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Alaska State Legislature

House of Representatives

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Special Committee on Fisheries

M E M O R A N D U M

DATE: March 20, 1985

TO: Members of the Press Corps

FROM: Peter Goll
Chairman
Special Committee on Fisheries

SUBJECT: Subsistence Briefing on Thursday, March 21

THE HOUSE SPECIAL COMMITTEE ON FISHERIES WILL CONDUCT A MAJOR BRIEFING SESSION ON SUBSISTENCE, THE MADISON DECISION AND ITS IMPACT ON ALASKAN SPORT AND COMMERCIAL FISHERMAN ON THURSDAY, MARCH 21, AT 8:30 AM, IN THE GOVERNOR'S CONFERENCE ROOM.

THE BRIEFING WILL FEATURE PRESENTATIONS BY THE VARIOUS DIVISIONS OF THE DEPARTMENT OF FISH AND GAME, THE DEPARTMENT OF LAW, AND THE BOARDS OF FISHERIES AND GAME.

THE OVERVIEW WILL PROVIDE MEMBERS OF THE LEGISLATURE AND THE PUBLIC WITH THE INFORMATION NECESSARY TO FOLLOW THE UPCOMING RESOURCES COMMITTEE HEARINGS ON THE GOVERNOR'S BILL.

"RESOLUTION OF THE ISSUE THIS SESSION IS VITAL TO ENSURING CONTINUITY IN FISHERIES MANAGEMENT," SAID FISHERIES COMMITTEE CHAIRMAN PETER GOLL (D-HAINES). "SPORT FISHERMEN, GUIDES, COMMERCIAL FISHERMEN AND SUBSISTENCE USERS ALIKE DEPEND UPON A BALANCED APPROACH TO RESOURCE MANAGEMENT.THE MADISON DECISION HAS EXPOSED THE GAPS IN OUR CURRENT ALLOCATION SYSTEM. THOUGHTFUL YET PROMPT ACTION BY THE LEGISLATURE IS REQUIRED TO RETURN BALANCE TO OUR FISH AND GAME MANAGEMENT."

"OUR ENTIRE STATE ENJOYS THE COMBINATION OF COMMERCIAL, SUBSISTENCE, SPORT AND PERSONAL USES OF OUR RESOURCES. IT IS MOST IMPORTANT THAT ALL USES BE RESPONSIBLY PROTECTED UNDER THE LAW."

SUBSISTENCE ISSUES PACKET

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Rep. John G. (Jack) Fuller
Bush Caucus Chairman

March 15, 1985

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

IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

HOUSE BILL NO. 288

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. FINDINGS. The legislature finds that

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

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

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

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

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

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

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

size limitations on the taking of fish;

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

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

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

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

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

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

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

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

(12) personal use fishing.

* Sec. 3. AS 16.05.940(23) is amended 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 as food, shelter, fuel,

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

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

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

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

HB 288

HOUSE BILL NO. 288 by the Rules Committee by request of the Governor, entitled:

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

was read the first time and referred to the Resources and Judiciary Committees.

A zero fiscal note was attached.

The Governor's transmittal letter dated March 13, 1985, appears as follows:

"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 popu)ations 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).

HB 288

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)(13), 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,

/s/

Bill Sheffield
Governor"

MEMORANDUM

State of Alaska

TO: Ron Jolin, Chairman
Joint Boards of Fish and Game

DATE: March 15, 1985

FILE NO:

TELEPHONE NO: 465-4100

FROM: Don W. Collinsworth
Commissioner
Department of Fish and Game

SUBJECT: Management Issues Arising From the Madison Decision

INITIAL ASSESSMENT

As you requested, my staff has completed an initial assessment of the Madison decision's implications for fish and wildlife management. This memorandum uses the Cook Inlet, Naknek River, and Copper River fisheries as examples, but Madison also affects existing Board of Fisheries regulations for Angoon and Lake Iliamna-Lake Clark and existing Game Board regulations for permit hunts.

Although the Game Board has not applied the eight criteria in the same way the Board of Fisheries has, Department of Law has said that the Game Board may be unable to continue providing permit hunts restricted to particular communities unless guided hunting and hunting by non-residents have already been eliminated. Further the legal analysis concludes that Madison may require the Game Board to discontinue non-state-resident and guided hunting for all permit hunts.

Department of Law and the management divisions are continuing to analyze Madison impacts and more information will be developed. However, this memorandum is intended to alert you to some of the anticipated area impacts.

COOK INLET/KENAI RIVER/SUSITNA RIVER SALMON

Testimony and data presented to the Board of Fisheries indicate that within the last 20-30 years, almost every part of Cook Inlet, including Knik Arm and Turnagain Arm, has been open to subsistence set-net fishing for salmon (Braund, 1980). The open season for fishing varied from location to location, as well as through time, but included the period May through September. Until 1978, 50 fathoms of net could be used in many areas. Species harvested in these set-net fisheries included primarily kings, sockeye, and coho.

As Anchorage and the Kenai Peninsula grew, subsistence salmon seasons were gradually restricted until only small areas remained open for very short periods with limited gear. Since 1980, subsistence fisheries have been authorized in very limited areas for residents of Tyonek, English Bay, and Port Graham only.

The impacts of the Madison decision on existing Cook Inlet fisheries depend on how many people decide to participate, and where and when they

fish, which makes it difficult for us to precisely assess immediate or long term effects. At a minimum, however, we would expect to see an increase in the gill net harvest of west side and Susitna River king salmon, since any Alaskan will be able to participate in the Tyonek district subsistence king fishery. This fishery begins in May, and has limits of 70 kings per household. Presently, this fishery is restricted to persons domiciled in Tyonek, and on average, 2,000 kings have been harvested annually.

It is impossible to predict how much new effort would occur, but any significant increase in this fishery will require compensating reductions in the expanding sport fishery of the Susitna drainage. This, of course, would mean reductions in seasons, bag limits, or even closures of certain areas to fishing if the subsistence harvest grows substantially.

In addition, the Kenai Peninsula subsistence net fisheries which existed in the late 1970s, and which have been closed since 1980, may have to be reopened to all Alaskans. This would include set net fisheries on king, sockeye, and coho stocks which enter all of the Kenai Peninsula drainages. King and coho stocks, which are already the focus of major allocation conflicts between sport and commercial users, will now have to be shared with another user group, which will have a priority. Additional harvest restrictions on sport and commercial fisheries in Cook Inlet may have to be imposed either before the fishing season or in-season as we determine whether escapements are being achieved.

Because of recent regulatory constraints, past harvests are a poor indicator of the potential demand for subsistence fishing in Cook Inlet. Further, recorded harvests probably underestimate the actual historical subsistence harvest due to inadequate catch reporting systems. If accessible beach areas are opened to net fishing, we would expect a substantial interest, similar to that in the Copper River dip net fishery. One indicator of this demand is the fact that participation in the Cook Inlet subsistence fishery increased from less than 100 people to more than 1,300 between 1977 and 1980, before the Board adopted the regulations restricting subsistence use. An additional indicator of demand are the requests the Fisheries Board has received from people wanting to fish with nets in Knik Arm and other parts of Cook Inlet.

In an extreme scenario, the Board could be required by a court to authorize subsistence fishing wherever it has occurred in Cook Inlet, Turnagain Arm, and Knik Arm, throughout the summer, by any Alaskan. The Madison decision clearly states that sport and commercial uses must be eliminated before subsistence uses can be restricted. Therefore, it seems unlikely that the Board or department could impose subsistence harvest limits or quotas to ensure that commercial and sport uses could continue.

In summary, we see major demands being imposed upon the department for in-season monitoring and management of all harvests to ensure adequate escapements in Cook Inlet. We also see the potential for confusion and controversy over Cook Inlet salmon management escalating and making it more complex.

NAKNEK RIVER SALMON

The Naknek River is currently open to subsistence fishing only by residents of the Naknek and Kvichak river drainages. This regulation was adopted in 1981 because of concern about growth in the Naknek subsistence salmon fishery by other Alaskans. From 1976 to 1980, participation and king harvests in the Naknek subsistence fishery doubled as more people learned about the fishery and came to the Naknek-King Salmon area to take part in it.

The Board, local residents, and sport fishermen all became concerned that this growing harvest was beginning to affect the allocation of the Naknek River's limited king salmon stocks. By restricting the fishery to local residents, the Board of Fisheries was able to allow continued development of the Naknek sport fishery on kings, which has become increasingly significant to guides and transportation services. By creating a personal use sockeye fishery on the Naknek, the Board was able to accommodate non-local fishing demand and shift it to more abundant species.

The Madison decision appears to open the Naknek net subsistence fishery again to all residents of the state. If significant effort occurs, it seems quite likely that restrictions will have to be imposed on the sport fishery in order to ensure king salmon escapement.

COPPER RIVER/PRINCE WILLIAM SOUND SALMON

Historically, Copper River sockeye have been harvested by commercial fishermen in Prince William Sound, residents of the Copper Basin and other interior communities, as well as Fairbanks and Anchorage residents. With population growth and increased publicity, the Chitina dip net fishery grew dramatically; harvests more than tripled from 1980 to 1983. Additionally, many urban dip net fishermen preferred to fish the early portion of the Copper River run, which posed potentially severe management problems for early run sockeye. About 50 percent of the Copper River run passes through the commercial fishery district in the first two to three weeks of the season, which means any management decisions to restrict the fishery must be made on very short notice.

As subsistence harvests increased in the 1970s, the board began restricting fishwheel and dip net harvests in the Copper River. In 1984, the board examined subsistence dip net and fishwheel fisheries in the Copper River. It authorized subsistence fishing for Copper Basin residents. Harvest by the subsistence fishery was predicted to be approximately 20,000 salmon and individual bag limits could go as high as 500. The board then established a personal use fishery for people who did not reside in the communities identified as having subsistence uses. The personal use fishery had bag limits of 15 salmon for individuals and 30 for households. The total catch was limited to 60,000 sockeye plus twenty-five percent of any excess escapement. The in-river sport fishery was predicted to harvest approximately 5,000 sockeye and the Prince William Sound commercial drift gill net fishery was managed to provide for these known harvest and escapement levels.

Under Madison, the Fisheries Board may have difficulty in predicting harvest levels for the Copper River fishwheel and dip net fishery, due to uncertainty about how many people will participate and how many fish they will take. Additional management problems are posed by the timing of the sockeye run and the heavy dip net harvest, which occurs on the early part of the run. These considerations seem to require more conservative management of the Prince William Sound commercial fishery.

In summary, we see a number of complex management issues arising from the Madison decision. Regulation specialists for Commercial Fisheries and Game Divisions are presently identifying the specific regulatory options which the Boards could address for the upcoming season.

MEMORANDUM State of Alaska

TO: Ron Jolin, Chairman
Joint Boards of Fisheries and Game

DATE: March 11, 1985

FILE NO: 366-375-85

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Subsistence

The State subsistence law must be implemented by the Boards of Fisheries and Game in a new and problematic way under Madison v. Alaska Department of Fish and Game, No. 7410, a decision issued by the Alaska Supreme Court on February 22, 1985. The precise holdings of the court could be interpreted by extrapolation to affect the entire state and regulation of game as well as fish.

The state statutes require:

-- That subsistence hunting and fishing be allowed, unless the resource would be harmed.

-- That subsistence be given a priority, if restrictions are necessary.

Before Madison:

-- These special protections applied to fishing and hunting by rural Alaskans.

-- Because subsistence consisted only of those rural harvests, the boards were able to accomodate non-state resident and guided hunting, personal use net fishing by non-rural Alaskans, sport fishing, and commercial fishing.

-- The state was in compliance with ANILCA.

After Madison:

-- All Alaskans may engage in subsistence fishing or hunting.

-- Subsistence fishing or hunting on a resource by all Alaskans cannot be restricted unless all non-subsistence uses are first eliminated.

- Example: The Prince William Sound commercial fishery may need to be restricted or even closed if necessary to accommodate the dip net fishery in the Copper River.

- Example: The Kenai River and Susitna drainage sport fisheries may need to be restricted or even closed if "subsistence fishing" by gill net must be allowed in large areas of Cook Inlet closed in recent years.

- Example: All Alaskans could subsistence fish near Tyonek for kings, near Angoon for cohos, in the Naknek River for kings, sockeye, and coho, and in the Iliamna-Lake Clark drainage for sockeye, unless any associated sport or commercial fishery were closed.

- Example: For any permit hunt, non-state resident and guided hunting may need to be eliminated.

-- If the boards cannot protect fishing and hunting by <u>rural</u> Alaska residents under the state statutes, non-compliance with ANILCA could mandate some federal action.

- It is unclear precisely what federal management would entail, but it has been argued that besides all federal land, all navigable waters would be affected, and that possibly some state lands would be affected if migratory species were involved.

NCG/LIS:rn

MEMORANDUM State of Alaska

TO: Don Collinsworth, Commissioner
Department of Fish and Game

DATE: March 8, 1983

FILE NO: 166-423-83

TELEPHONE NO:

FROM: Norman C. Gorsuch
Attorney General
LIS
By: Larri I. Spengler
Assistant Attorney General
Natural Resources-Anchorage

SUBJECT: Relative resource shortage activating the priority in the subsistence law

During the meeting of the Joint Boards of Fisheries and Game which began in Anchorage on November 30, 1982, several board members requested clarification regarding how and when a priority applies under the subsistence law. Under AS 16.05.251(b) and .255(b), the priority becomes active only when a relative resource shortage occurs, caused, for example, by increase in competition or decrease in harvestable surplus. The following diagram might aid in applying the subsistence law.

Relative abundance of resource	Board action	Priority status
1. No shortage*	Regulations allowable (for example, setting areas and seasons)	Subsistence uses must be allowed, but priority inactive; other uses may be allowed
2. Shortage*	Restrictions necessary	Subsistence uses must be allowed, with a priority over other uses which are allowed
3. Greater Shortage*	Further restrictions necessary	Only subsistence uses are allowed, with priority distinguishing among subsistence users.

4. Critical Shortage*	Total closure necessary	No uses may be allowed

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* Shortage means relative resource shortage, when restrictions on non-subsistence uses must be imposed because harvest competition among user groups or decline in numbers of fish or game would jeopardize sustained yield of the resource or subsistence uses of the resource.

The diagram is based upon the first sentence of AS 16.05.251(b) and 255(b):

> The Board . . . shall adopt regulations . . . permitting . . . subsistence uses unless . . . such regulations will jeopardize . . . the . . . sustained yield. . . .

Part 1 of the diagram reflects that when there is no relative shortage of fish or game, the boards are required by these statutes to allow opportunities for subsistence uses and may under AS 16.05.251(a) and .255(a) allow opportunities for non-subsistence uses. Subsistence uses are identified by the eight criteria which the boards established in 5 AAC 99.010(b). In a non-shortage situation the priority is not active under state law, nor under the federal Alaska National Interest Lands Conservation Act, Title VIII (ANILCA). The ANILCA provision, which parallels AS 16.05.251(b) and 255(b) is §804. Regarding that provision, the Senate committee report states:

> If a particular fish or wildlife population . . . in a particular area is sufficient to sustain a harvest by all persons engaged in subsistence and other uses, the implementation of restrictions on taking set forth in this section need not be imposed by the state rulemaking authority.

S.Rep.No. 413, 96th Cong., 1st Sess. 269 (1979).

As with other uses, regulation of subsistence uses even when there is no relative shortage is authorized. Regulations should be structured to provide opportunities for customary and traditional uses (for example, through the setting of areas and seasons); unconstrained harvests were not contemplated by the legislature. Indeed, regulation of subsistence uses on a case by case basis has been and is part of sound resource management, and was expected by the legislature. For example, the introduction

to Alaska's subsistence law, SLA 1978, Chapter 151, Section 1, states that beneficial use of Alaska's fish and game resources by all state residents "should be carefully monitored and regulated . . . ." The Board of Fisheries has adopted regulations called "subsistence fishing regulations." The Board of Game has generally regulated subsistence uses without designating the regulations as "subsistence regulations." The fact that subsistence uses are to be allowed by the boards does not amount to a guarantee that each participant will achieve a particular harvest. Rather, it is the opportunity to engage in customary and traditional uses which is assured, as long as sustained yield of the resource is not thereby jeopardized. 5 AAC 99.010(c).

Part 2 of the diagram is based upon the second sentence of AS 16.05.251(b) and 255(b):

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

If increase in competition or decrease in harvestable surplus result in a relative resource shortage, restriction of some harvest opportunities may be necessary, and, if so, the priority for subsistence uses comes into play. The boards can use any of the many management options available to them in imposing the needed restrictions on non-subsistence uses and in continuing to regulate subsistence uses in a way that protects the opportunity for subsistence harvests. For example, seasons could be altered, or the use of aircraft prohibited. Of course, in extreme cases the option of precluding non-subsistence harvests remains available.

Part 3 of the diagram is based upon the third sentence of AS 16.05.251(b) and 255(b):

> If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:
>
> (1) customary and direct dependence upon the resource as the mainstay or one's livelihood;
>
> (2) local residency; and
>
> (3) availability of alternative resources.

A more serious resource shortage resulting from greater increase in competition or decrease in harvestable surplus may require still further restriction of harvest opportunities. If so, subsistence uses will be the last to be precluded. At the point that only subsistence uses remain, the criteria listed in the statute would form a basis for distributing the allowable harvest among subsistence users. This is the only point at which the boards may make distinctions among users based upon their individual characteristics, rather than distinguishing among uses by examining the characteristics of those uses.

Part 4 of the diagram reflects the underlying constitutional and statutory mandate that sustained yield is always the paramount concern. Alaska Constitution, Article VIII, Section 4; AS 16.05.251(b) and .255(b). If the status of a fish or game resource is such that maintenance of sustained yield requires that all harvest cease, no use (including subsistence) may be allowed.

We hope this diagram and explanation clarify that under the subsistence law, the priority becomes active only in times of relative resource shortage.

LIS/jmo

MEMORANDUM State of Alaska

TO: Honorable Bill Sheffield
Governor

DATE: March 6, 1985

FILE NO: 366-375-85

Thru: John Shively
Chief of Staff

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Briefing memorandum: subsistence

I. Suggested Attendees

A. Governor Sheffield and appropriate staff

B. Department of Fish and Game

1. Don W. Collinsworth, Commissioner
2. Dennis D. Kelso, Deputy Commissioner
3. Steven R. Behnke, Director, Division of Subsistence

C. Department of Law

1. Norman Gorsuch, Attorney General
2. Larri Irene Spengler, Assistant Attorney General

II. Issue Summary

-- For several years, the Boards of Fisheries and Game have implemented the state subsistence law in a way which protected fishing and hunting by rural Alaskans.

-- At the same time, the boards provided reasonably for other uses, such as personal use net fishing by non-rural Alaskans, sport fishing, and commercial fishing.

-- This exercise of regulatory authority had been certified as complying with the federal subsistence law, ANILCA.

-- On February 22, 1985, the Alaska Supreme Court declared that the boards lacked statutory authority for the regulatory approach used in implementing the subsistence law. Madison v. Alaska Department of Fish and Game, No. 7410.

-- Madison means that all Alaskans may participate in subsistence uses, and that those uses cannot be restricted until sport and commercial fishing, and non-resident hunting and big game guiding are eliminated.

- Example: The Prince William Sound commercial fishery may need to be restricted or even closed if necessary to accommodate the dip net fishery in the Copper River.

- Example: The Kenai River and Susitna drainage sport fisheries may need to be restricted or even closed if "subsistence fishing" by gill net must be allowed in large areas of Cook Inlet closed in recent years.

-- If the boards cannot protect fishing and hunting by rural Alaska residents under the state statutes, noncompliance with ANILCA could mandate some federal action.

III. Necessity for Governor's Briefing

A decision is required from the Governor on whether the state should proceed under the statutes as interpreted by the court in Madison, or whether an amendment to the state statutes should be sought to return the regulatory authority the boards exercised before this court decision.

IV. Background

A. Pre-Madison: The state's position on the Alaska statutory and regulatory framework before this court decision was:

1. The legislature in 1978 intended to protect fishing and hunting by individuals who reside in rural areas and communities in which the taking of fish stocks and game populations for personal and family consumption is a significant part of the local economy.

2. The eight criteria developed by the joint boards correctly identified subsistence uses in rural areas and communities.

3. Fishing by net for personal use by people from other areas of the state could be accommodated through the personal use fishing category established by the Board of Fisheries in regulation.

4. Personal use fishing did not have a priority over sport fishing and commercial fishing.

B. Madison: The court held with regard to the statutory and regulatory framework in Alaska:

1. The legislature in 1978 did not intend that subsistence uses were to be limited to hunting and fishing by rural Alaska residents.

2. The legislature in 1978 did not intend subsistence uses to be identified in terms of the uses of an area or community.

3. Conversely, the legislature in 1978 did not intend a "grandfather" rights, limited entry-type system to control eligibility for subsistence.

4. The legislature in 1978 intended that subsistence uses could be restricted only if it is necessary for sustained yield purposes and if non-subsistence uses -- sport and commercial fishing, and by analogy, non-state-resident and trophy hunting, and big game guiding -- have already been eliminated.

5. If a situation requires restriction of subsistence uses, distinctions among subsistence users will be based on the three criteria contained in the statute: customary and direct dependence on the resource, local residency, and availability of alternative resources.

V. Relevant Laws

A. State law: Because the court ruled on statutory construction and legislative intent alone, without reaching any constitutional issues, the legislature may act on this issue.

B. Federal law:

1. The Alaska National Interest Lands Conservation Act allows the state to continue exercising its traditional management prerogatives on all land and water in Alaska if the state in a law of general applicability provides, among other things, the definition of subsistence uses contained in ANILCA.

a. ANILCA defines subsistence uses as uses of fish and game by rural Alaska residents.

b. It is unclear precisely what federal management would entail, but it has been argued that all navigable waters would be included, and that possibly some state lands would be included if migratory species were involved.

2. The Marine Mammal Protection Act also requires that if the state is to resume management, state law must define subsistence uses as uses of fish and game by rural Alaska residents.

VI. Alternatives

A. Implement the current statutes as interpreted by the court. Consequences:

1. All hunting and all net fishing for personal use by all Alaskans is now defined as "subsistence uses," which must be authorized unless the resource will be harmed, and which must be given a priority over sport and commercial uses.

2. As participation increases in a subsistence fishery, sport and commercial fishing must be closed before subsistence fishing can be restricted. (For example, theoretically the Prince William Sound commercial fishery could be closed because of an increase in "subsistence fishing" in the Copper River.)

3. Similarly, all commercial big game guiding and all non-state-resident and trophy hunting would have to be eliminated before subsistence hunting by Alaska residents could be restricted.

4. Subsistence fishing would probably have to be authorized any place in the state where it had been authorized in the past, unless the resource would be harmed. (For example, Madison could require areas in Cook Inlet closed to subsistence fishing for years to reopen, possibly affecting the Kenai River and Susitna drainage sport fisheries.)

5. Assuming non-compliance with ANILCA, the following could result:

   a. Federal management of some kind on all federal lands and possibly all navigable waters of the state could be asserted by the Department of Interior, or sought through judicial action.

   b. One million dollars in matching federal funds authorized by ANILCA would be lost to the state.

6. It would not be possible for the state to resume marine mammal management.

B. Amend the current statutes to return the regulatory authority that the boards exercised before Madison. Consequences:

1. By inserting the words "rural Alaska residents" into the definition of subsistence uses, the scope of uses qualifying for the protection and priority of the subsistence law would be narrowed.

2. By inserting the words "rural Alaska residents" into the definition of subsistence uses, compliance with ANILCA could be assured.

3. By establishing the personal use fishing category in statute, harvest opportunities for people who do not qualify for subsistence uses could be protected, without giving those uses a priority over sport and commercial fishing.

MEMORANDUM

State of Alaska

TO: Hon. Bill Sheffield
Governor

DATE: February 25, 1983

FILE NO: 166-448-83

TELEPHONE NO:

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Subsistence law: real and perceived problems

I recently asked the attorneys on my staff who work in the fish and game area to prepare an overview of the current status of the state subsistence law, with relevant background information for your review. The material which follows is the result of that effort. I have reviewed it personally and concur fully with its content.

OVERVIEW

The framework for the implementation of the subsistence law is now in place. The approach codified in regulation by the Joint Boards of Fisheries and Game is fairly straightforward, and with one notable exception, the definition of "rural," it is likely to be upheld by Alaska courts. See Madison v. ADF&G, 3KN 81-542, CIV; Giosund v. ADF&G, 3HO 80-92, 77-22104 Homer. This memorandum will explain the state statutory and regulatory framework and its relationship to federal law. It also will discuss three actual problems and twelve perceived "problems" in the current situation and identify specific issues that require attention.

STATE LAW

The Alaska Boards of Fisheries and Game are authorized by the legislature to allocate Alaska's fish and game resources among various uses, so long as sustained yield will not be jeopardized. Since statehood, the boards and their predecessor, the Board of Fish and Game, have had the discretion to decide which non-subsistence uses (for example, sports, commercial) should be allowed in each area of the state, and to what extent. Under AS 16.05.251(b) and 255(b), the boards are required to adopt regulations allowing subsistence uses, unless sustained yield will be jeopardized. Attachment A.

Although contained in the same statute, the requirement to allow subsistence uses is separate from the priority for subsistence uses over non-subsistence uses, which is triggered only by a relative resource shortage. The boards must accord the priority to subsistence uses whenever "it is necessary to

restrict the taking" of a fish stock or game population in order to assure maintenance of sustained yield or continuation of subsistence uses. AS 16.05.251(b) and 255(b). Attachment A. As discussed below, the mere existence of regulations authorizing subsistence uses does not mean that taking is "restricted" so as to trigger the priority. Rather, the priority comes into play only in relative resource shortage, when restrictions on non-subsistence uses must be imposed because harvest competition among user groups or decline in numbers of fish or game would jeopardize sustained yield of the resource or subsistence uses of the resource.

The legislature has defined subsistence uses as "customary and traditional uses" of wild, renewable resources for certain purposes. AS 16.05.940(26). Attachment B. The state statutory definition of "subsistence uses" is practically identical to that found in Title VIII of the federal Alaska National Interest Lands Conservation Act (ANILCA). Virtually the only difference is ANILCA's specification that subsistence uses are "customary and traditional uses by rural Alaska residents." ANILCA §803 (emphasis added). Attachment C.

However, the boards have determined that the state definition of "subsistence uses" also is limited to customary and traditional uses by "rural Alaska residents." 5 AAC 99.010(a). Attachment D. Not all uses of fish and game by rural Alaska residents are "subsistence uses." Rather, subsistence uses by rural Alaska residents are customary and traditional uses, which can be identified by eight criteria. 5 AAC 99.010(b). Attachment D. See April 1, 1982, memorandum from our office to Clint Buckmaster, Chairman of the Joint Boards of Fisheries and Game, A66-432-82. These criteria are based upon the ten criteria in 5 AAC 01.597 which the Board of Fisheries has employed to identify which uses of salmon in Cook Inlet are subsistence uses. The ten criteria have been upheld by two state superior court judges in the last year. Madison v. ADF&G, supra; Gjosund v. ADF&G, Supra. In approving the ten criteria, the court in Madison concluded at page 4 of the March 5, 1982, findings of fact and conclusions of law that:

> The intent of AS 16.05.251(b) and .940(26) is to provide for and protect personal use ... fisheries conducted by persons who reside in rural communities which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the community. (Emphasis added.)

The boards determine on a case by case basis whether a use qualifies as a subsistence use by evaluating information presented by the public, the advisory system, and the Department of Fish and Game in light of the criteria. Attachment D. The joint board regulation also sets out the procedures each board will follow in allocating between subsistence uses and other uses. 5 AAC 99.010. In brief, if a fish stock or game population can be harvested without jeopardizing sustained yield, the board will provide reasonable opportunities for subsistence uses of that resource. If the resource population is adequate, the board may permit opportunities for other uses as well. Attachment D.

FEDERAL LAW

ANILCA established a procedure for the state to continue managing fish and game on federal lands and in all the waters of Alaska if the state meets certain standards. In particular, ANILCA §805(d) requires the state to have "laws of general applicability" which mirror the federal provisions in three areas: (1) the definition of "subsistence uses," (2) a preference for those uses in times of relative resource shortage, and (3) public participation which includes advisory committees and regional councils. The Department of the Interior has determined that the state statutes, together with the boards' procedural regulation (5 AAC 99.010) and the regulations governing fish and game advisory committees and regional councils (5 AAC 96), satisfy the requirements of ANILCA. See December 2, 1981, and April 28, 1982, letters from our office to Governor Hammond, A66-120-82. Thus, under the approach now in place, the state is authorized to continue to regulate the taking of fish and game on federal lands and in all the waters of Alaska.

ACTUAL PROBLEMS

There are three actual problems with the implementation of the subsistence law which have not yet been resolved.

1. "Rural": When the joint boards adopted the criteria and procedures specified in 5 AAC 99.010, they also adopted a definition of "rural" in 5 AAC 99.020, Attachment E:

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

The definition poses serious equal protection problems under state and federal constitutions, in part in that whether an area of the state is "rural" is to be determined by whether the area has or has not organized as a borough. Equal protection requires that persons similarly situated be treated alike. Ketchikan Gateway Borough, Alaska v. Breed, 639 P.2d 995 (Alaska 1981). A definition of "rural" keyed to the presence or absence of a borough appears to violate that principle. For example, the Matanuska-Susitna Borough boundary bisects game management unit 13. Under 5 AAC 81.055(c)(3), rural residents of game management 13 who meet certain other requirements qualify for a subsistence permit to hunt Nelchina caribou. If the definition of "rural" in 5 AAC 99.010 is applied, residents of game management unit 13 living outside the borough are eligible, and those living inside are not. Information supplied to the Department of Law by the Alaska Department of Fish and Game would probably lead a court examining the classification to conclude that persons living inside and outside the borough are apparently similarly situated, except for the location of the borough boundary line. That boundary appears to be entirely unrelated to factors considered important by the boards in identifying subsistence uses, such as available opportunities. Consequently, a court would probably conclude that classification of land as being within a borough is a factor which does not reflect a difference in the pattern of harvest and use of resources and that different treatment of Alaskans based only on their residency in a borough violates equal protection principles. See June 17, 1982, memorandum from our office to Ronald Skoog, Commissioner of Fish and Game, J99-098-82.

The current definition of "rural" is also potentially flawed by vagueness. Regulations must be precise enough to enable the agency implementing them and the public to know what is intended. Woodards v. State, 604 P.2d 250 (Alaska 1979). For that reason, the Department of Law discourages the use in regulations of words like "adjacent" or "near", since courts have found that other such relative terms are too vague to be enforceable. Marks v. City of Anchorage, 500 P.2d 644 (Alaska 1972). Similarly, in the definition of "rural" the term "road connected area" is potentially vague. There is no way of knowing whether the definition of "road" was intended to include frozen

rivers in winter, logging roads, animal trails, or railroads. Nor is there any information on the amount of "area" anticipated to be included in terms of specific distances in yards or miles from a "road." It should also be mentioned that even if specific guidelines were set out, a differentiation in treatment based on proximity to a road also would have to bear a fair and substantial relationship to a legitimate governmental purpose under an equal protection analysis. Isakson v. Rickey, 550 P.2d 359 (Alaska 1976).

A definition of "rural" is not required by state law. The April 2, 1982, letter from our office to Representative Ramona Barnes, J66-561-82, points out that it is not necessary under federal law either. ANILCA requires only that subsistence uses be rural customary and traditional uses, not that "rural" be defined. ANILCA §803, §805(d). As the April 2, 1982, letter discusses, the legislative history of ANILCA indicates that Congress envisioned subsistence uses occurring in rural areas, and rural areas being places where subsistence uses occur. Although seemingly circular, that approach enables the state to provide for subsistence uses on a case-by-case basis through the operation of criteria which have the effect of limiting those uses to rural areas. The joint boards' eight criteria for identifying subsistence uses and their acknowledgement in 5 AAC 99.010(a)(2) that subsistence uses are rural uses would probably be sufficient under ANILCA to accomplish the rural focus. For example, Madison, supra, and Glosund, supra, held that the Board of Fisheries' ten criteria, which are similar to the joint boards eight criteria, identified rural subsistence uses in the Cook Inlet area.

In addressing the concept of "rural," consideration also should be given to the term "residents" as used in section 803 of ANILCA and 5 AAC 99.010(b). Enforcement of the subsistence regulations will require a definition of residency for subsistence purposes. A possible model is the definition of "domicile" recently approved by the Board of Fisheries at its January meeting. See 5 AAC 39.975(30) (not yet filed with Lt. Governor's office).

2. Avoiding disruption of non-subsistence harvest opportunities: Another problem related to implementation of the subsistence law is the authorization and use of a workable system to avoid disrupting harvest opportunities of those whose uses are no longer classified by the boards as subsistence uses and are not commercial or sport. A solution to this problem is the personal use category established by the Board of Fisheries in 5 AAC 77.001-015, in response to the court's action in Madison,

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supra. */ This category is intended to authorize regulations which provide access to fishery resources for those whose uses do not qualify under the criteria as subsistence uses, and cannot be classified as commercial or sport.

This personal use category has generated concern among some members of the public. There are those who fear that it will receive a disproportionately high allocation of the resource, and others that it will consistently be relegated to the lowest position. If the relationship between personal use and sport and commercial use can be resolved, the application of the personal use category as the board addresses different fisheries can be a useful tool to assure the adequacy of harvest opportunities when a particular use is not classified as subsistence use. For example, suppose a fishery has been conducted on a particular fish stock under subsistence fishing regulations for a number of years. As the Board of Fisheries considers proposals for regulations, the uses of that fish stock are examined, and only some of the uses are identified under the criteria as subsistence uses. In addition to providing for the identified subsistence uses, the board could authorize a personal use fishery to continue the uses no longer eligible to be classified as subsistence uses. Assuming the target stock and the continuation of subsistence uses would not be jeopardized, the personal use harvests could be regulated as before, except

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*/ In 1981 in Cook Inlet, the board had identified the non-commercial gillnet fisheries in Port Graham, English Bay and Tyonek as subsistence use fisheries. Gillnet fisheries had long occurred in other parts of Cook Inlet under previous subsistence regulations, but the board in 1981 simply eliminated those other harvests. In Madison, the court did not find that the subsistence law was flawed, nor that the board had erred under the law or the constitution in identifying subsistence uses in Cook Inlet. However, the court ruled at the preliminary injunction stage that the board's action in eliminating the other gillnet harvests which did not qualify as subsistence uses violated due process, in that all use groups had not been treated fairly. In response, the board established the personal use category. For 1982, a personal use gillnet fishery was permitted in Cook Inlet for gillnet harvests not qualifying as subsistence uses. 5 AAC 77.547.

under a new name. If it ever became necessary to restrict the harvest of that particular fish stock, the board would then of course treat the personal use and subsistence fisheries differently.

3. Apparent reluctance to follow Attorney General's advice and confusion among state officials:

There has been reluctance by some board members and some Department of Fish and Game personnel to follow the advice of the Department of Law in implementing the subsistence law. For example, that department chose to ignore our recommendation that the flawed definition of "rural," Attachment E, be severed and not be applied in issuing permits for the subsistence hunt of the Nelchina caribou herd. Such a procedure would have allowed any qualifying resident of game management unit 13 to apply for a subsistence permit, rather than only those living outside the Matanuska-Susitna Borough. That would have avoided the equal protection problem discussed above, which was caused by the use of the borough boundary in the classification of uses. See July 23, 1982, memorandum from our office to Ronald Skoog, Commissioner of Fish and Game, 366-042-83.

Another example is the refusal to publish a legal notice for the March 1982 meeting of the Joint Boards of Fisheries and Game which was adequate to allow action at that time to bring the state into compliance with ANILCA. Under the Administrative Procedure Act, state agencies are required to give notice to the public at least 30 days before taking action adopting proposed regulations. The notice must be specific enough to give a clear idea of the area in which action may be taken. AS 44.62.190, .200. For the March 1982 joint board meeting, despite advice from our office, a decision was made not to publish a notice sufficient to give the boards the flexibility to adopt regulations to meet the specifications of ANILCA at that session.

An additional ongoing problem is confusion among some board members and department personnel about what is possible or necessary under the subsistence statutory and regulatory framework. For example, some board members continue to insist that partial compliance is sufficient under ANILCA. As discussed earlier, ANILCA §805(d) requires the state law to be the same as the federal law in three areas: (1) the definition of "subsistence uses," (2) preference for those uses in times of relative resource shortage, and (3) a public participation system (advisory committees and regional councils). Although this has

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been explained on a number of occasions by our office, suggestions have continued to be made by some board members that Alaska could fail to comply in one or more of the areas specified and somehow still retain management on federal lands and in all the waters of Alaska.

Another example of ongoing confusion is the discussion outline prepared by the boards' executive director for the joint board meeting which began on November 30, 1982. The thrust of the outline is the purported need to formulate a "policy" on subsistence when, in fact, as discussed earlier, 5 AAC 99.010 already clearly sets out the boards' approach. Attachment D. It is now simply a matter of following those procedures.

PERCEIVED "PROBLEMS"

Numerous other "problems" which are perceived as stemming from the subsistence law are based on misinformation and misinterpretation.

1. Misperception: unconstitutional: In an April 1, 1982, memorandum to Clint Buckmaster, Chairman of the Joint Boards of Fisheries and Game, A66-432-82, our office analyzed the most commonly alleged constitutional flaws in the state subsistence law and concluded that the law was constitutionally sound.

Article VIII, section 4, of the Alaska Constitution allows for preferences "among beneficial uses." Kenai Peninsula Fisherman's Cooperative Association v. State, 628 P.2d 897, 904 (Alaska 1981), affirmed the authority of the Board of Fisheries to provide for "different treatment of such diverse user groups as commercial, sports, and subsistence." That authority is not diminished by Article VIII, section 15, of the Alaska Constitution, which prohibits exclusive fisheries and was derived from 48 USC §222, The White Act. 1961 Op. Att'y Gen., No. 3. The intent of the White Act, and Article VIII, section 15, was to preclude creation of classes of use of Alaska's fisheries for which some individuals could never qualify. Hynes v. Grimes Packing Co., 11 Alaska 564, 165 F.2d 323 (9th Cir. 1947), vacated and remanded on other grounds, 23 Alaska 348, 337 U.S. 86 (1949). As discussed below, the subsistence law is not the equivalent of exclusive use, nor does it create a class closed to participation by people who wish to qualify.

The constitutionality of the subsistence law also is not affected by Article VIII, section 3, of the Alaska Constitution, which reserves fish and wildlife to the people for common use. As the April 1, 1982, memorandum explains in more detail, the record of Alaska's constitutional convention shows that section was intended to prohibit private ownership of fish or game still in their natural state. This does not occur under the subsistence law.

The April 1, 1982, memorandum also concluded that identifying subsistence uses as rural uses was permissible under state law. The classification does not violate the equal protection clause of the Alaska Constitution, since the boards have received substantial evidence that basic differences exist between rural and urban areas with respect to economies, social and cultural systems, and resource use characteristics. Indeed, in another context the state supreme court has acknowledged the great differences. In Alvarado v. State, 486 P.2d 891, 894 (Alaska 1971), the court described the differences:

> ... economies which rely on hunting, fishing, and gathering activities, strong kinship bonds, isolation from those parts of Alaska that approximate mainstream America, different seasonal activity patterns, concepts of time and scheduling, which, in accordance with other cultural divergences, may be quite different from those of mainstream America, and finally, very limited participation in the cash economy.

2. Misperceptions: exclusive use: Participation in subsistence uses is not restricted to a closed class. This means eligibility is not limited in a way that precludes entry; it is not limited to individuals who have lived here since statehood, or to Alaska Natives. For example, in Cook Inlet the Board of Fisheries has determined that the uses of salmon by English Bay, Port Graham, and Tyonek are subsistence uses, and that any person domiciled in those communities may participate. 5 AAC 01.580(a). The class is not closed, since individuals may move to one of the communities and enter the subsistence system, or may move away.

The subsistence law also does not automatically preclude non-subsistence uses, for example, sport and commercial fishing. As always, no harvest is allowed if sustained yield would be jeopardized, but the legislature obviously intended non-subsistence uses to continue, and the boards have the discretion to authorize them. AS 16.05.251(a) and .255(a). For

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example, when the Board of Fisheries provides for subsistence uses identified by the eight criteria, some fisheries which previously have been termed "subsistence" may not qualify. That does not mean those harvests will cease to exist. As discussed above, the personal use category can be employed at the board's discretion to permit continued resource harvest opportunity.

If relative resource shortage, which is described earlier, occurs and the priority must be implemented, the boards still have available all their traditional management options to restrict non-subsistence uses and to continue regulating subsistence uses, such as altering seasons or prohibiting use of aircraft. These options can be used to implement the priority in ways that do not exclude non-subsistence uses, although that option is available to the boards in extreme cases.

3. Misperception: harm to resource: Under the regulations, statutes, and Article VIII, section 4 of the Alaska Constitution, maintaining sustained yield of the resource is always the paramount consideration. No uses, including subsistence uses, are allowed to interfere with that. If any harvest of a fish stock or game population will jeopardize sustained yield, no harvests, subsistence or otherwise, may be authorized on that stock or population.

4. Misperception: dilution of advisory committee effectiveness and creation of regional council regulatory authority: Created by the boards to assist in gathering information on resource issues, fish and game advisory committees have existed in all regions of Alaska long before the state or federal subsistence laws. Currently, there are 67 of these advisory committees, each of which is represented on one of the state's six regional councils, which were formed by the boards before passage of ANILCA.

In order to satisfy the public participation requirements of ANILCA §805, modifications were made to the advisory system regulations, some of which strengthened the regional councils' role in the regulatory process. Two concerns have since emerged regarding the regional councils. The first is that the councils will replace the committees, and thus hinder public access to the boards. However, under the current regulations, individuals may express their views directly to the boards, councils and committees. Committees may channel information both to the councils and to the boards. The councils supplement, rather than replace, communication with the boards by individuals and committees.

The second concern is that the councils will have undue authority over the boards, or will have separate regulatory authority. In conformance with the specifications of ANILCA §805(d), the boards now give limited deference to council recommendations concerning subsistence uses, although they receive council recommendations on all fish and game issues. The boards may reject the recommendations concerning subsistence uses if they are not supported by substantial evidence, if they would violate conservation principles, or if they would harm subsistence uses. 5 AAC 96.610(e). The regional councils have no authority to promulgate regulations; rather, they are authorized to make recommendations to the boards.

5. Misperception: courts managing resources: Although the subsistence law was enacted in 1978 (ch 15, SLA 1978), the boards did not begin implementing it immediately. In fact, the boards' actions were often inconsistent with the law. As a consequence, the state lost four lawsuits in 1980. For example, Tyonek v. Alaska Board of Fisheries, 3AN 80-3073, ruled that it was improper for the board to authorize a sport fishery on Susitna River king salmon while not allowing a subsistence fishery on those stocks, when sustained yield would not be jeopardized by harvest of the fish.

However, once the boards began articulating and applying standards for implementation of the subsistence law, recent litigation has been more successful. For example, the Board of Fisheries' approach to subsistence uses in Cook Inlet has been upheld completely in Madison, supra, and in large part in Gjosund, supra. The state's success in such cases hinges primarily on the boards' reasonableness in following the requirements of the law.

6. Misperception: waste permitted: The subsistence law does not authorize waste, which is prohibited separately by statute and regulation. See, for example, AS 16.05.831. Waste is not allowed by any use, subsistence or otherwise.

7. Misperception: racial criteria: The requirements of the subsistence law are race neutral. This is true of both the state statute and ANILCA.

8. Misperception: guaranteed take: 5 AAC 99.010(c) requires that "reasonable opportunities" for subsistence be provided. Attachment D. No participant is guaranteed a harvest.

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9. Misperception: subsistence harvests may not be regulated without triggering the priority: AS 16.05.251(b) and .255(b) require the boards to "adopt regulations" allowing subsistence fishing and hunting. Attachment A. However, the fact that a subsistence harvest is regulated does not automatically trigger the priority. The priority becomes active if "it is necessary to restrict the taking" of fish and game, because of relative resource shortage, which is described earlier. AS 16.05.251(b) and .255(b). Attachment A. See February ___, 1983, memorandum from our office to Don Collinsworth, Commissioner of the Department of Fish and Game, 166-423-83. This is also true under ANILCA §804. See S. Rep. No. 413, 96th Cong., 1st Sess. 269 (1979).

Just as with other uses, subsistence harvests can be regulated by specified areas, openings, and other management measures. Indeed, regulation of subsistence uses has been and is part of sound resource management, and it was expected by the legislature. For example, the legislature indicated in section 1, ch. 151, SLA 1978, the intent section of the subsistence law, that beneficial uses of fish and game by all state residents "should be carefully monitored and regulated." Historically, the Board of Fisheries has adopted regulations denominated "subsistence." The Board of Game has generally regulated subsistence uses without designating the regulations as "subsistence."

10. Misperception: requirement for precipitous change: As discussed in the March 22, 1982, memorandum regarding subsistence regulations from our office to Clint Buckmaster, Chairman of the Joint Boards of Fisheries and Game, the regulatory process contemplated by ANILCA is ongoing. Under ANILCA §806, the Department of the Interior will monitor the state's subsistence program on a continuing basis. Accordingly, instantaneous regulatory change in all fishing and hunting situations statewide is neither necessary nor desirable. As potential problems are identified and as data become available, the boards should act according to the procedures in 5 AAC 99.010. Attachment D. See May 4, 1982, memorandum to Milstead Zahn, Executive Director, Boards of Fisheries and Game, regarding effect of joint boards' subsistence regulations.

11. Misperception: limited entry system threatened and commercial sale of subsistence harvested fish or game allowed: Both state and federal laws include "customary trade" as a component of "subsistence uses." AS 16.05.940(26), Attachment B; ANILCA §803, Attachment C. However, legislative history indicates that Congress was mostly concerned about trapping, and neither state law nor ANILCA authorizes significant commercial activity. The state law limits the scope of customary trade by the phrase "for personal or family consumption." AS 16.05.940(26). Attachment B. Although these words do not modify "customary trade" in ANILCA §803, legislative history is clear that Congress did "not intend that 'customary trade' be construed to permit the establishment of significant commercial enterprises under the guise of 'subsistence uses'." S. Rep. No. 413, 96th Cong., 2nd Sess. 234. See December 2, 1981, letter from our office to Governor Hammond, A66-120-81, p. 26-29. Thus, under the subsistence law any exchanges involving cash which are eventually authorized by board regulation would be of a very limited nature, perhaps recognizing established exchange and distribution networks within subsistence economic systems.

The inclusion of "barter" as a component of "subsistence uses" as defined in AS 16.05.940(26) does not authorize commercial exchanges, either. "Barter" is defined in AS 16.05.940(27) as the exchange of fish or game taken for subsistence uses for other fish or game, or for "other food or nonedible items other than money if the exchange is of a limited and noncommercial nature."

12. Misperception: flexibility to define subsistence uses by economic need: It has been suggested that either the legislature or the boards should narrow the definition of subsistence to encompass only economic need, based, for example, on individual income level. Whatever the policy advantages or disadvantages of that approach, it is not an amendment that can be made if the state is to remain in compliance with federal law. An economic need requirement would be inconsistent with the language of ANILCA and with Congressional intent, as amply evidenced in legislative history. For example, in discussing the policy expressed in ANILCA §802(1), Representative Udall noted that it "also requires that regulatory systems which employ income requirements not be imposed upon rural residents." 126 Cong. Rec. H10546 (daily ed. November 12, 1980).

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CONCLUSION

State regulations and statutes provide a framework for implementing the subsistence law in a manner consistent with ANILCA. Many "problems" which have been perceived with the framework actually arise from misinformation and misinterpretation. Providing the public with correct information on the law would dispel the impression that these "problems" exist.

One problem which needs to be addressed is the authorization and use of a workable system to avoid disrupting harvest opportunities for those whose uses are no longer classified by the boards as subsistence uses. The personal use category established by the Board of Fisheries is a potential solution, though its relation to sport and commercial uses needs to be resolved. For example, Cook Inlet is a highly populated area where all four categories of fishery -- subsistence, sport, commercial, and personal use -- occur. Examining the appropriate application of the personal use category in Cook Inlet could develop a model not only for Cook Inlet but for other areas in the state.

Another problem is the current definition of "rural", which is vulnerable to equal protection and vagueness challenges. The definition could be amended, or even repealed, since a definition of "rural" is not required by either state or federal law.

If I can provide any further information or assistance, please let me know.

Sec. 16.05.251. Regulations of the Board of Fisheries.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.650) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

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

(2) local residency; and

(3) availability of alternative resources. (§ 3 ch 206 SLA 1973; am § 2 ch 215 SLA 1976; am § 4 ch 151 SLA 1978; am §§ 1, 2 ch 110 SLA 1980)

Sec. 16.05.255. Regulations of the Board of Game.

(b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.650) permitting the taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of game resources on a sustained-yield basis. Whenever it is necessary to restrict the taking of game to assure the maintenance of game resources on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

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

(2) local residency; and

(3) availability of alternative resources. (§ 3 ch 206 SLA 1973; am § 5 ch 151 SLA 1978)

ATTACHMENT A

Sec. 16.05.940. Definitions. In AS 16.05.010 — 16.05.950 /

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

ATTACHMENT B

MEMORANDUM State of Alaska

TO: Honorable Bill Sheffield
Governor, State of Alaska

DATE: February 22, 1985

FILE NO: 822-642-82

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Madison v. Alaska Dept. of Fish & Game

The Alaska Supreme Court today issued an opinion in Madison v. Alaska Department of Fish and Game, file No. 7410, which holds that the regulatory approach of the Boards of Fisheries and Game to subsistence is inconsistent with Alaska's subsistence statutes. A copy is attached.

The state's position on the Alaska statutory and regulatory framework before this decision was that:

-- The legislature in 1978 intended to protect fishing and hunting by individuals who reside in rural areas of the state which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the area.

-- The eight criteria developed by the board correctly identified subsistence uses in rural, reliant areas.

-- The harvest of people in other areas of the state could be accommodated through the personal use fishing category, created in regulation by the Board of Fisheries.

-- Personal use fishing did not have a priority over sport fishing and commercial fishing.

With regard to the statutory and regulatory framework in Alaska, the court in Madison held:

-- The legislature did not intend that subsistence uses were to be limited to rural uses, and the boards do not have the authority to do so.

-- The legislature did not intend subsistence uses to be identified in terms of the uses of a community or area.

-- The legislature did not intend that people qualify for subsistence fishing on an individual basis, and there is no authority to develop a "grandfather" rights system with respect to subsistence.

-- The legislature intended that subsistence uses could be restricted only if it is necessary to restrict harvest for sustained yield purposes and if sport and commercial uses have already been eliminated.

-- If a situation requires restriction of subsistence uses, distinction among subsistence users will be based upon the three statutory criteria, customary and direct dependence on the resource, local residency, and availability of alternative resources.

With regard to the federal subsistence law:

-- Federal management of fish and game on all federal lands in Alaska is mandated if the state does not by a law of general applicability define subsistence uses as uses of rural Alaska residents.

-- It is unclear precisely what federal management would entail.

LIS:rn

cc: (with attachment)

Don Collinsworth
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ALASKA COURT SYSTEM NEWS RELEASE

For release Friday, February 22, 1985, 12:30 p.m.

Court Strikes Down Fisheries Regulation

Madison v. Alaska Department of Fish and Game

Supreme Court Opinion No. 2911, File Nos. 6824/7181/7410

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[The following was prepared by the office of the Clerk of the Appellate Courts and is not an official statement of the Alaska Supreme Court.]

The Alaska Supreme Court Friday 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 regulation had been declared valid by Superior Court Judges Victor D. Carlson and Paul B. Jones.

The supreme court, in an opinion by Justice Daniel A. Moore, Jr., 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."

END

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

THE SUPREME COURT OF THE STATE OF ALASKA

GENE MADISON, LUCY CASEY, KEN McGAHAN, SR., ANDY JOHNSON, MARGIE KIVI, J. W. WARE, DICK FRANCIS, DON GROLESKE, KEN JORDON and SHIRLEY DEVAULT, Appellants, v. ALASKA DEPARTMENT OF FISH AND GAME, and ALASKA BOARD OF FISHERIES, Appellees, and THE ALASKA FEDERATION OF NATIVES, Intervenor.	File Nos. 6824/ 7181 O P I N I O N
ALASKA DEPARTMENT OF FISH AND GAME, RONALD SKOOG, ALASKA BOARD OF FISHERIES, Appellants, v. LOUIS GJOSUND, DORA MULCH, and KACHEMAK BAY SUBSISTENCY GROUP, INC., Cross-Appellees.	File No. 7410 [No. 2911 - February 22, 19

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Victor D. Carlson, Judge, and Third Judicial District, Homer, Paul B. Jones, Judge.

Appearances: Martin Friedman, Homer, Arthur Robinson, Soldotna, for Appellants/Cross-Appellees. Larri Irene Spengler, Assistant Attorney General, Norman C. Gorsuch, Attorney General, Juneau, for Appellees/Appellants. Donald C. Mitchell, Anchorage, for Intervenor/Amicus Curiae.

Before: Rabinowitz, Chief Justice. Burke, Matthews, Compton and Moore, Justices.

MOORE, Justice.

This case arises as a consolidated appeal of two cases. It concerns the validity of a Board of Fisheries' (hereafter board) regulation designed to identify eligibility for subsistence fishing in the Cook Inlet region.

Appellants (hereafter Madison and Gjosund) are two groups of Alaskan residents who live along the Kenai coastline and near Homer. For many years, they have fished with set nets for salmon for their personal and family use. Nonetheless, the board denied subsistence permits to Madison and Gjosund because their use of salmon did not meet the board's regulatory definition of subsistence. Both Madison and Gjosund challenged the regulation as exceeding the scope of the state's subsistence law. In both cases, the trial courts upheld the regulation as consistent with the

statutory grant of authority. We hold the regulation invalid since it is inconsistent with AS 16.05.251(b), AS 16.05.940(22) and AS 16.05.940(23) and contrary to the legislature's intent in enacting the 1978 subsistence law.

I. SUMMARY OF FACTS

Records indicate that subsistence fishing in Cook Inlet was minimal through the mid-1970s.[1] However, a core group of residents of each Cook Inlet community has traditionally fished for Cook Inlet salmon for subsistence. Participation in the subsistence salmon fishery is most visible in the smaller, more isolated villages, where the subsistence group represents a larger percentage of the population.

In 1977 the board established a comprehensive management policy for Cook Inlet, 5 AAC 21.363, which essentially allocated specific salmon stocks to sports fishermen and commercial fishermen on the basis of seasonal fish movements. See Kenai Peninsula Fisherman's Cooperative

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1. From 1971 to 1977, the average number of subsistence permits issued annually for the Upper Cook Inlet was 87 and the average catch was 405 salmon. Commercial harvest averaged about two million fish per year. However, this statistical data does not necessarily reveal the total subsistence use since many people did not obtain permits and some commercially caught salmon were used for subsistence.

Ass'n v. State, 628 P.2d 897 (Alaska 1981). Although the policy did not specifically refer to subsistence uses of salmon in Cook Inlet, it had a substantial impact on subsistence fishing. Commercial fishermen, accustomed to taking subsistence salmon from their commercial catch, instead obtained subsistence salmon fishing permits in order to fish for their personal and family use after the commercial season was over.

Before 1978, subsistence fishing was defined in AS 16.05.940(17) as fishing for "personal use and not for sale or barter."[2] In 1978, the Alaska State Legislature enacted ch. 151 SLA 1978 (hereafter the 1978 subsistence law). Subsistence fishing was redefined as fishing for "subsistence uses."[3] Subsistence uses were defined as "customary and

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2. Section 4, ch. 131 SLA 1960:

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

3. AS 16.05.940(22), (formerly AS 16.05.940(17)), states:

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

(Footnote Continued)

traditional uses . . . for direct personal or family consumption, and for the customary trade, barter or sharing. . . ." AS 16.05.940(23).[4] Furthermore, the legislation required the board to adopt regulations permitting "subsistence uses" of fish stocks, absent a showing that this use would jeopardize the sustained yield principle. AS 16.05.251(b).[5] Under AS 16.05.251(b), subsistence uses have

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(Footnote Continued)

the Board of Fisheries.

4. AS 16.05.940(23), (formerly AS 16.05.940(26)), states:

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

5. AS 16.05.251(b) states:

> The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board

(Footnote Continued)

priority over sport and commercial uses if the board finds it necessary to restrict the taking of fish to assure the maintenance of fish stocks or to assure the continuation of subsistence uses. If further restrictions are necessary after giving priority to all subsistence uses, the legislature established specific criteria to restrict subsistence uses based on the subsistence user's customary and direct dependence on the resource, local residency and availability of alternative resources. Id. As a result,

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(Footnote Continued)

> determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:
>
> (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
>
> (2) local residency; and
>
> (3) availability of alternative resources.

the board could no longer allocate for subsistence uses at its discretion pursuant to AS 16.05.251(a).[6] The

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6. AS 16.05.251(a) states:

> The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedures Act (AS 44.62) for
>
> (1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;
>
> (2) establishing open and closed seasons and areas for the taking of fish;
>
> (3) setting quotas and bag limits on the taking of fish;
>
> (4) establishing the means and methods employed in the pursuit, capture and transport of fish;
>
> (5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;
>
> (6) classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes;
>
> (7) engaging in biological research, watershed and habitat improvement, fish management, protection, propagation and stocking;
>
> (8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(Footnote Continued)

legislature mandated in AS 16.05.251(b) that the board regulate for the protection of subsistence uses as the priority use of fish and game.

The passage of the 1978 subsistence law, combined with adoption of the board's 1977 management policy, heighened public awareness of the state's subsistence fishing provisions. This public interest resulted in a

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(Footnote Continued)

> (9) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote fish research, management, education and information and to train persons for fish management;
>
> (10) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;
>
> (11) establishing seasons, areas, quotas and methods of harvest for aquatic plants;
>
> (12) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43.

FROM

substantial increase in the demand for subsistence permits and a corresponding increase in total catch.[7] The board responded to the permit increase by restricting subsistence fishing; it limited areas open to subsistence fishing, length of fishing periods and maximum length of gill nets. Several lawsuits were filed, all of which resulted in decisions unfavorable to the board.

In December 1980, the board held hearings to respond to the 1978 subsistence law and received a considerable amount of testimony on subsistence uses in Cook Inlet. The meeting resulted in the establishment of characteristics for identification of "customary and traditional uses" of Cook Inlet salmon.[8] In addition, the

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7. This chart reflects the trend in Upper Cook Inlet:

	Subsistence Use		Commercial Harvest
	Permits Issued	Salmon Caught	
1978	323	3,735	5,118,041
1979	1,161	9,923	1,923,229
1980	1,331	14,775	4,138,648

In 1980, household permits were issued instead of individual permits.

8. With some modification, these characteristics became the basis of 5 AAC 01.597, which states:

> CHARACTERISTICS OF SUBSISTENCE FISHERIES.
> (a) The board of fisheries finds that certain customary and traditional practices

(Footnote Continued)

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board decided to "adopt a set of criteria drawn from the

(Footnote Continued)

and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses. Based on testimony to the board, the following characteristics are those that should be evaluated in the identification of subsistence fisheries:

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

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

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

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

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

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

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

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

(Footnote Continued)

characteristics . . . and apply [them] to communities, subcommunities, groups and individuals who wish to continue to participate in an established customary and traditional fishing effort in Cook Inlet."

At its March 1981 meeting, the board received written testimony from the public about subsistence uses of Cook Inlet salmon stock. Subsequently, it decided to apply all of the ten criteria to determine "customary and

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(Footnote Continued)

> (9) a use pattern in which the effort and products are distributed on a community and family basis including trade, bartering, sharing and gift-giving; and
>
> (10) a use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.
>
> (b) The board will identify established geographic communities which may be participating in a subsistence system. The board will then apply all of the characteristics in (a) of this section to the communities and to subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority.
>
> (c) For purposes of this section, a "community" is generally considered to be several households of full-time residents who all reside in a specific geographic area because of common interests.

traditional uses" eligible for the subsistence priority. When the board applied the ten criteria, it determined that no group or community in the Cook Inlet region other than Tyonek, English Bay and Port Graham satisfied all ten of the criteria. The board limited the 1981 subsistence catch to these three communities. As a result, the board eliminated from the protection of the state's subsistence statute the majority of Cook Inlet fishermen who formerly fished under subsistence regulations.

Madison and Gjosund challenged the validity of the board's subsistence criteria (now 5 AAC 01.597) on several grounds. They claimed that: (1) the criteria were inconsistent with the statutory language and legislative intent of the 1978 subsistence law; (2) the board failed to comply with the Administrative Procedure Act in adopting the criteria; and (3) their equal protection and due process rights were violated by the board's action.[9] Both courts issued preliminary injunctions compelling the board to authorize personal use fishing for Madison and Gjosund similar to that allowed in the previous year. The board

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9. Since we hold the regulation invalid because it is inconsistent with AS 16.05.251(b) and AS 16.05.940(22) and (23), and contrary to the legislature's intent in enacting the 1978 subsistence law, we need not consider the APA, due process and equal protection issues raised regarding the regulation's validity.

moved for summary judgment on the plaintiffs' first claim. Both trial courts granted summary judgment to the board, after finding the subsistence criteria consistent with the legislative intent "to provide for and protect personal use . . . by persons who reside in rural communities. . . . "

On appeal, Madison and Gjosund seek reversal of the two trial court decisions. They claim that the board did not act within the legislative authority granted by AS 16.05.251(b) and AS 16.05.940(22) and (23) when it adopted the ten characteristics ultimately codified as 5 AAC 01.597.[10]

II. STANDARD OF REVIEW

We first consider the appropriate standard of review for this case. The legislature enacted AS 16.05.251(b), which requires the board to adopt regulations permitting the taking of fish for "subsistence uses." The legislature then defined subsistence uses as "customary and traditional" uses in AS 16.05.940(23), but it never defined

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10. Madison and Gjosund also contend that the board exceeded its statutory authority under AS 16.05.251(a) when it established a personal use fishery to accommodate people excluded from the subsistence fishery by 5 AAC 01.597. Because we hold 5 AAC 01.597 invalid, we need not address the issue of the board's authority to establish a personal use fishery.

"customary and traditional." The board developed the ten criteria (now codified as 5 AAC 01.597) to identify customary and traditional uses qualifying for a subsistence priority under AS 16.05.251(b). Therefore, the board interpreted the 1978 subsistence law and devised its regulatory criteria accordingly.

In Kelly v. Zamarello, 486 P.2d 906, 917 (Alaska 1971), we stated that the "reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations." However, the issues in this case concern statutory interpretation of the words "customary and traditional" and the question whether the board has acted within the scope of its statutory authority. Such issues "fall into the realm of special competency of the courts." Alaska Public Utility Commission v. Municipality of Anchorage, 555 P.2d 262, 266 (Alaska 1976). See also State, Commercial Fisheries Entry Commission v. Templeton, 598 P.2d 77, 80 (Alaska 1979).

In this instance, we are dealing with a question of statutory interpretation and will apply the substitution of judgment standard.

> The substitution of judgment standard is applied when the questions of law presented do not involve agency expertise, and, thus, a court need not take the deferential stance embodied in the rational basis test. . . . The standard is appropriate where the

> knowledge and experience of the agency is of little guidance to the court or where the case concerns "statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and experience."

Earth Resources Co. v. State, Department of Revenue, 665 P.2d 960, 965 (Alaska 1983), quoting Kelly v. Zamarello, 486 P.2d at 916 (emphasis added). Application of this standard allows the reviewing court to substitute its judgment about a statute's meaning for the board's interpretation, even if the board's interpretation had a reasonable basis in law. In this case, both trial courts erred by applying the rational basis standard to the board's statutory interpretation.

III. LEGISLATIVE HISTORY OF THE 1978 SUBSISTENCE LAW

Before 1978, subsistence fishing was defined as fishing for "personal use and not for sale or barter." Formerly AS 16.05.940(17). The 1978 subsistence law redefined subsistence fishing as fishing for "subsistence uses." AS 16.05.940(22). "Subsistence uses" were defined as "the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption . . . and for the customary trade, barter or sharing . . . . " AS 16.05.940(23). The board argues that the legislature intended to narrow the scope of subsistence fishing to mean fishing by individuals residing in those

rural communities that have historically depended on subsistence hunting and fishing. Under this interpretation, the board asserts that its criteria are consistent with the legislature's intent.

The board's argument reveals a fundamental misconception about the structure of the 1978 subsistence law. There are potentially two tiers of subsistence users under AS 16.05.251(b). The first tier includes all subsistence users. Under the statute, all subsistence uses have priority over sport and commercial uses "whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources. . . ." AS 16.05.251(b). If the statutory priority given all subsistence users over commercial and sport users still results in too few fish for all subsistence uses, then the board is authorized to establish a second tier of preferred subsistence users based on the legislative criteria expressed in AS 16.05.251(b), namely, customary and direct dependence on the resource, local residency, and availability of alternative resources.

Criteria like the ten criteria of 5 AAC 01.597(a) could be used to distinguish first-tier general subsistence users from second-tier preferred subsistence users, since most of the criteria relate to either "customary and direct

dependence" or "local residency," two of the three criteria set out in AS 16.05.251(b). However, before there is any occasion to restrict subsistence fishing to second-tier preferred subsistence users as distinct from all subsistence users, the board must make two findings. It must find: (1) that it is necessary to restrict the taking of fish for sustained-yield purposes; and (2) that eliminating sport and commercial uses will not assure the maintenance of fish stocks on a sustained-yield basis and, thus, establishing a priority among subsistence users is also necessary. The board erred because it applied the ten criteria without making these findings.

The board argues that the words "customary and traditional" in AS 16.05.940(23) authorize it to define first-tier subsistence users by their area of residence. We reject this argument for several reasons. First, the argument ignores the two-tier structure of AS 16.05.251(b) that defines only the second-tier subsistence users in terms of residency. If the legislature had intended to define the class of first-tier general subsistence users by area of residence, it would not have expressed that factor with respect to only the second tier of preferred subsistence users. Moreover, the phrase "customary and traditional" modifies the word "uses" in AS 16.05.940(23). It does not refer to users. The 1978 subsistence law refers to

"customary users" at only one point, when it defines the preferred subsistence users of the second tier with the three statutory criteria in AS 16.05.251(b).

The House Special Committee on Subsistence drafted a letter of intent for House Bill 960[11] that supports our interpretation. With respect to AS 16.05.251(b) (which was § 6 of House Bill 960),[12] the letter of intent made clear the priority to be given subsistence uses in general over sport and commercial uses and explained the two-tier system among subsistence users.

> Sections six and seven: These two sections, which are virtually identical for the Boards of Fisheries and the Board of Game, are intended to statutorily set out the priority given to subsistence use of fish and game resources. . . . Further, these sections set forth a priority of users if restrictions are needed because of the unavailability of resources. The priority list is an attempt to insure that those with the most dependence upon the fish and game resources are the last to be restricted.
>
> If there is a need to restrict the taking of fish or game in order to avoid damaging the fish stocks or game populations, or in order to assure that subsistence users may continue to take fish or game, it is the intent of the Committee that sports or commercial use be restricted before

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11. HB 960 became the 1978 subsistence law, ch. 151 SLA 1978.

12. The committee also intended to provide a priority for subsistence hunting in AS 16.05.255, as indicated in § 6 of HB 960.

> subsistence use. If these restrictions are inadequate, restricting of subsistence use as well is authorized based upon the dependence on the resource, the local residence of the subsistence users, and the availability of alternate resources.

(Emphasis added).

Only in connection with AS 16.05.251(b) does the letter of intent discuss applying residence criteria to subsistence users, and it does so only with respect to second-tier subsistence users. With respect to the definition of subsistence uses in § 17 of House Bill 960 (now AS 16.05.940(23)), the letter of intent does not suggest that the phrase "customary and traditional" was meant to describe users as well as uses. The letter of intent states:

> Section seventeen: Subsection (26) defines what uses can be made of subsistence caught fish and game. It allows it to be used for direct personal or family consumption, for barter as defined in subsection (27) and for sharing the subsistence caught fish and game with other persons. This subsistence caught fish and game which is shared can then only be used for personal or family consumption. This subsection also broadens the definition of family to include the extended family situation.

The letter of intent clearly expressed the legislative resolve to establish a priority for subsistence use of fish and game. The 1978 subsistence law also increased the number of uses qualifying as subsistence fishing by including trade and barter.

The board based its restrictive regulation, 5 AAC 01.597, on the words "customary and traditional." The legislature did not define these words in the 1978 subsistence law. In such a case, reference to legislative history may provide an insight into the legislature's intent and a statute's meaning. North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 540 (Alaska 1978). In the House floor debate on House Bill 960, Representative Cotton introduced an amendment to delete the words "customary and traditional" from the statute. The floor manager of the bill, Representative Anderson, opposed the amendment in the following speech:

> The two words are used in this context to put some guidelines around the uses of Alaska's freedom of resources. What we were afraid of, it was brought to our attention by people who were concerned that this would leave the field of the definition wide open. That newcomers just coming to the State of Alaska would automatically be able to establish not only residency in 30 days, but be able to go out and state that they have a customary and traditional use of Alaska's fish and game resources. The use of customary and traditional also is in recognition of a historical use of fish and game for food, shelter, fuel, clothing, tools, transportation, etc. This is not only in conformance with the aboriginal uses, but also those that have come in, those people who have come in later. . . . [T]he nonnative people in the State of Alaska have established customary and traditional uses of Alaska's fish and game resources for subsistence purposes. And in order to give the Board of Fish and Game more clarification in the area, we have come up with the (inaudible) of customary and traditional rather than leaving that section

> wide open. The design is not to be restrictive but to provide guidelines and that is basically what I feel and many . . . members felt it was necessary in . . . adding or retaining those two words "customary and traditional."

(Emphasis added).

We consider statements made by a bill's sponsor in the course of legislative deliberations to be relevant evidence when a court is trying to determine legislative intent. Alaska Public Employees Association v. State, 525 P.2d 12, 16 (Alaska 1974). Anderson argued for the retention of "customary and traditional" for use as a guideline. His major concern focused on the potential pressure put on resources by newcomers. In his view, the words "customary and traditional" recognized and protected a historical subsistence use by both native and non-native Alaskans. The words were not intended to restrict subsistence use.

Another part of the House debate serves to clarify the statute's meaning. Representative Parr expressed concern that the board might use AS 16.05.251(b) to eliminate Fairbanks residents from subsistence use. Some Fairbanks residents often traveled to the Chitina Dip Net Fishery near the Copper River for their fishing. Representative Anderson responded to these concerns:

> If we get into a condition where the fish stock gets down to the point where there is no way that you can allow any take, the first people that you are going to cut off are the commercial and then the sports, first, and

> then the last people that you are going to cut off are the subsistence people who have the greatest reliance on the resource. . . . [I]f it were defined that dip net fishing were for subsistence uses and not for sale or any other purpose, that would be allowed and I would think that people from Fairbanks would fall under these categories. I don't know where else they would go to . . . where people from Fairbanks make it a custom to go down to the Chitina area and if it was determined that that resource was down to the point where only subsistence would be allowed, those people would be taken care of under this section. I don't see that it is eliminating.

(Emphasis added).

In the House debate, Anderson attempted to assure Parr that residents of urban Fairbanks could be considered priority subsistence users. Contrary to the board's interpretation of the subsistence statutes, there is no indication that legislators understood the 1978 subsistence law to restrict subsistence use to either a rural or a community context. In fact, the House debate indicates that the 1978 subsistence law was necessary to protect subsistence uses as a priority use of Alaska's fish and game resources. This intent is clearly expressed by the preamble to the subsistence law:

> [I]t 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.

(Emphasis added).

The legislative history indicates that the legislature intended to protect subsistence use, not limit it. The words "customary and traditional" serve as a guideline to recognize historical subsistence use by individuals, both native and non-native Alaskans. In addition, subsistence use is not strictly limited to rural communities. For these reasons, the board's interpretation of "customary and traditional as a restrictive term conflicts squarely with the legislative intent.[13]

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13. The board notes that the words "customary and traditional" in the 1978 subsistence law were taken from § 703 of HR 39, 95th Congress, 2nd Session (1978), which Congress passed in modified form in 1980 as the Alaska National Interests Land Conservation Act (ANILCA), Public Law No. 96-487, 16 U.S.C. § 3113. Therefore, the board argues that the words in the Alaska act should have the same meaning as the words in the federal act and limit subsistence uses to residents of rural Alaska. We reject this argument for several reasons. First, § 703 of HR 39 in its 1978 form did not contain the "rural Alaska residents" limitation now found in 16 U.S.C. § 3113. Second, the Alaska House floor debate reveals that Representative Anderson, the bill's floor manager, understood the 1978 subsistence law to allow the urban residents of Fairbanks to qualify as general subsistence users. Finally, in the preamble to the 1978 subsistence law, the Alaska Legislature expressed its intent to "recognize the needs, customs and traditions of Alaskan residents." While the legislature declared that beneficial use of fish and game resources "by

(Footnote Continued)

IV. THE BOARD'S ADOPTION AND APPLICATION OF 5 AAC 01.597

We now turn to the board's interpretation of the 1978 subsistence law. In December 1980, the board met to examine the uses of salmon in Cook Inlet and to determine which uses would qualify for the subsistence use priority. Tom Lonner, the director of the subsistence section of the Alaska Department of Fish and Game, presented the department's recommendations on the subsistence statute. He suggested that the board begin its analysis of customary and traditional uses with an assessment of user profiles and use patterns on a case by case basis. Lonner noted that such information was most lacking in the major Cook Inlet subsistence fishery because of the rapid growth of subsistence uses in recent years, and that obtaining such information would be expensive.

The board did not follow Lonner's suggested approach.[14] After the board heard extensive testimony on subsistence use, its chairman appointed a committee,[15]

(Footnote Continued)

all state residents" should be carefully monitored and regulated, it did not express an intention to limit subsistence uses to rural Alaska residents.

14. A board member, Nick Szabo, stated that the board's limited budget prevented implementation of a case by case approach.

15. The board stipulated in 1982 that it violated

(Footnote Continued)

consisting of board members and staff, to identify subsistence uses of salmon in Cook Inlet. The committee drafted ten criteria to identify subsistence uses and presented them to the board.

Lonner worked with the committee to develop the ten criteria and explained them to the board. He stated: "These tenets here are . . . based on . . . the evidence about four relatively self-contained communities. . . . If, however, you have individual applicants, . . . this might not suffice as a test." Therefore, the board was fully aware of the limitations of the proposed criteria.

At its March 1981 meeting, the board received further testimony on uses of Cook Inlet salmon from the area advisory committees and several individual witnesses. After deliberation, the board decided to apply all of the ten criteria "to determine which uses are customary and traditional and therefore are eligible for the subsistence priority." Only the fisheries associated with Tyonek, English Bay and Port Graham met all ten criteria.

In its findings of fact, the board applied the ten criteria to individuals such as Madison and Gjosund. In particular, the individuals failed to meet the second

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(Footnote Continued)

AS 44.62.310-12 (public meeting provision) at its December 1980 meeting.

criterion: "A use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use."[16] The board found:

> Although some users have shown the existence of a community of interest (e.g., the Kenaitze Tribe and the Kachemak Bay Subsistence Group), these persons either are too widely dispersed or are too heterogeneous to be considered an identifiable community, subcommunity or group. On the evidence presented, the Board cannot conclude either that activities are conducted in common or that sharing or other group interchange occurs in relation to the resource.

In other words, an individual subsistence user (such as Madison or Gjosund) would not qualify for a subsistence use priority from the board unless he were part of an identifiable subsistence community or group.[17] Under the

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16. See 5 AAC 01.597 set out in n. 8 above.

17. In contrast, the Commercial Fisheries Entry Commission issues commercial fishing permits on an individual basis. See AS 16.43.250. We do not, however, read the words "customary and traditional" as a grant of authority to the Department of Fish and Game and the Board of Fisheries to impose a "grandfather" rights system with respect to subsistence users. Imposing an equitable system of grandfather rights is an extremely complicated task, as Alaska's experience with such a system in the commercial salmon and herring fisheries has demonstrated. See AS 16.43.010-990 and the numerous, and ever increasing, judicial decisions interpreting this act noted in the annotations. Such a system would also be extremely controversial. It is preposterous to suppose that the legislature intended to create such a system merely by using

(Footnote Continued)

board's regulation, many individual users who have historically depended on subsistence fishing are eliminated from subsistence use at the outset.

The board's regulation, 5 AAC 01.597, is inconsistent with the legislative intent to provide guidelines for the protection of subsistence fishing. The regulation exceeds the authority delegated to the board because it operates too restrictively in its initial differentiation between subsistence and non-subsistence uses. 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 decision of the two trial courts that 5 AAC 01.597 is consistent with AS 16.05.251(b) and AS 16.05.940(22) and (23) is REVERSED.

(Footnote Continued)

the words "customary and traditional" in the definition of subsistence uses, with no more notice or guidance than is inherent in those words.

the state files a civil complaint on the next working day following the seizure, and the owners are promptly notified, the owners are afforded procedural due process. State v. Baranof, Sup. Ct. Op. No. 2785 (File Nos. 7287, 7324), P.2d (1984).

Section not preempted by federal law. — The Fishery Conservation and Management Act, 16 U.S.C. § 1801 et seq., does not preempt state regulation of king crab harvesting in the extraterritorial fishery conservation zone by vessels registered in Alaska. State v. F/V Baranof, Sup. Ct. Op. No. 2787 (File Nos. 7287, 7324), 677 P.2d 1245 (1984).

The federal Fishery Management and Conservation Act does not preempt Alaskan king crab regulation of vessels registered in Alaska. State v. Baranof, Sup. Ct. Op. No. 2785 (File Nos. 7287, 7324), P.2d (1984).

Concurrent state jurisdiction of in rem admiralty forfeiture actions. — In rem admiralty forfeiture actions brought by the state to enforce violations of law may be brought in state courts under concurrent state jurisdiction. State v. Baranof, Sup. Ct. Op. No. 2785 (File Nos. 7287, 7324), P.2d (1984).

Article 2. Boards of Fisheries and Game.

Section
251. Regulations of the Board of Fisheries
255. Regulations of the Board of Game

Sec. 16.05.251. Regulations of the Board of Fisheries. (a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) local residency; and

(3) availability of alternative resources.

(c) If the Board of Fisheries denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explantion for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later. (§ 3 ch 206 SLA 1975; am § 2 ch 218 SLA 1976; am § 4 ch 151 SLA 1978; am §§ 1, 2 ch 110 SLA 1980; am §§ 8, 9 ch 132 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 3, 1984, in subsection (a), substituted "bag limits, harvest levels, and sex and size limitations" for "and bag limits" in paragraph (3), deleted "engaging in biological research" from the beginning of paragraph (7), substituted "and management, conservation, protection, use, disposal, propagation and stocking of fish" for "fish management, protection, propagation and stocking" in paragraph (7), repealed paragraph (9), and renumbered former paragraphs (10)-(12) as present paragraphs (9)-(11). The amendment also added subsection (c).

NOTES TO DECISIONS

Cited in Langesater v. State, Ct. App. Op. No. 279 (File No. 7357), 668 P.2d 1359 (1983).

Sec. 16.05.255. Regulations of the Board of Game. (a) The Board of Game may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

Effective dates. — Section 30, ch. 132, SLA 1984, makes this section effective July 3, 1984, in accordance with AS 01.10.010(c).

Sec. 16.05.930. Exempted activities. (a) This chapter does not prevent the collection or exportation of fish and game, a part of fish or game or a nest or egg of a bird for scientific or educational purposes, or for propagation or exhibition purposes under a permit which the department may issue and prescribe the terms thereof.

(b) This chapter does not prohibit a person from taking fish or game during the closed season, in case of dire emergency, as defined by regulation adopted by the appropriate board.

(c) AS 16.05.920 does not prohibit rearing and sale of fish from private ponds, the raising of wild animals in captivity for food or the raising of game birds for the purpose of recreational hunting on game hunting preserves, under regulations adopted by the appropriate board. In this subsection, "animals" includes all animal life, including insects and bugs.

(d) Nondomestic animals of any species may not be transferred or transported from the state under (a) of this section unless approved by the Board of Game in regular or special meeting. Animals transferred or transported under (a) of this section shall be animals that are certified by the department to be surplus and unnecessary to the sustained yield management of the resource. Each application for a permit under (a) of this section shall be accompanied by a statement prepared by the Department of Fish and Game examining the probable environmental impact of the action.

(e) This chapter does not prevent the traditional barter of fish and game taken by subsistence hunting or fishing, except that the commissioner may prohibit the barter of subsistence-taken fish and game by regulation, emergency or otherwise, if a determination on the record is made that the barter is resulting in a waste of the resource, damage to fish stocks or game populations, or circumvention of fish or game management programs.

(f) A permit may not be required for possessing, importing or exporting mink and fox for fur farming purposes. (§ 28 art I ch 94 SLA 1959; am § 1 ch 7 SLA 1972; am § 2 ch 104 SLA 1972; am § 4 ch 82 SLA 1974; am §§ 16, 17 ch 206 SLA 1975; am § 1 ch 20 SLA 1976; am § 13 ch 151 SLA 1978; am § 4 ch 23 SLA 1983; am § 23 ch 132 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 3, 1984, in subsection (c), made a word correction in the first sentence and added the second sentence.

Sec. 16.05.940. Definitions. In AS 16.05 — AS 16.40

(1) "aquatic plant" means any species of plant, excluding the rushes, sedges and true grasses, growing in a marine aquatic or intertidal habitat;

(2) "barter" means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature;

(3) "a board" means either the Board of Fisheries or the Board of Game;

(4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish;

(5) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish, or other fish resources;

(6) "commissioner" means the commissioner of fish and game unless specifically provided otherwise;

(7) "department" means the Department of Fish and Game unless specifically provided otherwise;

(8) "domestic mammals" include musk oxen, bison, and reindeer, if they are lawfully owned;

(9) "fish" means any species of aquatic finfish, invertebrate, or amphibian, in any stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic finfish, invertebrate, or amphibian;

(10) "fish derby" means a contest in which prizes are awarded for catching fish;

(11) "fishing derby association" means a civic, service, or charitable organization in the state, not for pecuniary profit, whose primary purpose is to promote interest in fishing for recreational purposes and which has been in existence for five years before applying for a permit under this chapter, but does not include an organization formed or operated for gaming or gambling purposes;

(12) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means

having the fish or game under positive control, as in a pen, pond, or an area of land or water which is completely enclosed by a generally escape-proof barrier;

(13) "fur dealing" means engaging in the business of buying, selling, or trading in animal skins, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the purchase of animal skins by a person, other than a fur dealer, for the person's own use;

(14) "game" means any species of bird, reptile, and mammal, including a feral domestic animal, found or introduced in the state, except domestic birds and mammals; and game may be classified by regulation as big game, small game, fur bearers or other categories considered essential for carrying out the intention and purposes of AS 16.05 — AS 16.40,

(15) "hunting" means the taking of game under AS 16.05 — AS 16.40 and the regulations adopted under those chapters;

(16) "nonresident" means a person who is not a resident of the state;

(17) "nonresident alien" means a person who is not a citizen of the United States and whose permanent place of abode is not in the United States;

(18) "operator" means the individual by law made responsible for the operation of the vessel;

(19) "resident" means a person who for 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the state; and in the case of a partnership, association, joint stock company, trust, or corporation, "resident" means one that has its main office or headquarters in the state; however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this paragraph, and the dependent of a resident member of the military service, who has been living in the state for the preceding year is a resident for the purposes of this paragraph, and a person who is an alien but who for one year has maintained a permanent place of abode in the state is a resident for the purposes of this paragraph;

(20) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under AS 16.05 — AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(21) "sport fishing" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(22) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence

uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

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

(24) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

(25) "taxidermy" means tanning, mounting, processing, or other treatment or preparation of fish or game, or any part of fish or game, as a trophy, for monetary gain, including the receiving of the fish or game or parts of fish or game for such purposes;

(26) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(27) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state, but does not include aircraft.

(§ 2 art I ch 95 SLA 1959; am §§ 1 — 4 ch 131 SLA 1960; am § 1 ch 21 SLA 1961; am §§ 1, 2 ch 102 SLA 1961; § 9 art III ch 94 SLA 1959; am § 23 ch 131 SLA 1960; am § 1 ch 160 SLA 1962; am §§ 13, 14 ch 31 SLA 1963; am § 2 ch 32 SLA 1968; am § 3 ch 73 SLA 1970; am § 1 ch 91 SLA 1970; am § 4 ch 110 SLA 1970; am § 1 ch 90 SLA 1972; am § 5 ch 82 SLA 1974; am §§ 26, 82 ch 127 SLA 1974; am §§ 18 — 20 ch 206 SLA 1975; am § 12 ch 105 SLA 1977; am §§ 14, 15 ch 151 SLA 1978; am § 1 ch 78 SLA 1979; am § 1 ch 24 SLA 1980; § 4 ch 74 SLA 1982; am § 24 ch 132 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 3, 1984, substituted "AS 16.05 — AS 16.40" for "this chapter" in the introductory language and paragraphs (14), (15) and (20); in paragraph (9), substituted "invertebrate, or amphibian" for "invertebrates and amphibians" and "its" for "their" preceding "life cycle" and added the language beginning "and includes any part of such aquatic finfish"; reworded the contents of paragraph (13); inserted "reptile" near the beginning of paragraph (14); substituted "those chapters" for "it" in paragraph (15); substituted "this paragraph" for "this chapter" in three places in paragraph (19); inserted "of" following "taking" in paragraph (22); deleted "for the purposes of this chapter" preceding "does not include aircraft" in paragraph (27); and repealed paragraph (28), defining "visitor."

PART 8.
SUBSISTENCE HUNTING, FISHING, AND TRAPPING

Chapter
99. Subsistence Uses

CHAPTER 99.
SUBSISTENCE USES

Section
10. Joint Boards of Fisheries and Game subsistence procedures
20. (Repealed)

5 AAC 99.010. JOINT BOARDS OF FISHERIES AND GAME SUBSISTENCE PROCEDURES. (a) In applying a subsistence priority, the Board of Fisheries and the Board of Game will provide for conservation and development of Alaska's fish and game resources according to the following procedures:

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Each board will, in its discretion, adopt

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

(f) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting non-subsistence harvest before subsistence uses are restricted. If all available restrictions for non-subsistence uses have been implemented and further restrictions are needed, each board will reduce the take for subsistence uses in a series of graduated steps, by giving maximum protection to subsistence users who

(1) live closest to the resource;

(2) have the fewest available alternative resources; and

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

(g) In no event, however, will a board allow uses which will jeopardize or interfere with the conservation and management of fish stocks or game populations on a sustained-yield basis. (Eff. 5/30/82, Reg. 82)

Authority: AS 16.05.251(b)
AS 16.05.255(b)

5 AAC 99.020. DEFINITIONS. Repealed 10/9/83.

(2) subsistence salmon fishing permits for the Port Graham subdistrict will be issued only to those persons domiciled in the villages of Port Graham and English Bay.

(b) Smelt may only be taken under the authority of a subsistence fishing permit, except that a permit is not required for smelt fishing in the Kenai River.

(c) Freshwater species other than trout, grayling, char and burbot may only be taken in freshwater under the authority of a subsistence fishing permit.

Authority: AS 16.05.251(a)(2),(7),(10) and (b)

5 AAC 01.590. MARKING OF SUBSISTENCE-TAKEN SALMON. (a) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(b) It is unlawful to purchase or sell salmon from which both lobes of the caudal fin (tail) have been removed.

Authority: AS 16.05.251(a)(2),(4),(5), (7) and (b)

5 AAC 01.595. SUBSISTENCE BAG AND POSSESSION LIMITS. (a) The total annual possession limit for each subsistence salmon fishing permit is as follows:

(1) there is no total annual possession limit for holders of Port Graham subdistrict subsistence salmon fishing permits; subsistence salmon catches must be recorded on forms provided by the department;

(2) 25 salmon for the head of a household and 10 salmon for each dependent of the permit holder;

(3) in addition to the limits in (2) of this subsection, the holder of a Tyonek subdistrict subsistence salmon fishing permit may take 70 king salmon; no more than 4,200 king salmon may be taken in the Tyonek subdistrict from May 15 through June 30.

(b) The daily bag and possession limit for halibut is two. No person may possess sport-taken and subsistence-taken halibut on the same day. (In effect before 1981; am 4/15/81, Reg. 78; am 5/17/81, Reg. 78)

Authority: AS 16.05.060
AS 16.05.251(a)(3),(7),(10) and (b)

5 AAC 01.597. CHARACTERISTICS OF SUBSISTENCE FISHERIES. (a) The Board of Fisheries finds that certain customary and traditional practices and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses. Based on testimony to the board, the following characteristics are those that should be evaluated in the identification of subsistence fisheries:

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

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

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

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

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

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

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

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

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

(10) a use pattern which includes reliance on

subsistence taking of a range of wild resources in proximity to the community or primary residency.

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

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

Authority: AS 16.05.251(b)

ARTICLE 12.
PRINCE WILLIAM SOUND AREA

Section
600. Description of Prince William Sound area
605. Description of districts and subdistricts
610. Fishing seasons
620. Lawful gear and gear specifications
625. Waters closed to subsistence fishing
630. Subsistence fishing permits
640. Marking of subsistence-taken salmon
645. Subsistence bag and possession limits
647. Copper River subsistence salmon management plan

5 AAC 01.600. DESCRIPTION OF PRINCE WILLIAM SOUND AREA. The Prince William Sound area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

Authority: AS 16.05.251(a)(2) and (b)

5 AAC 01.605. DESCRIPTION OF DISTRICTS AND SUBDISTRICTS. The Upper Copper River district consists of all waters of the main Copper River from the confluence of the Slana River downstream to an east-west line crossing the Copper River at the confluence of the unnamed stream located approximately one and one-fourth mile below the U.S.G.S. gauging cable across the Copper River, as designated by Alaska Department of Fish and Game regulatory markers

(1) the Chitina subdistrict consists of all waters of the main Copper River from the downstream edge of the Chitina-McCarthy Road Bridge downstream to an east-west line crossing the Copper River at the confluence of the unnamed stream located approximately one and one-fourth mile below the U.S.G.S. gauging cable across the Copper River, as designated by the Alaska Department of Fish and Game regulatory markers;

(2) the Glennallen subdistrict consists of all waters of the main Copper River from the confluence of the Slana River downstream to the downstream edge of the Chitina-McCarthy Road Bridge.

Authority: AS 16.05.251(a)(2) and (b)

5 AAC 01.610. FISHING SEASONS. (a) Unless restricted in this section and 5 AAC 01.625, or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Prince William Sound area.

(b) Salmon may be taken in the Upper Copper River District only as follows:

(1) in the Glennallen Subdistrict, from June 1 through September 30;

(2) in the Chitina Subdistrict, only when that subdistrict is open to personal use salmon fishing;

(3) when the Copper River subsistence fishery is closed or restricted because of an inadequate escapement of sockeye or chinook salmon, the fishery may be reopened September 1 for the taking of coho salmon, which constitute the majority of the salmon at that time.

(c) Repealed 6/30/83.

(d) Herring spawn on kelp may be taken only during the open commercial herring spawn on kelp season. (In effect before 1983; am 6/30/83, Reg. 86; am 4/28/84, Reg. 90)

Authority: AS 16.05.060
AS 16.05.251

5 AAC 01.620. LAWFUL GEAR AND GEAR SPECIFICATIONS. (a) Fish may be taken by gear listed in 5 AAC 01.010(a) unless restricted

angler needs. When this situation occurs, the department will attempt to achieve a minimum escapement of 30,000 sockeye salmon into the Russian River system.

(d) Early and late Russian River system sockeye salmon are discrete stocks with established escapement goals. Because of this they will be managed by the department as a separate entity without regard to Kenai River system sockeye salmon run size. The Russian River sockeye salmon harvest, therefore, will not be included in the Kenai River system recreational harvest quota outlined in 5 AAC 21.360(c).

(e) When the department determines that late Russian River system sockeye salmon stocks are comprising the majority of the Kenai River sockeye salmon run, appropriate restrictions will be placed on the various fisheries to protect the remaining Kenai River system sockeye salmon escapement.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(3),(4), (6) and (7)

5 AAC 21.362. EARLY KENAI RIVER KING SALMON MANAGEMENT PLAN. Repealed 5/3/84.

5 AAC 21.363. UPPER COOK INLET SALMON MANAGEMENT PLAN. (a) The Department of Fish and Game should receive long-term direction in management of upper Cook Inlet salmon stocks rather than being called upon to respond annually to changing management policies. Divisions within the department must receive long-term direction in order to accomplish their missions and plan management, research, administrative, and other programs. Therefore, the board establishes the following priorities for the use of upper Cook Inlet salmon stocks:

(1) consistent with the statutory priority for subsistence, the harvest of upper Cook Inlet salmon for customary and traditional subsistence uses will be allowed in specific species in appropriate areas, seasons, and periods to satisfy subsistence needs; other beneficial uses, to the extent they are consistent with the public interest and overall benefit of the people of Alaska, will be allowed in order to maximize the benefits of these resources;

(2) Susitna king, early Kenai king, and early Russian River sockeye salmon stocks, which normally move in upper Cook Inlet to spawning areas before June 30, will be managed primarily for recreational uses in order to promote the public interest and provide maximum benefits to the people of Alaska and to the extent that management is consistent with the statutory subsistence priority; and

(3) insofar as the following management steps are consistent with the statutory subsistence priority:

(A) from July 1 through August 15, salmon stocks which normally move in upper Cook Inlet will be managed primarily for commercial uses;

(B) after August 15, salmon stocks moving to spawning areas in Kenai Peninsula drainages will be managed primarily for recreational uses; and

(C) salmon stocks other than those spawning in Kenai Peninsula drainages will be managed primarily for commercial uses.

(b) The department shall

(1) manage the upper Cook Inlet commercial salmon fisheries to minimize the incidental take of Susitna coho, late Kenai king and early Kenai coho salmon stocks;

(2) assist the board in setting optimal salmon harvest rates for all uses by monitoring upper Cook Inlet salmon fisheries to determine the interception of Susitna coho, late Kenai king, and early Kenai coho salmon stocks;

(3) maintain the sustained yield of more abundant pink, chum, and sockeye salmon stocks; and

(4) insure that subsistence use priorities are met.

(c) In this section "upper Cook Inlet salmon

stocks" means those salmon that move through the Northern and Central districts as defined in 5 AAC 21.200(a) and (b) and spawn in waters draining into those districts. (Eff. 5/17/81, Reg. 78)

Authority: AS 16.05.251(a)(2),(6),(7) and (b)

5 AAC 21.380. UNLAWFUL POSSESSION OF SUBSISTENCE-TAKEN SALMON. It is unlawful to purchase or sell salmon from which both lobes of the caudal fin (tail) have been removed as required by 5 AAC 01.590.

Authority: AS 16.05.251(a)(2),(4),(7) and (b)

ARTICLE 4.
BOTTOMFISH FISHERY

Section
410. Fishing season
430. Gear

5 AAC 21.410. FISHING SEASON. There is no closed season on bottomfish.

Authority: AS 16.05.250(2)

5 AAC 21.430. GEAR. (a) Bottomfish may be taken only by trawls, longlines, pots, and mechanical jigging machines, except as provided in (c) of this section.

(c) Bottomfish may be taken in the Outer and Eastern districts by sunken gill nets under the authority of a permit issued by the commissioner. The permit may specify open areas, fishing periods, gear specifications and operating specifications, and may require completion by the vessel operator of log books supplied by the department.

Authority: AS 16.05.251(a)(4)

ARTICLE 5.
SMELT FISHERY

Section
510. Fishing seasons
531. Gill net specifications and operation
534. Identification of gear
535. Minimum distance between units of gear
550. Closed waters

5 AAC 21.510. FISHING SEASONS. (a) Smelt may be taken in the Northern and Central districts from October 1 to June 1.

(b) Smelt may be taken in the Eastern, Outer, Southern and Kamishak Bay districts from January 1 to December 31.

(c) Smelt may not be taken in freshwater.

Authority: AS 16.05.251(2) and (10)

5 AAC 21.531. GILL NET SPECIFICATIONS AND OPERATION. (a) The mesh size of a gill net used for taking smelt may not be more than two and one-half inches.

(b) No set gill net may exceed 35 fathoms in length. Each fisherman is allowed to operate 105 fathoms of set gill net in the aggregate.

managed for the purpose of protecting their suitability for wilderness designation pending revision of the initial plans; and

(4) unless expressly authorized by Congress the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Alaska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

FINDINGS

16 USC 3111.

SEC. 801. The Congress finds and declares that—

(1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence;

(2) the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(3) continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management;

43 USC 1601 note.

(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents; and

(5) the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

POLICY

16 USC 3112.

SEC. 802. It is hereby declared to be the policy of Congress that—

(1) consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized

scientific principles and the purp
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this Act, the purpose of this title i
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(2) nonwasteful subsistence use
renewable resources shall be the
such resources on the public land
to restrict taking in order to ass
fish or wildlife population or the c
of such population, the taking of s
subsistence uses shall be given
over other consumptive uses; and

(3) except as otherwise provide
laws, Federal land managing age
activities on the public lands an
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and other nations.

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SEC. 803. As used in this Act, the
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and selling of handicraft articles out
and wildlife resources taken for persc
barter, or sharing for personal or
customary trade. For the purposes of t

(1) "family" means all persons
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(2) "barter" means the ex
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PREFERENCE FOR SUE

SEC. 804. Except as otherwise pr
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(2) local residency; and

(3) the availability of alternativ

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POLICY

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scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so; *Ante*, p. 2377.

(2) nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses; and

(3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

DEFINITIONS

SEC. 803. As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. For the purposes of this section, the term— 16 USC 3113.

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

(2) "barter" means the exchange of fish or wildlife or their parts, taken for subsistence uses—

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

PREFERENCE FOR SUBSISTENCE USES

SEC. 804. Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria: 16 USC 3114. Priority criteria.

(1) customary and direct dependence upon the populations as the mainstay of livelihood;

(2) local residency; and

(3) the availability of alternative resources.

LOCAL AND REGIONAL PARTICIPATION

16 USC 3115.

SEC. 805. (a) Except as otherwise provided in subsection (d) of this section, one year after the date of enactment of this Act, the Secretary in consultation with the State shall establish—

(1) at least six Alaska subsistence resource regions which, taken together, include all public lands. The number and boundaries of the regions shall be sufficient to assure that regional differences in subsistence uses are adequately accommodated;

(2) such local advisory committees within each region as he finds necessary at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in paragraph (3)(D)(iv) of this subsection; and

(3) a regional advisory council in each subsistence resource region.

Regional advisory council, authority.

Each regional advisory council shall be composed of residents of the region and shall have the following authority:

(A) the review and evaluation of proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife within the region;

(B) the provision of a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(C) the encouragement of local and regional participation pursuant to the provisions of this title in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

Annual report to Secretary.

(D) the preparation of an annual report to the Secretary which shall contain—

(i) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(ii) an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(iii) a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(iv) recommendations concerning policies, standards, guidelines, and regulations to implement the strategy. The State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of this subsection may provide advice to, and assist, the regional advisory councils in carrying out the functions set forth in this paragraph.

(b) The Secretary shall assign adequate qualified staff to the regional advisory councils and make timely distribution of all available relevant technical and scientific support data to the regional advisory councils and the State fish and game advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of subsection (a).

(c) The Secretary, in performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary may choose not to follow any recommendation which he determines is not supported by substantial evidence, violates recogn wildlife conservation, or would be detrim subsistence needs. If a recommendation tary, he shall set forth the factual bas decision.

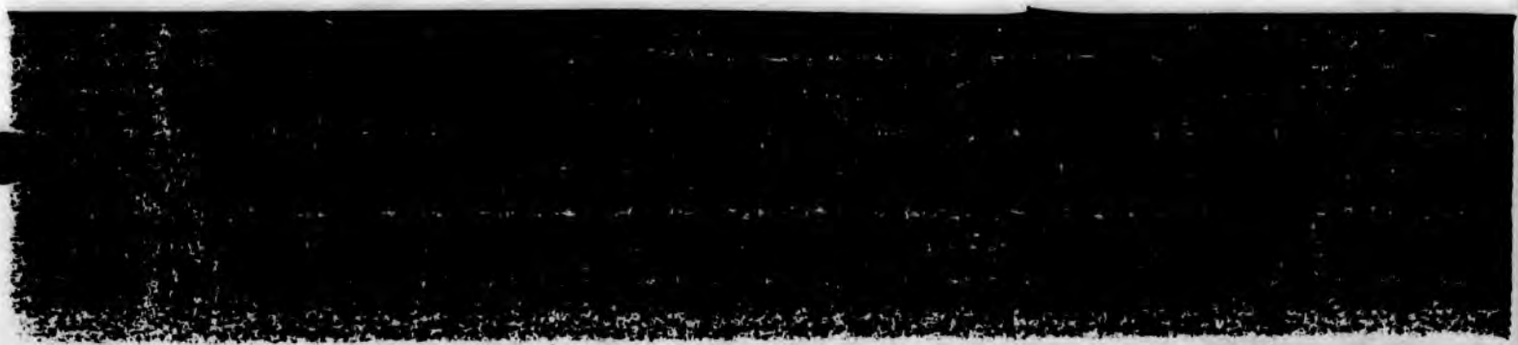
(d) The Secretary shall not implement s this section if within one year from the da the State enacts and implements laws of are consistent with, and which provide fo and participation specified in, sections 8(unless and until repealed, shall supers such sections govern State responsibility taking of fish and wildlife on the public Laws establishing a system of local adviso advisory councils consistent with section State rulemaking authority shall consider dations of the regional councils concern wildlife populations on public lands with for subsistence uses. The regional councils tions, and the evidence upon which such r to the State rulemaking authority during trative proceedings of such authority authority may choose not to follow any determines is not supported by substantial the course of its administrative proce principles of fish and wildlife conservation the satisfaction of rural subsistence needs. adopted by the State rulemaking authori forth the factual basis and the reasons for

(e)(1) The Secretary shall reimburse the ated to the Department of the Interior for able costs relating to the establishment ar advisory councils established by the State tion (d) and the operation of the State committees so long as such committees Secretary pursuant to paragraph (2) of bursement may not exceed 50 per centum year. Such costs shall be verified in a stat determines to be adequate and accurat subsection shall be in addition to any gran to which the State is entitled from approp of the Interior.

(2) Total payments to the State under exceed the sum of $5,000,000 in any one shall advise the Congress at least once whether or not the maximum payments are adequate to ensure the effectiveness by the State to provide the preference for wildlife set forth in section 804.

FEDERAL MONITOR

SEC. 806. The Secretary shall monitor th the subsistence preference set forth in se the State and the Committee on Interior Merchant Marine and Fisheries of the Ho the Committees on Energy and Natural R and Public Works of the Senate annually



D REGIONAL PARTICIPATION

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by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and the reasons for his decision.

Implementation.

(d) The Secretary shall not implement subsections (a), (b), and (c) of this section if within one year from the date of enactment of this Act, the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in, sections 803, 804, and 805, such laws, unless and until repealed, shall supersede such sections insofar as such sections govern State responsibility pursuant to this title for the taking of fish and wildlife on the public lands for subsistence uses. Laws establishing a system of local advisory committees and regional advisory councils consistent with section 805 shall provide that the State rulemaking authority shall consider the advice and recommendations of the regional councils concerning the taking of fish and wildlife populations on public lands within their respective regions for subsistence uses. The regional councils may present recommendations, and the evidence upon which such recommendations are based, to the State rulemaking authority during the course of the administrative proceedings of such authority. The State rulemaking authority may choose not to follow any recommendation which it determines is not supported by substantial evidence presented during the course of its administrative proceedings, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of rural subsistence needs. If a recommendation is not adopted by the State rulemaking authority, such authority shall set forth the factual basis and the reasons for its decision.

Reimbursement to States.

(e)(1) The Secretary shall reimburse the State, from funds appropriated to the Department of the Interior for such purposes, for reasonable costs relating to the establishment and operation of the regional advisory councils established by the State in accordance with subsection (d) and the operation of the State fish and game advisory committees so long as such committees are not superseded by the Secretary pursuant to paragraph (2) of subsection (a). Such reimbursement may not exceed 50 per centum of such costs in any fiscal year. Such costs shall be verified in a statement which the Secretary determines to be adequate and accurate. Sums paid under this subsection shall be in addition to any grants, payments, or other sums to which the State is entitled from appropriations to the Department of the Interior.

Report to Congress.

(2) Total payments to the State under this subsection shall not exceed the sum of $5,000,000 in any one fiscal year. The Secretary shall advise the Congress at least once in every five years as to whether or not the maximum payments specified in this subsection are adequate to ensure the effectiveness of the program established by the State to provide the preference for subsistence uses of fish and wildlife set forth in section 804.

FEDERAL MONITORING

Report to congressional committees. 16 USC 3116.

SEC. 806. The Secretary shall monitor the provisions by the State of the subsistence preference set forth in section 804 and shall advise the State and the Committee on Interior and Insular Affairs and on Merchant Marine and Fisheries of the House of Representatives and the Committees on Energy and Natural Resources and Environment and Public Works of the Senate annually and at such other times as

he deems necessary of his views on the effectiveness of the implementation of this title including the State's provision of such preference, any exercise of his closure or other administrative authority to protect subsistence resources or uses, the views of the State, and any recommendations he may have.

JUDICIAL ENFORCEMENT

Civil actions. 16 USC 3117.

SEC. 807. (a) Local residents and other persons and organizations aggrieved by a failure of the State or the Federal Government to provide for the priority for subsistence uses set forth in section 804 (or with respect to the State as set forth in a State law of general applicability if the State has fulfilled the requirements of section 805(d)) may, upon exhaustion of any State or Federal (as appropriate) administrative remedies which may be available, file a civil action in the United States District Court for the District of Alaska to require such actions to be taken as are necessary to provide for the priority. In a civil action filed against the State, the Secretary may be joined as a party to such action. The court may grant preliminary injunctive relief in any civil action if the granting of such relief is appropriate under the facts upon which the action is based. No order granting preliminary relief shall be issued until after an opportunity for hearing. In a civil action filed against the State, the court shall provide relief, other than preliminary relief, by directing the State to submit regulations which satisfy the requirements of section 804; when approved by the court, such regulations shall be incorporated as part of the final judicial order, and such order shall be valid only for such period of time as normally provided by State law for the regulations at issue. Local residents and other persons and organizations who are prevailing parties in an action filed pursuant to this section shall be awarded their costs and attorney's fees.

Hearing.

(b) A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at that time, and shall be expedited in every way by such court and any appellate court.

(c) This section is the sole Federal judicial remedy created by this title for local residents and other residents who, and organizations which, are aggrieved by a failure of the State to provide for the priority of subsistence uses set forth in section 804.

PARK AND PARK MONUMENT SUBSISTENCE RESOURCE COMMISSIONS

16 USC 3118.

SEC. 808. (a) Within one year from the date of enactment of this Act, the Secretary and the Governor shall each appoint three members to a subsistence resources commission for each national park or park monument within which subsistence uses are permitted by this Act. The regional advisory council established pursuant to section 805 which has jurisdiction within the area in which the park or park monument is located shall appoint three members to the commission each of whom is a member of either the regional advisory council or a local advisory committee within the region and also engages in subsistence uses within the park or park monument. Within eighteen months from the date of enactment of this Act, each commission shall devise and recommend to the Secretary and the Governor a program for subsistence hunting within the park or park monument. Such program shall be prepared using technical information and other pertinent data assembled or produced by necessary field studies or

Subsistence hunting program.

investigations conducted jointly or separat administrative personnel of the State an Interior, information submitted by, and at appropriate local advisory committees an cils, and any testimony received in a public by the commission prior to preparation of location or locations in the vicinity of the Each year thereafter, the commission, aft appropriate local committees and regional relevant data and holding one or more a vicinity of the park or park monument, sha to the Secretary and the Governor for any c its implementation which the commission d

(b) The Secretary shall promptly impl recommendations submitted to him by ea finds in writing that such program or r recognized principles of wildlife conservati vation of healthy populations of wildlife in ment, is contrary to the purposes for w monument is established, or would be detri of subsistence needs of local residents. U Governor, the Secretary shall take no act commission for sixty days during which per proposed changes in the program or recom the commission which the Governor provide

(c) Pending the implementation of a prog of this section, the Secretary shall permit residents in accordance with the provisio applicable Federal and State law.

COOPERATIVE AGREEMI

SEC. 809. The Secretary may enter into c otherwise cooperate with other Federal ag Corporations, other appropriate persons acting through the Secretary of State, othe purposes and policies of this title.

SUBSISTENCE AND LAND USE

SEC. 810. (a) In determining whether to w otherwise permit the use, occupancy, or d under any provision of law authorizing suc Federal agency having primary jurisdictic designee shall evaluate the effect of such u tion on subsistence uses and needs, the ava the purposes sought to be achieved, and would reduce or eliminate the use, occupan lands needed for subsistence purposes. No s tion, lease, permit, or other use, occupan lands which would significantly restrict s effected until the head of such Federal agen

(1) gives notice to the appropriat appropriate local committees and reg pursuant to section 805;

(2) gives notice of, and holds, a hea area involved; and

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ICIAL ENFORCEMENT

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st the State, the Secretary may be joined as
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filed against the State, the court shall
reliminary relief, by directing the State to
satisfy the requirements of section 804;
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NT SUBSISTENCE RESOURCE COMMISSIONS

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investigations conducted jointly or separately by the technical and administrative personnel of the State and the Department of the Interior, information submitted by, and after consultation with the appropriate local advisory committees and regional advisory councils, and any testimony received in a public hearing or hearings held by the commission prior to preparation of the plan at a convenient location or locations in the vicinity of the park or park monument. Each year thereafter, the commission, after consultation with the appropriate local committees and regional councils, considering all relevant data and holding one or more additional hearings in the vicinity of the park or park monument, shall make recommendations to the Secretary and the Governor for any changes in the program or its implementation which the commission deems necessary.

(b) The Secretary shall promptly implement the program and recommendations submitted to him by each commission unless he finds in writing that such program or recommendations violates recognized principles of wildlife conservation, threatens the conservation of healthy populations of wildlife in the park or park monument, is contrary to the purposes for which the park or park monument is established, or would be detrimental to the satisfaction of subsistence needs of local residents. Upon notification by the Governor, the Secretary shall take no action on a submission of a commission for sixty days during which period he shall consider any proposed changes in the program or recommendations submitted by the commission which the Governor provides him. Program and recommendation implementation.

(c) Pending the implementation of a program under subsection (a) of this section, the Secretary shall permit subsistence uses by local residents in accordance with the provisions of this title and other applicable Federal and State law.

COOPERATIVE AGREEMENTS

SEC. 809. The Secretary may enter into cooperative agreements or otherwise cooperate with other Federal agencies, the State, Native Corporations, other appropriate persons and organizations, and, acting through the Secretary of State, other nations to effectuate the purposes and policies of this title. 16 USC 3119.

SUBSISTENCE AND LAND USE DECISIONS

SEC. 810. (a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency— 16 USC 3120.

(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and Hearing.

(3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Notice and hearings.
42 USC 4332.

(b) If the Secretary is required to prepare an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act, he shall provide the notice and hearing and include the findings required by subsection (a) as part of such environmental impact statement.

(c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

48 USC note prec. 21.
43 USC 1601 note.

(d) After compliance with the procedural requirements of this section and other applicable law, the head of the appropriate Federal agency may manage or dispose of public lands under his primary jurisdiction for any of those uses or purposes authorized by this Act or other law.

ACCESS

16 USC 3121.

SEC. 811. (a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation.

RESEARCH

16 USC 3122.

SEC. 812. The Secretary, in cooperation with the State and other appropriate Federal agencies, shall undertake research on fish and wildlife and subsistence uses on the public lands; seek data from, consult with and make use of, the special knowledge of local residents engaged in subsistence uses; and make the results of such research available to the State, the local and regional councils established by the Secretary or State pursuant to section 805, and other appropriate persons and organizations.

PERIODIC REPORTS

Submittal to Speaker of House and President of Senate.
16 USC 3123.

SEC. 813. Within four years after the date of enactment of this Act, and within every three-year period thereafter, the Secretary, in consultation with the Secretary of Agriculture, shall prepare and submit a report to the President of the Senate and the Speaker of the House of Representatives on the implementation of this title. The report shall include—

(1) an evaluation of the results of the monitoring undertaken by the Secretary as required by section 806;

(2) the status of fish and wildlife populations on public lands that are subject to subsistence uses;

(3) a description of the nature and extent of subsistence uses and other uses of fish and wildlife on the public lands;

(4) the role of subsistence uses in t
rural Alaska;

(5) comments on the Secretary's re
advisory councils and regional advis
the Secretary or the State pursuant
appropriate persons and organization

(6) a description of those actions ta
be taken in the future, to permit th
ation of activities relating to subsisten
and

(7) such other recommendations the
ate.

A notice of the report shall be published i
the report shall be made available to the pu

REGULATIONS

SEC. 814. The Secretary shall prescrib
necessary and appropriate to carry out his
title.

LIMITATIONS, SAVINGS C

SEC. 815. Nothing in this title shall be co

(1) granting any property right in a
resource of the public lands or as per
ence uses of fish and wildlife within a
be inconsistent with the conservation
within a national park or monument
conservation of natural and healthy
wildlife. No privilege which may be g
individual with respect to subsistenc
any other individual;

(2) permitting any subsistence use
portion of the public lands (whether
tion system unit) which was permane
January 1, 1978, or enlarging or d
authority to manipulate habitat on
lands;

(3) authorizing a restriction on the
for nonsubsistence uses on the public
parks and park monuments) unless
tion of healthy populations of fish and
forth in section 816, to continue subs
tions, or pursuant to other applicable

(4) modifying or repealing the pro
governing the conservation or prote
including the National Wildlife Refu
Act of 1966 (80 Stat. 927; 16 U.S.C. 6
Service Organic Act (39 Stat. 535, 16 U
Act of 1966 (80 Stat. 1091; 16 U.S
Species Act of 1973 (87 Stat. 884; 16 U.
Mammal Protection Act of 1972
1361-1407), the Act entitled "An Ac
Bald Eagle", approved June 8, 19
742a-754), the Migratory Bird Treaty
703-711), the Federal Aid in Wildlif
917; 16 U.S.C. 669-669i), the Fishery
ment Act of 1976 (90 Stat. 331; 16 U.S

A) such a significant restriction of subsist-
consistent with sound management prin-
on of the public lands, (B) the proposed
ie minimal amount of public lands neces-
purposes of such use, occupancy, or other
asonable steps will be taken to minimize
subsistence uses and resources resulting

uired to prepare an environmental impact
ion 102(2)(C) of the National Environmen-
ide notice and hearing and include the
ction (a) as part of such environmental

be construed to prohibit or impair the
ative Corporation to make land selections
es pursuant to the Alaska Statehood Act
s Settlement Act.
th the procedural requirements of this
e law, the head of the appropriate Federal
spose of public lands under his primary
uses or purposes authorized by this Act or

ACCESS

tary shall ensure that rural residents
s shall have reasonable access to subsist-
lands.
other provision of this Act or other law,
on the public lands appropriate use for
vmobiles, motorboats, and other means of
itionally employed for such purposes by
ıso e regulation.

RESEARCH

in cooperation with the State and other
es, shall undertake research on fish and
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; and make the results of such research
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RIODIC REPORTS

s after the date of enactment of this Act,
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the implementation of this title. The

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nd wildlife populations on public lands
nce uses;
nature and extent of subsistence uses
wildlife on the public lands;

(4) the role of subsistence uses in the economy and culture of rural Alaska;

(5) comments on the Secretary's report by the State, the local advisory councils and regional advisory councils established by the Secretary or the State pursuant to section 805, and other appropriate persons and organizations;

(6) a description of those actions taken, or which may need to be taken in the future, to permit the opportunity for continuation of activities relating to subsistence uses on the public lands; and

(7) such other recommendations the Secretary deems appropriate.

A notice of the report shall be published in the Federal Register and the report shall be made available to the public. Publication in Federal Register.

REGULATIONS

SEC. 814. The Secretary shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title. 16 USC 3124.

LIMITATIONS, SAVINGS CLAUSES

SEC. 815. Nothing in this title shall be construed as— 16 USC 3125.

(1) granting any property right in any fish or wildlife or other resource of the public lands or as permitting the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife. No privilege which may be granted by the State to any individual with respect to subsistence uses may be assigned to any other individual;

(2) permitting any subsistence use of fish and wildlife on any portion of the public lands (whether or not within any conservation system unit) which was permanently closed to such uses on January 1, 1978, or enlarging or diminishing the Secretary's authority to manipulate habitat on any portion of the public lands;

(3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in section 816, to continue subsistence uses of such populations, or pursuant to other applicable law; or

(4) modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927; 16 U.S.C. 668dd-jj), the National Park Service Organic Act (39 Stat. 535, 16 U.S.C. 1, 2, 3, 4), the Fur Seal Act of 1966 (80 Stat. 1091; 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531-1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361-1407), the Act entitled "An Act for the Protection of the Bald Eagle", approved June 8, 1940 (54 Stat. 250; 16 U.S.C. 742a-754), the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-711), the Federal Aid in Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669-669i), the Fishery Conservation and Management Act of 1976 (90 Stat. 331; 16 U.S.C. 1801-1882), the Federal

Aid in Fish Restoration Act (64 Stat. 430; 16 U.S.C. 777-777K), or any amendments to any one or more of such Acts.

CLOSURE TO SUBSISTENCE USES

16 USC 3126.

SEC. 816. (a) All national parks and park monuments in Alaska shall be closed to the taking of wildlife except for subsistence uses to the extent specifically permitted by this Act. Subsistence uses and sport fishing shall be authorized in such areas by the Secretary and carried out in accordance with the requirements of this title and other applicable laws of the United States and the State of Alaska.

(b) Except as specifically provided otherwise by this section, nothing in this title is intended to enlarge or diminish the authority of the Secretary to designate areas where, and establish periods when, no taking of fish and wildlife shall be permitted on the public lands for reasons of public safety, administration, or to assure the continued viability of a particular fish or wildlife population. Notwithstanding any other provision of this Act or other law, the Secretary, after consultation with the State and adequate notice and public hearing, may temporarily close any public lands (including those within any conservation system unit), or any portion thereof, to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. If the Secretary determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Secretary may immediately close the public lands, or any portion thereof, to the subsistence uses of such population and shall publish the reasons justifying the closure in the Federal Register. Such emergency closure shall be effective when made, shall not extend for a period exceeding sixty days, and may not subsequently be extended unless the Secretary affirmatively establishes, after notice and public hearing, that such closure should be extended.

Publication in Federal Register.

TITLE IX—IMPLEMENTATION OF ALASKA NATIVE CLAIMS SETTLEMENT ACT AND ALASKA STATEHOOD ACT

SUBMERGED LANDS STATUTE OF LIMITATION

43 USC 1631.

SEC. 901. (a) Notwithstanding any other provision of law, the ownership by a Native Corporation or Native Group of a parcel of submerged land conveyed to such Corporation or Group pursuant to the Alaska Native Claims Settlement Act or this Act, or a decision by the Secretary of the Interior that the water covering such parcel is not navigable, shall not be subject to judicial determination unless a civil action is filed in the United States District Court within five years after the date of execution of the interim conveyance if the interim conveyance was executed after the date of enactment of this Act, or within seven years after the date of enactment of this Act if the interim conveyance was executed on or before the date of enactment of this Act. If a parcel of submerged land was conveyed by a patent rather than an interim conveyance, the civil action described in the preceding sentence shall be filed within five years after the date of execution of the patent if the patent was executed after the date of enactment of this Act, or within seven years after the date of enactment of this Act if the patent was executed on or before the date of enactment of this Act. The civil action described in this subsection shall be a de novo determination of the parcel which is the subject of the action.

43 USC 1601 note.

(b) No agency or board of the Department of the Interior, including the Bureau of Land Management, shall have any authority to determine the navigability of water covering a parcel conveyed or patented by a Native Corporation or Native Group pursuant to the Alaska Native Claims Settlement Act unless a determination by the Bureau of Land Management that the water covering such parcel of land is not navigable was validly appealed to the Secretary prior to the date of enactment of this Act. The date of such interim conveyance or patent (whichever is executed first) from the Bureau of Land Management conveying a parcel of submerged land to a Native Corporation or Native Group shall be the final administrative decision with respect to a decision by the Secretary of the Interior that the water covering such parcel is not navigable, unless such decision was validly appealed prior to the date of enactment of this Act. Any agency or board of the Department of the Interior, including the Bureau of Land Management.

(c) If the court determines that a parcel of submerged land is the subject of a civil action described in subsection (a) and that the Native Corporation or Native Group to which it was conveyed pursuant to the Alaska Native Claims Settlement Act is entitled to quiet title, each defendant Native Corporation and Native Group shall be awarded a money judgment against the plaintiff for an amount equal to its costs and attorney's fees, including costs and fees incurred on appeal.

(d) No Native Corporation or Native Group shall be deemed to have been conveyed its acreage entitlement under the Alaska Native Claims Settlement Act until—

(1) the statutes of limitation set forth in this section have expired with respect to every parcel of submerged land conveyed to such Corporation or Group; and

(2) a final judgment or order not subject to appeal has been obtained in every civil action filed pursuant to this section.

(e)(1) Whenever a parcel of submerged land conveyed to a Native Corporation or Native Group is located in the vicinity of a conservation system unit such Corporation and the State of Alaska may mutually agree that such parcel may be conveyed by and conveyed to the State under the provisions of section 6(i) of the Alaska Statehood Act.

(2) In any instance in which the State could not receive title to a parcel of submerged land pursuant to an agreement between a Native Corporation or Native Group pursuant to paragraph (1) because such parcel had not previously been conveyed to such Corporation or Group, such Corporation or Group is authorized to convey such parcel to the Secretary, and the Secretary is authorized to accept such conveyance. If the surface estate and subsurface estate in a parcel are owned by different Native Corporations or Groups, each such Corporation and Group with an interest in such parcel shall convey its entire interest in such parcel to the Secretary.

(3) In any agreement made between a Native Corporation or Native Group and the State of Alaska pursuant to paragraph (1) or any reconveyance executed by a Native Corporation or Native Group to the Secretary pursuant to paragraph (2), each affected Corporation or Group shall disclaim its interest in the parcel which is the subject of such agreement or reconveyance. If such parcel is a square or rectangular surface area of fifty acres or greater or a strip of land three chains or greater, the Secretary shall



COMMENTS ON INTRODUCTION OF SUBSISTENCE LEGISLATION

MARCH 11, 1985

REP. JACK FULLER

465-3789

NOW THAT WE HAVE HAD SOME TIME TO DIGEST THE MADISON DECISION AND REALIZE ITS IMPACTS, IT IS CLEAR THAT THE LEGISLATURE MUST TACKLE THE SUBSISTENCE ISSUE THIS SESSION. IT MUST BE HANDLED IN A CAREFUL, REASONABLE FASHION, WITH PLENTY OF OPPORTUNITY TO HEAR FROM DIFFERENT AND PERHAPS COMPETING PERSPECTIVES.

FIRST, PEOPLE ACROSS THE STATE MUST HAVE THE FACTS. THEY MUST LEARN JUST WHAT THE COURT DECISION MEANS FOR ALL USERS OF OUR RESOURCES. THIS IS AN ISSUE AFFECTING ALL ALASKANS WHO HUNT, FISH, OR GUIDE NO MATTER WHERE THEY LIVE. FOR EXAMPLE, IN COOK INLET THE BOARD OF FISHERIES HAS LIMITED SUBSISTENCE USE TO THREE AREAS AND ESTABLISHED A PERSONAL USE FISHERY TO TAKE CARE OF THOSE PEOPLE WHO LIVE OUTSIDE THOSE AREAS AND HAD PREVIOUSLY FISHED. ALL USES AND ALL USERS WERE ACCOMMODATED. WHAT MAY VERY LIKELY HAPPEN NOW, IF NOTHING IS DONE, IS THAT SUBSISTENCE USERS WILL INCREASE TO SUCH AN EXTENT THAT SPORT AND COMMERCIAL FISHING WILL HAVE TO BE SEVERELY CURTAILED, AND PERHAPS ELIMINATED.

ANY SOLUTION MUST RECOGNIZE THE IMPORTANCE OF SUBSISTENCE TO RURAL ALASKA. PEOPLE IN DIFFERENT PARTS OF THE STATE USE RESOURCES DIFFERENTLY. IN RURAL ALASKA, SUBSISTENCE IS A VITAL PART OF THE CULTURAL HERITAGE AND THE BASIC ECONOMICS OF LIFE. THERE, CHOICES OF

HOW TO MAKE A LIVING ARE FEW. SUBSISTENCE IS SURVIVAL. IN URBAN AREAS, ALTHOUGH PEOPLE MAY GO OUT AND TAKE FISH OR GAME BY SUBSISTENCE MEANS, THERE ARE ALTERNATIVES.

SINCE THE 1978 LAW WAS ENACTED, THE BOARDS OF FISHERIES AND GAME HAVE IMPLEMENTED THE LAW IN A FAIR AND REASONABLE FASHION. THE EIGHT-POINT CRITERIA ADOPTED BY THE BOARDS PROVIDED THAT ALL USES WOULD BE MET. SUBSISTENCE USE WAS FAIRLY NARROWLY DEFINED, RURAL RESIDENTS WERE PROTECTED, AND ALL OTHER USES WERE STILL ACCOMMODATED. AFTER MADISON, ANYONE MUST BE CONSIDERED A SUBSISTENCE USER, WHICH WILL DRASTICALLY INCREASE THE AMOUNT OF A RESOURCE THAT MUST BE ALLOCATED TO SUBSISTENCE. THIS MAKES IS ALL TOO LIKELY THAT OTHER USES WILL BE SEVERELY RESTRICTED OR ELIMINATED.

THE DECISION PROBABLY PUTS THE STATE OUT OF CONFORMITY WITH FEDERAL LAW, SO THE UNFORTUNATE SPECTER OF FEDERAL CONTROL OF ALASKA'S FISH AND WILDLIFE RESOURCES LOOMS OVER OUR HEADS.

GIVEN ALL THIS, WE RECOGNIZE THE NEED FOR LEGISLATIVE CONSIDERATION THIS YEAR, BEFORE THE SUMMER SEASON BRINGS CHAOS TO WHAT HAD BECOME AN ORDERLY SYSTEM OF ALLOCATING FISH AND GAME RESOURCES. APPROPRIATE ACTION BY THE LEGISLATURE NOW WILL MINIMIZE THE NEGATIVE IMPACTS, AND PERHAPS AVOID THEM ALTOGETHER.

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REPRESENTATIVE
BEN GRUSSENDORF

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RULES COMMITTEE
LEGISLATIVE COUNCIL

DISTRICT 3
ELFIN COVE
PELICAN
PORT ALEXANDER
SITKA
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Alaska State Legislature

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House of Representatives
SPEAKER OF THE HOUSE

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 signficant 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.

REPRESENTATIVE
PETER GOLL

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STATE OF ALASKA
HOUSE OF REPRESENTATIVES

ALASKA'S SPORT AND COMMERCIAL FISHERMEN, BIG GAME GUIDES AND RURAL SUBSISTENCE USERS ARE FACING A CRISIS OF MAJOR PROPORTIONS THAT MAY ONCE AGAIN DIVIDE THE RESIDENTS OF THIS GREAT LAND.

OF COURSE, I'M REFERRING TO THE RECENT STATE SUPREME COURT DECISION ON FISH AND GAME ALLOCATION. TWO WEEKS AGO, THE COURT RULED IN WHAT HAS BECOME KNOWN AS THE MADISON CASE THAT FISHERIES MANAGERS CANNOT PRIORITIZE AMONG RURAL AND URBAN SUBSISTENCE USERS UNTIL ALL OTHER USES OF FISH AND WILDLIFE ARE ELIMINATED.

THE IMPLICATIONS OF THIS DECISION CAN BE FAR-REACHING. IF WE THE LEGISLATURE DO NOT ACT WITH CAREFUL DISPATCH, THE DECISION COULD CREATE MAJOR PROBLEMS FOR ALASKA.

WE KNOW THAT THE DECISION COULD HAVE CHAOTIC RESULTS FOR FISH AND GAME MANAGEMENT, AND COULD SERVE TO PIT ALASKAN AGAINST ALASKAN. I THINK THESE PROBLEMS CAN AND SHOULD BE AVOIDED.

THE COURT HAS RULED IN MADISON THAT UNDER EXISTING LAW, THE BOARDS CAN NEITHER ALLOCATE AMONG SUBSISTENCE USERS (INCLUDING THE PERSONAL USERS) NOR LIMIT SUBSISTENCE USES UNTIL ALL OTHER USES HAVE BEEN ELIMINATED. WHILE THE CONCEPT THAT EVERY ALASKAN IS A SUBSISTENCE USER MAY SOUND ATTRACTIVE ON ITS FACE, LET'S ANALYZE WHAT THIS MEANS IN APPLICATION.

PRIOR TO MADISON, THE BOARD OF FISHERIES RESTRICTED SUBSISTENCE FISHING TO THREE SMALL RURAL COMMUNITIES WHICH TOOK RELATIVELY SMALL AMOUNTS OF SALMON. HOWEVER, THE BOARD OF FISHERIES HAS DOCUMENTED HISTORIC NET FISHERIES FOR KING, COHO AND SOCKEYE SALMON FROM KACHEMAK BAY TO KNIK ARM AND ON THE WEST SIDE OF COOK INLET. ACCORDING TO THE DEPARTMENTS OF LAW AND FISH AND GAME, THE BOARD OF FISHERIES MUST NOW PROVIDE FOR SUBSISTENCE NET FISHERIES IN THOSE LOCATIONS FOR ALL ALASKA RESIDENTS WHO DESIRE TO TAKE FISH FOR THEIR PERSONAL USE. UNDER THE COURT'S INTERPRETATION OF EXISTING STATUTES, THIS PRIORITY FISHING EFFORT WILL DISPLACE THE SPORT AND COMMERCIAL FISHERIES, AND PROBABLY LEAD TO DRASTIC CUTBACKS FOR SPORT FISHERMEN AND SIGNIFICANT REDUCTIONS IN THE CATCHES OF COMMERCIAL USERS.

MADISON ALSO COULD CAUSE SUBSTANTIAL DISPLACEMENTS IN THE COPPER RIVER SALMON FISHERY. LAST YEAR, FISH AND GAME ISSUED 562 SUBSISTENCE PERMITS TO WATERSHED RESIDENTS AND 5,328 PERSONAL USE FISHING PERMITS TO OTHER ALASKANS. ALSO ACCOMMODATED WERE THE SPORT FISHERY AND THE COMMERCIAL FISHERY AT THE MOUTH OF THE COPPER RIVER WHICH IS THE MAINSTAY OF THE PRINCE WILLIAM SOUND ECONOMY. UNDER MADISON, THE PERSONAL USE DIPNETTERS ARE CONSIDERED SUBSISTENCE USERS AND MUST BE GIVEN THE SUBSISTENCE PRIORITY OVER COMMERCIAL AND SPORT FISHERMEN. ACCORDING TO FISH AND GAME, THE COMMERCIAL FISHERY PROBABLY WOULD HAVE TO BE CUT BACK SUBSTANTIALLY OR EVEN ELIMINATED.

THE IMPACT OF MADISON WON'T BE LIMITED TO THE SALMON FISHERIES, HOWEVER. THE DEPARTMENT OF FISH AND GAME REPORTS THAT THE COURT RULING PROBABLY WILL PUT MOST OR ALL OF THE STATE'S BIG GAME GUIDES OUT OF BUSINESS. THE GROWING GUIDING AND RECREATION INDUSTRIES WHICH DEPEND UPON OUT OF STATE USERS OF ALASKA FISH AND GAME CAN BE CRIPPLED BY THIS DECISION. I REGRET THAT IN TERMS OF PROBLEMS, THESE IMPACTS MAY REPRESENT ONLY THE TIP OF THE ICEBERG.

HISTORY SHOWS THAT THESE SITUATIONS CAN BE VERY DIVISIVE AND CAN CAUSE SIGNIFICANT DISRUPTIONS IN THE PRIMARY LIVELIHOODS OF THOUSANDS OF ALASKANS.

IN ADDITION TO UPSETTING THE DELICATELY BALANCED ALLOCATIONS AMONG USERS OF ALASKA'S FISH AND WILDLIFE RESOURCES, THE COURT DECISION RAISES THE SPECTER OF FEDERAL MANAGEMENT OF OUR FISH AND GAME. THE DEPARTMENT OF LAW REPORTS THAT THE MADISON RULING PROBABLY PUTS ALASKA OUT OF COMPLIANCE WITH THE PROVISIONS OF ANILCA WHICH GIVES SUBSISTENCE PRIORITIES IN FISH AND WILDLIFE MANAGEMENT TO RURAL RESIDENTS.

GOVERNOR SHEFFIELD HAS PROMISED TO INTRODUCE LEGISLATION EARLY NEXT WEEK THAT WOULD RETURN FISH AND WILDLIFE MANAGEMENT TO THE BALANCE ACHIEVED PRIOR TO THE MADISON RULING. AS WE CONSIDER THE BILL AND ATTEMPT TO RESOLVE THE PROBLEMS CREATED BY MADISON, THE LEGISLATURE MUST KEEP TWO THINGS VERY FIRMLY IN MIND:

FIRST, SUBSISTENCE FISHING AND HUNTING ACTIVITIES REPRESENT THE PRIMARY ECONOMIC SYSTEM OF OUR RURAL AREAS. ALASKANS RECOGNIZED THAT REALITY WHEN THEY VOTED SO OVERWHELMINGLY TWO YEARS AGO TO RETAIN THE STATE'S SUBSISTENCE PRIORITY.

SECONDLY, THE BOARDS OF FISHERIES AND GAME HAD ACCOMPLISHED AN ADMIRABLE JOB IN PROVIDING FOR THE NEEDS OF URBAN AND RURAL ALASKANS PRIOR TO THE MADISON CASE. DISRUPTION OF THIS BALANCE WILL LEAD TO MAJOR SUFFERING BY ALL RESOURCE USING GROUPS: GUIDES, SPORTSMEN, PERSONAL, COMMERCIAL, AND SUBSISTENCE USERS ALIKE. GOVERNOR SHEFFIELD'S LEGISLATION WOULD RESTORE THAT BALANCE.

IT IS OUR JOB IN THE COMING WEEKS TO CAREFULLY WEIGH THE NEEDS OF PRESENT AND FUTURE GENERATIONS OF ALASKANS IN THE MANAGEMENT OF FISH AND GAME. LET US STRIVE TO RETAIN CONTROL OVER OUR MOST CRITICAL OF NATURAL RESOURCES IN A MANNER THAT PROTECTS THE RIGHTS AND LIVELIHOODS OF RURAL AND URBAN ALASKA.

MAR 7 RECD

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 <u>all</u> 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 desireability 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.

Bennett: Subsistence bill not likely this year

Juneau Empire 3-14-85

By DEAN FOSDICK
The Associated Press

A Sheffield administration bill that would return first rights for subsistence hunting and fishing to rural Alaskans probably won't make it out of the Legislature this year, Senate President Don Bennett said Wednesday.

Bennett, R-Fairbanks, made that obvious when he assigned the measure (SB331) to four different Senate committees after it was introduced Wednesday.

"It's highly controversial," Bennett told a reporter. "It needs to be studied.

"It involves resources and it's a legal problem," he said. "Many net users aren't happy with it. That's also the case with various sports users and guides.

"I don't see any problem with studying it through the interim and coming up with a good product next year," Bennett said.

But Bennett's plan to ensure the measure gets lengthy hearings in the Senate runs counter to the prevailing mood in the Democrat-led House, where a companion bill (HB388) was introduced Wednesday and routed to just two committees.

"Four referrals in the Senate doesn't bode well for the issue," said House Majority Leader Don Clocksin, D-Anchorage. "I don't think we need a bloody subsistence fight this year."

Sheffield to propose new subsistence law

By BRUCE SCANDLING
The Associated Press

JUNEAU — Rural Alaskans would retain first right to subsistence use of the state's fish and game — and state law would change to conform with a recent court ruling — under a measure Gov. Bill Sheffield will introduce today.

The governor said Tuesday his proposal would set up personal-use fishery laws for Alaska net fishermen who can show they rely on fishing for personal consumption.

In effect, Sheffield said, the bill would amend state law to allow the same fish and game allocations that were in effect before a Feb. 22 state Supreme Court ruling.

That decision said the state Board of Fisheries was too restrictive in interpreting the intent of a subsistence law passed in 1978 by state lawmakers.

Two groups of fishermen from Homer and along Cook Inlet sued the state over a fisheries board ruling that only three small Cook Inlet villages qualified to set salm on nets for subsistence use.

The fishing groups said they had relied for years o. set-netting for subsistence use.

The supreme court last month overturned two lower-court decisions supporting the fisheries board, and said legislators never intended to distinguish subsistence from personal-use fishing.

Subsistence fishermen are allowed unlimited catches — as long as combined catches don't damage future runs in a given fishery. Personal-use fishermen are assigned a limited catch — enough for personal consumption.

Basically, the supreme court ruling opened subsistence rights for any Alaskan, a decision many state officials said would put unprecedented pressure on fish and game populations.

Lawmakers said Tuesday the issue must be addressed, but they want to approach the matter carefully.

"It must be handled in a careful, reasonable fashion with plenty of opportunity to hear from different and perhaps competing perspectives," said Rep. Jack Fuller, D-Nome.

Fuller chairs an organization of Bush lawmakers.

"What may very likely happen now, if nothing is done, is that subsistence users will increase to such an extent that sport and commercial fishing will have to be severely curtailed, and perhaps eliminated," Fuller said.

Still, he said rural Alaskans deserve first crack at subsistence rights.

House Speaker Ben Grussendorf, D-Sitka, said lawmakers should act upon Sheffield's measure "carefully, calmly and constructively."

The ruling said subsistence use must be protected at the expense of other users such as commercial fishermen, sport fishermen and big-game guides.

"Prior to the court decision, Alaska had in place a system for implementing state and federal subsistence laws, allocating fish and game harvests and resolving disputes," Sheffield said. "... I believe we must restore that system."

His proposal also would ensure the state complys with provisions of the Alaska National Interest Lands Conservation Act of 1980, Sheffield said.

That federal statute, in part, says Alaska can retain management of its fish and game as long as subsistence rights for rural Alaskans are protected.

Sheffield urged lawmakers to pass his proposal promptly, so upcoming fisheries aren't opened to all Alaskans under the recent supreme court ruling.

Anch. Daily News 3/13/85

Ruling may reduce sports fishing on Kenai

By CRAIG MEDRED
Daily News reporter

Sport fishing in the Kenai and Susitna rivers might have to be reduced or eliminated this summer because of a court decision giving a priority to subsistence harvest of state fish and game, top state officials said Tuesday.

Assistant Attorney General Larri Spengler and Deputy Commissioner of Fish and Game Steve Pennoyer told 400-members of the Alaska Sportfishing Association that an Alaska Supreme Court ruling mandating a priority for subsistence makes it difficult for the state to regulate subsistence harvests, in Cook Inlet.

Those harvests are expected to increase significantly this summer because the high court ruled that urban and rural residents qualify for the priority to stock their freezers or shelves with fish, Pennoyer said.

Since there are no surplus salmon available for harvest in the Kenai, he added, either sport or commercial fishermen are going to have to give up some fish to the new subsistence fisheries.

The state Board of Fisheries several years ago eliminated all subsistence fishing on the Kenai Peninsula, saying people who lived on the road system and held jobs didn't need subsistence to survive.

A group of subsistence fishermen filed suit. They said the board's decision illegally eliminated a fishery that had provided them with food for many years. The Supreme Court agreed.

Chuck Robinson of Kenai, the attorney for the subsistence fishermen, Tuesday night said the state could limit subsistence harvests by setting seasons and bag limits for subsistence fishermen; Pennoyer disagreed.

Even if seasons and bag limits were imposed, Pennoyer said, "I don't think we can limit the participation."

Attempt to limit fishery will bring suit, lawyer says

By RONNIE CHAPPELL
Daily News reporter

Any effort by the legislature to limit subsistence use of fish and game to rural Alaskans will be met with a court challenge, Soldotna attorney Chuck Robinson predicted Tuesday.

Last month, Robinson won an Alaska Supreme Court decision affirming the subsistence hunting and fishing rights of all Alaskans.

Gov. Bill Sheffield, who Tuesday proposed major changes in the state's 1978 subsistence hunting and fishing law, fears the decision will unleash thousands of urban subsistence hunters and fishermen who will take an ever increasing share of the state's fish and game.

Sheffield wants to limit subsistence use to rural Alaskans and establish personal use, gill net fisheries for those who live in other parts of the state.

If the legislature agrees, Robinson said, the state is "still going to face a constitutional challenge over the allocation of a common property resource on the basis of residency."

Under the Alaska Constitution, the state's natural resources — including its fish and game — belong to all Alaskans.

Fisheries Board member Bill Bonney is, also concerned by the legislation proposed by the governor. The bill doesn't define what a rural Alaskan is.

According to Bonney, that could keep residents of Anchorage, Fairbanks, Juneau and Ketchikan from participating in subsistence fisheries, while opening the gates for everyone else.

"That doesn't help us a bit," Bonney said. "We have to have in the statute that the Board of Fish has the authority to say what is rural and that is the crux of it."

Robinson disagrees with the contention that the Supreme Court decision will wreck havoc with the management and allocation of the state's fish and game.

Not everyone will choose to participate in the subsistence fishery, he said. Between 1978 and 1981, the Cook Inlet subsistence catch increased from from 3,735 to 14,755.

During the same period, the commercial catch ranged from two million to five million fish.

Sheffield has been advised by the attorney general's office that the state cannot limit the size of the subsistence catch without first curtailing the sport and commercial harvest.

"The other side keeps saying they can't set a quota," Robinson said, "but the state did it in Tyonek. Once they catch 4,200 kings they close the fishery. Now they're saying they can't do that."

Anchorage Daily News 3/13/85

ADN 3-6-85

Subsistence law may be reworked

By BRUCE SCANDLING
The Associated Press

JUNEAU — Gov. Bill Sheffield may ask lawmakers this session to rework Alaska's subsistence law in the wake of a state Supreme Court ruling that subsistence rights can't be limited to rural Alaskans.

Key legislators, however, say the issue isn't likely to be resolved by a "quick-fix" solution that would have to be pieced together in the next two months.

Sheffield said Tuesday he is drafting legislation he may introduce Friday in response to the Feb. 22 decision.

"We need to get it in and dealt with so no fears are left hanging out there," Sheffield said.

In effect, the Supreme Court said more people — urban or rural — can qualify for subsistence fishing rights.

That decision means subsistence fisheries can be expanded, said Larri Spengler, an assistant attorney general for the state.

If that expanded use poses a threat to fish runs in specific streams or rivers, commercial and sport fishing may have to be restricted or eliminated to protect the runs for subsistence use, Spengler said.

Tackling the complex — and controversial — subsistence issue this session is not a popular idea with many legislators.

"Because of the timing of the decision, I think it would be very difficult for us to come up with a solution in the remainder of the 120 days," House Speaker Ben Grussendorf, D-Sitka, said Tuesday.

The legislature is nearing the halfway mark of a 120-day session Alaska voters ordered by ballot initiative last November.

Grussendorf said it's clear the Supreme Court ruling could open the door for drastic change in state fishing and hunting laws.

"But at this point, I don't see a solution that is a quick fix," Grussendorf said.

The court's decision, in effect, means the state is violating the Alaska National Interest Lands Conservation Act of 1980, said Rep. Jack Fuller, D-Nome.

That federal law says the state may manage its own fish and game resources, as long as rural Alaskans have first-use priority if fisheries or game populations begin to dwindle.

While the state must protect the subsistence hunting and fishing rights of rural Alaskans, Fuller said, he doesn't want to see the legislature attempt a band-aid solution in the wake of the court ruling.

The Supreme Court decision, drafted by Justice Daniel Moore Jr., reversed district and superior court rulings against residents who live along Cook Inlet and in Homer.

The state fish board in 1981 limited subsistence fishing in those areas to three villages, even though other groups claimed they had relied on the susbsistence fishery for years.

The board, in developing strict guidelines to enforce the 1978 subsistence law, took away subsistence fishing rights the legislature was apparently trying to protect, Moore wrote.

All subsistence users, urban or rural, have a right to take fish before sport or commercial fishermen, the court said.

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35¢ Per Copy News-Miner 24 pages

March 5, 1985

Governor ponders subsistence change

By DAN JOLLIFFE
News-Miner Bureau

JUNEAU—The Sheffield Administration may be working on a bill to narrow the definition of subsistence use, limiting it to rural residents and matching an interpretation set by the Board of Fisheries in recent years.

That interpretation by the Fish Board was struck down Feb. 22 by the Alaska Supreme Court, which ruled that the board strayed from the Legislature's intent of the 1978 subsistence law when it decided that subsistence users must be rural residents.

Since the court ruling involved interpretation of a law, not the Constitution, it could be changed with passage of a new law this session. The issue is expected to be highly controversial.

The Supreme Court ruling concerned the board's decision to limit subsistence salmon fishing in the Upper Cook Inlet to residents of nearby communities Tyonek, English Bay and Port Graham, communities which have no road access and are not tied to urban economies. Tyonek is on the northwest shore of Cook Inlet, 43 miles southwest of Anchorage. English Bay and Port Graham are on the other side of inlet, 10 miles southwest of Seldovia.

The court ruled that all subsistence users—rural and urban—must have their fish or game needs taken care of before the needs of sport and commercial fishermen. It said the Legislature did not limit the definition of subsistence user to rural residents when granting them preference over sport and commercial fishermen.

The court ruled that use among subsistence fishermen may be limited by their proximity to the resource, but only if there's not enough to go around after sport and commercial fishing is eliminated.

"That's one of the real problems that we face in the thing," said Steve Behnke, director of the Subsistence Division of the state Department of Fish and Game.

He said he suspected that some sort of narrowing of the definition of subsistence user will be considered by the department and the governor.

A second concern is that the interpretation leaves the state in conflict with the federal Alaska National Interest Lands Conserva-

(See GOVERNOR, page 3)

GOVERNOR . . .

(Continued from page 1)

tion Act of 1980, which allows the state to manage fish and game on federal land if rural Alaskans have a subsistence priority.

[illegible], the ruling upsets the regulation established by the board for regulating Copper River fisheries, which includes dipnetting for salmon at Chitina, a favorite pasttime for Fairbanks and Delta residents.

The Fish Board last year, using the same criterea applied to Upper Cook Inlet, said only residents in the Copper River Valley, Northway, Tanacross, Dot Lake, Tetlin and Tok would be classified as subsistence users.

They relegated dipnetters in Delta, Fairbanks and Anchorage to status as "personal use fishermen" and approved lower limits and reduced fishing times.

The court ruling may prompt the governor to introduce a law to narrow the definition of subsistence user.

"That's certainly one of the options that the governor is going to have to look at," Behnke said. "I think there's a lot of people who feel that system was working reasonably well."

Fbks. News-Miner

Subsistence priority at stake

Chitina status likely to change

By DERMOT COLE
Staff Writer

News Analysis

Alaska's Supreme Court says that the state's refusal to allow Fairbanksans to get subsistence fishing permits at Chitina runs contrary to the 1978 subsistence law.

The court decision will probably force the state Board of Fisheries to reverse its classification of Chitina as a "personal use fishery" for Fairbanksans, according to Byron Haley, president of the Chitina Dipnetters Association.

"That's what we've always maintained," Haley said, "That you can not set up a certain area for a certain class of people. We're not against subsistence use, but it should be based on need and not where you live."

The Supreme Court offered its views on the Chitina fishery in a major ruling last week that said subsistence is not limited to rural Alaskans.

In addition to likely changes in the Chitina regulations, the decision could lead to a showdown between the state and federal government. Federal law requires that rural Alaskans be given a subsistence priority on federal lands, but the state's highest court now says that's prohibited.

Federal officials have warned in the past that unless the rural subsistence priority is enforced by the state, the federal government may step in to control fish and game on federal lands because of provisions in the Alaska Lands act.

Last week's ruling specifically deals with Cook Inlet subsistence salmon fishing, but in explaining how the state Board of Fisheries misinterpreted the law, the court relied heavily on a 1978 legislative debate over Chitina.

When the subsistence bill was being argued on the floor of the state House seven years ago, Fairbanks Rep. Charlie Parr said he was worried that the law might be used to eliminate Fairbanks residents from subsistence fishing at Chitina.

As Parr predicted, that actually happened last year when the state Board of Fisheries set up a system under which only residents of the

(See SUBSISTENCE, page 3)

SUBSISTENCE . . .

(Continued from page 1)

Copper River Valley and Northway, Tanacross, Dot Lake, Tetlin and Tok could be subsistence users at Chitina.

For residents of Fairbanks and other urban areas, a more restrictive "personal use fishery" was set up in 1984 with lower limits and reduced fishing times. There were 5,328 personal use permits and 562 subsistence permits issued last summer. In basing subsistence on rural residency, the board was following guidelines offered by the federal government.

But back in 1978 when the subsistence law was under consideration, sponsors of the measure in Juneau said Fairbanks residents would be considered subsistence users at Chitina.

The Supreme Court quoted Dillingham Rep. Nels Anderson, floor manager of the bill, as saying at the time "where people from Fairbanks make it a custom to go down to the Chitina area and if it was determined that that resource was down to the point where only subsistence would be allowed, those people would be taken care of under this section."

The court cited Anderson's remarks as evidence that legislators wanted urban residents to qualify for subsistence under state law.

"Contrary to the board's interpretation of the subsistence statutes, there is no indication that legislators understood the 1978 subsistence law to restrict subsistence to either a rural or a community context," the court said.

Lawyers for the state and the Alaska Federation of Natives who argued for the rural residency requirement said it's too early to tell what will happen next.

Don Mitchell, an attorney for the AFN, said in a phone interview from Anchorage, "We have not yet come to any firm conclusion as to what the altered status of the situation is or what should be done about it."

Supreme Court drops subsistence bombshell

TUNDRA DRUMS Feb. 28, 1985

by Mary Lenz

Urban residents who fish with nets for their own consumption are now considered subsistence fishermen, whether or not they have traditionally used the resource, legal experts said.

The Alaska Supreme Court last week threw out a key provision in the Alaska Board of Fisheries subsistence regulations which limited subsistence fishing to rural residents.

The decision appears to put state law into conflict with federal law, which could mean the state no longer has the power to manage fish and wildlife on federal lands.

And increased pressure on resources by a greatly expanded subsistence fishery near urban areas could set off another showdown with sportsmen's groups. In 1982, a petition backed by sports groups to wipe out Alaska's statutes protecting subsistence was defeated.

Legal and subsistence experts said the Bethel area will not immediately be af-

Please turn to page 27

fected, unless anger and controversy stirred up by the decision threaten subsistence laws.

"This is a bombshell. It's nothing small. It's very, very dangerous," said Tom Lonner, who headed the Alaska Department of Fish and Game's subsistence division until 1981, and helped develop certain portions of the fisheries board's subsistence regulations.

Fisheries Board spokesmen declined to comment.

"Once you get the Anchorage commercial fishermen and sportsmen really angry, you may have to go through the entire process of a (referendum) on the subsistence law again," Lonner said. "This has given fuel to the fire."

Nunam Kitlutsisti's Harold Sparck said the decision "makes Fairbanks dipnetters in the Copper River equal to historic native fishermen from Gakona. It means that the commercial fisheries in Prince William Sound now have to wait till all the Fairbanks dipnetters and the customary and traditional users take their allocation."

Sparck said as the definition stands following Friday's court decision, "If you eat it, it's subsistence."

Sparck said the decision means that "people who fish with rod and reel have got to wait at the end of the line."

A state legal expert who asked not to be identified said the fact that any urban resident can qualify as a subsistence fisherman will vastly expand subsistence fishing near urban areas and cut into both the commercial and sports take.

The Supreme Court ruled that the fisheries board excluded many legitimate subsistence users of Cook Inlet salmon through regulations implemented in 1981.

Basically, the board limited subsistence fishing to those who were part of an identifiable subsistence community or group.

That limited subsistence fishing to residents of the small villages of Tyonek, English Bay and Port Graham.

Justice Daniel A. Moore said legislators who voted for the 1978 subsistence law intended to protect, not limit, the "customary and traditional use of Alaska's fish and game."

Moore said the law recognized historic subsistence use by both native and non native individuals, and did not limit subsistence to rural communities.

Tundra Drums Feb. 28 (cont.)

Spud Williams, president of the Tanana Chiefs Council, said he does not believe the decision will harm subsistence laws "because there is federal oversight."

Williams said if the rural definition of subsistence is thrown out by the state federal authorities "don't have a choice. They will step in and take management responsibility."

Williams said he believes if some one cannot demonstrate traditional and cultural use, he or she cannot be a subsistence fisherman.

However, assistant attorney general Larri Spengler said customary and traditional use only applies to which fisheries are open to subsistence, not which individuals are allowed to participate.

Several fisheries experts said that means subsistence net fishing is now "wide open" to urban residents, whether they have traditionally fished or not.

Spengler said the state is still analyzing the impact of the court decision on Alaska's concurrence with federal law.

Sparck said that federal law is very specific.

"The state is given authority to manage fish and wildlife on federal lands in Alaska if its laws are in compliance with congressional language. And if not, the Secretary of the Interior is the manager of fish and wildife in rural Alaska," Sparck said. "The Secretary is now our mother and father...

"There will be an outstanding hue and cry... because this upsets the (subsistence) plan as it's been developed since 1978," Sparck said.

Lonner said he wrote a list of criteria in 1980 defining subsistence, but after he left the Fish and Game Department, the board added language that subsistence was "rural only," which basically excluded communities connected by roads to cities of over 7,000 population.

Lonner said this also excluded Anchorage residents who legitimately could be considered subsistence users.

"There are 10,000 Alaska natives who live in Anchorage and quite a few get whale, walrus, seal and seal oil. They need it and it's important to them," Lonner said.

"From the point of view of Bethel, it looks like (the decision) makes no difference," Lonner said. "The problem is that it puts at risk the entire subsistence law."

State seeks grace period

by David Ramseur
Times Washington Bureau

Washington — Alaska officials will seek a federal grace period while they prepare changes to the state subsistence law made necessary by last week's state Supreme Court decision, Gov. Bill Sheffield said today.

The governor said he is confident the federal government will grant Alaska time to change its law before moving to impose a subsistence use in the state or take over management of Alaska fish and game.

And Sheffield said any change in state law will protect the subsistence rights of native Alaskans.

"What we'll try to do is have as minimal a change as possible but still stay in compliance and still guarantee the subsistence rights of native Alaskans," Sheffield said.

The governor also said he expects a federal response soon to proposed changes in Alaska tribal governments and will begin serious talks this year on a proposal for state acquisition of the federal Alaska Power Administration.

Sheffield's comments came as he was wrapping up nearly a week of meetings here with congressional and federal officials.

He arrived in Washington last Saturday for a three-day National Governor's Conference and has spent the last three making the rounds of federal agencies which handle Alaska issues.

Sheffield and his aides here said this morning that state lawyers have determined that changes in Alaska's subsistence law are necessary in the aftermath of the recent court decision.

That decision, based on a Cook Inlet fishing case, found that subsistence use cannot be limited to rural Alaskans as state regulations require.

Officials said they were still studying the decision but said it could present a potential conflict between state and federal laws.

The 1980 Alaska Claims Settlement Act gives rural subsistence users a priority claim to fish and game.

But Sheffield said he will ask Interior officials for time for the state to change its law before the federal government moves to require a rural subsistence use or take over fish and game management in Alaska.

"We have the time," Sheffield said. "I think they would grant us that right."

Interior Deputy Under Secretary Bill Horn said Wednesday he was still reviewing the court decision.

On other issues, Sheffield said Interior Secretary Donald Hodel promised a response to state concerns with six to eight weeks over proposed changes in constitutions for tribal governments in Alaska.

The department currently is reviewing several proposed constitutions which could drastically increase the powers of some native governments.

For example, the native village of Eagle is seeking authority to manage development and fish and game on its lands.

State and federal officials have been at odds over the proposed changes since early last year.

Sheffield also said he expects to begin serious talks with the federal government on a Reagan administration proposal to have the state take over the APA which operates hydroelectric projects in Anchorage and Juneau.

The governor said the state probably would be willing to assume the agency's debt but would be reluctant to agree to pay for a costly expansion of Juneau's Snettisham hydro project.

On other issues, Sheffield:

- Said the U.S. State Department is supporting efforts to reduce the high seas catch of salmon by foreign fishing fleets.

He said Japanese officials have been sent a diplomatic note expressing America's concern with the catch that costs Alaska fishermen thousands of dollars annually.

- Reiterated his complaint that the President is not doing enough to push for Alaska oil exports.

"My opinion is that if the administration aggressively worked with Congress on the Export Administration Act we'd see some movement toward Alaska being able to ship its oil wherever it wants to," Sheffield said.

Anc Times 2/28/85

...AIII, NO. 53 FAIRBANKS, ALASKA, SATURDAY, FEBRUARY 23, 198

Court rejects Cook Inlet subsistence ruling

By DAVID FOSTER
Associated Press Writer

ANCHORAGE—Subsistence use cannot be limited to rural Alaskans, the Alaska Supreme Court ruled Friday as it struck down a Fisheries Board rule for restricting subsistence fishing in Cook Inlet.

The regulation, adopted by the board in 1981, limited subsistence salmon fishing around Cook Inlet to residents of Tyonek, English Bay and Port Graham, all small villages.

Two groups of people who live along the Kenai coast and near Homer challenged the regulation. They were denied subsistence permits, even though they said they had fished for years with set nets for personal use.

District and Superior court judges upheld the fish board's regulation, but the Supreme Court reversed those judgments, citing a 1978 state law enacted to protect subsistence hunting and fishing.

Writing for the court, Justice Daniel A. Moore Jr. said, "The board has devised a regulation to disenfranchise many subsistence users whose interests the statute was designed to protect."

Moore delved into the 1978 law's legislative history, saying lawmakers meant to protect, not limit, the "customary and traditional use of Alaska's fish and game."

"The words 'customary and traditional' serve as a guideline to recognize historical subsistence use by individuals, both native and nonnative Alaskans," Moore wrote.

"In addition, subsistence use is not strictly limited to rural communities. For these reasons, the board's interpretation of 'customary and traditional' as a restrictive term conflicts squarely with the legislative intent."

The fish board adopted the rule after subsistence fishing in Cook Inlet jumped dramatically because of the 1978 subsistence law, which increased the number of uses qualifying as subsistence fishing by including trade and barter.

The court's opinion quotes state figures showing the number of subsistence permits issued in Upper Cook Inlet jumped from 323 in 1978 to 1,331 in 1980. The number of salmon caught by subsistence fishermen increased from 3,735 to 14,785.

The board responded to the permit increase by restricting subsistence fishing, limiting seasons, areas and the length of gill nets. Many of those restrictions were challenged successfully in court.

In 1981, the board adopted a set of 10 criteria to apply to all individuals and groups applying for subsistence permits.

Only Tyonek, English Bay, and Port Graham residents met all the criteria, the fish board ruled.

"As a result, the board eliminated from the protection of the state's subsistence statute the majority of Cook Inlet fishermen who formerly fished under subsistence regulations," Moore wrote.

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Fbks. News-Miner Feb. 23, 1985

Subsistence decision could trigger federal-state conflict

By DERMOT COLE
Staff Writer

A court decision overturning a subsistence fishing rule in Cook Inlet may lead to a conflict with federal law and force changes in regulations such as those governing dipnetting in Chitina.

That's the speculation among representatives of sportsmen's groups in the wake of a major ruling Friday by the Alaska Supreme Court.

State officials, lawyers connected with the Cook Inlet case and other interested parties cautioned, however, that they can't be sure what will happen because it will take days to analyze the complex ruling.

The court said Friday that subsistence is not limited to rural Alaskans and that in carrying out the law meant to protect "customary and traditional" uses, other Alaskans should not be excluded.

Ron Somerville, executive director of the Alaska Fish and Wildlife Federation and Outdoor Council, said if press reports are accurate, Friday's court decision may bring about a direct conflict between state and federal subsistence laws.

The federal government requires that a subsistence priority for fish and game be given to rural residents.

"It does appear that there may be a major schism between the federal and the state law," he said in a phone interview from Juneau.

He said other cases where the state has defined subsistence by residence include Chitina dipnetting and hunting the Nelchina caribou herd. Subsistence hunting permits for the Nelchina herd are limited to people who reside in Game Management Unit 13.

He said Friday's decision may lead to more unrest over the 1978 subsistence law.

"It's going to boil the subsistence controversy even harder because there doesn't seem to be any solution, which has been our contention all along," Somerville said. "We're creating tremendous social unrest with this law and it seems the courts are verifying that there are major problems with implementing it."

Sam Harbo, a former member of the game board, agreed that the ruling may "put us in a difficult situation as far as the federal law is concerned."

Tom Scarborough, chairman of the Fairbanks Fish and Game Advisory Committee, said he expects continued turmoil over both the game and fish board subsistence regulations.

(See RULING, Page 3)

RULING. . .

(Continued from page 1)

As an example, Scarborough said he thinks the court's ruling could mean that current regulations regarding Chitina dipnetting will be found illegal. The state Board of Fisheries has decided that subsistence users of Chitina must reside in the Copper River basin or in five small communities nearby.

Under those rules, which have been criticized by the Chitina Dipnetters Association and others, people from Fairbanks and other urban areas are not subsistence users, but "personal use fishermen" and are accorded a lower limit. It makes no difference if the Fairbanks fishermen have been going to Chitina for many years, they can't qualify as subsistence users.

Meanwhile, lawyers for the state and the Alaska Federation of Natives, who unsuccessfully argued in favor of the use of the residency requirement in the Cook Inlet case, said it is too early to judge the impact of the court decision.

"Certainly it would appear that the approach the two boards have taken to date is certainly going to have to be reevaluated in light of the opinion," said Don Mitchell, a lawyer for the Alaska Federation of Natives.

Mitchell said the court has not decided that the subsistence approach taken by the state is unreasonable.

85-13-JB DRAFT

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.

Official Business

Alaska State Legislature

House of Representatives

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Juneau, Alaska 99811

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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 Gøll, Chair

STATE OF ALASKA
THE LEGISLATURE

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May, 1986

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

Jeanie Henry

House Special Committee on Fisheries, 3/21/85, 8:30 am

KENAI RIVER SPORTFISHING ASSOCIATION

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Phone (907) 276-1451

To: Alaska State Legislatorss

On March 19, 1985 the Steering Committee of the Kenai River Sportfishing Association unanimously approved the following motion:

"We favor interim legislation this session having a sunset clause of December 31, 1985 that accomplishes:

(1) Return of the regulatory jurisdiction of fish and game back to the boards of fish and game as it existed prior to the Madison decision of February 22, 1985 by the Alaska Supreme Court.

(2) That the legislature then cause to have public hearings held state wide prior to the 1986 legislative session that would frame legislation that would accomplish a permanent solution to the relationship between subsistence, sport, commercial and personal use fisheries as well as all aspects of recreational and subsistence hunting."

Chaos must be remove from the management of our fish and game resource until a permanent solution be gained from public input from all citizens of the State of Alaska on the permanent use and allocation of fish and game. We cannot allow any situation to continue that has the potential of causing severe damage to the fishery resource. Resource regulation must be preserved.

FROM LAW ANCH CIVIL 03/19/85 08:14 P. 2 TOTAL P. 2

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By: Bruce Wenmack
Introduced: 03/11/85
Postponed: 03/11/85
Adopted: 03/14/85

RESOLUTION NO. 85-024

A RESOLUTION IN SUPPORT OF HOUSE BILL NO. 253, "AN ACT ALLOWING MUNICIPALITIES TO EXEMPT LAND FROM PROPERTY TAXES AND FROM SPECIAL ASSESSMENTS FOR FIRE PROTECTION SERVICE . . ."

WHEREAS, the Fairbanks North Star Borough has a large portion of its population unprotected by Fire Service Districts; and

WHEREAS, the Fairbanks North Star Borough Fire Service Areas have had difficulty in getting total acceptance of proposals to create such Fire Service Districts, largely because larger land owners have not been able to be a part of the process; and

WHEREAS, the Fairbanks North Star Borough has supported differential land and improvement taxation for the past five years, and has investigated many potential taxation methods in order to provide safety and protection to areas of the Borough through equitable taxation; and

WHEREAS, the Assembly of the Fairbanks North Star Borough has reiterated its position during public meetings and public hearings in support of taxation only on improvements, including personal property affixed to the improvements upon the lands, and exemption of the assessment upon the land value.

NOW, THEREFORE, BE IT RESOLVED by the Assembly of the Fairbanks North Star Borough that we urge adoption of House Bill No. 253 to allow municipalities to exempt land from property taxes and from special assessments for fire protection services and fire protection facilities.

PASSED AND APPROVED THIS 14TH DAY OF MARCH, 1985.

Sandra Scott Stringer
Presiding Officer

ATTEST:

Clerk of the Assembly