

HFB

2008

File #2

Dear Sir

3-21-85

I am writing to urge you to Pass House Bill # 288 and give to the Board of Fisheries the flexibility to manage the resource for the user groups.

Thank You

John Johnson

Put in 288
file in Res.
Committee

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 (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-
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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).

APR 10 1985



Telegram

04003

ANCHORAGE ALASKA 18 04-10 1105 AST

PMS

REPRESENTATIVE ADELHEID HERRMANN

JUNEAU AK

0424

THE BRISTOL BAY NATIVE CORPORATION SUPPORTS THE PASSAGE OF HB288

IN REGARD TO SUBSISTENCE HUNTING AND FISHING.

SINCERELY,

DONALD F. NIELSEN, SR. VICE-PRES.

APR 10 1985

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 use, 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

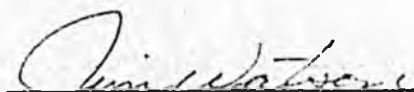
Section 1. There be immediate consideration and enactment of Senate Bill 231 and House Bill 288 as proposed by Governor Sheffield.

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

TESTIMONY OF CHUCK ROBINSON
BEFORE THE HOUSE RESOURCES
COMMITTEE ON APRIL 2, 1985

SUBSISTENCE AFTER MADISON

In the recent case of Madison v. Alaska Dept. of Fish and Game, the Alaska Supreme Court ruled that a set of regulations adopted by the Alaska Board of Fisheries concerning eligibility into the Cook Inlet Subsistence Fishery were unlawful and inconsistent with the intent of the current subsistence law. The regulations invalidated by the court excluded the majority of subsistence users, mostly Kenai Peninsula residents from participation in the Cook Inlet Subsistence Fishery. This, the court declared, was contrary to the intent and spirit of the state's subsistence laws.

To fully understand the ruling of the court, it is necessary to review the language of the law, the circumstances which surrounded the passage of the law, and the facts and circumstances concerning the application and interpretation of the law by the Board of Fisheries which led to the court's ruling. Further, any enlightened discussion of subsistence fishing cannot occur without including the relationship of this fishery with other uses of fish, such as sports and commercial fishing. The Cook Inlet salmon fisheries provide the best example of salmon fishing user conflicts in terms of the means and ways that the Board has used to resolve or heighten and intensify those conflicts. Only by reviewing the law, the facts and the application and interpretation of the law by the Board can an accurate picture of the Madison decision be depicted.

The current subsistence law, adopted by the Alaska Legislature in 1978, is a fairly simple law. It was enacted by the Legislature in the spirit of cooperation with federal law and is founded upon sound social policy. The law was passed in light of a need on the part of Alaskan people to protect subsistence uses of fish resources in face of changing social and economic development bound to occur in the state with increase in growth and the need to conserve the fish stocks for sustained yield purposes.

The law provides that the Board of Fisheries must

permit subsistence use of fish unless a factual determination is made that such use is harmful to or jeopardises the fish stocks in question. If fish resources are in short supply, then subsistence use of the resources shall have a priority use over all other beneficial uses. If fish resources are in such short supply that only subsistence uses can be permitted on fish stocks then, those subsistence users who have a customary need and dependence on the stocks, live closest to the resource and have no other alternate available resources for use have a priority of use over all other subsistence users on these resources. Until such time that the fish resource is in such scarcity that only subsistence use is allowed and there is not enough fish to go around among subsistence users any Alaska resident is eligible to obtain a subsistence permit.

The law establishes a two tier or two class category of subsistence users. The first tier is the general class, to which any resident may belong and the second tier, which is the preferred class, which only certain residents may qualify for. Any Alaskan resident is eligible for a subsistence permit at such times when fish stocks are abundant and even when fish stocks may be low, but not necessarily depleted to the point of severe jeopardy. Only certain residents may qualify for preferred subsistence status, based on dependency, local residency, and alternate available resources, When fish resources are so low that only subsistence use is allowed on these resources, sports and commercial use have been prohibited and there are not enough fish stocks to adequately supply subsistence use. Further,⁴ if the Board determines that subsistence use may jeopardize the viability of available fish stocks this use may too be eliminated.

The subsistence law defines subsistence fishing as the taking of fish by longline, seine, fishwheel, gill net or other means defined by the Board for subsistence uses. Subsistences uses are defined as those customary and

traditional uses of fish in Alaska for direct personal and family consumption for food, shelter, clothing, fuel, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish resources taken for personal or family consumption, and for customary trade, barter, or sharing of these resources for personal or family consumption. Subsistence use covers a wide range of personal use of fish resources.

The law was adopted in response to a number of factors that had occurred and were occurring in the area of conservation, utilization and development of fish and game resources in Alaska during the 1970's. In 1972 Governor Bill Egan's administration established a state-wide policy within the Department of Fish and Game that made subsistence use by Alaska residents of fish and game resources the highest priority use during resource shortages. This policy was established one year after Congress enacted the Alaska Native Land Claim Settlement Act (ANSCA) and at the infancy of the Alaska oil pipeline boom. During the same year the constitutional amendment allowing limited entry into Alaska's commercial fisheries was ratified and the commercial fishery entry law was passed.

Between 1972 and 1981, Alaska experienced a dramatic increase in population. By 1980 there were approximately 400,000 people living in the state. Also many thousands of people visited the state each year. In 1976 Congress, after the election of President Carter, proposed the Alaska National Interest Land Conservation Act (ANILCA). The proposed legislation, enacted in 1980 was in part the result of the transfer of federal lands to the state and native Alaskans under Section D-2 of ANSCA. The ANILCA legislation creates a subsistence use priority on fish and game resources on federal lands and water within Alaska. In 1978 the Alaska legislature in an attempt to protect subsistence uses and to conserve on state fish and game resources enacted the subsistence law. In part the subsistence use priority was established to comply with federal law.

Despite the establishment of the 1972 subsistence policy and the passage of the 1978 subsistence law, the Board of Fisheries continued to regulate Alaska fisheries in such a way that completely ignored the mandate of the social policies on subsistence use of fish resources. Even during periods of shortages the Board failed to allow subsistence fishing to be the priority use. The Cook Inlet salmon fishery is a prime example of the Board's reluctance during the late 1970's and early 1980's to accommodate subsistence use of these resources.

In 1977 the Board of Fisheries established the Upper Cook Inlet management plan. This plan was used by the Board to allocate Cook Inlet salmon stocks between sports and commercial fishermen until it was invalidated by the Supreme Court in 1981. The plan essentially allocated Cook Inlet salmon stocks between sport and commercial use based upon seasonal fish movements. The plan did not include any specific allocations for subsistence use. The plan was adopted by the Board in response to political pressures placed upon it by the Anchorage chapter of the Isaac Walton League, an international organization comprised mostly of recreational fishermen and hunters and outdoor enthusiasts. The argument put forth in support of the plan was that Cook Inlet king and silver salmon resources should be allocated to sports use on a priority basis because sports users outnumber commercial users and the sport use demand is growing. Threats were made to the Board that if it did not adopt the plan sportfishermen would urge a referendum vote on the subject or get the Legislature to adopt the policies outlined in the plan.

The plan allocated all salmon found in Upper Cook Inlet prior to June 30 to exclusive sport use and all salmon destined to spawn on the Kenai Peninsula after August 15 to priority sport use. All salmon moving in Upper Cook Inlet between July 1 and August 15 is primarily for commercial fishing use, except certain salmon stocks which must be

minimized in the commercial harvest. No specific priority allocations were made in the plan for subsistence use of Cook Inlet salmon stocks.

The stocks moving in Upper Cook Inlet prior to June 30 are the majority of Cook Inlet king salmon and other runs of red salmon. After August 15 the stocks moving in Upper Cook Inlet are mostly fall silver salmon. Between July 1 and August 15 the Upper Cook Inlet salmon stocks are comprised mostly of red, pink and chum salmon. However, there are stocks of silver and king salmon present. The Kenai River king salmon, for instance, is present during July, though it is a much smaller run of salmon than the early runs present prior to June 30.

The Cook Inlet salmon subsistence fishery until 1977 was opened by regulation to any Alaskan resident. It had been in existence since territorial days and was opened in practically all areas of the inlet. The seasons were from early May until December 31, until the early 1960's when the seasons were shortened along with commercial and sports fishing seasons to protect for conservation purposes the depleted early run of Cook Inlet king salmon. From the mid 1960's until 1978 the season opened in the Northern district of the Inlet from June 30 until September 21 and in the rest of the Inlet from August 15 until December 31. The open periods were the same as the open commercial fishing periods. The method of subsistence harvest was with set gill nets, one per permit holder, ranging in size from 20 to 35 fathoms. The bag limit or quota per permit holder was no more than 50 salmon. The subsistence fishery primarily throughout its history targeted on king and silver salmon, though other species in smaller quantities were also harvested.

The lead plaintiffs in the Madison case, Gene Madison and Louis GJosund are Alaska residents living in North Kenai and Homer respectively. Each has been a subsistence fisherman since the mid 1940's. They and others similar to them, have regularly subsistence fished for salmon for personal and family consumption as food ever since settling

in Alaska nearly 40 years ago. In addition to salmon, they have used other natural resources such as wood, coal, berries and wildlife for subsistence purposes for food and fuel.

In 1977 the Board by regulation eliminated the Homer subsistence fishery. The elimination of the fishery was done in response to sportfishing pressure, mainly from Anchorage sportsfishermen who wanted no competition from subsistence users on their take of fall silver salmon in the Homer area. Louis GJosund and other subsistence fishermen went to Superior Court and requested an injunction against the elimination of the Homer salmon subsistence fishery. The court after finding that the Board's action was unjust, enjoined the enforcement of the regulation closing the fishery.

In 1978, less than two months after the current subsistence law went into effect, the Board adopted regulations eliminating all of the subsistence fisheries along the Eastern shore of Cook Inlet and severely restricted the gear, area, and quota for the Homer subsistence fishery. This action was taken to accommodate and prioritize sport use of fall silver salmon. Again, Louis GJosund went to court to enjoin the regulations and again the Superior Court ruled in favor of GJosund and against the Board.

Pursuant to the 1977 salmon management plan the Board in 1978 adopted regulations permitting the sport use of early Susitna River drainage king salmon. It refused to allow any subsistence or commercial use of these resources. In 1979 a group of Tyonek residents requested of the Board to allow a subsistence fishery on these stocks. The Board denied the request in light of much objection by Anchorage sport fishing interest groups. In 1980 the Tyonek residents, mostly people from a small Indian village located on the northwest shore of Cook Inlet, brought suit against the Board claiming that their customary and traditional subsistence fishery for king salmon should be allowed if the Board was going to allow sport use of these stocks. The Superior Court ruled in favor

of the people of Tyonek and ordered the Board to open a king salmon subsistence fishery in the Tyonek area. As a result of the ruling in the Tyonek case, the Board was forced to address subsistence fishing in all other parts of the Cook Inlet and to provide for subsistence use. In 1980 the Board opened the Tyonek fishery and opened a subsistence fishery along the Eastern shore of Cook Inlet. However, the area opened along Eastern Cook Inlet was in a place that was rock strewn, extremely muddy and terribly inaccessible. Again, the Board was sued in Superior Court. This time the Board reached a compromise and out of court settlement with the litigants and opened the fishery in an area that was more suitable to subsistence fishing. The series of court cases against the Board exemplifies the Board resistance to protecting subsistence use of Cook Inlet salmon resources as mandated by the Egan policy and the subsistence law.

By 1981, the Board was convinced that subsistence use of salmon was to be permitted in Cook Inlet despite the opposition from sport interest groups. However, the Board was still looking for a way to allow the use in its most narrow form, so as not to upset the sports fishing priority set forth in the management plan. The means that it found to accomplish this objective was the interpretation of the words customary and traditional use as found in the current subsistence law. The Board interpreted those words to mean that only rural residents in the Cook Inlet region were eligible to participate in the subsistence fishery and only areas close to rural communities would be open to subsistence fishing. The only rural areas and residents that the Board found to exist in Cook Inlet were Tyonek, Port Graham, and English Bay. These communities are predominantly native in composition and are isolated. The only access to these areas is by water or air travel. The rest of the Kenai Peninsula areas were considered urban and their residents ineligible to participate in subsistence fishing. This included communities such as Clam Gulch, population 100, Ninilchik, population 200, and other Peninsula communities like Homer, Kenai,

Soldotna, Seward, and North Kenai. Also the whole of the Mat-Su valley which borders the Inlet was considered urban along with the Anchorage community. None of the residents of these areas could qualify for subsistence fishing permits and no areas near these communities were open to subsistence fishing. As a result of the Board's 1981 subsistence fishing regulations the majority of the Cook Inlet subsistence users were excluded from the subsistence salmon and other subsistence fisheries including halibut, herring, bottom fish and smelt fisheries.

Prior to 1978 subsistence fishing was defined by law as the taking of fish by longline, gill net, fishwheel, seine or other means as defined by the Board for personal use, not for barter or sale. The 1978 law changed the definition to the taking of fish by such means for subsistence uses, which includes barter trade and selling of nonedible parts of fish as handicrafts. At the insistence of the Attorney General's office, the Board made a distinction between subsistence use and personal use and adopted the narrowest interpretation of the subsistence law in order to exclude the majority of the subsistence users. It found that only the residents of the three villages of Tyonek, Port Graham, and English Bay had a history of subsistence use of Cook Inlet salmon.

In 1981 Madison, Gjosund and other Cook Inlet subsistence fishermen brought suit in two Superior Courts to enjoin the enforcement of the Board of Fisheries subsistence regulations. Superior Court Judge Paul Jones presided over a case brought in Homer and Superior Court Judge Victor Carlson presided over another case brought in Kenai. Judge Jones ruled that the subsistence criteria were valid, however, the Board's application of these criteria violated equal protection of the laws and was not based on a factual finding that it was necessary to exclude Homer subsistence fishermen to protect subsistence fishing in Tyonek, Port Graham and English Bay. Judge Carlson ruled that even though the Board's criteria were valid, that the Board's exclusion of

Upper Cook Inlet subsistence fishermen was without due process of law and remanded the case to the Board with a request to provide a personal use fishery for these fishermen. In March of 1982, the Board pursuant to Judge Carlson's ruling, created a personal use fishery on Kasilof red salmon and Upper Cook Inlet fall coho salmon. The personal use fishery was created as an excess "charity" fishery to be accommodated only after subsistence, sports, and commercial fishermen had satisfied their needs. Also, the fishery would not permit trade and barter of the fishery resources. However, the Homer subsistence fishery remained open and has continued as a subsistence fishery since the Court's ruling.

In 1983 the Kenai River Sportsfishing Association, the sports interest group of which Board member Bix Bonney was an officer, brought suit in Kenai Superior Court to halt the fall coho personal use fishery. The court issued a restraining order against the operation of the fishery in favor of Bonney's group.

Then, in 1985, the Supreme Court reversed the two Superior Court rulings in the Madison and G. Josund cases, declaring the Board's subsistence criteria and the regulations adopted pursuant to them invalid and inconsistent with the subsistence law.

It is from this Supreme Court ruling that much debate has followed concerning subsistence use of fish and game and has led the Governor to introduce House Bill 288. Though the Court's ruling is fairly clear and simple, some confusion has been created over the issue. The alleged purpose behind HB 288 is to clear up the confusion, bring state law into compliance with ANILCA, and prevent the elimination of sports and commercial fishing because of runaway subsistence use. None of the objectives of the Governor's bill are well founded. Indeed, the legislation is not essential nor reasonably needed to deal with subsistence fishing in Alaska.

Taking each alleged purpose for the passage of the legislation one at a time and discussing them openly and

rationality should convince members of the Legislature that such legislation is not needed and moreover may be unconstitutional under Alaska law.

It has been alleged by the Governor's administration that unless HB 288 is enacted the state's subsistence law will not be in compliance with ANILCA and this will lead to a takeover of management by the federal government of Alaska fish and game resources and a denial to the state of certain federal revenues intended for management of sea mammals and sports fishing. This allegation is not founded on the truth.

On April 6, 1982, Under Secretary of the Department of the Interior Bill Horn gave a presentation to the joint Boards of Fish and Game at a joint Board meeting in Anchorage. Attached to this document are the transcribed comments of Mr. Horn made to the Boards concerning what actions the Board needed to take to be in compliance with ANILCA. In his presentation Mr. Horn made it perfectly clear that regulations adopted by the Boards which encompass either a one tier or two tier subsistence use approach to subsistence users would satisfy the federal requirements of ANILCA. The one tier approach would make only rural residents eligible to be subsistence users. The two tier approach would allow any Alaska resident to qualify until such time that fish resources are so low that only subsistence use can be permitted and the supply of fish stocks available is not enough to reasonably accommodate all subsistence users. Then a priority between subsistence users can be established for subsistence uses, based upon customary dependence on the resource, local residency, and alternative available resources.

The Board opted for the one tier approach to subsistence use. The court in Madison reviewed the one tier approach of the Board and rejected that approach as inconsistent with intent of the current law. The court declared that the current subsistence law intends a two tier approach on the issue of eligibility into the subsistence

fisheries. The two tier approach embodied in the law is consistent with and in compliance with ANILCA. In fact, the court stated that our law is not intended to limit subsistence users to rural residents only, but that all Alaska residents can qualify for a permit. The court also found that the subsistence fishery in which Madison had participated in for approximately 40 years was a customary and traditional use of salmon for personal and family consumption and other subsistence uses. The claim that the current law is not in compliance with ANILCA is patently false.

The next misrepresentation of the Madison decision concerns the Governor's administration's claim that subsistence use of fish cannot be limited until such time that sports and commercial fishing has been eliminated. This representation, like the noncompliance with ANILCA representation, is unfounded. The administration has either mistakenly or wilfully confused the issues of use and users. The two are distinctly different. Subsistence use is intended by the current law to be carefully monitored and regulated. This is clearly stated in the preamble to the subsistence law. In the preamble it states:

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.

The legislative intent to regulate subsistence use in order to avoid jeopardy to fish stocks is abundantly clear. Therefore subsistence use of fish resources can be limited by bag limits, quotas, time, area, and other means available to the Board of Fisheries without the elimination of sports or commercial fishing.

In Madison, the court merely stated that before the Board may limit priority use among subsistence users, it

must factually find two things: 1) that it is necessary to restrict the taking of fish for sustained yield purposes and 2) that eliminating sports and commercial users will not assure the maintenance of fish stocks for sustained yield purposes and establishing a priority among subsistence users is also necessary. It is this interpretation of the law by the court that the administration has confused and misrepresented. It is not necessary to eliminate sports and commercial use of fish in order to limit and regulate subsistence use. It is required to find that it is necessary to restrict the taking of fish to avoid damage and harm to the stocks and that eliminating sports and commercial uses will not assure the viability to the stocks before there is any occasion to limit subsistence fishing to second tier preferred or priority subsistence users as distinct from all subsistence users. The concept of use and users must be kept separate in discussing the intent of the law.

The Cook Inlet subsistence fishery has never posed a real and substantial threat to salmon resources or other beneficial uses of the resource. The Cook Inlet salmon subsistence fishery since the 1960's and until the 1980's has never harvested more the one half percent to one percent of the total salmon harvest by all user groups.

Between 1978 and 1980 the number of persons licensed by the state to participate in the Cook Inlet salmon subsistence fishery ranged from 323 to 1,331. This number is compared to 1300 commercial salmon entry permit holders and from 180,000 to 200,000 sportfishing license holders for the same period. In comparing the number of sport license holders with subsistence permit holders it is readily apparent that the Cook Inlet sport fishery rather than the subsistence fishery has experienced the more dramatic increase in the number of participants. The Cook Inlet sportfishery is comprised of approximately 47 percent non-resident participants. The subsistence fishery is a 100 percent resident fishery. The Cook Inlet salmon commercial fisheries are comprised of seine and gill net fisheries. The Cook Inlet salmon seine fishery

is a 100 percent resident fishery. The set gill net fishery is 90 percent resident and the salmon drift gill net fishery is 60 percent resident and 40 percent non-resident.

The intent of the current subsistence law is to establish subsistence use by Alaska residents of fish as the priority use during times of resources shortage. Most of the sport fisheries and many of the commercial fisheries are comprised of resident and non-resident participants. The social policy embodied in the subsistence law is to make available on a priority basis fish stocks for subsistence use by Alaska residents over non-residential use of these stocks for sports and commercial use in times of resource shortages. This is good sound policy designed to protect the needs, customs, and traditions of Alaskan residents.

The Governor's proposed legislation may also run afoul of the state's constitution. Article VIII, Section 15 of the constitution reads:

Section 15. No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the state. This section does not restrict the power of the State to limit entry into any fishery for the purpose of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Article VIII, Section 17 of the constitution reads:

Section 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 regulations.

These two constitutional provisions create major stumbling blocks to the attempt by the Governor or the Legislature to limit entry into the subsistence fishery to rural residents only, and the establishment of a personal use fishery as an alternative for urban residents. Article VIII, Section 15 prevents exclusive and special rights or privileges of fisheries in the natural waters of the state except for commercial fishing and aquaculture. The recent Supreme Court case of Ostrosky v. State gives a clear

interpretation of what this constitutional provision means. If HB 288 was enacted limiting entry into subsistence fisheries to rural residents only, this law would create an exclusive or special right or privilege of fishery based solely on residency. This scheme would be contrary to this constitutional provision prohibiting such action. This is so because the law would create a closed class of persons, namely rural residents, which have an exclusive right or special privilege to subsistence fish.

Next, Article VIII, Section 17 would prevent the rural vs. urban classification of subsistence users. If the purpose behind the governor's bill is to protect subsistence use of fish then those uses demonstrated by Gene Madison and others to have customarily and traditionally existed as subsistence uses in Cook Inlet for many years would be entitled to uniform treatment by the law. Those individuals who have demonstrated use of the Cook Inlet salmon resources for personal and family consumption as food, etc., and for trade and barter are similarly situated with other Alaska residents in rural communities like Tyonek, Port Graham and English Bay with respect to the use and disposal of salmon resources. The constitution requires that these individuals be given equal treatment. Therefore, it would be unconstitutional to allow subsistence use by rural residents only and exclude urban residents from such use. Further the creation of a personal use category for urban users is not equal treatment. Under the personal use category trade, barter, and sale of non-edible by products of fish would not be permitted. The prohibition of these activities to urban residents and the permission to rural residents would not be uniform treatment. Both groups of people would be harvesting the resource for personal and family consumption but only rural residents would be able to extend this consumption to trade, barter and sale of non edible by products as handicrafts. This limitation on urban users would not withstand the mandate of Article VIII, Section 17 as it would result in unreasonable differential treatment among persons similarly situated with

respect to the use of fish resources.

In conclusion it must be said that HB 288 is not a well founded piece of proposed legislation. The bill would create more problems than it allegedly attempts to resolve. The current subsistence law achieves the twin objectives of conserving fish stocks and protecting subsistence uses of these resources. The current law when circumstances warrant would protect a rural priority for subsistence use, for instance, when the fish are in such short supply that priorities must be set among subsistence users.

It is urged that the legislature take no action on HB 288. The time has come to allow subsistence fishing to take its course. There are no present circumstances that have been clearly demonstrated which require subsistence use of fish resources to be limited solely to rural residents. Until such time that a clear and present need arises for such action the type of legislation proposed by the Governor should be shelved. The sky over subsistence use of fish and game is not falling.

If a problem does exist over subsistence use perhaps the solution is not in changing the law but rather in a close re-examination of the Board's process and its application of the law.

DATED this 1 day of April, 1985.


ARTHUR S. ROBINSON


MARTIN FRIEDMAN

JOINT MEETING OF THE ALASKA BOARD OF FISHERIES
AND BOARD OF GAME, APRIL 6, 1982

Testimony of Deputy Undersecretary of the Department of Interior Bill Horne.

BM: stands for Board of Fish/Game member

Horne: Thank you, Mr. Chairman, I appreciate the opportunity to appear before the Joint Boards and discuss the State's compliance and implementation with the Alaska Lands Act, and hope that the cooperation that we've been engaged in with the State since last August can continue and we can bring this matter to a satisfactory conclusion. Let me say at the outset that reiterate the Dept. remains philosophically and policy-wise strongly committed to state management. We believe that the State possesses the requisite expertise to protect the fish and game resources of the State of Alaska. It is expertise that we cannot hope to match and as a consequence, we are most anxious to have this matter resolved in such a fashion that we can continue to defer to your judgement, expertise and not have to comply with any mandatory statutory requirements that would force us into the fray. Let me state that from where we're sitting, the federal law that is at issue imposes some fairly minimal requirements on the state, it is obvious that these minimal requirements can have some fairly major repercussions but in and of themselves, we see the requirements to be very bare bones and they are that the State establish some law of general applicability which includes regulations that would provide for a rural priority for subsistence, of course, rural is not the sole criteria, and it also includes the terms "customary and traditional" and there are continued references in the legislative history to nonwasteful taking. That's basic requirement number one. Requirement number two is that the state establish this regional advisory council system and that the recommendations that come up from the regional advisory councils be dealt with by these boards. That is all that the federal law requires and all that we've asked for in our review so far is demonstration from the state that you have laws or regulations that meet these minimal requirements. One of the courses of action suggested to us last year when this process began, was that the State has historically provided this type of preference to its rural residents and that Dept. of Interior should look to the factual track record of recent years, we can conclude on that basis that yes, indeed, the State was doing an adequate job in providing that rural priority and therefore, we could approve a state program without any form of specific laws or regulations. We choose to reject that approach for two basic reasons, one legal and one policy. From the legal perspective, the statute requires us to determine whether or not the state has loss of general applicability to implement Sections 803-805, and factual track record and policies and such as terms of _____ do not constitute laws of

general applicability, we could not satisfy a federal court of law that we had done an adequate and appropriate job of review if all we brought in was the factual track record. It's one of those crazy circumstances in which you need a regulation rather than the facts. The second reason, from a policy perspective, we found even more persuasive. We did not want to engage in a thorough review of the State's track record on fish and game management and try to determine by looking over your shoulder whether or not you had done a job on a resource by resource basis to satisfy rural priority. Frankly, we are not equipped to do that job, we did not possess the requisite expertise to go through the process and say, "well, in game area X you didn't give enough moose to this particular group or in fishing area Y you divided up the resource incorrectly and not in keeping with federal statute". We did not possess the expertise to engage in that type of review, we didn't think it was appropriate of the federal government to second-guess your track record. More important, when it came, if at some stage of the game, this whole process ends up in court, which we regard as a pretty good prospect, we did not want to be going to some federal judge and having that federal judge look over our shoulder at the nature of the factual review that we conducted the program. Consequently we have limited our review to a legal review, which is why since last August, you've been dealing with our friendly solicitors rather than our folks from the Wildlife Service or other resource experts that we possess. All we are looking for is does the state have laws or regulations that establish the regional council system and provide for a rural priority with customary and traditional criteria. That's all we've looked for, that's as far as our review is going to go. Regarding implementation, and obviously we've tried to keep our review to a bare statutory requirements, we've also received many questions about how in the state has this type of priority, codified in a regulation, what sort of guidelines regarding implementation, what sort of practical on the ground effects will that regulation have. Frankly, we don't know. That is something we have refrained from engaging in because it is pretty clear in our mind that the statutory scheme outlined in Title 8 defers those judgements to the State of Alaska, and the state of course, has chosen to defer those judgements to these boards. It is essentially the state's job and the state's responsibility to define rural. The only guidelines in the legislative history regarding what rural means is one phrase in the Senate committee report that says "Anchorage, Fairbanks, Ketchikan and Juneau aren't and Dillingham, Barrow, Bethel, Kotzebue, Nome are". Now that obviously is one criteria, there is nothing in the legislative history regarding what is customary and traditional is, that's clearly yours, and of course, the statute also refers to nonwasteful levels of taking. That again, is a determination for the state to make. Consequently, all that we need is the assurance in some law or regulation that you will provide the adequate rural priority and then in terms of how that is to

be specifically implemented, the statute clearly confers those decisions on you, and as a matter of policy we would like very much to have those decisions conferred on you because, frankly, we don't possess the requisite expertise.

Regarding the timing, the consequences of approval, disapproval. We made it very clear in all of the meetings that we've been conducting, starting last August, that all we need is these minimal requirements. And the stage where we are now is that either one of the approaches outlined by John Gisberg would satisfy ourselves. I will say that from sort of a selfish perspective, we would prefer what I call, for lack of better term, a "one tier" approach that would simply recognize and provide a priority to rural subsistence without trying to define and establish a second category of other subsistence. That is the cleanest way for us, it is abundantly clear that would be in full compliance with Title 8. However, based on the process that we have gone through, we are fully prepared to accept what I call the "two tier" system, which is embodied in the proposed regulation that is in your book, which of course is the minor modifications made to your December policy statement and have that modified policy statement recast as a regulation. As the letter from the Secretary to the Governor on February 25, indicated, if that particular proposal is enacted as a regulation by the boards, upon our formal receipt of notification from either the commissioner, the boards, or the governor, that that is now a binding regulation on the State of Alaska. The Secretary will immediately issue the letter of approval and the responsibilities for implementing this program will remain firmly in the State. I guess I can't emphasize enough how much we wish to do that, that's our primary desire. The reason the Secretary has asked me to come up for these meetings, to pass that on. Obviously if passage of that proposal or something similar that provides for the rural priority. If that goes, we obviously are in a position to approve. I guess the other side of the coin, what are the consequences of inaction or some action that does not establish a sufficiently clear, sufficiently firm rural priority. You know the Act basically says that the Secretary is supposed to grant the state one year to put a program in place, and if at the end of one year, a program is not in place, that the Dept. was mandated, and I guess I should emphasize that it was nondiscretionary, it was mandated to step in and begin to undertake a subsistence management program on federal lands. We received the state's submission on December 2, exactly one year after enactment of the Alaska Lands Bill. We have been engaged in the review process since and consequently have held off and have conducted no planning and no activities in terms of preparing for any contingencies such as federal intervention and assumption of management. However, the clock is ticking on us and we feel that sometime very soon we are going to have to take some action and determine whether the state is in compliance or not in compliance. Consequently, if at the conclusion of the

meetings, we have not received from the state some form of regulation or law that establishes the priority in proper fashion that conforms with the federal statute. We will be shortly be forced to issue some kind of preliminary finding of noncompliance, schedule a hearing within a matter of days in which we will take testimony, I think we will probably have to have it here in the state, regarding whether or not the state program does comply with Title 8. Following that hearing, the Secretary will render his decision. Obviously if this decision is that the state is in noncompliance, we will have to being on a very fast basis the tooling up to assume the management authority on federal lands and of course, we will have to establish further provisions of 805, the regional council system that right now is set up under state law. We don't undertake that activity very lightly. We don't undertake it with much relish. It is something that we hope to avoid at all costs. But nonetheless it is very explicit, nondiscretionary requirement of the law and if we fail to act, any party can go to court and get a writ of mandamus forcing the Secretary to do it. Frankly, one of the concerns we have and there have been various points of view expressed that well, that the Dept. could take a rather minimal back of the hand approach. We wouldn't have to do much in terms of assuming this management authority on federal lands. That type of approach frightens us and it frightens, I could sum it up in two words "federal courts". We are concerned that if the necessity for federal assumption came to pass, and we engaged in what I call a "minimalist approach", it ever so barely satisfied the requirements in the Act, that we may well be hauled into federal court. I think the chances of that are fairly high. If we get before some federal judge, I have a sneaking suspicion we might end up before the judges in the District of Columbia, the prospects of a judge finding that the Dept. has failed to comply with its obligations under the provisions of Title 8 and then the judge take it upon himself to say "Dept. you've acted in bad faith, I'm assuming management of the program." We think the prospects and the chances by our inaction of our obligation under Title 8, that this would end up, there is a good prospect of having this whole thing end up under the jurisdiction of a federal judge in the District of Columbia. We would regard that as an unmitigated travesty and would do all in our power to see that that does not come to pass.

Let me just basically conclude and prepared to answer any questions you might have. We are fully committed to state management. You're the people with the expertise, not ourselves. We will have to engage in a real scramble to catch up effort if this responsibility is thrust on us. We think that the federal law establish some basic minimum requirements that we believe the state, from a policy prespective has been doing this for years, and that in essence, what this regulation does is merely codify the actual enacted policy of many years. Consequently, we would think that that would have rather minimal impacts within the

state. We would hope that the state would take appropriate action. That we would approve the program on a very fast track because we are committed to state management, as evidenced by the recent memorandum of understanding that we executed between our Fish & Wildlife Service and the Alaska Dept. of Fish & Game regarding state involvement in refuge management. We are currently negotiating a similar agreement with the Parks Service regarding fish and game management in the National Park areas. It's common knowledge that we are working very hard to attempt to return marine mammal management to the people of the state of Alaska. Again, you are the people who possess the expertise. We would like to assure that our Secretary's policy of trying to get these things back in the hands of the people with the expertise can be continued and the way to best continue that is for us to have the state enact the appropriate laws and regulations that would permit us to certify compliance with Title 8. Thank you much.

BM: Bill, from your reading of the law there, does the state only have one chance to actually comply, the language just says that within one year the state complies then (inaudible) assume this thing under the guidelines, you're saying that you know, that this is where (inaudible) is here now, but either we have to take some action at this meeting to decide whether we choose to comply or not. But, for example, if we choose not to comply at this time, would there be an opportunity, say a year from now or five years from now for the state to say "OK, we've rethought this whole thing and maybe we will (inaudible).

Horne: The statute is not explicitly clear. It is very clear that it says one year. Our general belief is that there may well be an opportunity that if the state did not comply at this stage, for the state to come into compliance at a future stage and resubmit something to the Secretary. So that I think that there is a possibility of future compliance by the state. My major concern is that I don't think the statute is explicitly clear and someone may well argue that the door has been closed. Obviously from a practical standpoint, we don't engage frankly in the federal management efforts, we don't think that would be good for the resource, we'd much prefer for the state to take appropriate action now.

APR 02 1985

attention Adolfo Herrmann

I am writing to urge you to pass House Bill # 288 and give the Board of Fisheries the flexibility to manage the resource for the user groups. Thank You.

Robi Adams

Box 1251
Cordova 99571

APR 02 1985

I am writing to urge you to pass House Bill #288 and give the Board of Fisheries the flexibility to manage the resource for the user groups. Thank You.

Jack + Heidi Balic
Box 1208 Condova 99571

4-1-85

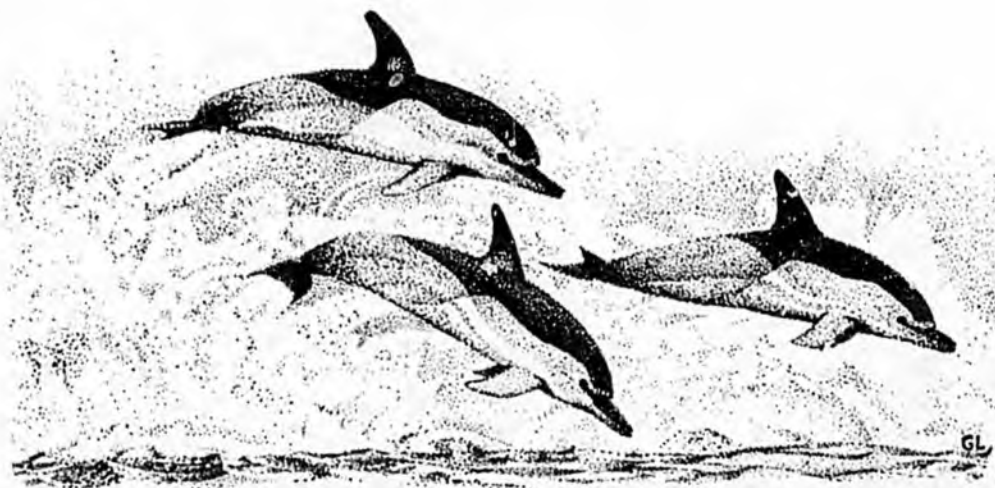
APR 04 1985

Dear Representative Herrmann,

I urge you to support H.B. 288 and Senate Bill 231. We are Cordova fishermen and our livelihood depends on our ability to commercially fish the Upper River Flats.

Sincerely,

Mr. + Mrs. E. L. Cheskie
Box 116
Cordova, Alaska
99574



APR 6 1985

4-1-85

Dear Representative Herrmann,

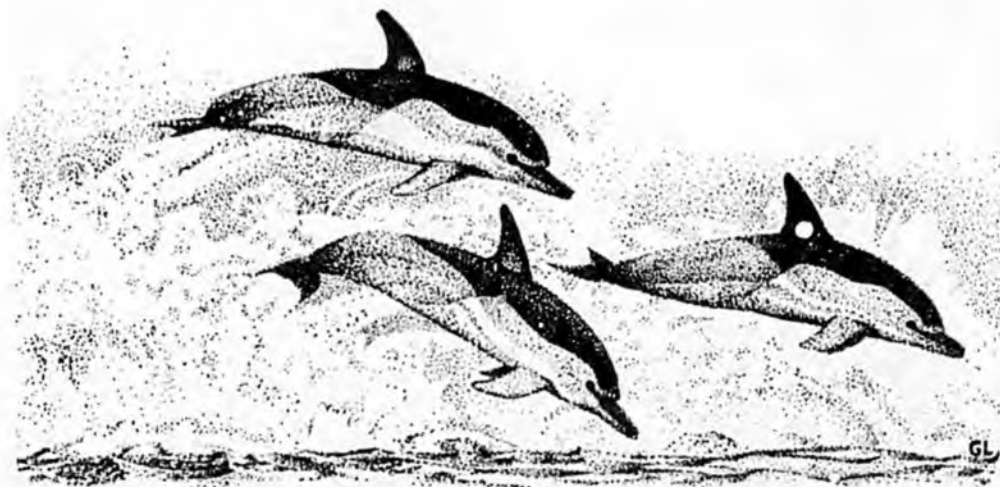
I urge you to support HB.288
and Senate Bill 231. We are
Cordova fishermen and our livelihood
depends on our ability to commercially
fish the Copper River Flats.

Sincerely,

Walter + Clara Phillips

Box 396

Cordova, AK 99574



4/1/85

Rep. Herrmann,

I urge you to read my enclosure which expresses my feelings better than I can.

I also urge you to support Senate Bill #931, House Bill #283.

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. DeWille
Box 652 - Cordova

Main Trails & Bypaths.

We recently passed the opinion that sportsman anglers should not be allowed to fish salmon after the fish have entered their freshwater 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-jowled 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 awhile 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 fisherman 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 jumped 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" sockeye 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 policing 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. King
 Publisher

APR 04 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 Alutian 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 exist 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. Few can argue that the Copper River dipnet 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 gill-netting close the world famous Kenai sport fishery?

Please address this problem rationally, responsibly and quickly by passing Governor Sheffield's subsistence bill.

Fred Dixon

STAR RT. BOX 6700-E

WASILLA, ALASKA
99687

APR 02 1985

GILBERT L. URATA, D.M.D.

GENERAL DENTISTRY

BOX 518

CORDOVA, ALASKA 99574

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 288 for the following reasons.

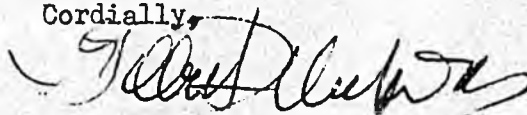
1) Subsistence merely means existence or an aid to existence. Not all people of Alaska need to catch fish in order to exist. Those that do, ought to have the opportunity to do so, those that don't should be restricted. The ADFG and Board of Fisheries have, and need to be allowed to continue to regulate 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 the survive the winter. Keep a historic way of life alive.

Cordially,



Gilbert L. Urata DMD

APR 02 1985

Tanana Chiefs Conference, Inc.

Doyon Building
201 First Avenue
Fairbanks, Alaska 99701
Phone (907) 452-8251

March 27, 1985

Hon. Richard Schultz
Co Chair, House Committee
Natural Resources
Alaska State Legislature
Pouch V MS 3100
Juneau, Alaska 99811

RE: H.B. 288

Dear Rep. Schultz:

Enclosed please find a copy of Resolution No. 85-77, "Support for SB 231 and HB 288, Governor's Subsistence Bill". This resolution was passed by the full Board of Directors of the Tanana Chiefs Conference, Inc. gathered at their annual convention mid March, and is being forwarded at their request to the House Committee on Natural Resources to please be made an official part of the record of hearings which your committee is currently holding on this proposed legislation.

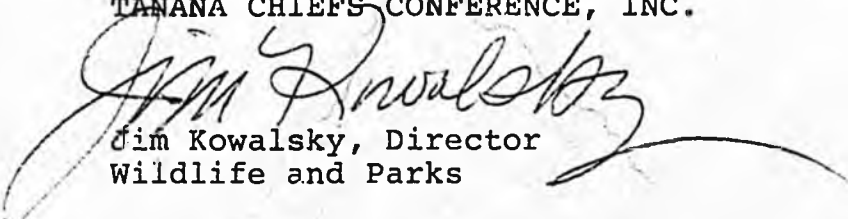
The resolution emphasizes the need to treat subsistence priority as a rural occurrence on a community basis, that is that communities subsist as communities not as individuals.

We also urge action to be taken in this bill this session.

Thank you in advance for any consideration you and the committee hopefully will make of the information set forth in the resolution.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.


Jim Kowalsky, Director
Wildlife and Parks

cc: Rep. Adilheid Herrmann
Rep. Kay Wallis
Rep. John Sund
Rep. David Thompson
Rep. Mike Miller, North Pole
Rep. Bette Cato
Rep. Drew Pearce
Rep. Roger Jenkins
Ted Charles, Director, TCC Tok Subregion

enclosure

JK/kk

TANANA CHIEFS CONFERENCE, INC.

Support for SB 231 and HB 288,
Governor's Subsistence Bill

Resolution No. 85-77

- WHEREAS: the Alaska Supreme Court has recently ruled, in Madison v. Alaska Department of Fish and Game, that the State Board of Fisheries could not distinguish between rural and urban subsistence users until all other uses such as commercial and sport fishing have been eliminated first; and
- WHEREAS: this ruling means that potentially large numbers of urban fishers and hunters will share scarce subsistence resources equally with rural fishers and hunters up to the time that those resources reach a critical level; and
- WHEREAS: this ruling also means that only when such local resources reach a critically low level, and only when all sport and commercial uses thusly are eliminated, can local rural communities be given priority subsistence use of that resource over all other including urban uses; and
- WHEREAS: this ruling fails to fully recognize that Alaska's urban and rural economics, lifestyles, institutions, opportunities for employment, culture, customs and traditions of communitywide sharing greatly differ; and
- WHEREAS: characteristically, rural communities acting together as whole communities have few or no alternatives to the subsistence harvest of locally available resources; and
- WHEREAS: urban communities, as whole communities, have diversified economic opportunities and support systems as alternatives to the subsistence harvest; and

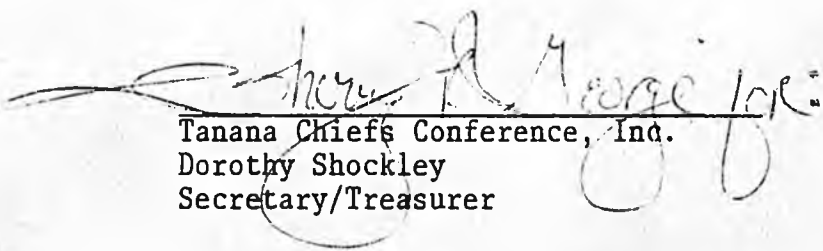
TANANA CHIEFS CONFERENCE, INC.

- WHEREAS: local populations of game and fish cannot support harvests of large numbers of urban subsistence users fishing and hunting alongside, and in competition with, rural subsistence hunters and fishers; and
- WHEREAS: federal law (the Alaska National Interest Lands Conservation Act of 1981) does define subsistence as "rural" in contrast to State law which does not; and
- WHEREAS: Governor Sheffield proposed legislation SB 231 and HB 288 to specify that subsistence users are customary and traditional uses of fish and game made only by rural Alaska residents; and
- WHEREAS: such legislation, if enacted, would essentially resolve the problems created by Alaska's Supreme Court ruling;

BE IT HEREBY RESOLVED that the Board of Directors of the Tanana Chiefs Conference, Inc. supports the proposed legislation SB 231 and HB 288 which would specify that subsistence users are rural users of fish and game resources.

CERTIFICATION

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference, Inc. Board of Directors on March 14, 1985 at Fairbanks, Alaska.


Tanana Chiefs Conference, Inc.
Dorothy Shockley
Secretary/Treasurer

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

APR 04 1985

P. O. Box 215
Cordova, Alaska 99571
Phone (907) 421-8507

House of Representatives and Judiciary

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

I would not like to start by telling you a little about myself and family.

Both my husband and I work on a 128 ft coo picker 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 Hubbard Hann advisory committee in this area, so I am well aware of the problems we have had in the past.

I was on the Fish and Game Advisory Committee, when it was first decided to bring before the Board of Fish naming three user groups Subsistence Personal Use, and Commercial. I 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 Women's Resource Center, which I am a board member of.

My husband has been a Commercial Fisherman since he was 13 years old and he is now 34 years old. Our livelihood depends on fishing, we depend on the Copper River Flats for 85 percent of our living and 15 percent on the Prince William Sound.

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

You see it's quite simple if we fishermen 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 99571
Phone (907) 424 3507

(5)

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

Sincerely,

Joe and Belen Cook



APR 04 1985



RAINBIRD FISHERIES, Inc.

P.O. Box 1065
Cordova, AK. 99574

March 31, 1985

Adelheid Herrmann, Co-Chairman
Richard Shultz, Co-Chairman
House of Representatives Resources
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Sirs:

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

It is most important that this issue be resolved during this Session.

Thank you very much for your efforts.

Very truly yours,

A handwritten signature in cursive script that reads "R. J. Shaw".

R. J. Shaw

APR 04 1985

Box 993

Cordova, Alaska, 99574

March 27, 1985

Dear Representative,

Please take immediate action,
Concerning Senate Bill # 231 or House
Bill # 288.

Unless Fish & Game open 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 withdraw
Senate Bill # 231 so this can be
resolved in time

Thank you,
Rebecca Garland

APR 04 1985

Box 993
Cordova, Al
99574
March 26, 1985

Dear Representative:

I'm writing to you on behalf of the subsistence fishing ordeal. 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 seriously hoping that you'll give the matter at hand some thought and fast action.

Sincerely,
Adam Garland
age 14

APR 02 1985

Box 254
Cordova, Alaska
March 28, 1985

Representative Adelheid Herrmann, Co-Chairman
House of Representatives Resources
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Herrmann;

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 loose their boats and their only means of making a living if they are not allowed to fish (gill-net). 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 and have been residents for over 25 years. This is our only means of employment. We are not young and certainly do not want to loose our boat. We also 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 02 1985

HIGH TIDE SEAFOODS

P. O. Box 1556
VALDEZ, AK 99686

March 29, 1985

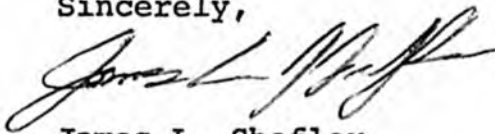
Representative Adelheid Herrmann
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative:

The commercial salmon industry is a major resource of revenue and employment in the State of Alaska. We urge you to support SB #231.

Thank you.

Sincerely,



James L. Shefler
Partner

JLS/jcs

APR 02 1985

ALASKA POWER SERVICES

P.O. BOX 622 • CORDOVA, ALASKA 99574
(907) 424-3300

March 25, 1985

Adelheid Herrmann, Co-Chairman
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Adelheid Herrmann:

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 02 1985

March 28, 1985

Dear Representative Herrmann,

I am a commercial fisherman's wife who is very concerned about the courts interpretation of priority in allocating fish. Giving subsistence users priority over commercial fishermen means financial disaster to us personally and to the future of the Copper River salmon. For the past three years we have worked hard in Prince William Sound and now find ourselves with an investment in a doomed industry.

I am asking for immediate action this session to protect our livelihood. Commercial fishing was under strict regulation by the state board of fish and game. I feel qualifying as a subsistence user should also be strictly limited. Salmon is a fragile resource - mismanagement one year may have lasting effects.

Sincerely,

Jean C Phillips
3308 Lois Dr
Anchorage AK
99503

Dear Sir

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

John Johnson

House Resources Comm.

Adelheid Heermann

Sir,

I ask your support on H.B. ^H288 or
any other legislation that would put the Board
of fish and game back in power to regulate
the resources as they have in the past.

The economy of Cordova and every other
fishing community in the state may well hinge
on this Bill.

Thank you

Jack Keitel
Box 489

Cordova, AK.

APR 02 1985

Dear ~~Mr~~ Representative

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 far as 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 had been done successfully under the Board of Fishes pre-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

99574

MAR 29 1985

I am writing to urge you to pass House Bill # 288 and give the Board of Fisheries the flexibility to manage the resource for the user groups. Thank You.

Jim A. Johnson
Box 1179
CORDOVA, AK. 99574

THEODORE J. ALMASY

Pioneer "Alaskan Woodsman" Guide-Outfitter
McGrath, Alaska 99627

The Tikchik Lakes - The Kuskokwim - The Alaska Range
Trophy Fishing • Trophy Hunting • Recreation & Exploration
Dec. 15, 1984

State of Alaska
Boards of Fisheries & Game
Box 3-2000
Juneau, Alaska 99801

Subject: Regulation Proposal Item 4. (extra sheets as required)

DEFINITION: Subsistence in Alaska today is simply all or that portion of an individual or family unit's living or livelihood that is derived and obtained from land and sea by self-employment through use, utilization and development of available natural resources by Alaska's permanent inhabitants (without regard to race or ancestral heirdity); and, including, but not limited to; agriculture, mining and forest products along with personal harvest of fur, fish and game.

IN SHORT: Self-support by direct acquisition and personal processing and use of Alaska's land and sea natural resources to provide all or most of one's living or livelihood, and with cash flow not involving wages and salaries from this self-employment.

* * * * *

LEGAL BASIS: "GRANDFATHER RIGHTS" established by present day Alaskan inhabitants by and through historic personal use. These rights are not limited to any particular race, but rather belong to an ethnic group in a mixed and integrated society. The U.S. Government, after all, invited foreign immigration, permanent settlement, and encouraged and fostered economic development by these pioneers through use, utilization and development of Alaska's natural resources for more than 100 years; and, while she may have changed the rules and policies with reference to recent and current immigrants - she (and her Colonial Arm - the so-called State of Alaska) are legally duty and honor bound to keep promises and commitments made in the past. Thus, after some 250 years (beginning with the Russian occupation) of foreign immigration, permanent settlement, and racial integration and assimilation both an ethnic group has developed and a way of life evolved in which individual rights cannot be decided nor judged based upon racial nor ancestral heirdity; but must be treated on the basis of members of an ethnic society. We are now aware of many flaws in the Alaska Native Claims Settlement Act, and a major flaw yet to be contested in the courts is based on the Civil Rights of those Alaska Nationals forcefully segregated and disenfranchised because of our race, and thus denied our "equal rights".

IN SHORT: "GRANDFATHER RIGHTS".

* * * * *

DETERMINATION of WHO and WHOM QUALIFIES

WHO IS QUALIFIED? ; All Legal Residents of Alaska whose home and permanent residence is outside of the limits of first and second class cities tied into the integrated highway system and Marine Highway Systems, and who as individuals or family units qualify as subsistence users under the "DEFINITION" and "LEGAL BASIS" as stated.

WHO IS EXCLUDED ? ; All persons whose home and permanent residence is located within the city limits of any First or Second Class City tied into the integrated highway or Marine Highway systems; residents of government (federal or state) owned housing located upon government owned or reserved lands; and, all U.S. Citizen immigrants who may hold Alaska Resident Status under Law, but whom are themselves in Alaska under "labor" or "tour of duty" contracts or agreements on full time wages and/or salaries; and, who are granted and accorded special benefits, privileges, and tax exemptions including "cost of living allowances" by their employer and governments "as an condition of employment" that are not equally granted nor accorded nor available to local permanent inhabitants of Alaska. Such "Residents" cannot claim Subsistence Rights in Alaska.

IMPLIMENTATION

1. (a) For the purpose of implimenting this Section: Each full Game Unit (as they currently exist including all divisions and sub-units) shall henceforth be declared to be also a Subsistance Unit and Unit of Permanent Residence for all legal (one year) Alaska Residents who maintain their home and permanent Post Office address within such Unit's boundaries.

(b) Both Subsistance Rights and Resident Hunting and Fishing Rights (without payment of trophy fees) for all Resident Alaskans shall be limited to (1) Unit only - the Unit of Permanent Residency; and, in order to maintain these rights a party must reside year around in Alaska and not less than six (6) months per year within the boundaries of the Unit for which he claims these rights.

2. All Subsistance Users and legal Residents hunting and fishing outside of their Unit of Permanent Residence shall be deemed to be Trophy Hunting and Sports Fishing and subject to the prevailing trophy fees, but exempt (as Residents) from the Registered Guide Requirement.

3. Trapping is hereby designated as a subsistance right, and trapping is closed except to Subsistance Users.

4. Any Alaskan holding a "Permanent Hunting, Fishing & Trapping License is automatically declared to be a subsistance user and hold Subsistance Rights.

5. That where the taking of certain game animals is restricted by permit that subsistance users within said Game Unit shall have first preference rights to these permits with the general public taking the excess.

Implimentation Continued:

6. Nothing in this or these regulations is intended nor shall prevent immigrant settlers from acquiring Subsistance Rights as an Earned Right so long as they meet the requirements.

* * * * *

END

* * * * *

by Theodore J. Almasy
Theodore J. Almasy



CORDOVA DISTRICT FISHERMEN UNITED

P.O. Box 939

Cordova, Alaska 99574

(907) 421-3177

Representative Adelheid Herrmann,
Co Chairman, Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska

Representative Herrmann,

I am writing to urge you to pass House Bill #288 as quickly as possible. It is most urgent that the flexibility to manage the resources is returned to the Board of Fisheries this year. The Copper River will be hard to manage if the Madison decision stands the way it is now.

A lot of hard work has been accomplished by Fish and Game, PWSAC and the Advisory Board to come up with a management plan for the Copper River. This plan did work and did provide for all the user groups on the Copper River in the form of personal use and Subsistence. That balance to manage and maintain a small sockeye fishing time will further burden the financial stability of Cordova as a whole.

Thank you for your cooperation on this important matter.

Sincerely,

Jerry McCune
Vice President
CDFU

JM/ru

cc Richard Shultz
F. Day Wallis
Bette Cato
Roger Jenkins
Mike W. Miller
Drue Pearce
John Sund
Dave Thompson

LEADERS IN PROTECTING THE HERITAGE OF AMERICAN MOUNTAINEERING FREEDOM

23 March 1985

Representative Richard Shultz
Pouch V
Juneau, Alaska 99811

Subject: Subsistence

Dear Representative Shultz,

Reference subsistence: The Alaskan Alpine Club is appalled by the nature and degree of fallacious information presented to legislators by Governor Sheffield's appointees.

These are the same tactics used by the Native Corporations/ Sierra Club to gain the blackmail Federal subsistence law. It is important that Alaska legislators not tolerate such tactics.

Furthermore, the recommendation of Governor Sheffield's now fully politicized Boards of Game and Fisheries demonstrate a classic case of dishonest politics undermining the achievements of scientific wildlife management in this nation.

Every credible wildlife management agency and organization in the nation is on record as acknowledging that subsistence priorities greatly harm sound biological management of wildlife resources.

If the Alaska State Legislature holds any vestige of honesty, it is inconceivable that Legislators would acquiesce to the same entity which illegally managed the subsistence law amid years of public complaints against that abusive and illegal management.

The self-serving intents of Sheffield administrators are too obvious to later claim any position other than intentional dishonesty, and acquiescence to such.

The subsistence issue CANNOT avoid blowing up in the face of Alaska, not only for Alaskans, but for the witness of the nation.

Its ramifications involve all outdoor users.

Alaska's legislators may not then wish to be identified with the actions that caused such irreparable harm.



23 March 1985
Representative Shultz: Subsistence
page two

Now is the time to demonstrate the honesty and integrity so notably lacking in the imposition of the subsistence scam.

We urge you to address this profound issue with the care and full public participation that it demands.

I must ask: where are the recommendations of Governor Sheffield's Subsistence Task Force?

Like many other Alaskans, who sincerely accepted the merits of that promised Task Force, the Alaskan Alpine Club was waiting to testify before that entity!!!!

Governor Sheffield categorically lied to the public when he used the promise of that Task Force to get elected and gloss over this critical issue. That sham Task Force has branded Sheffield and Butrovitch as contemptable examples of Alaskan government officials.

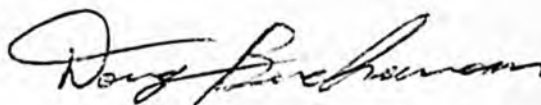
Are the Interior Alaska State Legislators of the same nature, and too cowardous to demand credible results from that Task Force? Are they incapable or unwilling to study the results of this law and hear the people, as Alaskans were led to believe would be done?

I respectfully request answers to these questions from yourself and other interior legislators.

Thank you for considering these views.

And have a pleasant day.

Sincerely,



Doug Buchanan
Executive Director

cc: interior delegation
Governor Sheffield
Mr. Butrovitch
Board of Game and Fisheries
news media

GREGORY FRANK COOK

ATTORNEY AT LAW

P.O. Box 618, Douglas, Alaska 99824

Residence (907) 586-9719

Admitted to Practice in Alaska and Oregon

Representative Dick Shultz
Chairman, House Resources Committee
Pouch V
Juneau, Alaska 99811

March 26, 1985

Dear Representative Shultz,

This is in response to your request for a written memorandum of the oral testimony I presented before the House Resources Committee on March 25, 1985 regarding subsistence legislation.

In dealing with the subsistence issue, the Legislature should bear in mind two key provisions of the Alaska Constitution.

"Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use."
(Article VIII, Sec. 3.)

"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."
(Article VIII, Sec. 17.)

Recently introduced legislation (HB 288; SB 231) should be carefully assessed in the light of these Constitutional provisions.

Before adopting any subsistence legislation, the Legislature would be wise to carefully formulate the specific goals it seeks to achieve. Also, it would be prudent to specify the tasks to be delegated to the Board of Fisheries and Board of Game.

Once its goals are made clear, the Legislature's purposes should be put into draft legislation. A broad variety of public comment, together with a range of legal opinions, should be studied until a political resolution is reached that does not violate our state Constitution.

Thank you.

Sincerely,



Gregory F. Cook

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
1117 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
907-456-2899

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE (907) 465-3763
HESS COMMITTEE
(907) 465-3834
HOME 907-780-6027



Senate

March 26, 1985

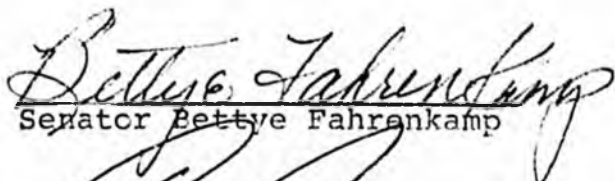
Representative Richard Shultz
Chairman, House Resources Committee
Pouch V
Juneau, AK 99811


Dear Dick:

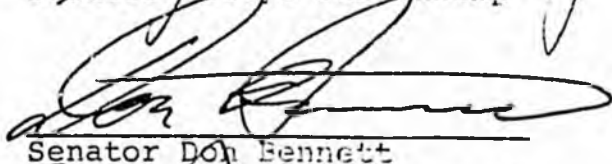
Because of the ramifications of the recent Supreme Court decision in Madison vs. the State of Alaska, the Governor has introduced legislation to establish a personal use fishery in law and further broaden the definition of "subsistence user" to mean customary and traditional uses by rural Alaska residents.

HB 288 currently before the House Resources Committee affects many of our constituents. Last year many of our Interior Delegation teleconferences were dominated by those interested in this issue. Now, once again our constituents are requesting hearings before the Legislature takes any final action on the Governor's proposal. We respectfully request that you hold hearings on this bill in those communities most affected, including Fairbanks.

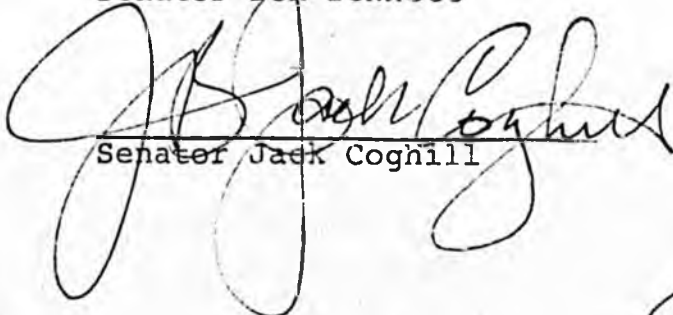
Thanking you in advance for your consideration.


Senator Bettye Fahrenkamp

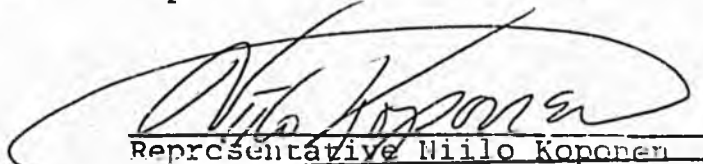

Representative John Ringstad

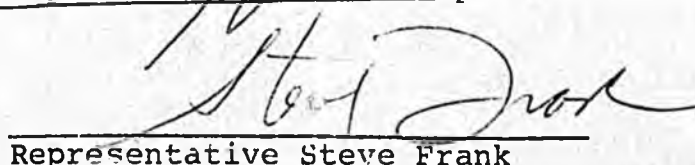

Senator Don Bennett


Representative Mike Davis


Senator Jack Coghill


Representative Mike Miller


Representative Niilo Koponen


Representative Steve Frank

APR 02 1985

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 Washington 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 blatant 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

Dear Rep. Cheney

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. gillnetters 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, if 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 ^{favor} ~~am in favor of~~ ~~subsidizing~~ ~~the~~ ~~fishery~~ ~~industry~~ ~~for~~ ~~those~~ ~~who~~ ~~need~~ ~~it.~~
Have 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.

MAR 29 1985

Adelheid Herrmann, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Ms. Herrmann,

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

Betty J. York

*Betty York
Box 835
Cordova 99574*

MAR 29 1985


Adelheid Herrmann, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Ms. Herrmann,

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 50% 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


Tom Johnson
Box 835
Cordova



Box 1210 602 Railroad Avenue
Cordova, Alaska 99574
Phone: (907) 424-3237
or 424-3238

"The Friendly City"

March 20, 1985

MAR 23 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 Bette Cato
Pouch V
Juneau, AK 99811

Dear Representative Cato:

On March 3, 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

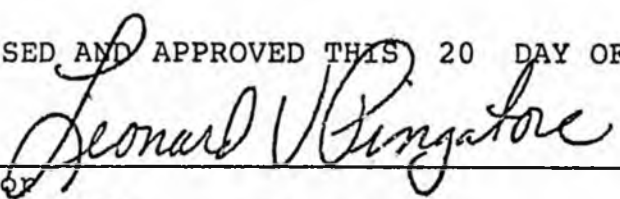
WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and non-subsistence fishery issues, and

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

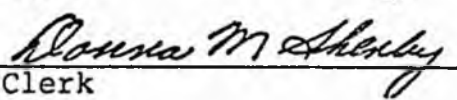
WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal use, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource.

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

Richard Shultz, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Shultz,

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

Betty J. York

Richard Shultz, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Shultz,

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 50% 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



Adelheid Herrmann Co-Chairman
(John Gregory
Box 342 - Cordova 99574)

MAR 29 1985

PAGE I

Addressing House of Representatives Resources

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 Fisherman, and Copper River Valley resident 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

Sincerely,

John C. Gregory

John C. Gregory

Copper River
Salmon Drift
Gillnetter

"NAIAD"



Box 1210 602 Railroad Avenue
Cordova, Alaska 99574
Phone: (907) 424-3237
or 424-3238

"The Friendly City"

March 20, 1985

MAR 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 Bette Cato
Pouch V
Juneau, AK 99811

Dear Representative Cato:

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.

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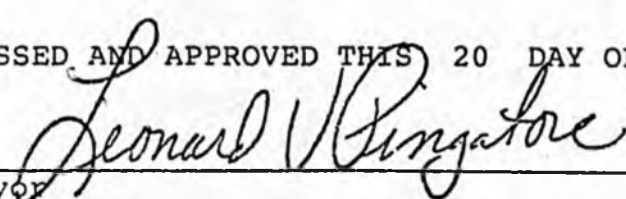
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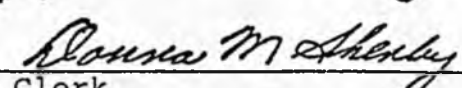
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Mayor



City Clerk

Richard Shultz, Co-Chairman

PAGE I

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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 blantly waste them! I myself eat a lot of Salmon annually. Including Canning, Smoking, and gifts to relatives,

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Fishing Vessel

—

Sincerely,

John C. Gregory

—

John C. Gregory

Copper River
Salmon DRIFT
GILLNETTER

Richard Shultz, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Shultz,

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 50% 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.

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Richard Shultz, Co-Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

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Thank You for your time and effort.

Sincerely
Betty J. York

Betty J. York

I am writing to urge you to pass House Bill #288 and give the Board of Fisheries the flexibility to manage the resource for the user groups. Thank You.

Jim Johnson
Box 1179
CORDOVA, AK. 99574

Dear Rep. Schumery

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. gillnetters 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, if 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~~^{favor} ~~strongly~~ ~~in~~ ~~favor~~ ~~of~~ ~~the~~ ~~subsidy~~ ~~program~~ ~~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 futures of so many hang in the balance.

Sincerely
Carol Emmett
Bartender
Cordova.

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4453/4530

2201 ROOSEVELT DRIVE
ANCHORAGE, ALASKA 99503
(907) 248-4234



MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
HOUSE STATE AFFAIRS COMMITTEE

Representative Roger Jenkins

DISTRICT 11

MEMORANDUM

TO: Representative Richard Shultz
Chairman, House Resources Committee

FROM: Representative Roger L. Jenkins
Representative Drue Pearce

Handwritten signatures of Representative Roger L. Jenkins and Representative Drue Pearce.

DATE: March 27, 1985

SUBJECT: Information Requested for HB 288

The following information is requested to aid in making a sound longlasting decision on the Subsistence House Bill 288:

1. During the next Resource Committee hearing on HB 288 request the prevailing attorneys, Martin Freidman and Chuck Robinson to give their interpretation of the Madison Case decision.
2. Ask the Attorney General's Office to define the following words:
 - a) rural
 - b) customary
 - c) traditional
3. What is the Attorney General's Office opinion on the ability of hand held hook and line fishing being used for subsistence?
4. Since a large number of Alaskans do not understand the full impact of HB 288 that public hearings be held at least in Anchorage, Fairbanks, and maybe other areas of Alaska

Only after we acquire and review the preceding information can we make a responsible decision.

Thank you.

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
1117 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
907-456-2899

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE (907) 465-3763
HESS COMMITTEE
(907) 465-3834
HOME 907-780-6027



Senate

March 26, 1985

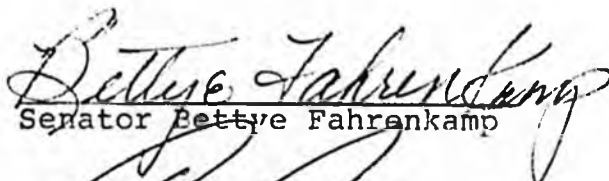
Representative Richard Shultz
Chairman, House Resources Committee
Pouch V
Juneau, AK 99811

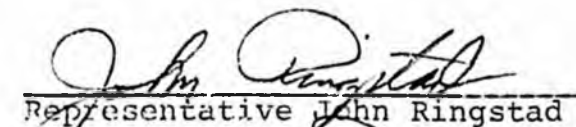
Dear Dick:

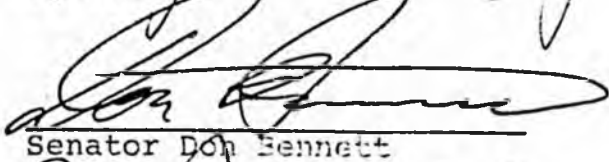
Because of the ramifications of the recent Supreme Court decision in Madison vs. the State of Alaska, the Governor has introduced legislation to establish a personal use fishery in law and further broaden the definition of "subsistence user" to mean customary and traditional uses by rural Alaska residents.

HB 288 currently before the House Resources Committee affects many of our constituents. Last year many of our Interior Delegation teleconferences were dominated by those interested in this issue. Now, once again our constituents are requesting hearings before the Legislature takes any final action on the Governor's proposal. We respectfully request that you hold hearings on this bill in those communities most affected, including Fairbanks.

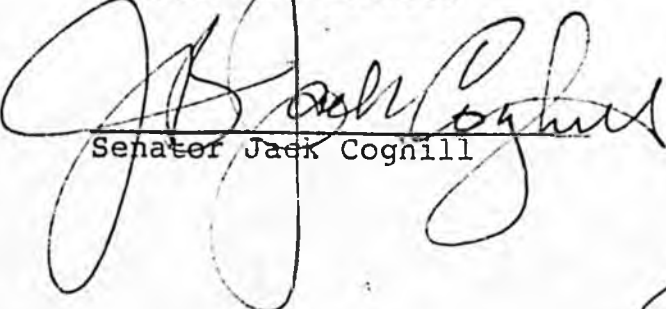
Thanking you in advance for your consideration.

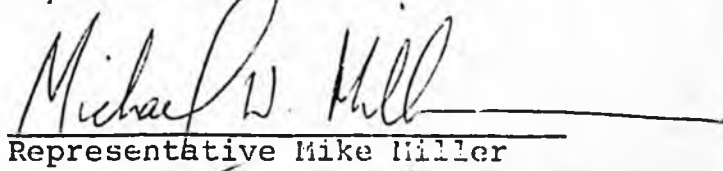

Senator Bettye Fahrenkamp

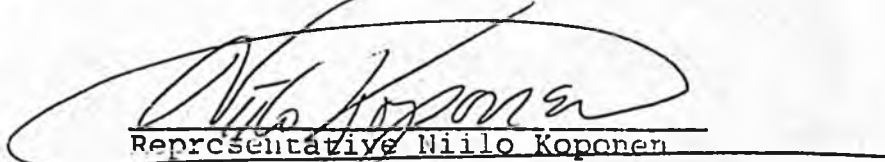

Representative John Ringstad

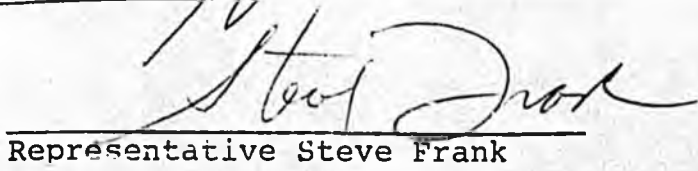

Senator Don Bennett


Representative Mike Davis


Senator Jack Cognill


Representative Mike Miller


Representative Niilo Koponen


Representative Steve Frank

GREGORY FRANK COOK

ATTORNEY AT LAW

P.O. Box 618, Douglas, Alaska 99824

Residence (907) 586-9715

Admitted to Practice in Alaska and Oregon

Representative Dick Shultz
Chairman, House Resources Committee
Pouch V
Juneau, Alaska 99811

March 26, 1985

Dear Representative Shultz,

This is in response to your request for a written memorandum of the oral testimony I presented before the House Resources Committee on March 25, 1985 regarding subsistence legislation.

In dealing with the subsistence issue, the Legislature should bear in mind two key provisions of the Alaska Constitution.

"Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use."
(Article VIII. Sec. 3.)

"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."
(Article VIII, Sec. 17.)

Recently introduced legislation (HB 288; SB 231) should be carefully assessed in the light of these Constitutional provisions.

Before adopting any subsistence legislation, the Legislature would be wise to carefully formulate the specific goals it seeks to achieve. Also, it would be prudent to specify the tasks to be delegated to the Board of Fisheries and Board of Game.

Once its goals are made clear, the Legislature's purposes should be put into draft legislation. A broad variety of public comment, together with a range of legal opinions, should be studied until a political resolution is reached that does not violate our state Constitution.

Thank you.

Sincerely,



Gregory F. Cook



CORDOVA DISTRICT FISHERMEN UNITED

P.O. Box 939

Cordova, Alaska 99574

(907) 424-3177

Representative Adelheid Herrmann,
Co Chairman, Resources Committee
Alaska State Legislature
Pou... V
Juneau, Alaska

Representative Herrmann,

I am writing to urge you to pass House Bill #288 as quickly as possible. It is most urgent that the flexibility to manage the resources is returned to the Board of Fisheries this year. The Copper River will be hard to manage if the Madison decision stands the way it is now.

A lot of hard work has been accomplished by Fish and Game, PWSAC and the Advisory Board to come up with a management plan for the Copper River. This plan did work and did provide for all the user groups on the Copper River in the form of personal use and Subsistence. That balance to manage and maintain a small sockeye fishing time will further burden the financial stability of Cordova as a whole.

Thank you for your cooperation on this important matter.

Sincerely,

Jerry McCune
Vice President
CDFU

JM/ru

cc Richard Shultz
F. Day Wallis
Bette Cato
Roger Jenkins
Mike W. Miller
Drue Pearce
John Sand
Dave Thompson

THEODORE J. ALMASY

Pioneer "Alaskan Woodsman" Guide-Outfitter
McGrath, Alaska 99627
The Tikchik Lakes - The Kuskokwim - The Alaska Range
Trophy Fishing - Trophy Hunting - Recreation & Exploration
Dec. 15, 1984

State of Alaska
Boards of Fisheries & Game
Box 3-2000
Juneau, Alaska 99801

Subject: Regulation Proposal Item 4. (extra sheets as required)

DEFINITION: Subsistence in Alaska today is simply all or that portion of an individual or family unit's living or livelihood that is derived and obtained from land and sea by self-employment through use, utilization and development of available natural resources by Alaska's permanent inhabitants (without regard to race or ancestral heirdity); and, including, but not limited to: agriculture, mining and forest products along with personal harvest of fur, fish and game.

IN SHORT: Self-support by direct acquisition and personal processing and use of Alaska's land and sea natural resources to provide all or most of one's living or livelihood, and with cash flow not involving wages and salaries from this self-employment.

* * * * *

LEGAL BASIS: "GRANDFATHER RIGHTS" established by present day Alaskan inhabitants by and through historic personal use. These rights are not limited to any particular race, but rather belong to an ethnic group in a mixed and integrated society. The U.S. Government, after all, invited foreign immigration, permanent settlement, and encouraged and fostered economic development by these pioneers through use, utilization and development of Alaska's natural resources for more than 100 years; and, while she may have changed the rules and policies with reference to recent and current immigrants - she (and her Colonial Arm - the so-called State of Alaska) are legally duty and honor bound to keep promises and commitments made in the past. Thus, after some 250 years (beginning with the Russian occupation) of foreign immigration, permanent settlement, and racial integration and assimilation both an ethnic group has developed and a way of life evolved in which individual rights cannot be decided nor judged based upon racial nor ancestral heirdity; but must be treated on the basis of members of an ethnic society. We are now aware of many flaws in thw Alaska Native Claims Settlement Act, and a major flaw yet to be contested in the courts is based on the Civil Rights of those Alaska Nationals forcefully segregated and disenfranchised because of our race, and thus denied our "equal rights".

IN SHORT: "GRANDFATHER RIGHTS".

* * * * *

DETERMINATION of WHO and WHOM QUALIFIES

WHO IS QUALIFIED? ; All Legal Residents of Alaska whose home and permanent residence is outside of the limits of first and second class cities tied into the integrated highway system and Marine Highway Systems, and who as individuals or family units qualify as subsistence users under the "DEFINITION" and "LEGAL BASIS" as stated.

WHO IS EXCLUDED ? ; All persons whose home and permanent residence is located within the city limits of any First or Second Class City tied into the integrated highway or Marine Highway systems; residents of government (federal or state) owned housing located upon government owned or reserved lands; and, all U.S. Citizen immigrants who may hold Alaska Resident Status under Law, but whom are themselves in Alaska under "labor" or "tour of duty" contracts or agreements on full time wages and/or salaries; and, who are granted and accorded special benefits, privileges, and tax exemptions including "cost of living allowances" by their employer and governments "as an condition of employment" that are not equally granted nor accorded nor available to local permanent inhabitants of Alaska. Such "Residents" cannot claim Subsistence Rights in Alaska.

IMPLEMENTATION

1. (a) For the purpose of implimenting this Section: Each Full Game Unit (as they currently exist including all divisions and sub-units) shall henceforth be declared to be also a Subsistence Unit and Unit of Permanent Residence for all legal (one year) Alaska Residents who maintain their home and permanent Post Office address within such Unit's boundaries.

(b) Both Subsistence Rights and Resident Hunting and Fishing Rights (without payment of trophy fees) for all Resident Alaskans shall be limited to (1) Unit only - the Unit of Permanent Residency; and, in order to maintain these rights a party must reside year around in Alaska and not less than six (6) months per year within the boundaries of the Unit for which he claims these rights.

2. All Subsistence Users and legal Residents hunting and fishing outside of their Unit of Permanent Residence shall be deemed to be Trophy Hunting and Sports Fishing and subject to the prevailing trophy fees, but exempt (as Residents) from the Registered Guide Requirement.

3. Trapping is hereby designated as a subsistence right, and trapping is closed except to Subsistence Users.

4. Any Alaskan holding a "Permanent Hunting, Fishing & Trapping License is automatically declared to be a subsistence user and hold Subsistence Rights.

5. That where the taking of certain game animals is restricted by permit that subsistence users within said Game Unit shall have first preference rights to these permits with the general public taking the excess.

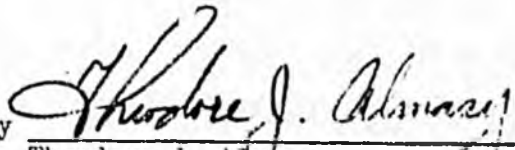
Implimentation Continued:

6. Nothing in this or these regulations is intended nor shall prevent immigrant settlers from acquiring Subsistance Rights as an Earned Right so long as they meet the requirements.

* * * * *

END

* * * * *

by 
Theodore J. Almsy

Dear Sir

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

John Johnson

3/23/85

Representative Shultz

Pouch V

Juneau Ak 99811

Dear Representative Shultz

I am in shock that the Subsistence law could be passed as is. Please remit the issue to more public hearings. The future of my children's Alaska is at stake. Thanks

Michael R. Penn
292 Narraw View Lane
Fairbanks, Alaska 99701

P.S. Don't let it pass.

March 23/85

Tina M. Simmons
Box 80303
College, AK 99708

Representative Shultz
Pouch V
Juneau, Alaska 99811

Dear Representative Shultz,

I am opposed to Governor Sheffield's
subsistence law.

Sincerely

Tina Simmons

Tina Simmons

Dear Rep. Richard Shuts.

Please hold public hearings

in Fols on the substance law

before acting on it.

Thank you

Tori Petersen

1153 Donna Dr

Fols, AK 99701

P.O. Box 1142
Cordova, Alaska 99574
March 24, 1985

House of Representatives
Resources Committee
Alaska State Legislature
Fouch V
Juneau, Alaska 99811

Dear Sirs,

As a resident of Cordova, Alaska, and a Prince William Sound Drift Gillnet permit holder I am urging your support of HB #288 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. Max

Karol R. Max

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 Dumas

March 25

Dear Mr. Schultz,

I'm writing to urge
you to please pass
House Bill 288 and
give to the Board of
Fisheries the flexibility
to manage the resource
for the user groups.

Thank you,
Mike McKinzie

REP. SHULTZ

THIS LETTER IS IN SUPPORT OF SENATE BILL #231
AND HOUSE BILL #288 WHICH WILL SAVE THE COPPER
RIVER FISHERY.

I MOVED TO CORDOVA TOO LATE TO BE ELIGIBLE
FOR A LIMITED ENTRY PERMIT ON THE POINT
SYSTEM. FOR THE PAST 10 YEARS I HAVE FISHED
FULL-TIME AS A DECKHAND ON CRAB & SALMON
BOATS WHILE ALSO RUNNING MY SMALL BOAT
ON OTHER HARVESTS.

AS OF LAST YEAR MY HOUSE WAS NEARLY PAID
~~FOR~~ FOR AND I COULD INVEST IN A P.W.S GILLNET
PERMIT (VIA A STATE LOAN). IF I AM NOT ALLOWED
TO FISH THE COPPER RIVER RED SALMON TEN
YEARS OF EFFORT, IN ACCORDANCE WITH
LEGISLATIVE POLICY, WILL HAVE BEEN WASTED.

CRAB & OTHER FISHERIES AT THIS POINT ARE NOT
LUCRATIVE ENOUGH TO MAKE PAYMENTS. WITHOUT
THE GILLNET FISHERY I WOULD BE FORCED TO
LEAVE CORDOVA.

AFTER WORKING FOR 10 YEARS, IN COMPLIANCE
WITH LEGISLATIVE POLICY, TO HAVE ALL I'VE
WORKED FOR THROWN OUT BY LEGISLATIVE
ACTION WOULD ~~BE~~ LEAVE ME WITH A
DEEP RESENTMENT A LOSS OF RESPECT FOR
THOSE LAWS I HAVE TRIED TO OBEY AND
RESPECT.

SINCERELY

LYNN POTTER - COMM. FISHERMAN
CORDOVA.

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

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
ANCHORAGE, ALASKA 99511
007. 445. 1400

To: Resources
Room 118 CAPITOL

Ms. Hermann, Mr. Shultz +
COMMITTEE MEMBERS,

I AM A Cordova, Alaska resident.
AT present, I have all my personal
FUNDS TIED UP AND HANGING IN THE
BALANCE OF FURTHER DECISIONS, FOLLOW
THE INITIAL decision ON SUBSTANCE
WHICH HAS BROUGHT SUCH CHAOS TO
OUR COMMUNITY. THE LAST INDUSTRY
OF Cordova BEING CHOKEED OFF AT
THE WHIM OF ONE SUPREME COURT
decision.

I AM AT THE MERCY, FINANCIALLY
AT A CRITICAL MOMENT, HAVING

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

HEALTHY STATE CAPITAL
BUREAU ALASKA 09811
907-465-1810

invested properly & safely in
A viable Limited entry fishery,
which another ARM OF STATE
Government - The Dept. of Fish & Game
has worked hard & well to manage
and the results are beginning to show
Suddenly - this is all in jeopardy
and the future of an Alaskan town
with the fishermen who've worked
& died on these coasts for so
many years will suffer a dismal
& degrading end.

I beg that your committee will find
solutions acceptable to all Alaskans
in this matter. Give the working person -
the fisherman - the respect he has earned
over the long history of fishing in Alaska

Dennis McGuire

My name is Roy Eats. I was
born here in Cushing.

I believe that our renewable
resources can be shared equally, by
all of the people of Alaska. This can
be done only if the Board of Fish &
Game are allowed to do the job they
are best qualified for.

As a lifelong fisherman, I can see
no feasible way to allow any sensible
management under present conditions.

Allowing unlimited harvesting means the
end of our fisheries - and eventually, our
salmon. This is cold reality, as things
stand now.

Please pass SB 231 and House
bill 288. Without it, Cordova will just
about cease to exist.

Thank you
Roy Eats
Box 1307
Cushing, Alaska

To: House Resources Committee

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

Date: March 26, 1985

Re: HB 288, Subsistence priority

Yesterday, in Anchorage, I attended the Joint Boards of Fisheries and Game hearing on the Madison case. During the hearing the winning lawyers on the Madison case offered their advise--free of charge--to the boards. I fear the boards may not accept the offer.

These two lawyers, Martin Freidman and Chuck Robinson, have a very different interpretation of the subsistence priority law than does the AG office. Using that interpretation Freidman and Robinson have not only won the Madison case before the state's supreme court. Evidently they have also won other cases against the state regarding this issue. Yet, for some reason, the administration continues to listen only to the AG office and not to the "winners".

I urge your committee to receive substantial input from Mr. Friedman and Mr. Robinson before taking any action on HB 288. It would be nice if they could make a 10 minute presentation at the April 8 teleconference so that all of us who are interested in the issue might benefit from their input.

After speaking personally to Mr. Freidman, I am convinced that the impact upon Cordova commercial fishing interests has been misrepresented by the AG office. The boards may, right now, regulate and restrict total subsistence harvest of a resource to the customary and traditional level of that subsistence use. For example, if the traditional level of subsistence harvest at Chitina is 60,000 sockeye, then any fish available for harvest above that 60,000 quota can be allocated to recreation, sport or commercial users in any manner the board desires.

This is not the same as saying all Chitina subsistence users get the traditional "bag limit" of 300 fish. Rather, the traditional total harvest level (60,000) must be maintained. As the court opinion makes clear on both pages 17 and 19, the priority goes for the customary and traditional use, not for the user.

The priority language as written in AS 16.05.251(b) and .255(b) needs to be rewritten and the intent of the legislature made clear. The original bill was passed in haste back in 1978. The language is vague and confusing; I am concerned about parts of the legislative history. We don't need to do this right now.

The Boards of Fisheries and Game are dealing with an incredibly difficult situation--not made easier by the fact that virtually all of them are newly appointed, with the notable exception of Sydney Huntington.

A problem exists--not necessarily the one described by the AG office. Passing the Governor's bill is no solution. It would merely create more tension among state residents.

Mary Bishop



Box 1210 602 Railroad Avenue
Cordova, Alaska 99574
Phone: (907) 424-3237
or 424-3238

"The Friendly City"

March 22, 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

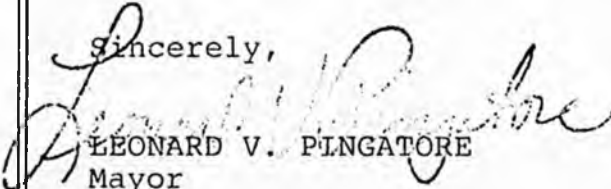
Chairman, House Resources Committee
State of Alaska

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 colleagues and the City Council and all Cordovans 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

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 rest actively in non-subsistence uses, and

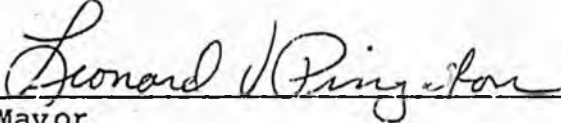
WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and non-subsistence fishery issues, and

WHEREAS, the economy of the City of Cordova is critically dependent on the Copper River fishery, as is the State of Alaska dependent on the revenue and employment resulting from the commercial and sport fisheries, and

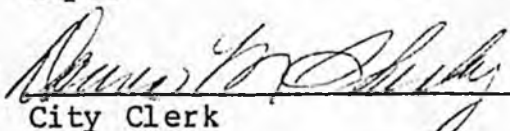
WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal use, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource,

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 20th DAY OF March, 1985.



Mayor



City Clerk



Grand Camp
Alaska Native Brotherhood

320 West Willoughby Avenue
Juneau, Alaska 99801
(907) 586-2049

1984 Officers
Grand President ANB
Ronald D. Williams
1st Vice President
William Thomas
2nd Vice President
James Martinez
Secretary
Albert Kookesh
Treasurer
Paul Young
Sergeant-At-Arms
Lawrence Sweet
Grand President ANS
Eihel Lund

August 16, 1984

Honorable Donald W. Collinsworth
Commissioner
Alaska Department of Fish & Game
Post Office Box 3-2000
Juneau, Alaska 99802

Dear Commissioner Collinsworth:

There is some confusion among the people of Southeast Alaska regarding the Personal Use fishing category, and its interaction with subsistence law. It would be much appreciated if you could clarify the situation by providing answers to a series of questions.

In an effort to avoid a major confrontation these questions and your responses will be printed in the SEALASKA Shareholder, a monthly publication which goes out to the 16,000 + shareholders. We feel that if our constituents are informed they are less likely to react to some of the letters to the editor(s) appearing frequently in Alaska Newspapers.

Please provide answers to the following questions:

1st ANB Grand Presidents
Dr. Alfred Widmark
Patrick J. Paul
Thomas Jackson

John Hope
Frank Gies
Dr. Walter Sobotoff

Richard Stitt
Steven V. Holch
Nelson D. Frank

Frank O. Williams
Herbert Hope
Robert R. Martin

Roy Peratrovich, Grand President Emeritus
Dr. Cyrus Peck, Sr. Grand Secretary Emeritus
Dr. Mildred Sparks, ANS Grand President Emeritus

- 1 ° "Personal use fishing" is not a category of fishing mentioned in the Alaska Statutes. Could you please explain the origin of this category of fishing?
- 2 ° Is there any foundation to concerns that personal use fishing could jeopardize subsistence fishing by establishing a new and competing use group?
- 3 ° What is the relative priority that personal use fishing has with relation to subsistence fishing, commercial fishing, and sport fishing?
- 4 ° Are there any Personal Use regulations that cover: waterfowl, shellfish, aquatic plants, fur bearing animals, deer, moose, wild roots, berries and vegetables, bottom fish and trout species?
- 5 ° Can any person participate in personal use fishing? In other words, are there any eligibility requirements?
- 6 ° What are the reporting requirements for Personal Use fishing? for Game?
- 7 ° Can people engage in personal use fishing if the Board of Fisheries has not authorized personal use fishing by regulation?
- 8 ° What seasons have been instituted by regulation on salmon, halibut and other bottom fish, wild game, waterfowl?

- 9 ° Will Personal Use cause a reduction of allocation for Subsistence?
- ° Are there areas that are open to Personal Use, but closed to Subsistence?
- 11 ° Will the advisory councils/committees have a role in Personal Use in their areas, and of the region?
- 2 ° What is the difference between Personal Use and Subsistence? Sports?
- 13 ° Since 1982, what has been the annual take of salmon in the Southeast in the following categories? Commercial, Sports, Subsistence, Personal Use.
- ° Is there a limit for fish taken for Personal Use? Game? Waterfowl?

Commissioner, so often correct information can eliminate misunderstandings and problems before they begin. We will appreciate your help by responding to the above questions, and done so timely for this being published.

Thank you in advance for your cooperation.

Sincerely,

ALASKA NATIVE BROTHERHOOD
RONALD D. WILLIAMS
GRAND PRESIDENT

BY: *Ronald Williams*

Chairman ANB
Legislative Affairs Committee

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4100

OFFICE OF THE COMMISSIONER

September 6, 1984

Mr. Robert Willard, Chairman
Legislative Affairs Committee
Alaska Native Brotherhood
320 West Willoughby Avenue
Juneau, Alaska 99801

Dear Mr. Willard:

Thank you for your August 16, 1984, letter regarding the personal use fishing category. I am pleased to have this opportunity to help clarify this topic for your shareholders. Since you plan to run my responses in your newsletter, perhaps it would be best to answer the questions in the order you presented.

1. Before 1978, "subsistence fishing" was defined as fishing with a net for personal use, and "sport fishing" was defined as fishing with rod and reel for personal use. Thus, the difference between "subsistence" and "sport" fishing was based on the type of gear used.

After the state subsistence law was passed in 1978, subsistence fishing was defined differently. It was no longer defined in terms of "personal use," but rather, in terms of "subsistence uses." In 1978, the legislature also enacted a definition of subsistence uses which hinged upon "customary and traditional uses."

The other important change brought about by the state subsistence law was that before 1978, the Board of Fisheries could authorize subsistence fisheries at its discretion. Since 1978, the board has been required to authorize subsistence fishing if subsistence uses have been associated with a particular fish stock, unless the sustained yield of that stock would be jeopardized by fishing. Additionally, if fishing must be restricted to protect a certain fish stock, sport, commercial, and personal use fisheries must be curtailed before the subsistence harvest could be cut back.

As the Boards of Fisheries and Game began to implement the subsistence law, they developed a FAC 99.010 -- a regulation which interprets the statute. This regulation

statutory priority. It is up to the board to allocate reasonably between these three categories.

4. So far the Fisheries Board has established personal use salmon fisheries for the Copper River, Cook Inlet, and Bristol Bay. As the board applies the subsistence criteria to more and more fisheries, they will probably continue to create personal use fisheries. The Game Board has not established a personal use hunting category.
5. Unlike subsistence fisheries, where eligibility hinges on the board's eight criteria, there are no special eligibility requirements for personal use fisheries other than general requirements -- for finfish, a resident Alaska sport fishing license and for aquatic plants or shellfish, a resident or non-resident Alaska sport fishing license.
6. Reporting requirements for personal use fisheries are set by the board when each fishery is established and are generally similar to subsistence fishing reporting requirements.
7. No one may legally fish unless the board has authorized the fishery by regulation.
8. In southeastern Alaska, the board has not yet established personal use fisheries. As mentioned above, so far personal use fisheries have only been authorized for salmon in Bristol Bay, Cook Inlet, and the Copper River. As noted above, the Game Board has never established a "personal use" hunting category.
9. The subsistence law clearly mandates that where harvestable surpluses occur, the board must provide for subsistence uses first. Likewise, when the harvestable surplus is not great enough to satisfy all uses, subsistence uses are the last to be cut back. Therefore, under the law, subsistence allocations could not be reduced to protect personal use allocations.
10. There are areas open for personal use fisheries that are not open for subsistence fishing. For example, in Cook Inlet, the board found that only the communities of Tyonek, English Bay, and Port Graham met the criteria set out for subsistence fisheries. Since no other communities qualified for subsistence fisheries, the board used the personal use category to allow historical non-commercial net fisheries to continue in areas where subsistence fisheries are no longer authorized. Anyone with an Alaska resident sport fish license may participate, including residents of Tyonek, English Bay, and Port Graham.

11. Advisory committees and regional councils always play an important role in the regulatory process and we certainly hope that they will continue to do so. The information they provide the board is critical to the board's ability to analyze regulatory proposals relating to all fishing--subsistence, commercial, sport, and personal use.
12. The primary difference between subsistence and personal use is that subsistence uses are defined as customary and traditional uses and must be authorized, with a priority as necessary. Authorizing personal use and sport fishing is left to the board's reasonable discretion and no statutory priority applies. Sport fishing is restricted to hook and line gear attached to a pole, whereas personal use fishing primarily includes nets.
13. The annual southeast salmon catch for 1982 and 1983 is as follows (there are no personal use salmon fisheries in Southeast):

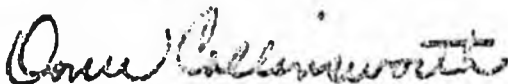
	<u>COMMERCIAL</u>	<u>SPORT</u>	<u>SUBSISTENCE</u>
1982	29,536,800	138,486	40,180
1983	42,202,700	138,510	not available

14. The board sets bag and possession limits for personal use fisheries as they are established or modified just as it does for sport and subsistence fisheries. The Game Board has not established a personal use hunting category.

I hope that these responses will help your readers understand the personal use category. While it is a new term, it simply describes fisheries that have long been conducted, but which no longer fit under the 1979 definition of subsistence.

Please let me know if my staff and I can be of any further assistance. We greatly appreciate your efforts to help people better understand fish and game regulations.

Sincerely,



Don W. Collinsworth
Commissioner



ALASKA OUTDOOR COUNCIL, INC.

3780 McGINNIS DR. JUNEAU, AK 99801
(907) 789-3450

March 5, 1985

PRESIDENT
Rupert Andrews
9416 Long Run Drive
Juneau, AK 99801
(907) 789-7122

REGIONAL VICE-PRESIDENT
Lyle Carlson
Box 2741
Fairbanks, AK 99707
(907) 452-3498

REGIONAL VICE-PRESIDENT
Robert Rausch
P.O. Box 2662
Juneau, AK 99803
(907) 789-3764

REGIONAL VICE-PRESIDENT
Ron Swanson
3417 Kallian
Eagle River, AK 99577
(907) 694-9564

TREASURER
Ed Grasser
Box 1350
Palmer, AK 99645
(907) 745-3772

SECRETARY
Sam Harbo
P.O. Box 80522
Fairbanks, AK 99708
(907) 452-7815

DIRECTOR-AT-LARGE
Warren Hofflich
6901 Tall Spruce Dr.
Anchorage, AK 99502
(907) 243-4790

Representative Richard Shultz
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: Possible Amendment to 1978 Subsistence Law


Dear Representative Shultz:

This letter is written because our Executive Director was recently advised that there may be an effort to amend the 1978 subsistence law and that effort may be tailored to accomplish those amendments with little or no public hearings.

We understand that if an effort to amend the law is offered this year, it will be to permit the Alaska Boards of Fish and Game to discriminate against individuals who reside in a community defined as "urban".

The purpose of this letter is to make it as clear as possible that we believe the 1978 subsistence law should not be amended in the absence of committee hearings which are open to the public, including hearings which involve teleconferences. In other words, public participation should be permitted.

Sincerely,


LYLE R. CARLSON
Vice-President Interior Region

REPRESENTATIVE
BEN GRUSSENDORF

P O Box 926
SITKA, ALASKA 99835
(907) 747-8458

RULES COMMITTEE
LEGISLATIVE COUNCIL

DISTRICT 3
ELFIN COVE
PELICAN
PORT ALEXANDER
SITKA
TENAKEE

Alaska State Legislature



House of Representatives
SPEAKER OF THE HOUSE

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 485-3824
(907) 465-3720

PRESS RELEASE #7

March 12, 1985

COMMENTS ON SUBSISTENCE BY REP. BEN GRUSSENDORF

Today the Governor introduced a proposed remedy for the recent court action on subsistence. We now have before us an unexpected, undiscussed issue which requires us to proceed carefully, calmly and constructively.

It appears that the court decision, unless remedied this spring, could cause significant disruption in the livelihood of thousands of Alaskans. Not only subsistence users, but also sport and commercial fishermen, and big game guides could be very directly and deeply impacted. The court decision also raises the old and unwelcome issue of federal management of Alaska's fish and game. But, with appropriate action by the Legislature, these potential impacts can be minimized, if not avoided altogether.

We will begin by gathering basic facts and clearly identifying issues. We will also evaluate the immediate and longterm impacts on all the resource users. We recognize that there may be differing perspectives and perhaps competing concerns.

Throughout our discussions, we will seek a solution which recognizes the importance of subsistence fishing and hunting in our rural areas, and provides for the needs of personal users, guides, sportsmen and commercial groups as well.

We will provide, of course, for extensive public comment and, hopefully, at the same time, provide a forum for public understanding of what is really at stake in our deliberations. We will seek throughout this process to work on the basis of facts, not opinions; on the basis of reason, not emotion. Our goal will be to minimize any disruptions this unexpected and largely unwelcome change might cause. Only after fact-finding and public input will we decide what constitutes positive, reasonable action on our part.

THE CHITINA DIPNETTERS ASSN.

1002 PIONEER ROAD
FAIRBANKS, ALASKA 99701

March 9, 1985



Rep. Richard Shultz
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Rep. Shultz:

In a teleconference Tuesday night 3-5-85 I along with Stan Bloca, Dick Burley and Marry Bishop all testified on the Alaska Supreme Court Opinion on subsistence.

The Chitina Dipnetter's Assn. agree with this opinion and want the law to stay as it is and we do not want to be disfranchise again.

I received a phone call from Juneau the next day (3-6-85) in which it was stated that there was some confusion after the teleconference as why we wanted the law to be changed. We do not want the law to be changed we support the Supreme Court Opinion. If there is a bill from the Governor or other legislatures to change this Opinion the Chitina Dipnetter's Assn. would like for you to do whatever you can to defeat there efforts.

If the interior delegation is positive the other side may have a chance to get a bill passed then you should work for a compromise to make sure that RURAL, LOCAL RESIDENCY OR COMMUNITY are not included and to try an identify "CUSTOMARY AND TRADITIONAL" in order to cut down on users.

If any changes are going to be made there will need to be public hearings on all changes. The main thing is that you go slow and get all of the input you can and make a good and constitutional law.

In the Daily News-Miner this morning Rep. Peter Gell stated that "Alaskans voted overwhelmingly in 1982 to keep the subsistence priority for rural Alaskans". This is incorrect the vote was to repeal the State of Alaska Subsistence Law and the word RURAL is not in the State Law.

Again I say if there has to be a change go very slowly.

Sincerely
Bryan W. Haley
Bryan W. Haley President

Alaska Fish and Wildlife Federation and Outdoor Council

and

Alaska Fish and Wildlife Conservation Fund
3780 McGinnis Dr.
Juneau, AK. 99801

SPECIAL NOTICE

Alaska Supreme Court Subsistence Ruling

The Alaska Supreme Court Friday February 22, 1985 struck down a Board of Fisheries regulation designed to identify eligibility for subsistence fishing in the Cook Inlet region. Under the regulation, certain residents of the Kenai coastline and an area near Homer were forbidden to fish for subsistence purposes.

The Supreme Court, in a 5-0 ruling, held that the board erred in denying subsistence permits to certain residents who had fished with set nets for personal and family use for many years. The Supreme Court found that the board's regulation on subsistence uses was inconsistent with Alaska law because the regulation was too restrictive.

The opinion stated: "Under a statute designed to protect subsistence uses, the board has devised a regulation to disenfranchise many subsistence users whose interests the statute was designed to protect."

The ruling by the Supreme Court was not a Constitutional decision but rather a statutory ruling. The Court decision went far beyond just eliminating the particular regulation, however.

The Court opinion emphasized the following points:

1. The State subsistence law does not allow the Boards of Fisheries and Game to distinguish between rural and urban subsistence fish and game users.
2. The State law does not allow the Boards to restrict initial subsistence users to a specific community.
3. The Court ruled that the ten point criteria used by the Board of Fisheries was too restrictive and was thrown out.
4. The State law requires the Boards to adopt regulations permitting "subsistence uses".
5. A major point of departure from the State's previous position was the ruling by the Court that all sport and

commercial uses must be eliminated before subsistence uses are restricted in any way.

The Administration Proposal

It is our understanding that the Sheffield Administration is preparing a bill to at least insert the word "rural" into the State law. This would offer a patchwork response to the court ruling that has opened subsistence use to all Alaskans. This type of reaction will perpetuate the present political atmosphere of competition between urban and rural residents. The divisiveness of this issue requires a full and open discussion of what the legislature intends to define as subsistence use and users.

The Alaska Outdoor Council Position

The following points and options should be considered:

1. The court ruling has focused on several critical issues involved with the State subsistence law and any changes should be carefully considered and the public fully involved. This was a socially divisive issue two years ago and any exclusion of the public will only create more animosities.
2. The Governor created a Subsistence Task Force two years ago, to prepare recommendations on this issue. So far, there has been no report from the committee.
3. Legislative action this session should focus on clarifying the elements of the issue as the first step in resolving this controversy. Hasty amendments will cause the issue to emerge annually.
4. It is feasible to consider the desirability of changing the Federal law to comply with existing State law by excluding the word "rural". All of the original hearings in Alaska on the State subsistence law did not include "rural" in the proposal which led everyone equally situated to believe they were a subsistence user.
5. The position of the Alaska Outdoor Council membership has consistently been that subsistence should be based on some equitable basis of individual or family "need". Is this the proper time to consider restructuring the State law to include "need" as a viable criteria?
6. We propose the Legislature not be panicked into quickly altering the State's subsistence law because of this accurate interpretation by the Supreme Court without due deliberations and consideration of all alternatives.

7. The Alaska Outdoor Council annual meeting is scheduled for Juneau from April 11-14, 1985 where subsistence and other critical issues are scheduled for deliberation. We request that no immediate action be taken until after the Council's annual meeting.

8. We agree that some resource management problems could exist this year if the administration chooses to direct the Fisheries and Game Boards to adopt sweeping regulatory changes. It is our opinion that this type of action isn't necessary nor equitable to the general public.

9. If however, it is determined, after full deliberations by the legislature, that immediate temporary corrective measures are essential, we propose that the legislature consider passing a law creating a one year moratorium or "freeze" on the subsistence law which will give them, the public and the Subsistence Task Force one full year to appropriately tackle the entire issue.

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 1972 / ANILCA, opposed this federal mandated discrimination he was removed from his Washington 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 blatant 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



Alaska Sportfishing Association

3505 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

March 21, 1985

Representative Richard Shultz
Pouch V
Juneau, Ak 99811

Dear Dick,

The recent Alaska Supreme Court decision (Madison Case) has resulted in a potentially chaotic and explosive situation. It leaves nearly all of Alaska's people as "priority subsistence users" under the subsistence law and it precludes restricting these subsistence users until sport and commercial fishing is closed down. Although on the outside this may appear to be fair, it creates an unmanageable mess of the Dept of Fish and Game and renders the Board of Fisheries nearly useless. This could be disastrous to the sportfishing, commercial and hunting industries. Additionally, some rivers cannot stand an efficient harvesting method without a threat to the fish resource. The current legislation proposed by the Administration will not resolve these issues and, as a permanent bill, will harm sport and commercial fisheries.

The citizens of Alaska did not vote or participate in the designation of "rural" Alaska as the only ones qualified for priority subsistence, nor is the definition of "rural" or "subsistence priority" clearly understood. These are issues that need full public discussion prior to considering a permanent change to the subsistence law. Therefore, as an interim measure, the Alaska Sportfishing Association calls for immediate action to:

1. Enact legislation this session with a termination or sunset clause expiration date of December 31, 1985, that will enable the Dept of Fish and Game and particularly the Boards of Fish and Game to limit subsistence fishing in the same manner as they were before the Madison decision.

2. Immediately take action that will insure that prior to the 1986 legislative session the priority subsistence issue is fully aired at public hearings with this input assembled and given to the 1986 legislature.

3. During the 1986 legislative session, thoroughly debate the subsistence priority statute and bring about a long term, fair solution for resource users in all areas of the state.

One possible means of identifying the Boards authority in a temporary law for this year would be to include the eight points utilized by the Board.

We believe that a true subsistence priority need does exist for a very few long time residents in very remote areas. Putting any individual in a position where he has priority of a resource, if even legal, over all other people in Alaska, and the world for that matter, is a law and priority that must be severely restricted.

Robert L. Hunter
Robert L. Hunter

Alaska Sportfishing Association

March 21, 1985

The Honorable Richard Shultz, Co-Chariman
Alaska State Legislature
Fouch V
Juneau, Alaska 99811
Dear Representative Shultz,

We urge your support of HB #288 which will
help save our Copper River fishery.

This request is not from a casual concern,
but we are dependent on the salmon fisheries
for our livelihood.

Sincerely yours,
Chris D. Billings
Chris D. Billings
P.O. Box 219
Cordova Ak. 99574

ok

Kenai Peninsula Fishermen's Cooperative Assn.

Political and Legal Action Committee

Box 546, Soldotna, Alaska 99669

Phone: 262-2492



March 18, 1985

Representative Richard Shultz
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Shultz:

We are writing to you to ask your support on Senate Bill 37 and its corresponding House Bill 235. It is an act relating to management plans and regulations adopted by the Board of Fisheries. We have enclosed a Request for Support for this piece and legislation and hope that you will take time to read it.

We are especially concerned that we make it clear to you that we do not support United Fishermen Of Alaska in their position on the Governor's piece of subsistence legislation. In a March 8 letter to past UFA members, support was sought for the this legislation. It was stated that "efforts will require a rigorous and expensive lobbying effort, and even then the outcome will be uncertain because of the powerful seats held in the Legislature by the Fairbanks delegation." These are NOT our sentiments as commercial fishermen who fish the waters of Cook Inlet. In years past, we played a very active role as members of UFA with Cook Inlet commercial fishermen comprising a large number of their membership. When we called upon UFA to assist us with problems that we faced in Cook Inlet, they did not want to become involved. When we needed their help, they were not there to help. As a result of these types of things, we withdrew our support from the organization, but, unfortunately, UFA stills thinks that they have the authority to speak for every commercial fisherman in our state. There have been many issues that UFA has supported in recent years that we cannot support. Please do not think that they speak our minds when they speak on commercial fishing issues.

Representative Richard Shultz
Page 2
March 18, 1985

Our legislation is not a special interest bill. It is designed to benefit all user groups of our very valuable resource of fish. We believe that it would allow the Alaska Board of Fisheries to operate apart from the political pressures and whims of special interest groups that they are at present so susceptible to. It is designed to have our resource managed on a biological basis which will insure its future for generations to come. It is not an "exclusive right" bill and we are not endeavouring to remove anyone from their opportunity to have a part in the harvest of this resource.

We appreciate your time and consideration and hope that you will support us on our bill.

Sincerely,



Cheryl Sutton (Mrs.)
Committee Coordinator
Political and Legal Action Committee

CS:cp

Enclosures

KENAITZE INDIAN TRIBE
Resolution 85-6

RESOLUTION IN OPPOSITION TO HOUSE BILL 288 AND SENATE BILL 231

WHEREAS, the Kenaitze Indian Tribe is a federally recognized Indian Tribe which was reorganized in August of 1971 under the statutes of the Indian Reorganization Act of 1934 as amended for Alaska in 1936; and,

WHEREAS, the Kenaitze Indian Tribe represents and promotes the security, social welfare as well as the interests and common bond of association of its 500 Tribal members; and,

WHEREAS, it is the conviction of the Kenaitze Indian Tribe that the preservation and fostering of a customary and traditional subsistence lifestyle for its members is the primary means of promoting the interests of its members; and,

WHEREAS, the State of Alaska's Subsistence Law (Chapter 151 SLA 1978) recognizes that the fish and game resources of the state "... are not inexhaustible and that preferences must be established among beneficial users of the resources..."; likewise 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 Alaska residents" (Sec. 1, Chapter 151); and,

WHEREAS, it is the Supreme Court of Alaska's opinion that the Board of Fisheries interpretation of "customary and traditional" uses (§ 703 HR 39) in the 1978 Subsistence Law is inconsistent with the legislative intent to provide guidelines for the protection of subsistence fishing (5 AAC 01.597); and,

WHEREAS, 5 AAC 01.597 was designed to protect subsistence uses; and,

WHEREAS, the Board of Fisheries has devised a regulation to disenfranchise many subsistence users whose interests the statute was designed to protect; and,

WHEREAS, House Bill 288 and Senate Bill 231 - an Act entitled: "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date" - was introduced at the request of Governor Sheffield; and,

WHEREAS, House Bill 288 and Senate Bill 231 intends to amend Section 3 AS 16.05.940(23) to read: (23) "'subsistence uses' means the customary and traditional uses by rural [In] Alaska residents of wild, renewable resources for direct personal or family consumption..."; and,

WHEREAS, Section 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 use and not for sale or barter..."; and,

KENAITZE INDIAN TRIBE
RESOLUTION 85-6
PAGE TWO (2)

WHEREAS, amending Section 3 (AS 16.05.940(23) to regulate "subsistence uses" to rural Alaska residents only and creating "personal use" fishery for urban residents is viewed as an attempt to divide Alaskans and to legalize something that has been illegal in the past;

NOW THEREFORE BE IT RESOLVED BY THE EXECUTIVE COMMITTEE/TRIBAL COUNCIL OF THE KENAITZE INDIAN TRIBE at a meeting held on March 18, 1985 that the Tribe goes on record as being opposed to House Bill 288 and Senate Bill 231 introduced at the request of the Governor;

BE IT FURTHER RESOLVED that the Tribe urges all Senators and Representatives to carefully review the legality of House Bill 288 and Senate Bill 231 before making this important decision;

BE IT FINALLY RESOLVED that the Tribe will request federal intervention if further attempts to circumvent Supreme Court rulings are taken.

CERTIFICATION

This Resolution 85-6 was duly adopted by the Executive Committee/Tribal Council of the Kenaitze Indian Tribe at a meeting held on March 18, 1985 by a vote of 6 for and 0 against with 1 absent and 0 abstaining.

Ms. Clare Swan

Chairperson, Kenaitze Indian Tribe

Ing. S. Swolff

Secretary, Kenaitze Indian Tribe

PHIL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 / 465-4100

March 22, 1985

The Honorable Peter Goll
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Goll:

We appreciated the opportunity to have our department, the Department of Law, and the Boards representatives meet with your committee and believe it went well. In response to the inquiry of Representatives Furnace and Phillips concerning Federal Funding available under ANILCA, Dingell/Johnson (D-J), and Pittman/Robertson (P-R), following is an outline of the Federal Funding that was available for the past three years:

	<u>ANILCA</u>	<u>D-J</u>	<u>P-R</u>
FY 85	\$1,000.0	\$1,639.0	\$4,600.2
FY 84	\$1,000.0	\$1,569.0	\$3,804.5
FY 82/83	\$ 960.0	\$1,753.0	\$3,387.4

The ANILCA funding, which is available specifically for the implementation of subsistence provisions, required 100 percent matching funds from the State of Alaska, and the D-J and P-R funds require a 25 percent match.

It is our understanding that the solicitor of the Department of Interior is reviewing possible compliance questions, including funding ramifications, related to the Madison decision. The ANILCA funds are directly related to subsistence provisions as mentioned. However, the D-J and P-R funds are only indirectly potentially affected.

I hope this provides the information requested. If you have additional questions, please call me.

Sincerely,



Don W. Collinsworth
Commissioner

House Special Committee on Fisheries
Governor's Conference Room
March 21, 1985
8:30 a.m.

Members Present: Representative Peter Goll, Chair
Representative Mike Navarre
Representative Kate Hurley
Representative Roger Jenkins
Representative John Binkley
Representative David Thompson

Members Absent: Representative Andre Marrou

Legislators Present: Representative Walt Furnace
Representative Jack Fuller
Representative Randy Phillips
Representative Steve Frank

Legislative Staff Present: Offices of Senators: Zharoff, Sturgulewski, and Senate Advisory Committee. Representatives: M. M. Miller, Sund, Binkley, Jenkins, Thompson, Wallis, Boucher, Navarre, Larson, Reiger, Grussendorf Hermann, Szymanski, and Fuller.

COMMITTEE CALENDAR: Briefing on Subsistence and HB 288 by the Department of Law, the Department of Fish and Game and Alaska Board of Fisheries. Some members of the departments and Alaska Board of Fisheries participated via teleconference.

WITNESS REGISTER:

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Position Statement: Observer

ACTION NARRATIVE:

TAPE 12, SIDE A

Recording

Number 003

Chairman Goll called the special meeting on subsistence to order at 8:39 a.m. and listed those present: We have a number of distinguished guests representing a variety of organizations and interest groups. We are here today to receive a briefing by the Department of Fish

and Game, its various divisions, the Department of Law and to receive an announcement and some information from the joint boards of fisheries and game regarding their position on the subsistence bill and their guidance on the issue in general. So with that I would invite Mr. Ayers representing the Commissioner's office of the Department of Fish and Game to open our meeting.

Number 015 Jim Ayers, Alaska Department of Fish and Game: Thank you Mr. Chairman, members of the committee and other Representatives. I appreciate this opportunity. My name is Jim Ayers, I'm Deputy Commissioner of the Department of Fish and Game. What we would like to do this morning is provide a framework from which we think that you will be able to construct and a reasonable discussion and action regarding the Governor's bill and most particularly as it relates to the Madison decision. We're here in the spirit of cooperation. We're here to assist in any way we can and to hopefully, help us all understand that the Madison Decision has removed the board's ability to achieve balance. It has removed the board's ability to obviate the potential deviousness that was throughout our state for a while. We would like to discuss in this presentation three major aspects: One, a review of the Madison decision and the legal holdings; two, the implications that we think are there with some definition and some implications that are potentially there with regard to federal law; and the third aspect is of course, the potential impact on users as a result of the Madison decision. God willing there are participants in Anchorage at the board meetings who are going to make the majority of this presentation. And so I will become a pretty face and a listener as you all are. The participants in Anchorage are Bix Bonney, a member of the fish board, Beth Stewart, who is the director of our boards' division; Steve Behnke who is the director of the subsistence division; Larry Spengler who is assistant attorney general from the Department of Law; Ron Jolin, who is the chairman of the joint boards and chairperson of the fish board; Ken Florey who is a regional supervisor with the Department of Fish and Game; John Garner, who is a board member of the fish board; if there are others there that I have not mentioned, I'm sure they will identify themselves as the need arises. What we thought would be most helpful is if we began with a presentation from Ron Jolin who is the chairman of the joint boards. Ron, hopefully, is awaiting my silence and will then discuss with you what he believes the current situation is and give you the boards' perspective. I will mention one other thing and that is that we have distributed a copy of the resolution that was passed by the joint boards yesterday. And so Ron will know you have in front of you a copy of their resolution. With that said, Mr. Chairman, and with a gentle reminder that we are here in a spirit of cooperation and to work with you in any way we can to resolve this potential conflict. And with that I would hope, Mr. Chairman, that we can then move to Anchorage to hear from Ron Jolin.

Number 115 Chairman Goll: Thank you very much Mr. Ayers. Yes, we will move to Anchorage. I'd like to request of you and all the other participants today to the extent possible that you send us your comments in writing. What we'd like to do is make sure that other members of the House and Senate who are not present today are thoroughly briefed and by getting either your written comments or transcripts of your comments telecopied down to us here in Juneau, we would take it upon ourselves to get that distributed. Secondly, I'd like to say we were hoping to go until 11

o'clock this morning, but there's a majority caucus at 10:00 and things may wrap up earlier, so that gives us about an hour and a half, a little less to get our business done and I just wanted all participants to be aware of the schedules. Thank you very much and once again back to you and back to Anchorage.

Ayers: Ron Jolin are you in Anchorage?

Number 118 Ron Jolin: Yes, good morning Mr. Chairman and ladies and gentlemen of the House Committee on Fisheries. I'll give a little overview on what the boards' perspective is of the Madison decision. As you know under Title 16, the boards' responsibilities are the preservation and enhancement of the resource for the people of Alaska. And the allocation of those resources to the different user groups in the state of Alaska. I think the board feels that prior to Madison, we were following a process that was working fairly well. Maybe I can give you some of our perspectives of what the Madison decision means to the board or what we feel are some of the problems we would be facing under the decision. We would have some problems in trying to accommodate our commercial and sport users in the state of Alaska. I think that under the decision we are put in a position of having to allocate fish to one user group in preference over all user groups in the state, especially the commercial and sport fishermen. It's taken away a lot of flexibility of the board to regulate our fisheries. I think that as we move into this we will be getting a more indepth report on that from our legal staff, from the AG's office and from some of the people in the department. HB 288 would return the flexibility that we need to regulate and manage our fisheries resources. It's not an easy job in a state as large as Alaska to try and allocate all of the resources in an equitable manner to all of our user groups. But we really feel that we're doing the best job that could be done under the circumstances. I think that anything that we can do to return our regulatory authority to the balance that we had prior to Madison, would be in the best interests of all people and all user groups in the state. I suppose as we move into this we'll be getting into some of the worst-case scenarios and what might happen - what might not happen this year and the following years if we do indeed not get back to our previous position before Madison and if we do return to our position. If we can find the support that we need to pass both bills. With that maybe I'll turn it over to Larri and she can run through some of the AG's perspectives.

Number 167 Larri I. Spengler: Thank you. This is Larri Spengler with the Department of Law. What I'm going to do is give a very brief overview of Madison, the decision which put us all in this position and also of the series of events that led up to the Madison case and the holdings of Madison, generally how they impact the board's authority and also briefly how that has implications with regard to the federal subsistence law. After that, the different people from the Department of Fish and Game, and to whatever extent I can be of assistance in that, along with board members will talk about the various specific situations that we know we'll need to address under Madison if the Governor's bill does not pass. We thought it might be most useful for questions to be asked after each section, rather than waiting to the end of the whole presentation. So when I'm done with the legal overview, if there are any questions on that maybe we could take them then and then after we talk about each resource

situation, if the committee has questions on that we could take those questions at that time before getting into the next one.

The Madison case is the first time that the State Supreme Court has had an opportunity to evaluate the state's subsistence statutes and what it means. In doing that the court basically turned on its head the authority the board had thought it was exercising up to that point and made it very difficult for the board to continue the balance and the ability to accommodate all of the different uses that had been thought to rest in the board earlier.

Madison is a case that came out of Cook Inlet. It's a case that was filed by people living in Kenai and Homer. The board's approach to subsistence in Cook Inlet is perhaps a useful microcosm to how it has been approaching subsistence throughout the state as well. And therefore the chronology that led up to this case, to this lawsuit, provides a good background against which to look at Cook Inlet in more detail and also to look at the other situations.

The state subsistence statute was passed in 1978. Before 1978, the board of Fisheries had been delegated from the Legislature the authority to authorize commercial fishing, sport fishing and subsistence fishing in the board's discretion. Subsistence fishing at that time, before 1978, was simply described as fishing by net for personal use. Sport fishing was defined as fishing by rod and reel for personal use and commercial fishing was defined as fishing for profit. What the Legislature did in 1978 was take away some of the board's discretion with regards to subsistence fishing. The Legislature said that if there were subsistence uses on a fish stock or a game population, for the game board, then the board no longer had the discretion to authorize or not authorize that. It had to authorize fishing unless it would hurt the resource. So it removed some of the board's discretion and it also said that if there was a resource situation that required restriction, subsistence would have the priority. So, the law was passed in '78 and several years went by. No real effort was made or no real examination was made of the law and what it required by the board of fisheries. In 1980, there were three lawsuits filed by different individuals around Cook Inlet and communities.

And that brought the board's attention and the state's attention generally sharply into focus on the subsistence law and what it required. The state lost all three cases simply because the board had not really been looking up to that point at the subsistence law and what it required.

Those cases came from the Homer, Kenai and Tyonek areas. As a result of that summer, the board in a winter meeting of 1980 and the spring of 1981 examined the uses around Cook Inlet and examined which of those uses were subsistence uses of salmon under the state law and in order to do that they had developed criteria against which they would examine a use of salmon to determine if it was a customary and traditional use of salmon. That was, customary and traditional being some of the catch words in the definition of subsistence uses. Under those criteria, the board determined that in Cook Inlet only three communities qualified for subsistence uses: Tyonek, English Bay and Port Graham. The board

authorized subsistence uses for those communities and then looked at the rest of the Inlet. Elsewhere in the Inlet, there had been subsistence fishing authorized since statehood and before, under the definition of net fishing for personal use. Now, the board had determined that that fishing was not subsistence fishing because it did not meet the criteria that they had developed and in the spring of 1981 before the 1981 summer the board did not authorize any net fishing for any one else in Cook Inlet for their own personal use except for the subsistence fishing which was to occur in Tyonek, English Bay and Port Graham. That summer, the summer of 1981, individuals from Homer and Kenai filed two different lawsuits. In both cases, the people claimed that they were subsistence fishermen and always had been, and should be able to continue to subsistence fish, But, also claimed that in any event, they ought to be able to have some kind of access to the fishery with nets because they had historically done so. The court in Madison at the lower level refused to overturn the board's assessment, that there were no longer subsistence uses existent in the Kenai area, but also said that the board had to treat those people fairly and could not eliminate that historic use without some good reason. And that basically that in treating them fairly they might have to set up some kind of personal use fishery that would allow those people, Mr. Madison, the plaintiff in that case, and others in the area, access to the fish. So, the board then established, after the summer of 1981, established the personal use fishing category in regulation. Personal use fishing was defined, basically the way subsistence fishing had been defined before the subsistence law was passed: fishing by net for personal use. Subsistence fishing was now defined as fishing for subsistence uses, customary and traditional uses for certain purposes. So subsistence fishing was a subset after 1978 of what subsistence fishing had been before 1978. It was, under the board's interpretation, narrowed. The definition of subsistence fishing had been narrowed in 1978 to protect the uses and harvests in rural communities and areas. Ok, so the board set up a personal use fishery and authorized personal use fisheries opportunities for Mr. Madison and everyone else in the Anchorage area, Kenai area Homer area on sockeye in the summer in Cook Inlet and some coho in the fall. What the lawsuit was filed over was a more extensive coho fishery in the fall, that's what the people had been seeking. The court, as I said in Madison, said these criteria that you've been applying are the right approach to identifying rural communities in the areas that are reliant on fishing for personal uses and a significant component of the economy of the community or area. And that's exactly what the Legislature meant in 1978. You're doing it right, board go ahead. So the board went ahead and in combination with the joint board adopted 8 criteria which eventually replaced the 10 criteria from Cook Inlet which both boards would use on a statewide basis to identify subsistence uses of fish stocks and game populations.

The board of fisheries applied those criteria in various situations, including the Copper River and we'll get into that a little bit more later. At the end of February the Supreme Court issued its ruling in Madison. All along since 1981, the case had been slowly winding its way through the court system and finally reached the State Supreme Court. The court said that the board's implementation of the statute was inconsistent with the statute. The court did not rule on any constitutional issues, but rather looked at what the court thought the Legislature in 1978 meant. And the court determined that the Legislature

in 1978 had not meant nor had authorized the board to identify subsistence uses as rural uses in rural communities and areas. That the Legislature had not authorized the board to look at the uses of communities or areas. And conversely that the Legislature had not authorized the board to look at individuals to see at first instance who gets in to be able to subsistence fish.

Mr. Jones can because he's lived here for 20 years, Mr. Smith can't because he's been here for two years is not a system that the board had ever tried, but the court said by the way, don't try it because that wasn't meant either. What this left us with is a situation where, under the court's ruling, if there has been a subsistence fishery at any time on a particular fish stock, the board has to authorize subsistence fishing on that stock unless any fishing would be dangerous to the stock. The board cannot say who can go and fish in that fishery. All Alaskans can go and fish until or unless all sport and commercial fishing on that relevant stock has been eliminated. So an example which we'll talk about more in the Cook Inlet section is the village of Tyonek across the inlet from Cook Inlet. The board established a subsistence fishery for which only residents of Tyonek could qualify on king salmon in the spring. They took approximately 2000 king salmon in a year in that fishery. Now, there is no question in that fishery is a customary and traditional fishery, the board will have to authorize it and cannot exclude anyone from participating in it. So anyone from Anchorage or from anywhere else can go over there and fish and the board cannot restrict that until and unless the sport fishery in the Susitna drainage afterwards and any relevant commercial fishery have been closed down.

The Madison case then left us with two different sets of problems. One is the potential disruption to the balance that the boards have achieved among the different use groups. And the other is a probably inconsistency with federal law. If it's acceptable, I'll go straight on into the federal law problem and then pause for questions, unless someone would like some now. (no questions)

The federal subsistence law, ANILCA Title 8, allows the state to continue its traditional management on all of the federal land in the state, which makes up 60% of the land, it's not just the parks and monuments, it's all federal land. If the state by a law of general applicability provides for three things which are specified in ANILCA: one is the advisory committee and regional council system, which the state already has; another is the subsistence priority which the state has; and the third is the definition of subsistence uses that is found in ANILCA. ANILCA defines subsistence uses identically to the state with the exception that it is specifically stated in the statute that subsistence are customary and traditional uses by rural Alaska residents. Up until the Madison decision, we were in compliance with ANILCA because the boards had been interpreting our subsistence law as the intention of the law was to protect the harvests of fish and game in rural communities and areas which were dependent on the resource. So, we were in compliance. Now the court has said that the boards are not authorized to identify subsistence uses as rural uses. If the boards cannot protect rural uses as subsistence uses, separately from other uses then we will not be in compliance with ANILCA and the federal government may be required to take some action to impinge upon the board's

regulatory authority over fish and game. There are several questions with regard to this. One aspect of this, as I mentioned, is taking over the management of the federal land in the state. Land is defined in the statute as water and there is an argument to be made, although the state has not and would not concede this, that navigable waters are included under the definition. So, if that were the case, then the federal government would have to exercise some management over all of the navigable water.

The other thing to keep in mind is that even if the federal government doesn't particularly want to take over management there is a section in the federal law that allows another private party to go into court and sue the federal government to make them do their duty as such under the law. So, a private party or group could go into court and sue the federal government and say: 'federal government, the state is not now authorized to protect rural uses as opposed to other uses and that means that you have to go in and do something.' And the court might well order them to do something.

Another consequence of this is financial. Because the statute says that if the state is in compliance we will receive and we have been receiving matching money in the amount of about \$1 million dollars a year from the federal government to support the advisory committee and regional council system. And maybe Jim Ayers could summarize the financial consequences before we take any questions.

Number 376 Ayers: Thank you Mr. Chairman. I will do two things actually, I will mention Larri and to Beth Stewart who, hopefully, is waiting to discuss some other aspect of the impacts subsequent to this. We are under a time line here and maybe, Mr. Chairman, you could give us some direction.

Chairman Goll: Yes, Jim, thank you. Rep. Fuller has just come back and advised us that we will be able to continue until 10:30 a.m. So that's a little bit better, but we will still have to move rapidly if we are going to get through all of the facets of your presentation.

Ayers: Those of us who are inclined to enjoy the sound of our own voice will try to restrain ourselves. Thank you Mr. Chairman. The financial implications with regard to the federal funds are most specifically those ANILCA funds that we receive from the federal government to ensure that we carry out the intent of the federal language with regard to rural Alaskans and subsistence use. The subsistence way of life has given cause to the federal government to provide funds to the state of Alaska to ensure that the advisory committees and the regional councils have sufficient funds to address their own issues in the names of solving their own problems and bring those forward to the board. Those funds also assist the department through the division of Subsistence in providing support staff to address questions such as resource uses in rural areas, and those funds total a million dollars. Those are on a reimbursable basis, so what we have is a reimbursement from the federal government each subsequent year to the expenditure.

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There's a million dollars of the ANILCA. A question that would arise is other federal funds - for example we have as some members who might have attended the finance discussions what is referred to as Dingell/Johnson or now Dingell/Johnson/Wallop/Breaux funds. Those funds come as support funds for the sport fishing industry from the federal government to us. It is not clear what the status of those funds would be and I won't belabor that point unless there are specific questions. There also Pittman/Robertson funds, those funds come from the federal government as a result of hunting activities. Both of those funds are based on a formula that have to do with hunting license and area and those kinds of things. So it's not clear what the status of those funds would be, although as the Department of Law has mentioned, there is some question about whether guiding, outside activity, sport fishing, hunting, what the results would be and therefore those funds could be called into question by the federal government. But we have no information at this time which direction the federal would go with regard to those funds.

Those funds total a little over \$5 million. So you have a direct question on a little over a million dollars. There is a subsequent question of probably another \$5 million. With that said, Mr. Chairman, perhaps the best thing to do is to answer any questions at this point and of Mr. Jolin, the board chair, Larri Spengler of the department of Law and her overview or of myself and then we'll go immediately to some specific concerns and potential impact on users.

Number 436

Representative Furnace: Mr. Chairman, a question.

Goll: Rep. Furnace.

Representative Furnace: Mr. Chairman, a request to Mr. Ayers. I'd like to have a more detailed breakdown on these federal funding sources. Perhaps you could track that over several years as to what those funds have been and the specific sources and conditions.

Ayers: Mr. Chairman, Rep. Furnace, we'll have that by tomorrow for you.

Goll: Mr. Jolin, do you have any other comments in behalf of the board that you're planning to make during this presentation. Are other board members going to be making further presentations?

Jolin: No, we're just going to talk about them in the context of each situation as we discuss them.

Goll: Then maybe it would be helpful to the people present if maybe you or I were to briefly read the resolution of the board of fisheries and game. Is that now the position of the board? Has that been officially voted on and are we to take this as the joint boards' stand on this issue?

Jolin: That was voted on yesterday by the joint boards and that is our joint resolution and our stand on the issue.

Goll: Then with the permission of the members I'll just quickly read this statement so that all the people with us today will be aware of where the boards stand and then go on as Mr. Ayers suggested. The statement reads:

WHEREAS the Alaska Board of Fisheries and Alaska Board of Game have been delegated responsibility and authority by the Alaska Legislature to regulate the taking of fish stocks and game populations for the maximum benefit of all of the people of Alaska; and

WHEREAS, prior to the decision of the Alaska Supreme Court in "Madison v. Alaska Department of Fish and Game" the boards developed procedures which provided adequate regulatory flexibility, both to protect opportunities for subsistence hunting and fishing in rural communities and areas, and to provide hunting and fishing opportunities for recreational, commercial, and other uses; and

WHEREAS, it is unclear to what extent the boards may restrict subsistence harvest after the "Madison" ruling and as a result, substantial and significantly disruptive reallocations of opportunities to harvest fish stocks and game populations may be necessary. For example:

1. The commercial gill net fishery which is an important component of the Prince William Sound economy may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the "Madison" decision the Board of Fisheries had adequate regulatory flexibility to accommodate both the historic commercial fishery and other users.

2. Sport fishing for king and other species of salmon on the Kenai and Naknek rivers and in the Susitna drainage may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the "Madison" decision the Board of Fisheries had adequate regulatory flexibility to prevent that result.

3. Non-subsistence hunting, including commercial guiding activities may be significantly restricted and, in many cases, eliminated. Prior to the "madison" decision the Board of Game had adequate regulatory flexibility to accommodate these users reasonably.

WHEREAS, prior to the "madison" decision the State of Alaska was in compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). As a result of the "Madison" decision the federal government may now take control over game populations on public lands and fish stocks on public lands and within navigable waters; and

WHEREAS, if the State of Alaska is no longer in compliance with ANILCA, the state will lose the ongoing million dollar per year federal appropriation for the state's public participation system which is essential to the success of the state's regulatory and management activities; and

WHEREAS, the Alaska Board of Fisheries and Board of Game strongly believe that the potential restrictions, closures,

reallocations and loss of funding described above are not in the best interest of the fish and wildlife resources and the people of Alaska;

NOW THEREFORE BE IT RESOLVED, that the Alaska Board of Fisheries and Board of Game meeting in joint session respectfully, but strongly urge the Alaska Legislature to enact legislation during the current legislative session which returns to the boards the regulatory authority and flexibility which they exercised before the "Madison" decision; and

THEREFORE BE IT FURTHER RESOLVED, that the Alaska Board of Fisheries and Alaska Board of Game have reviewed SB 231 and HB 288, the legislation introduced by the Governor to accomplish this purpose, and urge that this legislation be enacted into law as expeditiously as possible.

Thank you very much. Mr. Jolin and Mr. Ayers please proceed.

Ayers: Mr. Chairman, the next brief presentation that we have designed is from Beth Stewart, who is director of our board's division. We're going to ask Beth to talk a little bit about the board's approach in current potential problems from the perspective of proposals or petitions. Perhaps Beth could lead that off. Mr. Chairman, members of the committee - Beth Stewart, if you're in Anchorage.

Number 534 Beth Stewart: The boards have two situations facing them at this meeting. Some of the proposed changes to the regulations which are before them will have to be considered in light of Madison and the changes that it has imposed on the board. Also, the boards have situations that are not before them at this meeting, that were not regularly scheduled that they may have to contemplate changes in the regulations to for next summer. In both of those situations, the uncertainty about the status of the subsistence law, whether it remains as it currently is written and under the Supreme Court's interpretation or whether it changed makes the boards task extremely difficult. At this meeting, both boards are probably going to spend a great deal of time discussing alternative approaches to the proposals before them. Also, preparing alternative approaches to the situations that may occur this summer. For the fisheries board in terms of the situations that may occur this summer, there has been little or no opportunity for people to come before the board to request changes in the current regulations under Madison. We don't have the kind of regulatory time frame available to us that would allow a full-scale board of fisheries hearing and regulatory cycle. So if changes in the regulations must be made, to conduct fisheries this summer, the board most probably will not be meeting at the time those changes would need to be made. And under the delegation of authority to the commissioner of fish and game, the boards would ask Commissioner Collinsworth to adopt emergency regulations to conduct fisheries this summer.

Both boards plan to meet again in joint session, on March 25, which is the last day of the board meetings to discuss directions to the Commissioner for emergency regulations for this summer. Those

directions may not end up being very specific since neither one of the boards will have had the kind of public input that would guide them in making specific recommendations. I'll just stop here in a second. The way that people may have access to the regulatory system now that no call for proposals is out or no proposals are being solicited is through petition. The Administrative Procedures Act allows anyone to petition any regulatory agency in the state for a regulatory change.

That's the sort of unpredictable portion of what the board and the department may be facing this summer. We have no way of knowing whether people will petition us for changes in the regulations to authorize additional subsistence fisheries and no way to really predict how those can be handled come summer. And with that I'll just close.

Ayer: Thank you Beth. Are there any questions of Beth or Mr. Jolin about the issues confronting the board at this point? At least those that we can see?

Number 594 Representative Furnace: I'd like to pose a question to Ms. Stewart and perhaps Mr. Jolin of their specific intent of perhaps holding hearings, realizing that there is somewhat a shortage of time. It appears that this is an important issue which the public does deserve its ability to participate in.

Number 643 Stewart: Mr. Chairman, the board doesn't have a special hearing scheduled at this time, the decision came out well after the board's regular announcements for public hearings and proposals had already been well underway. The board is going to provide an opportunity on the 25th, as I said, for people to come in and speak to the board about the Madison decision and what they think its implications will be. But at this point we have no plans to conduct hearings under any other circumstances. We don't have, for instance, the time to call for proposed changes to the regulations. The board of fisheries has a very complex and lengthy process that it undergoes for soliciting proposed changes to its regulations. About 120 days before the board meets, we issue a call for proposals. We have about a month and a half available for people to mail proposed changes in. Then we must compile those proposals and send them to the printer, then have them distributed to over, I think we have over 3,000 people on our mailing list now. We provide about another 2 months for people to comment on those proposed changes and hold advisory committee and regional council meetings. Then we actually conduct the board meeting and allow people to comment on specific proposals. At that point then, if the board adopts changes, the changes are reviewed by the Department of Law and then sent to the Lt. Governor and then become effective 30 days after the Lt. Gov. signs them. That time alone from when a change is adopted to the time it becomes effective is about 90 days, so as I said earlier, about the only way to change the regulations this summer would be through the emergency regulation process.

Goll: Thank you very much Ms. Stewart, would the next person now like to come forward and speak to the issues affecting their division?

Ayers: Mr. Chairman, there are division directors and as well as perhaps a board member in Anchorage and its my understanding that we would first like to speak about the Cook Inlet area. So, let's go directly to Anchorage, Mr. Chairman, and if people are prepared there why don't you introduce yourself and step right off.

Number 675 Mr. Chairman, this is Ron Jolin again, maybe we'll let everyone introduce themselves so you'll have an idea of who's here.
(Anchorage participants introduce themselves, see witness register)

Jolin: I'd like to pose a question to Larri. Larri, under the Madison decision, do we now have to open all fisheries restricted to local to all residents of Alaska?

Spengler: Yes, Mr. Chairman, at least at the first instance. And in the Cook Inlet situation the management people can talk about this more specifically, I believe there are three fisheries currently which are open to residents of particular communities; Tyonek, English Bay and Port Graham. The Madison decision would require that those fisheries be opened to everyone until or unless any sport or commercial fisheries on the same stock had been closed. The Madison decision also requires that if there has been a subsistence use of fish that the board authorize that use and now that the court has said the board does not have the authority to speak in terms of rural uses. This would apply to any area of Cook Inlet, whether it was rural or not. Maybe what would be useful is for Ken Florey who is directly involved with Cook Inlet to talk about where those uses might be in Cook Inlet and what affects that might have.

Number 724 Ken Florey: Yes, thank you Larri. Well under your definitions you just gave we do have the three local area fisheries that were defined by the board after a 1981 board meeting as being subsistence fishing. Those being the early spring fishery in Tyonek for chinook salmon, king salmon; and then the two fisheries in Port Graham and English Bay which go on throughout the year, through the summer months - the spring through the fall months for local residents. Under my understanding or how it's been presented, those no longer would be open only to local residents or those domiciled in those areas, but anyone who's a resident of the state of Alaska can participate. As far as other fisheries in Cook Inlet, it's my understanding that those that we have called personal use would now be under a subsistence name and that those could also be opened and would be opened to any participants who wanted to get involved in that fishery. There are depending upon how far back you want to go with the old subsistence laws those would be primarily all the beach areas in Cook Inlet and taking to an extreme even some fresh water areas in Cook Inlet, primarily the Susitna drainage and Knik Arm, parts of Turnagin Arm that have been closed upwards to 25 years. And then all of the eastside beaches and the current setnet commercial areas in upper sub district and northern district of Cook Inlet.

Spengler: It might helpful for the committee if some of the board members could talk about what impact they would see that those fisheries being open would have on different use groups depending of course on the level of participation in those subsistence fisheries.

Number 752 Bix Bonney: Mr. Chairman this is Bix Bonney, board member and more or less representing the sport fishery groups in the Anchorage area. I was contacted by the two major groups the Kenai Sport Fishing Association and the Alaska Sport Fishing Association to attend steering committee and board meetings to get their thoughts out. Essentially their thoughts will be enclosed in a letter...

CHANGE TAPE # TO SIDE TWO

Number 003 ... public hearings throughout this time information can be gathered to more definitively approach the subsistence problem. They essentially are worried that, in their words, "chaos and confusion" that result with no regulation going on and the short circuiting or the cutting off of the fish that would get into the traditional sport areas, particularly the Kenai River. Whether they are right or wrong they can foresee where there could be subsistence nets out on the eastside beaches cutting off the run of the king salmon as it approaches the Kenai River. They don't want that at all. They said they are not subsistence fishermen, never thought of themselves that way. They're sport fishermen and they want to continue that way. That's essentially what's happened. These two groups represent an aggregate made up membership of about approximately 2,000 sport fishermen and there will be letters from both groups going out, one went out yesterday and the other will be going out this afternoon. If there's any questions, I'll be happy to answer them.

Ayers: Bix, with your approval, I have a telecopy version of the letter of which you speak of the Kenai River Sport Fishing Association. If you would like I would distribute that if you think that there have been modifications, I'll hold it. It's at your pleasure.

Bonney: Jim, the first one that went out, that's complete. The second one is essentially the same as the first one, only the second one comes from the Alaska Sportfishing Association and the trend of their reasoning is just about exactly the same, they're just now getting the words put down they hope in a littler cleaner manner than the first letter. But that's definitely there and it's coming.

Goll: Well, thank you very much. We are having that copied at this time and it will be distributed out to the folks present today.

John Garner: This is John Garner, a board member. I think that it might be useful, Larri, if you could explain to us what the Madison decision says about keeping the harvest limits on the subsistence fisheries, both as to the overall harvest and in terms of individual bag limits so that we can get some feel of the impact.

Number 103 Spengler: Yes, this is Larri Spengler with the Dept. of Law, The Madison decision basically requires that customary and traditional uses must be authorized and the people must be given a reasonable opportunity to participate in those uses unless sport and commercial have been eliminated first. Customary and traditional uses are spoken of by the court in terms of individual Alaskans reliance and dependence on resources and that is their reading of what the Legislature in 1978 was concerned

about. There are two different concepts of levels of tasks that I suppose would be considered. The first thing to understand is that the Madison decision does not mean that subsistence fishing would be unregulated. Regulation must reflect however, customary and traditional levels. So, for example, in Tyonek, the customary and traditional levels of the King salmon harvest has been 70 fish per household. So that is what is authorized under the current regulations. Because before the Madison decision came out only the people in Tyonek were fishing, as I mentioned before that fishery only took about 2,000 fish a year. If that fishery had to be opened to everyone as it does under Madison, then those 70 fish per family per household, bag limits must be retained, because that is the customary and traditional use level that is supposed to be perpetuated. The question of whether an overall allocation could be made to the subsistence fishery in Tyonek, say, so that, for example, perhaps the board might want to say well, this will open and everyone can go fish at 70 fish per household until the whole fishery has taken - I'll just make something up - 8,000 fish and then it will close. That question of whether a harvest cap can be put on a fishery was not addressed directly in the Madison decision. The strong implication in the decision is that that cannot be done. That is partly because the fishery then could conceivably be diluted in the sense that if there were a lot of people going to fish people would not get anywhere near the 70 fish per household that was customary/traditional or that if the first group of people all got 70 fish per household, then it would close and nobody else would get to go. So they'd be cut off from the opportunity entirely. It might be useful to ask Ken Florey or Ken Parker or maybe Bob Clasby what might help in Cook Inlet if the Governor's bill doesn't pass and the Tyonek Fisheries has to be opened to everyone at the normal limit and, assuming the board can't put a cap on it, which seems to be the implication of the case, what that might mean and what other fisheries might be affected by that.

Ken Parker: This is Ken Parker, director of commercial fisheries. It's difficult to anticipate exactly all the impacts of such an action. But, if you took the worst case scenario where we did have a large immigration of effort into that fishery, the first thing the department would have to do of course is very accurately monitor the harvests that are occurring in that area and then evaluate that in terms of our reproductive needs of the stocks that are contributing to the fishery. If we got to the point where we were pushing against our escapement needs then we would have to take regulatory actions on the fisheries that also impact that stock and of course under the Madison decision, it seems that the first fisheries that would have to be impacted would be commercial or recreational uses. So, I think in that we don't have any commercial activity on those Chinook stocks, of course we would have to direct our attention to the recreational fisheries and I would suspect that if we got to a point where we were concerned about our escapements, we would be obliged to close those recreational fisheries, until we were at least felt confident about our escapement levels in the various contributing stocks. Essentially that would be our action as a department: we would have to closely monitor the fishery, and then take appropriate regulatory action to ensure that our escapement needs are met. If we sense that the subsistence harvest was progressing at a rate that they were threatening escapement then we would also have to implement restrictions in that subsistence

fishery according to the law and restrict to the most dependent users as you mentioned earlier.

Spengler: Ken, where does the recreational fishery take place, on the same stocks at Tyonek fishing ground?

Florey: Yes, Larri, We don't have a sport fish division representative here, but maybe I can answer that. There's several tributaries within the Susitna System both on the east side and the west side; there'sfisheries primarily in the Doshka River, Lake Creek, up several other systems on the other side being Willow Creek, Montana Creek,, some of those are open seven days a week and there's other smaller stocks primarily on the east side that are week end only fisheries. Depending on what the harvest level were those would be the fisheries we would have to watch quite closely. A question that we have is trying to determine how we would try to manage this if this were to be confined to the area we now have open for the Tyonek subsistence fishery is one thing, but if it were to be open to a large portion of the beach, I know we could not monitor it closely enough to have an accurate catch harvest. When we're faced with those situations, fisheries managers are normally more conservative, not knowing what's going on unless we could have accurate catch figures. I just know from the area we were talking about if it were extended beyond the current boundaries, that we could not accurately monitor that fishery.

Spengler: Before we move onto Copper River, maybe it would be useful to talk a little bit about what the effect would be on the east side of Cook Inlet and if the the eastside beaches were opened at various times during the summer, true subsistence fishing, depending on the level of participation in that fishery, which fisheries might be affected and what measures the department might want to consider.

Number 116 Representative Thompson: My question is addressed to Mr. Parker, I want to make sure I understood what you just said and I don't want to put words in your mouth, but I thought I understood you to say that Fish and Game would be obliged to close sport fisheries if there was an imbalance as a result of this decision. Is that correct?

Parker: If we sense exploitation at Tyonek, and that subsistence fishery was occurring at such a level and it was confined to a certain limited period of time that essentially would perhaps focus that exploitation on a few of the contributing stocks, we would be obliged to implement closures in the recreational fishery to ensure that our escapement objectives are achieved. Of course, this is our mandate under Title 16 to provide for the proper conservation and protection of the resource so that they can continue to support fisheries in future years. So we would have to react to those exploitations and take whatever appropriate actions we felt necessary given the data at hand. As Ken Florey points out, if the fishery was expanded beyond the confines of Tyonek, it would be essentially impossible for the department to accurately monitor that fishery. Then, I think in that situation we would also be compelled to take a very restrictive action in any other fisheries that may impact the stock.

Thompson: Could you give me some sense of your time... how long would it take Fish and Game to study an issue like that before it could lift such a ban?

Number 128 Florey: That is a very difficult question to answer, not knowing how expansive the fishery would be. If it were quite restrictive in an area we could easily monitor, we could get the information just based on interviews with the fishermen. If the area was very large, and we were really unable to monitor the amount of use say other than aerial surveys to get a generalized number, it would be extremely difficult within a timely manner where those fish are going to be available to those different sport fisheries to monitor in a fast enough manner where we could say close and reopen and have an effective fishery because within a very short period of time those fish move out of those areas that sport fishermen are allowed to participate in up into the closed waters. So it's almost impossible to answer your question any clearer than that. It's just a difficult situation to try to assess until we get into it. If we had lots of stocks of fish and very few participants, there probably wouldn't be any impact. If we had returns of chinook on that earlier run that were very weak, which we have not had, in the number of years we've had very good returns and we had a fair number of people over there trying to harvest them, then we'd have to be more conservative. But I just can't be more specific than that.

Goll: Thank you very much, if you care now Larri to proceed with the presentation on the issues that you were leading up to.

Larri Spengler: Thank you. Yes, I had just asked Ken Florey if he could please talk a little bit about what the effects might be if the board were required by Madison to open subsistence fishing on various stocks on the eastside beaches at various times during the summer.

Number 159 Florey: Currently within Cook Inlet we manage the summer salmon runs under a plan that was adopted by the board of fisheries, the Cook Inlet Salmon Management Plan, which specifically states periods of time when certain users will be given preference or primary use of the resource. During the times of July 1 through August 15, it's primarily for commercial uses and the stocks migrating through Cook Inlet at that time, especially on the eastside beaches are now primarily taken by commercial users with secondary uses on certain stocks by sport fishermen. I don't feel that we would have many problems managing those stocks during that time period just based on the fact that we now have a very intensive commercial fishery and were able to monitor them quite well and do very well at it. The problem that you would have would be the social problems between the subsistence net users trying to compete for or establish beach areas with the commercial users and that could be quite dramatic and traumatic for those that try to monitor it. Because it would be very, very difficult to do and I'm afraid you could have some real problems that way. From a biological standpoint I don't foresee any major problems during that time period. After August 15 and say prior to July 1, we're looking at a totally different situation. We have one sockeye stock moving in Cook Inlet at that time primarily destined for the Russian River on the Kenai Peninsula which is a heavily used Sport fishery. It's not a large returning number of fish. We haven't had a commercial fishery on it for a good

number of years. A net fishery on that stock could be very, very dramatic, on those beaches and would probably mean having to close the Russian River to sport fishing determining what the escapement levels are. The other stocks during that early time, would be the early Chinook return, a king return to the Kenai River, and some to the Crooked Creek which is a hatchery return on the Kasilof River. A large net fishery if it were effective and that is yet to be determined, by subsistence users early, could have an impact on the early returning Chinook or king salmon return to the Kenai River, probably not much of an impact on the hatchery supported return to Crooked Creek. In the late fall, the late coho return which is one that the original petitioners or subsistence users wanted to target on that would totally depend on run strength. Last year we had a very large return of coho to the Kenai River, over probably in the neighborhood of 70,000 harvest by sport fishermen. In a year like last year, I don't think it would be that big of a concern. But on years when we'd go back to an historic level if you had a large net catch or subsistence catch on that late run it would probably mean having to curtail the sport fishery within the Kenai River or close it.

Number 205 Bonney: One of the real worries that has come up is there's an extremely heavy fishery on the early run king, particularly on the Anchor River and the Ninilchik and Deep Creek. It's probably as big as the second largest city in the state during those particular weekends. It's worried that if the beaches are open to subsistence fishing could and would cut off the early kings in June going into these streams and effectively have those streams shut off to sport fishing. It would be rightly so because the run would be jeopardized. That's a real worry as well as having an early run into the Kenai River which is heavily fished also jeopardized by the possibility of subsistence nets along the beach. The subsistence nets could be mesh size that are equipped to specifically catch king salmon whereas now the commercial nets are set for sockeyes and its an incidental catch in the commercial nets. But if they were to get a specific mesh size that would select the king salmon it would be extremely detrimental to the runs in the recreational fishery that go on during June.

Number 213 Goll: One of the questions that has been posed to me as chairman and I think to some of the committee members as well has been whether or not the threat to sport fishing is as serious as it is described. But your comments suggest to me, and you are probably the most experienced in the sport fish industry present at this meeting today. We don't have the representative from the department, division of sport fish, so from your comments I gather that the threat to sport fishing is very real and significant and one way or another something that really should be dealt with before this summer season commences. Is that a correct understanding of your position?

Bonney: Yes, it certainly is. The potential is one that we can't really live with. We don't know what will happen, but the potential is there for the very worst scenario that you could think of. And one of the worst ones I can think of is when you have the large urban area of Anchorage sitting here is to have the subsistence fishery..right in so that it would have to have the recreational fishery shut off. That's the worst possible thing that could happen and the potential is very definitely there. Whether it would happen or not, is another story.

That's why we have to buy some time to start finding out where we are in this situation.

Goll: Thank you very much.

Number 241 Garner: I think that comment sort of summarizes the position that the board took in our resolution. Our concern is that it's unclear what kind of regulatory restrictions we can impose on customary and traditional subsistence users. If the worst case situation is correct, if Madison requires us to allow bag limits that are customary and traditional, if Madison does not allow us an overall quota on these fisheries then these kinds of impacts are very likely. It has the potential to remove the ability of the board to balance the interests of each of these groups.

 Spengler: If there are any more questions about Cook Inlet, maybe this is the time to take them before we move on to the Copper River situation.

Number 259 Stewart: Mr. Chairman, maybe to make one thing a little more clear before we go into the Copper River, I spoke to you about petitions earlier. The question that board is having to deal with at this meeting and that the department will have to deal with throughout the summer is if someone walks in this summer with a petition to open a subsistence fishery in Knik, for instance, the department is struggling with whether or not that would have to be done instantly. During the time that the boards were dealing with applying the subsistence law in Cook Inlet, we received a great deal of testimony from people who had fished in various parts of Cook Inlet in the past with subsistence gill nets. One of those areas was Knik, another area was Eklutna. Virtually the records the board has behind it includes almost every place in Cook Inlet that was accessible. Perhaps Larri could speak to whether or not we would be in the position of having to authorize fisheries all summer long on demand.

 Spengler: It is fairly clear from Madison that if a customary and traditional use has occurred it doesn't matter whether it's in a rural area or not and the board is mandated by the law to authorize that unless there's a biological problem and the sport and commercial fishery have been closed. So, given the record that the board has in Cook Inlet, a very thorough record, that indeed subsistence fishing has existed everywhere, basically. There would be practically no legal excuse not to grant those petitions as they came in and open fisheries throughout the summer and make any necessary adjustments in sport and commercial fisheries. Are there any further comments on Cook Inlet or questions from Juneau?

Number 289 Florey: As I earlier stated, depending upon the extent in Cook Inlet, we would have to open fisheries those limited number stocks both earlier in the summer and late in the summer now under the management plan are primarily recreational uses we feel would probably be the ones most impacted. That is not the case in the Copper River. It's a total reversal of that situation. In the Copper River we have an extensive gill net fishery that operates in salt water at the mouth of the river then almost two to three weeks delay time until we get to Chitina where we have a large dip net fishery which we last year defined as a personal use

fishery. And also a subsistence fishwheel fishery. Under our interpretation, or my understanding or as it's been told to me, now we have a subsistence fishery as it used to be in the Upper Copper River open to any resident who wants to. Under the current bag limits, which have been established by the board, if we did not have a lid on that, it could be a major impact trying to ensure that we could get enough fish through the commercial fishery, well, we could do it easily enough, close the commercial fishery, not knowing how many people we were going to have show up at Chitina two weeks later. We struggled with this and have struggled with it for years. We come up with a plan the last two years that has worked quite well. Now we have a quota for the old personal use fishery in the neighborhood of 60,000 sockeye salmon. The highest number that that fishery took prior to the new plan was about double that in the neighborhood of 120,000. We do not know how many people would show up, but given we had to give them an opportunity at current bag limits it would be very difficult to manage the Copper River commercial fishery to ensure those numbers would escape. First of all, our biological goals, by stock, second of all the subsistence fishery in the Chitina area from Chitina all the way up to Salana and thirdly then to provide for the Copper River fishery on the flats. One of the major problems we have is that although the Upper Copper River is a large component of that system it only contributes, or it has in the last few years, about 50% of the returning sockeye to the Copper River, the other being the Delta stock which do not have and have not had any fishery other than a commercial fishery on them to any extent. So we would have to forego a rather large portion of the harvest for the commercial fishermen on the Delta stocks to ensure we would have enough fish upriver for the subsistence users. It would be extremely difficult management situation, not impossible.

Number 333 Garner: Just to make it clear it's my impression that there's no other opportunity to harvest those Delta stocks. The only opportunity that we have is as they come in mixed with the upriver stock.

Florey: Yes, John that is correct. Only with the net fishery at the mouth of the river there is no other opportunity to harvest Delta stock,

Beth Stewart: Ken, at the time the board was dealing with the Copper River and the Chitina personal use or subsistence fishery there were a lot of questions about being able to know how many fish were coming out of that upper river harvest. Knowing exactly what the subsistence take is during the summer, maybe you could speak to that a little bit.

Florey: Yes, Beth, are you saying what's the upriver component in the commercial fishery is? I don't quite understand your question.

Stewart: I'm sorry Mr. Chairman. No, what the actual take is by subsistence fishermen, monitoring that catch.

Florey: Well, under the plan that we implemented this last year we set the days of the week that they could fish depending upon what our predetermined quota for that week would be and the fact that they

king salmon fishing. It's not a large stock, we're only talking anywhere from 10-15,000 king salmon. We could have an impact there and we would have to probably have to curtail the sport fishing in the Naknek River, but for sockeye, I don't anticipate any problem.

Spengler: Any questions on the Naknek fishery or any comments by anyone else here before we move on to Angoon?

Number 428 Bob Clasby: For southeastern Alaska, there are only two subsistence coho fisheries. That's one at Klukwan and the other one is in Angoon. The one in Angoon was opened by the board at its December 1980 meeting was restricted only to residents of Angoon. With Madison decision that fishery would now have to be open to all, I assume 12-month, Alaska residents. Certainly if my memory serves me right, the harvest level in the last year for Angoon has been around 1,000 or 2,000 coho salmon. The fishery takes place in Salt Lake and Mitchell Lake. Apparently that's a so a very popular coho sportfishing area. I'd like to go back and say there's no way for us to even guess at what level of participation or harvest might come out of that fishery with it being opened to all Alaska residents. Because I think I mentioned before, except for Klukwan, there have been no subsistence coho fisheries allowed in Southeast. So, you don't have any past harvest data to even guess at. If one does get an increase in that harvest above probably the 2-4,000 level, it's probably going to result in closures to the sports fishery in that Salt Lake-Mitchell Bay area. The other harvesters on those stocks, of course, are primarily the hand troll fish fishery. Primarily the troll fishery on the inside that fishery occurs before the subsistence fishery ... there'd be no time to react and make closures on that troll fishery ... probably to substantially increase the amount of coho moving in to Mitchell Bay. One would make the assumption if you carry the scenario that the fishery has to be open to all Alaska residents into the future and the harvest levels increase, it's going to mean reductions to the troll harvest. And of course that's probably going to have a very significant impact on the residents of Angoon also, because I think as far as cash income to that community, they are very heavily dependent on that hand/troll catch. I think that's about all I have to say on it if there's any questions from the committee members.

Number 478 Spengler: We will not go into detail about the Illiama-Lake Clark fishery which has a similar restriction as the Naknek fishery did, which is that currently only residents of Illiama-Lake Clark drainages can fish in those drainages and under Madison those would have to be opened to everyone. Also, in trying to give you a sense of the impact, it has been impossible to predict where as Beth Stewart mentioned in Cook Inlet, but in other places throughout the state people may petition to open areas which formerly had been closed and now the board will not be able to refuse to open them based on any criteria of ruralness or other concepts. For example, most of the road systems in the larger Southeast communities are closed currently to subsistence fishing and if petitions are received, those would probably have to be opened. I believe we're basically concluded with the Anchorage portion of the presentation. Ron Jolin, chairman of the joint board has a few concluding remarks and then we'll turn it back to Jim Ayers.

Number 493 Jolin: Thank you Larri. I really don't have an awful lot to put in at the conclusion of this meeting. I think I brought most of it up when we started. The crux is that the boards feel that we need the flexibility that we had prior to the Madison decision in order to regulate. In order to regulate our fisheries and game issues. We feel now that our hands are somewhat tied and we're really unsure what might happen in the following year. So, if we can get back to that position, it would certainly help the boards to do their job.

Number 509 Ayers: Do you have any further comments in Anchorage, Larri, or Ron or anyone else there? (none)

Number 511 Rep. Fuller: I think most people are aware, but on the 25th and 26th the Resources Committee will be having an informational hearing on HB 288. At that time we're going to ask to have nets open throughout the state so that people can be informed of what's going on. This is an informational hearing. Then after these hearings we're going to open it up throughout the state for people to participate in it. I just want to make everybody aware of that. I don't know whether Ron Jolin will be available on the 25th or not, because I know we're getting ready to adjourn, but I wanted everyone to know about it. Thank you, Mr. Chairman.

Goll: Thank you very much Rep. Fuller. I'd like also to assure people that this would be a good opportunity to Resources hearing to follow this issue as we move it through the House. Mr. Ayers?

Number 553 Ayers: Thank you Mr. Chairman. I will be brief in my concluding remarks. There have been a variety of rumors and comments regarding the effects of Madison and what we are trying to do, as I mentioned earlier, is work with you in a cooperative spirit to provide you the information and the framework that will allow you to take immediate action to return regulatory jurisdiction to the boards. Our effort and the governor's bill, HB 288, is focused on restoring harmony in the use of our fish and wildlife resources. Let me also say that that bill is basic and thorough in renewing a system that has been working. You've heard today from a variety of people talking about the Madison decision and the potential impacts and a plea for your assistance to restore that harmony. They have respectfully, but strongly, requested your assistance and guidance in restoring sufficient regulatory flexibility to the boards that will ensure all Alaskans that they are provided fair and reasonable access to our fish and game populations. Anything we can do Mr. Chairman, to assist you in moving this bill and restoring that harmony, we are at your pleasure. Thank you very much for this opportunity as well as the members in coming forward. We are available. Thank you.

Number 569 Goll: Thank you very much Mr. Ayers, and all of you in Anchorage. It's really a favor to us that you come forward and provided us with this information and we're very grateful and hope the people gathered here today have benefited from your presentation.

I'd like at this time to read a letter which I'd like to send to the House Resources Committee. The letter basically restates some of the comments made today and asks for expedient action in looking for a solution to these problems. It does not recommend specific action,

but simply asks that the Resources Committee move as rapidly as they can to get the issue solved. I'd like to read the letter for the record at this time and seek unanimous consent from the members of the committee. Also other members of the Legislature who wish to sign on the letter are certainly invited to do so.

"The Madison decision by the Alaska Supreme Court on subsistence has the potential of seriously disrupting the management of Alaska's fish and wildlife resources. According to testimony before the Special Committee on Fisheries, the Madison decision could force radical shifts in established patterns of resource allocation, upsetting the carefully balanced approach to fish and game management achieved in recent years.

The Fisheries Committee received testimony on the Madison decision from the Department of Law, Department of Fish and Game and chairman of the Joint Boards of Fisheries and Game. Although the state's fish and wildlife managers are still in the process of developing specific management strategies responsive to Madison, this much is clear:

- 1) Sport and commercial fishing in Cook Inlet may have to be cut back to accommodate anticipated increases in non-commercial net fishing.
- 2) The commercial drift net fishery in Prince William Sound may have to be sharply restricted to provide increased dip-netting opportunities in the Copper River.
- 3) Many of Alaska's big game guides may be forced out of business because of major decreases in non-resident hunting activities.

The members of the Special Committee on Fisheries believe that the subsistence issue must be addressed by the Legislature in a prompt but thorough manner. The committee respectfully requests the Resources Committee to take all possible steps to address this critical issue in a manner providing for action by the Legislature in the remaining weeks of the Legislative session."

I would ask unanimous consent from the members that I submit this letter to House Resources. Rep. Hurley...

Number 614 Rep. Hurley has moved the letter and asked unanimous consent. Are there any objections. Hearing none, then we will send this letter to House Resources today and distribute it to members of the Legislature and members of the public. I thank you.

I have a couple of brief announcements before we adjourn. Number one, I'd like to state that the next meeting of the House Fisheries Committee will be held at 4:30 p.m. on Friday a week from tomorrow. If any member has a problem with that. We will be getting in touch with you to firm up those arrangements.

(discussion of HESS committee schedule and the calendar for the next meeting)

Number 621 I'd also like to just take a moment to express in behalf of the committee our grave sadness at the passing of Mr. John Clark who was the director of the habitat division and one of the most dedicated and competent public servants I've ever met. And I'd like to just say in behalf of the committee, we would like to extend our sympathies to Mrs. Clark and recognize his contribution to the state.

Rep. Hurley: In that regard, I believe that I'd like the minutes to reflect the contribution of the late Senator Al Owen who appeared before this committee just one month ago. And who died last week in Kodiak.

Number 670 Goll: Let the record show that we recognize the passing of this Alaskan and his great contribution to the state. It's certainly been a tragic week and I hope that with this meeting will go on the upward track. Once again thank you all for attending today. This meeting of the Special Committee on Fisheries is adjourned, the time is 10:11 a.m.

Introduced: 3/13/85
Referred: Resources and
Judiciary

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 288

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

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

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

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

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

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

29 (3) setting quotas, bag limits, harvest levels, and sex and

1 size limitations on the taking of fish;

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

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

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

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

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

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

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

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

25 (12) personal use fishing.

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

27 (23) "subsistence uses" means the customary and traditional
28 uses by rural [IN] Alaska residents of wild, renewable resources for
29 direct personal or family consumption as food, shelter, fuel,

1 clothing, tools, or transportation, for the making and selling of
2 handicraft articles out of nonedible by-products of fish and wildlife
3 resources taken for personal or family consumption, and for the
4 customary trade, barter, or sharing for personal or family consump-
5 tion; for the purposes of this paragraph, "family" means all persons
6 related by blood, marriage, or adoption, and any person living within
7 the household on a permanent basis;

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

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

14 * Sec. 5. This Act takes effect immediately in accordance with AS 01.-
15 10.070(c).

16



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 13, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill regarding the taking of fish and game for subsistence and personal uses. The purpose of this bill is to amend AS 16 to delegate to the Alaska Board of Fisheries and Alaska Board of Game the same authority to regulate the taking of fish stocks and game populations that the boards exercised before the recent decision of the Alaska Supreme Court in Madison v. Alaska Department of Fish and Game, Supreme Court Opin. No. 2911 (February 22, 1985).

The bill does so in two ways. First, the bill would amend AS 16.05.940(23) to limit the identification of "subsistence uses" of fish stocks and game populations to hunting and fishing for personal and family consumption and related uses by residents of rural communities or rural areas, where the taking of fish and game for such uses is a significant part of the economy of the community or area. This change recognizes that in rural Alaska the taking of fish and wildlife is essential to the health, safety, and general welfare of Alaskans domiciled in many of the rural communities and rural areas of our state and to the economy of the community or area in which they reside. As the Alaska Department of Fish and Game has determined from its research on this subject:

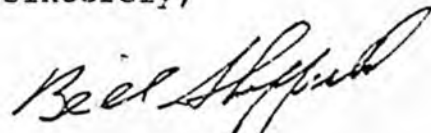
Alaska is characterized by a diversity of socioeconomic systems and patterns of resource use. ... It seems clear that the economic and social stability of many communities depend upon access to and utilization of renewable fish and wildlife resources. Disruptions of the relationships between the community and the resource base may affect the viability of these ways of life.

Alaska Department of Fish and Game, Division of Subsistence, Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities, technical paper No. 61, 274 (1983).

Second, the bill would establish a statutory definition of the term "personal use fishing" (proposed AS 16.05.940(28)). The Alaska Board of Fisheries has already established this category by regulation. This category of harvest, though not subsistence fishing, is important to Alaska residents. After the board has identified the "subsistence uses," if any, of particular fish stocks, AS 16.05.940(28) and the amendment to AS 16.05.251(a)(6) and addition of AS 16.05.251(a)(12), in sec. 2 of the bill, would authorize the board to adopt regulations allocating access to those stocks for the purposes of personal use, sport, and commercial fishing in a fair and reasonable manner consistent with its constitutional responsibility to adopt regulations to use, develop, and conserve fish stocks for the maximum benefit of all Alaskans.

As previously mentioned, this legislation is intended only to provide the boards the same regulatory authority which they exercised before Madison v. Alaska Department of Fish and Game. Consequently, I urge your expeditious consideration of this bill, since its enactment is essential to provide the boards sufficient regulatory flexibility to ensure that Alaskans are provided fair and reasonable access to our fish stocks and game populations. Enactment will also ensure that the State of Alaska remains in compliance with the provisions of Title VIII of the Alaska National Interest Lands Conservation Act and, consequently, retains full authority to regulate the taking of fish and game on all land and in all water of the state.

Sincerely,



Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
 Bill/Resolution No.: HB 288
 Title: An Act relating to the taking of fish & game for subsistence & personal use
 Sponsor: Rules Comm. at Gov. request
 Requestor: Rules Comm. at Gov. req.
 Date of Request: March 13, 1985

FISCAL DETAIL
 Agency Affected: Department of Fish and Game
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: All ADF&G BRU's

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Passage of bill will reduce management costs substantially. Failure to adopt will require a major increase in funds for monitoring growing subsistence fisheries.

If state is found to not comply with federal requirements, then state may lose federal matching grants and revenues

Prepared By: Steven R. Behnke *Steven Behnke* Phone: 465-4147
 Division: Subsistence Date: 3/12/85

Approved by Commissioner: *James A. Olson* Date: 3-12-85
 Agency: Department of Fish and Game

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)



Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

DATE: March 21, 1985

TO: House Resources Committee

SUBJECT: Special Committee on Fisheries
Comments on Subsistence

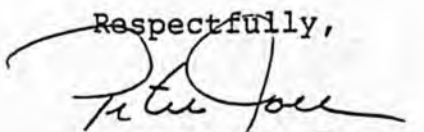
The Madison decision by the Alaska Supreme Court on subsistence has the potential of seriously disrupting the management of Alaska's fish and wildlife resources. According to testimony before the Special Committee on Fisheries, the Madison decision could force radical shifts in established patterns of resource allocation, upsetting the carefully balanced approach to fish and game management achieved in recent years.

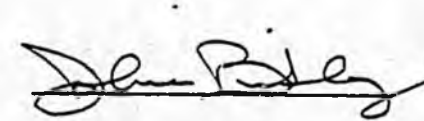
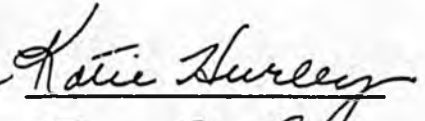
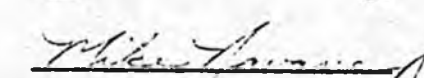

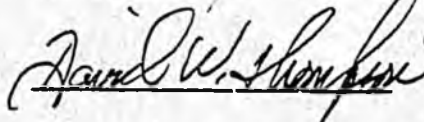
The Fisheries Committee received testimony on the Madison decision from the Department of Law, Department of Fish and Game, and chairman of the Joint Boards of Fisheries and Game. Although the state's fish and wildlife managers are still in the process of developing specific management strategies responsive to Madison, this much is clear:

- 1) Sport and commercial fishing in Cook Inlet may have to be cut back to accommodate anticipated increases in non-commercial net fishing.
- 2) The commercial drift net fishery in Prince William Sound may have to be sharply restricted to provide increased dip-netting opportunities in the Copper River.
- 3) Many of Alaska's big game guides may be forced out of business because of major decreases in non-resident hunting activities.

The members of the Special Committee on Fisheries believe that the subsistence issue must be addressed by the Legislature in a prompt but thorough manner. The committee respectfully requests the Resources Committee to take all possible steps to address this critical issue in a manner providing for action by the Legislature in the remaining weeks of the Legislative session.

Respectfully,


Peter Goll, Chair

WHEREAS, the Alaska Board of Fisheries and Alaska Board of Game have been delegated responsibility and authority by the Alaska Legislature to regulate the taking of fish stocks and game populations for the maximum benefit of all of the people of Alaska; and

WHEREAS, prior to the decision of the Alaska Supreme Court in Madison v. Alaska Department of Fish and Game the boards developed procedures which provided adequate regulatory flexibility, both to protect opportunities for subsistence hunting and fishing in rural communities and areas, and to provide hunting and fishing opportunities for recreational, commercial, and other uses; and

WHEREAS, it is unclear to what extent the boards may restrict subsistence harvest after the Madison ruling and as a result, substantial and significantly disruptive reallocations of opportunities to harvest fish stocks and game populations may be necessary. For example:

1. The commercial gill net fishery which is an important component of the Prince William Sound economy may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to accommodate both the historic commercial fishery and other users.

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2. Sport fishing for king and other species of salmon on the Kenai and Naknek rivers and in the Susitna drainage may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to prevent that result.

3. Non-subsistence hunting, including commercial guiding activities may be significantly restricted and, in many cases, eliminated. Prior to the Madison decision the Board of Game had adequate regulatory flexibility to accommodate these users reasonably.

WHEREAS, prior to the Madison decision the State of Alaska was in compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). As a result of the Madison decision the federal government may now take control over game populations on public lands and fish stocks on public lands and within navigable waters; and

WHEREAS, if the State of Alaska is no longer in compliance with ANILCA, the state will lose the ongoing million dollar per year federal appropriation for the state's public participation system which is essential to the success of the state's regulatory and management activities; and

WHEREAS, the Alaska Board of Fisheries and Board of Game strongly believe that the potential restrictions, closures, reallocations

and loss of funding described above are not in the best interest of the fish and wildlife resources and the people of Alaska;

NOW THEREFORE BE IT RESOLVED, that the Alaska Board of Fisheries and Board of Game meeting in joint session respectfully, but strongly urge the Alaska Legislature to enact legislation during the current legislative session which returns to the boards the regulatory authority and flexibility which they exercised before the Madison decision; and

THEREFORE BE IT FURTHER RESOLVED, that the Alaska Board of Fisheries and Alaska Board of Game have reviewed SB 231 and HB 288, the legislation introduced by the Governor to accomplish this purpose, and urge that this legislation be enacted into law as expeditiously as possible.