY	PERCENT
Single family,.....	358.....	64.6%
Apartment, or a.....	86.....	15.4%
Duplex,.....	50.....	9.1%
Mobile home?.....	32.....	5.7%
Zero lot line,.....	11.....	2.0%
Condominium,.....	10.....	1.7%
Townhouse,.....	8.....	1.5%

29. Does someone in your household own your home, or do you rent it?

EQUITY STATUS	FREQUENCY	PERCENT
Own.....	373.....	67.2%
Rent.....	182.....	32.8%

30. In what year were you born? (COMPUTED TO AGE BY SUBTRACTING FROM 85)

AGE OF RESPONDENT	FREQUENCY	PERCENT
18 - 24.....	74.....	13.4%
25 - 29.....	91.....	16.4%
30 - 34.....	93.....	16.8%
35 - 39.....	91.....	16.5%
40 - 49.....	113.....	20.4%
50 plus.....	92.....	16.6%
(n = 555)		
(MEAN = 37.603)		
(MEDIAN = 35.034)		

31. How many total years and months have you lived in Alaska?

ALASKAN RESIDENCY	FREQUENCY	PERCENT
1982 - 1985.....	87.....	15.7%
1976 - 1981.....	129.....	23.3%
1967 - 1975.....	144.....	26.0%
Before 1967.....	194.....	34.9%
(n = 555)		
(MEAN = 16.400)		
(MEDIAN = 12.967)		

32. How many total years and months have you lived in the _____ area?
(FILL IN AREA CALLING AND WRITE NUMBER OF YEARS AND MONTHS ON ANSWER SHEET)

LOCAL RESIDENCY	FREQUENCY	PERCENT
1982 - 1985.....	160.....	28.9%
1976 - 1981.....	149.....	26.8%
1967 - 1975.....	124.....	22.3%
Before 1967.....	122.....	22.0%
(n = 555)		
(MEAN = 11.766)		
(MEDIAN = 7.330)		

33. Are you, or is any member of your household (living at home), a veteran?

VETERAN IN HOUSEHOLD	FREQUENCY	PERCENT
Yes.....	250.....	45.1%
No.....	305.....	54.9%

34. Are you, or is any member of your household (living at home), a member of a union?

UNION MEMBER IN HOUSEHOLD	FREQUENCY	PERCENT
Yes.....	182.....	32.8%
No.....	373.....	67.2%

35. Are you married, separated, divorced, widowed, never married and living with another adult, or never married and living alone?

MARITAL STATUS	FREQUENCY	PERCENT
Married.....	370.....	66.7%
Divorced.....	67.....	12.1%
Never Married and Living with Another Adult.....	63.....	11.3%
Never Married and Living Alone.....	35.....	6.4%
Widowed.....	11.....	2.6%
Separated.....	8.....	1.4%

(COMPUTED FROM MARITAL STATUS AND GENDER QUESTIONS)

MARITAL STATUS BY GENDER	FREQUENCY	PERCENT
Married Males.....	185.....	33.2%
Married Females.....	185.....	33.4%
Single Males.....	110.....	19.8%
Single Females.....	75.....	13.5%

(COMPUTED FROM AGE, CHILDREN, GENDER, AND MARITAL STATUS QUESTIONS)

FAMILY STATUS	FREQUENCY	PERCENT
Mature Family.....	127.....	22.9%
Young Family.....	101.....	18.2%
Mature Couple.....	97.....	17.4%
Young Single.....	76.....	13.8%
Adult Single.....	57.....	10.2%
Single Parent.....	52.....	9.3%
Young Couple.....	45.....	8.1%

36. Do you or does anyone in your household (living at home) work for the federal, state or local government? IF YES, ASK, "Which level of government? Is it the"

GOVERNMENT EMPLOYEE	FREQUENCY	PERCENT
NO GOVERNMENT EMPLOYEE.....	319.....	57.4%
State, or.....	135.....	24.3%
Federal,.....	56.....	10.2%
Municipal Government?.....	45.....	8.1%

The last few questions are being collected purely for statistical purposes.

37a. How many total people, including children and adults, live in your household?

HOUSEHOLD SIZE	FREQUENCY	PERCENT
One.....	68.....	12.2%
Two.....	164.....	29.5%
Three.....	118.....	21.2%
Four.....	122.....	22.0%
Five or More.....	84.....	15.1%
	(n = 555)	
	(MEAN = 3.079)	
	(MEDIAN = 2.392)	

37b. Of the people in your household, living at home, how many are adults — aged 18 and older?

NUMBER OF ADULTS	FREQUENCY	PERCENT
One.....	87.....	15.6%
Two.....	361.....	65.1%
Three.....	85.....	15.4%
Four or More.....	22.....	3.9%
	(n = 555)	
	(MEAN = 2.082)	
	(MEDIAN = 1.528)	

37c. How many are children or adolescents under 18 years old?

CHILDREN IN HOUSEHOLD	FREQUENCY	PERCENT
NONE.....	275.....	49.5%
One.....	111.....	20.0%
Two or More.....	169.....	30.4%
	(n = 555)	
	(MEAN - ALL HOUSEHOLDS = 0.997)	
	(MEDIAN - ALL HOUSEHOLDS = 0.025)	
	(MEAN - HOUSEHOLDS WITH CHILDREN = 1.976)	
	(MEDIAN - HOUSEHOLDS WITH CHILDREN = 1.266)	

38. How many total years of education have you completed? (FORMAL ATTENDANCE IN SCHOOL) (EIGHTH GRADE = 8; HIGH SCHOOL = 12; TRADE SCHOOL = 13; COLLEGE GRADUATE — BA OR BS = 16; MASTERS DEGREE = 18; LAWYER, DOCTOR, PH.D = 19)

YEARS OF EDUCATION	FREQUENCY	PERCENT
12 Grade or Less.....	194.....	34.9%
1 - 2 Years College.....	170.....	30.6%
3 - 4 Years College.....	124.....	22.3%
Post Graduate.....	68.....	12.2%
	(n = 555)	
	(MEAN = 13.941)	
	(MEDIAN = 13.055)	

39. Are you seasonally employed, annually employed, unemployed and looking for work, not looking for work, or retired?

EMPLOYMENT STATUS	FREQUENCY	PERCENT
Annually Employed.....	341.....	61.5%
Seasonally Employed.....	74.....	13.3%
Not Looking for Work.....	66.....	11.9%
Retired.....	39.....	7.0%
Unemployed and Looking for Work.....	35.....	6.4%

40a. How many individuals in your household are presently working fulltime 35 or more hours per week? How many part-time, 34 or less hours?

(COMBINES WAGE EARNERS COMPUTED FROM THE PRECEEDING TWO QUESTIONS)

TOTAL WAGE EARNERS	FREQUENCY	PERCENT
Under One.....	52.....	9.4%
One.....	185.....	33.4%
One and One-half.....	77.....	14.0%
Two.....	176.....	31.6%
Over Two.....	65.....	11.6%

(n = 555)

(MEAN = 1.545)

(MEDIAN = 1.259)

41a. Including only those living at home, what was your total household income for 1984 before taxes and other deductions were made? Please tell me the figure to the nearest thousand dollars.

41b. We don't need the exact dollar figure; could you tell me which of these broad categories it falls in...

- Less than 16,000 dollars,
- Between 16,000 and 25,000 dollars,
- Between 26,000 and 35,000 dollars,
- Between 36,000 and 45,000 dollars,
- Between 46,000 and 55,000 dollars,
- Between 56,000 and 65,000 dollars,
- Between 66,000 and 75,000 dollars, or
- More than 75,000 dollars?

(COMPUTED INCOME FROM THE PRECEEDING TWO QUESTIONS)

1985 HOUSEHOLD INCOME	FREQUENCY	PERCENT
\$ 0 - \$15,999.....	73.....	14.5%
\$16,000 - \$25,999.....	67.....	13.3%
\$26,000 - \$35,999.....	74.....	14.6%
\$36,000 - \$45,999.....	93.....	18.5%
\$46,000 - \$65,999.....	96.....	19.1%
\$66,999 or More.....	101.....	20.0%

(n = 504)

(MEAN = \$46,132)

(MEDIAN = \$39,889)

(COMPUTED FROM WAGE AND INCOME QUESTIONS)

INCOME PER WAGE EARNER	FREQUENCY	PERCENT
\$ 0 - \$15,999.....	133.....	26.4%
\$16,000 - \$25,999.....	116.....	23.0%
\$26,000 - \$35,999.....	104.....	20.7%
\$36,000 - \$49,999.....	80.....	15.9%
\$50,000 or More.....	71.....	14.0%

(n = 504)
(MEAN = \$30,595)
(MEDIAN = \$25,777)

42. Is your telephone number.....

TELEPHONE LISTING	FREQUENCY	PERCENT
Listed or.....	483.....	87.0%
Unlisted.....	72.....	13.0%

43. SEX.....

GENDER OF RESPONDENT	FREQUENCY	PERCENT
Male.....	295.....	53.1%
Female.....	260.....	46.9%

THIS COMPLETES THE SURVEY, THANKYOU VERY MUCH FOR HELPING US — GOODBYE

SUBSISTENCE PRIORITY FOR RURAL ALASKANS

BY

POLITICAL AND GENERAL DEMOGRAPHICS

SUBSISTENCE PRIORITY		FREQUENCY	PERCENT		
FAVOR		338	60.9%		
OPPOSE		178	32.1%		
DON'T KNOW		39	7.0%		
DEMOGRAPHICS	n	FAVOR	OPPOSE	DON'T KNOW	TOTAL % OF ADULTS
AREA OF STATE: (Row %)					p = 0.0190
Valdez-Kenai--S. Anc	59	59.3%	33.7%	7.0%	10.6%
Anchorage	224	60.2%	34.4%	5.4%	40.4%
Mat Su/Grtr Fbks	50	54.2%	39.9%	5.9%	9.0%
Fairbanks	76	47.9%	43.0%	9.1%	13.7%
Southeast-Rural Alaska	146	71.7%	19.7%	8.6%	26.3%
REGISTERED TO VOTE: (Row %)					p = 0.4858
Yes	447	59.9%	33.3%	6.8%	80.5%
No	108	64.8%	27.4%	7.8%	19.5%
PARTY AFFILIATION: (Row %)					p = 0.0007
Democrat	120	73.8%	19.4%	6.9%	21.6%
Republican	145	66.1%	31.4%	2.5%	26.1%
Libertarian	17	63.5%	29.9%	6.6%	3.0%
Independent	273	52.3%	38.3%	9.4%	49.3%
VOTED IN 1982, NOVEMBER: (Row %)					p = 0.2295
Yes	362	59.0%	34.6%	6.4%	65.2%
No	193	64.4%	27.6%	8.0%	34.8%
VOTED IN 1984, NOVEMBER: (Row %)					p = 0.1290
Yes	373	58.1%	34.8%	7.1%	67.3%
No	182	66.7%	26.6%	6.8%	32.7%
IDEOLOGY OF RESPONDENT: (Row %)					p = 0.0461
Liberal	128	70.5%	23.4%	6.1%	23.2%
Moderate	237	59.4%	32.0%	8.6%	42.7%
Conservative	190	56.3%	38.3%	5.5%	34.2%
INTEREST IN STATE CAMPAIGNS: (Row %)					p = 0.7837
Very Interested	119	56.4%	36.5%	7.0%	21.4%
Somewhat Interested	319	61.3%	31.5%	7.2%	57.6%
Not very Interested	117	64.3%	29.4%	6.3%	21.0%
ADULT MARKET SHARE		60.9%	32.1%	7.0%	100.0%