

S B

2 3 1

FILE 4

288
RECEIVED
EMMONAK CORPORATION AND CITY OF EMMONAK
JOINT RESOLUTION IN SUPPORT OF HOUSE BILL 288 MAY 6 1985

TO ALL MEMBERS OF THE ALASKA LEGISLATURE:

THIS RESOLUTION expresses the most urgent request by the people of Emmonak that House Bill 288 be passed immediately.

Six hundred forty-one people live in Emmonak. Many, but not all, are shareholders of Emmonak Corporation. The primary resource from which our people derive income and subsistence is the lower Yukon fishery. This fishery provides ninety percent (90%) of the cash income for the people of Emmonak. Nearly all other non-governmental enterprises are also dependent upon cash income from this fishery.

The lower Yukon fishery has historically been managed so as to provide adequate fish for subsistence users without conflict with commercial fishermen. This sustained yield management can continue to provide for this balance and for a viable community economy in Emmonak.

Recent developments in the law, particularly as expressed in Madison v. Alaska Department of Fish and Game, Opinion No. 2911 of the Alaska Supreme Court, threaten the destruction of the only viable cash economy in the lower Yukon area. At the present time these developments, unless altered by passage of House Bill 288, may end commercial fishing on the lower Yukon for the 1985 season and possibly thereafter. The impact of this development on our people, both commercial fishermen, subsistence users, and other non-governmental enterprises, will be catastrophic. A substantial portion, if not all of our

population, will find it necessary to seek governmental assistance for the barest of essentials absent the cash incomes derived by the community from commercial fishing operations.

Even those of us who depend on subsistence fishing will be injured due to the destruction of the cash economy of the lower Yukon.

We unanimously have resolved to urge you to pass House Bill 288 as soon as possible. Preparations for the 1985 season have already begun. These preparations require start-up financing which may become unavailable if the current uncertainties following Madison are not resolved immediately.

RESPECTFULLY SUBMITTED to the Legislature of the State of Alaska this ____ day of May, 1985.

EMMONAK CORPORATION
By its Board of Directors

CITY OF EMMONAK

Martin B. Moore, Chairman

Andrew Kelly, Sr., Mayor

Mr. Billy Charles

Mary Ann Immamak, Vice Mayor

Ms. Elizabeth Carden

attest:

Mr. Raymond F. Waska, Sr.

Secre

Mr. Phillip G. Immamak

Mr. Donald B. Redfox

Mr. James M. Kameroff

Mr. Jacob A. Johnson, Sr.

Mr. Andrew C. Kelly, Sr.

MEMORANDUM

TO: ALL LEGISLATORS:
For Your Information

FROM: AXEL JOHNSON, EMMONAK
FORMER STATE REPRESENTATIVE

DATE: MAY 5, 1985

SUBJECT: HB 288, SUBSISTENCE
(Taken over telephone by Sen. Sackett
Mr. Johnson's # is 949-1127)

288

AS

"I do not want the identity of the Eskimo, Indians, and Aleuts to be lost, and I feel this will happen if we do not pass the subsistence legislation.

As a former older legislator I beg the Senate to pass the bill.

I am dying (cancer) but I want this for my children and my grandchildren. Our life is subsistence and today there is no other alternative to being able to hunt & fish in order to eat. In 10 - 40 years maybe we will be modernized but right now there is no economy, few jobs, its tough to make ends meet, so we need to hunt & fish.

When we met together in Juneau in 1959 to organize the State we were not Republicans or Democrats - we were just a group of people who were there to set up rules. Things were tough then, but we tried for the whole state.

Again, I plead and pray that the Senate will pass the bill on subsistence.

I thank each one of you very much."

RECEIVED
MAY 6 1985

Evelyn Hash Pete
General Delivery
Copper Center, Alaska 99573

May 6, 1985

TO: All Alaska State Senators

The original people of Alaska suffer the most devious and treacherous of warfare and are not a violent people, we are alert for attacks of violence because we are sovereign; we have hunting and fishing rights; as duly documented into our language and history; and as mandated in United States laws. We are telling you through deed and word we are not selfish people; we share; we can live here together; we must keep the land of Alaska pure to keep our common spirituality; to honor our laws which govern this land intact; it has kept it so for more years than you care to hear; you have ignored our testimony everywhere; we are telling the truth.

You have no jurisdiction here because in 1867, the United States assumed suzerain and fiduciary responsibility over us when it bought the right to trade with us in the treaty of cession. In scrupulous good faith and candor, the United States by their undertaking has the duty to act primarily for another's benefit; our benefit; the original inhabitants of Alaska.

We don't want the repercussions that violence, alcohol, stealing, lying, and killing bring. We are here because we are in practice of the only way to live in Alaska. Our culture is to eat the animals we catch; the fish; to have the most efficient use of our resources; to have the right of quiet enjoyment of our beautiful, peaceful Alaska. Not fearing that any day another one of us is dead, another child is lost, another one of us hasn't the facility to think because of real fear, or loss of capacity to think. We too, have all the rights outlined in the U.S. Bill of Rights. We urge the "State of Alaska" to change its direction to promote the well being of the world.

Alaska is the "old frontier", and the law of the land shall prevail. Blatent, violent, abusive acts are not condoned by Alaska Real people. We urge that House Bill 288 pass by a much higher margin in the Senate; thus showing your adherence to U.S. Laws and to the Law of the Land in Alaska Villages.

Sincerely,



Evelyn Hash Pete
Tribal Council Member
Native Village of Chitina

April 30, 1985

2588

810 Ballaine Road
Fairbanks, Alaska 99701

Dear Legislator:

As professional fisheries and wildlife biologists, we are deeply concerned about the wise management and conservation of Alaska's fish and wildlife resources. Sections of the current Alaska statutes governing those resources seem to deny the use of a management approach that we believe is essential in order to manage those resources safely. In this letter, we identify the statutory sections in question and request legislative action to correct them.

The sections of the statutes of primary concern are those (Sec. 16.05.251 and 16.05.255) which require that a particular consumptive use, subsistence, must remain unrestricted unless the Board of Fisheries or the Board of Game determines that such use, continued without restriction, would jeopardize the sustaining of such use (i.e. would not allow sustained yield). That approach -- unrestricted use unless damage is proven -- is opposite to the accepted and established resource management strategy of the fisheries and wildlife professions.

The consistently reliable approach in connection with consumptive uses of fish and wildlife is a conservative one. In effect, one should manage from an initial position of complete closure, removing restrictions in a safe manner as understanding of the resources increases so that we can be assured that the desired consumptive uses can be accommodated. Current understanding of most wild populations, and of their consumptive harvests, allows us safely to set limited seasons and bag limits. However, even though Alaska has one of the best fisheries and wildlife staffs in the country, the existing specific population data usually are not sufficient to prove, before we can impose restrictions, that unrestricted use is jeopardizing sustained yield. Given the budget constraints presently inhibiting gathering additional information, that situation likely will persist. Hence we should take a conservative approach to managing consumptive uses if we are to guarantee that users, subsistence and others, will have long-term access to fish and wildlife resources.

Another undesirable consequence of the unrestricted approach is that harvests often will occur at times of the year when they have greater detrimental impacts on the fish and wildlife populations than do controlled harvests occurring at specific times. Obvious examples of the need for control over timing of harvests in order to protect resource productive potential exist in the instances of king salmon smolt leaving fresh water, of ptarmigan on the nesting grounds, of cow moose when they have calves, and of sow bears when they have cubs. Many other examples also could be cited. The point is, greater total yields often could be provided if restrictions on seasons, methods and means, etc., could be

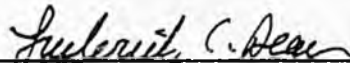
RECEIVED
MAY 6 1985

put in place based on our understanding of population dynamics. The current statutory language regarding controls on subsistence use does not permit such restrictions, even those that conceivably could increase total allowable harvest. We believe such management latitude is necessary, particularly in this day and age when subsistence use does not have the same dire dependence associated with it that was true several decades ago. In addition, subsistence harvesting with steadily increasing use of modern equipment often places the resource in essentially the same risk situation that non-subsistence uses do.

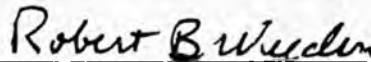
We hope that you will see the need for regaining a conservative, flexible management approach in order to provide long-term protection to resources whose continuation is critical to subsistence lifestyles as well as to all other uses. Wise and responsible management of our fish and wildlife populations requires that we change the current statutory language regarding management of subsistence uses. We request your help in that regard.

Thank you for your concern for Alaska's fish and wildlife.

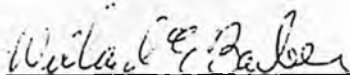
Sincerely,



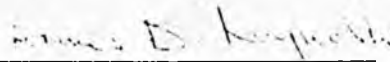
Dr. Frederick C. Dean
Ph.D., Forest Zoology



Dr. Robert B. Weeden
Ph.D., Zoology



Dr. Willard E. Barber
Ph.D., Fisheries



Dr. James B. Reynolds
Ph.D., Fisheries



Dr. David R. Klein
Ph.D., Wildlife Management



Dr. Robert G. White
Ph.D., Zoophysiology and Nutrition

SB 231

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,

File Nos. 6824/
7181

Appellants,

v.

OPINION

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

Appellees,

and

THE ALASKA FEDERATION OF NATIVES,

Intervenor.

ALASKA DEPARTMENT OF FISH AND GAME,
RONALD SKOOG, ALASKA BOARD OF FISHERIES,

File No. 7410

Appellants,

v.

LOUIS GJOSUND, DORA MULCH, and KACHEMAX
BAY SUBSISTENCY GROUP, INC.,

Cross-Appellees.

[No. 2911 - February 22, 19

Re: Pages 4, 8, 12, 16, 19, 20, 22, 23, 24, 25, 27

Attachment #1

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

SB 231

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,

File Nos. 6824/
7181

Appellants,

v.

O P I N I O N

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

Appellees,

and

THE ALASKA FEDERATION OF NATIVES,

Intervenor.

ALASKA DEPARTMENT OF FISH AND GAME,
RONALD SKOOG, ALASKA BOARD OF FISHERIES,

File No. 7410

Appellants,

v.

LOUIS GJOSUND, DORA MULCH, and KACHEMAK
BAY SUBSISTENCY GROUP, INC.,

Cross-Appellees.

[No. 2911 - February 22, 19

Re: Pages 4, 8, 12, 16, 19, 20, 22, 23, 24, 25, 27

Attachment #1

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

Contact: David A. Lampen
Clerk of the Appellate Courts
Anchorage (907) 264-0607

[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

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

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

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. *Hand rod hook & line*

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

(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,

(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

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, heightened public awareness of the state's subsistence fishing provisions. This public interest resulted in a

(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.

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

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

	<u>Subsistence Use</u>	<u>Commercial Harvest</u>
	<u>Permits Issued</u>	<u>Salmon Caught</u>
1978	323	3,735
1979	1,161	9,923
1980	1,331	14,775
		5,118,041
		1,923,229
		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)

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

(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 Tycnek, 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

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

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 960¹¹ 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

11. HB 960 became the 1979 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

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

(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

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.

COOK INLET MANAGEMENT AREA SUBSISTENCE

FISHERY REPORT 1972

A. General Information

1. Description of Area: The Cook Inlet area includes all waters of Alaska in Cook Inlet and Resurrection Bay north of Cape Douglas and west of Cape Fairfield, including the Barren Islands. (Figure 1)
2. Species Utilized: All five species of pacific salmon are utilized in the Cook Inlet area. Since 1962 . cohos have made up 66 percent of the subsistence catch, reds 20 percent, pinks 8%, chums 5%, and kings 0.2 percent. (Table 1) King crab, tanner crab, dungeness crab, shrimp, smelt, herring, bottom fish, and clams are also utilized for subsistence purposes. However, few records are available on degree of utilization. In actuality it is hard to define what constitutes "sport fishing" and what constitutes "subsistence fishing" for the above listed species.
3. Economic Conditions: No figures are available on the average income of those applying for subsistence permits in the Cook Inlet area. It is the personal opinion of the area management biologist that less than five

* See page # 3, 6, 7, 9, 10, 17, 19

Attachment #2

FIGURE I

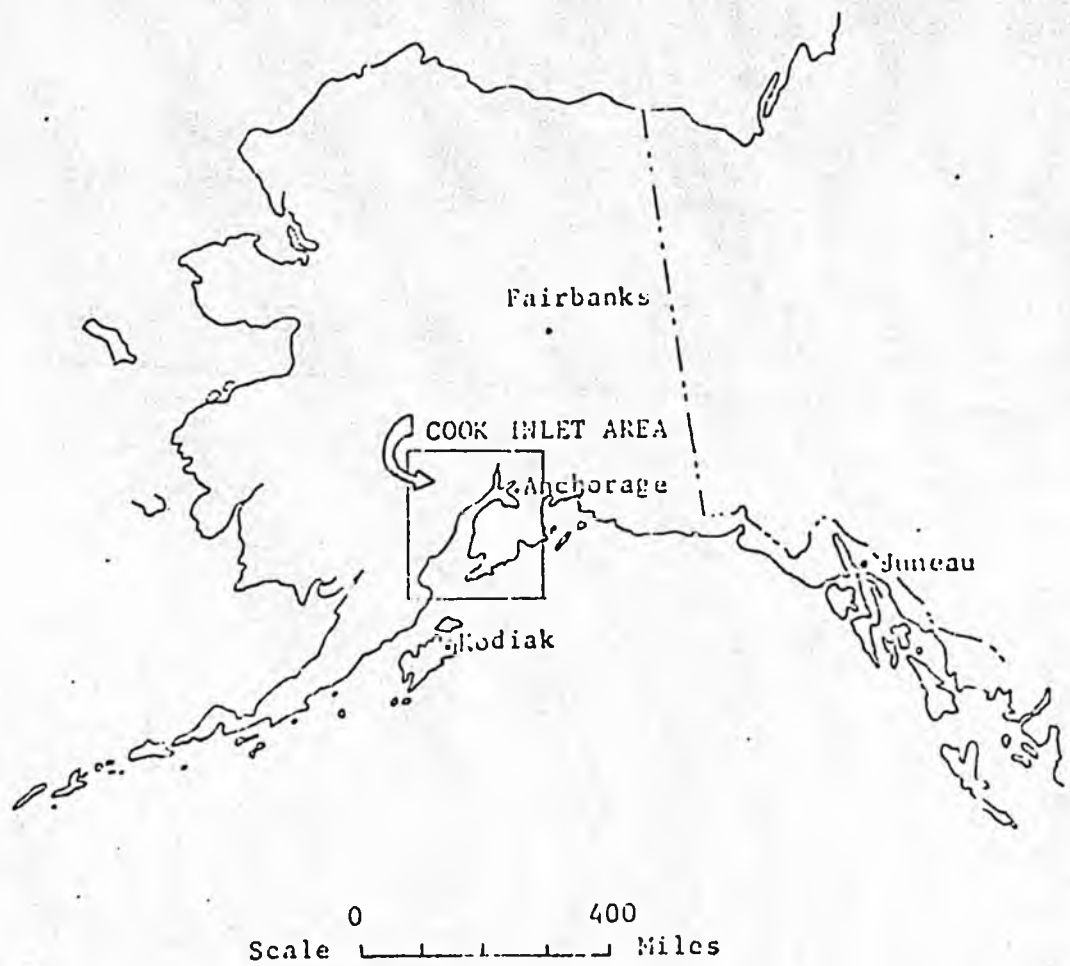
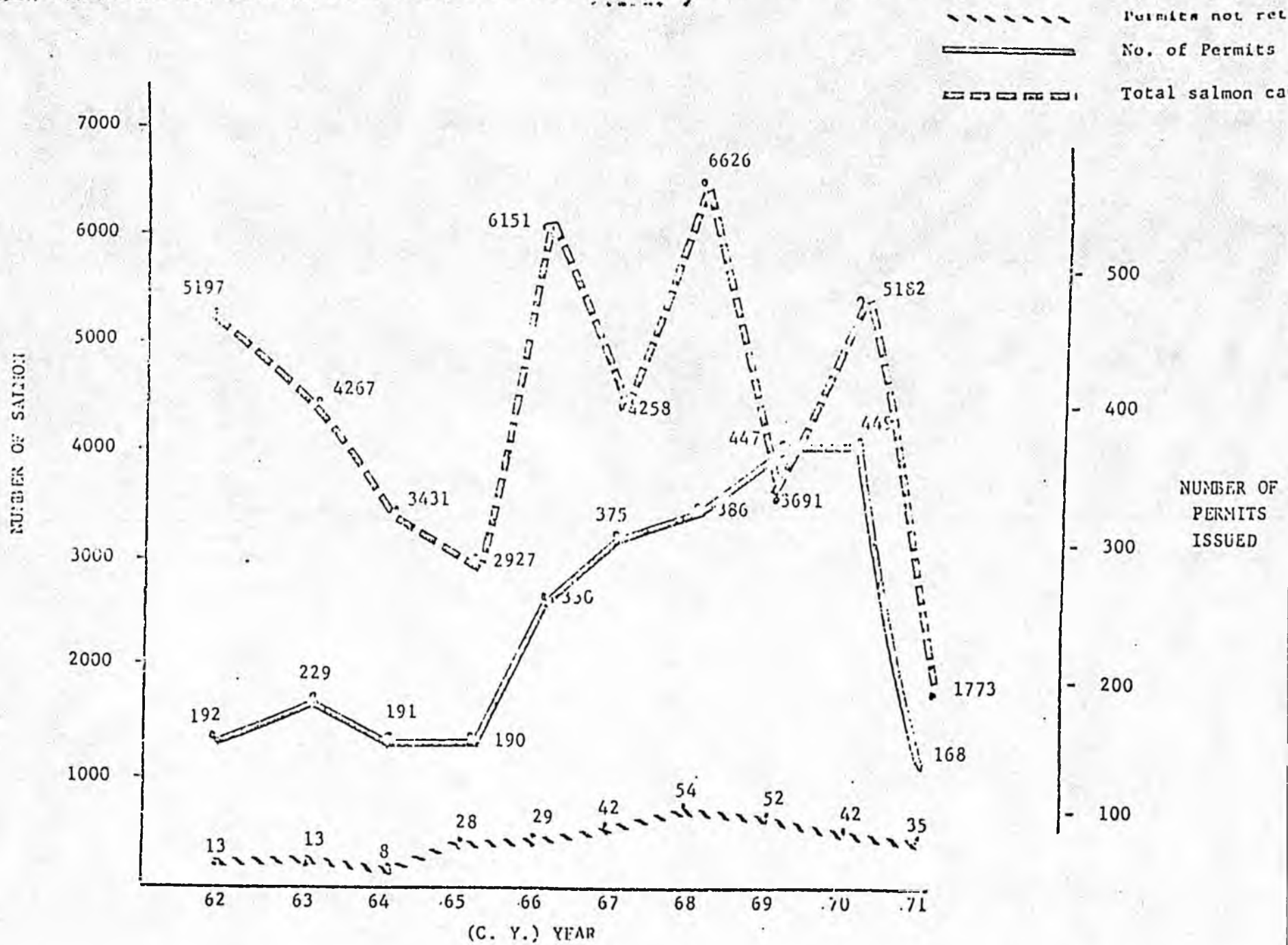


Figure 1. Cook Inlet area location map.

TABLE 1

COOK INLET SUBSISTENCE CATCH OF SALMON, 1962-1971

YEAR	NO. PERMITS	DID NOT REPLY	KINGS	REDS	COHO	CHUM	PINK	TOTAL
1962	192	13	45	770	3574	391	417	5197
1963	229	13	29	859	2510	424	447	4269
1964	191	8	--	393	2463	207	368	3431
1965	190	28	--	484	2109	285	49	2927
1966	330	29	8	1656	3533	356	598	6151
1967	375	42	4	863	3105	213	73	4258
1968	386	54	10	1009	4201	236	1170	6626
1969	447	52	--	1518	2011	94	68	3691
1970	449	42	3	1218	3371	152	438	5182
1971	168	35	2	23	1697	7	44	1773
TOTALS	2,957	316	101	8,793	28,574	2,365	3,672	43,505
PERCENT	100.0	10.7	0.2	20.2	65.7	5.4	8.4	100.0



or ten percent of the subsistence fishing in the area is carried out by persons in such financial positions that they actually have a legitimate need of the resource harvested in order to subsist. The type of subsistence fishing found in the Cook Inlet area could more appropriately be classified as recreational or supplemental fishing. Many people regard it as a form of sport fishing in which they not only derive recreational benefits but at the same time supplement their food stocks. Some people in the Cook Inlet area, natives and whites alike, because of either need or personal preference, are trying to maintain a "live-off-the land" life style. To these few, "subsistence" fishing may fall into a need category and may play an important part in their means of existing.

B. History of Fishery

1. Methods of Fishing: A variety of subsistence fishing methods are used in the Cook Inlet area, as it is a multi-species utilization area.
 - a. Salmon: Set nets, seines and drift nets are currently used with set nets accounting for about 95 percent of the effort. Since statehood, all subsistence salmon fishing has been in conformance

with commercial regulations and, therefore, areas open and methods used have been identical to those in commercial fishing. Prior to statehood, much of the subsistence fishing took place in salmon spawning streams with gear ranging from hook and line to gill nets. Snagging was one of the more popular methods.

- b. Shellfish: King crab, tanner crab, dungeness crab and shrimp are taken with various forms of pots. Most fishing takes place at or near the small boat harbors of Homer and Seward. Clams for subsistence are taken by use of a clam shovel. The methods currently used for taking shellfish species for subsistence purposes do not differ appreciably from those used prior to statehood.
- c. Smelt: Both bill nets and dip nets have been used in the Cook Inlet area for taking smelt, however, in 1972 dip nets became illegal gear for taking smelt in the waters of the Kenai Peninsula. A limited amount of hook and line snagging for smelt also exists.

- d. Freshwater species: The gear most commonly utilized for freshwater species is small mesh gill nets and seines. In the past, fish-wheels and dip nets have also been used in freshwater.

2. Catches and Fishing Effort

- a. Salmon: Salmon fishing is the only subsistence fishing for which reliable catch and effort data exists and this data covers from 1962 to 1971 only. During these years, a total of 2,957 subsistence permits were issued and all but 316 were returned. The total reported salmon catch from 1962 to 1971
 * is as follows: 101 kings, 8,793 reds, 28,574 cohos, 2,355 chums, 3,672 pinks, for a total of 43,505 salmon. The number of permits issued and the total catch by species appears in Table 1 and is depicted in graphic form in Figure 2.
- b. Smelt: Catch data on smelt is only available for the past two seasons. In 1971, there were 1,387 smelt reported taken and in 1972, the reported catch was 8,542. Most effort has taken place along the western shoreline of the Kenai Peninsula and around Turnagin Arm.

The number of permits issued by year since 1969 appear below:

<u>Year</u>	<u>Salt Water</u>	<u>Kenai River</u>	<u>Total</u>
1969	150	194	344
1970	157	393	550
1971	92	*	92
1972	160	*	160

*Smelt permits not required for Kenai River.

- c. Shellfish: No permits are required for taking shellfish and, therefore, no records are available on effort or catch. Most effort occurs in Kachemak and Resurrection Bays.
- d. Freshwater species: Relatively few permits have been requested for taking freshwater species and most of these have been for Lake Louise and Tyone Lakes. Whitefish comprise about 90 percent of the catch.

3. Management Regulations: The following is a history of subsistence regulations in Cook Inlet from 1943 to 1972.

1942 through 1950

No mention made in Cook Inlet section of commercial fisheries regulations.

1951

First mention in commercial regulations.
Required notification of intention to take salmon for personal use, with statement of type of gear to be used, area, time, number of fish to be taken and intended disposition of fish taken.

Fish, Ship, and Campbell and Cottonwood Creeks closed to subsistence fishing.

1952

No intent to take notification required. More streams closed, including all tributaries to Knik Arm, Willow Creek (tributary to Susitna), Campbell Creek, and all streams and lakes of Kenai Peninsula that are tributary to Cook Inlet: Provided this
* shall not apply to fishing with rod, hook and line for personal use.

- (Apparently this was the first time many Cook Inlet streams were closed to use of nets for personal use of fish.)

1953

Above regulations same, plus added stipulation that no personal use fishing allowed within 300 feet of weirs and ladders. Snagging was prohibited for the first time.

Also, personal use fishing prohibited within 500 yards of all other streams or lakes except with hand rod, hook and line. Bay limit two (2) per day per person.

And subject to laws regulating commercial fishing 48 hours before and continuing 48 hours after each fishing period. Except for fall season and/or place greater than 25 miles from waters open to commercial fishing. . .

* And in Knik Arm where 15 fathom set nets, 100 yards apart, shall be operated prior to August 6, only during hours open to commercial fishing in the Northern district.

1954

Same as 1953 with additional sections that. . . Commercial gear may be used for personal fishing during any fall season. . .

Fishing allowed in Turnagain Arm east of a line between Hope and Indian, and. . .

Fishing allowed more than 5 miles upstream from tidewater on all streams and lakes of Cook Inlet drainage South and West of the Susitna River or South of town of Homer.

1955

General regulations and. .

Coo Inlet regulations same as 1954.

1956

Same as 1955 with added restrictions. . .

Closed Kenai & Russian Rivers within 300 yards of their confluence (this to 'Sportsmen').

Rod and line. . . limited take to two (2) salmon over 16 inches, per person per day.

1957

General regulations same as 1956.

Cook Inlet about same except for limit on take by rod and line fishermen ('. .not to exceed 10 inches'. . per person per day by hook and line, and not more than two (2) may exceed 16 inches').

1958

General same as 1957 plus. .

A series of regulations devised to try to curb snagging. . including limiting size hooks and making it illegal to use weights with multiple hooks.

Cook Inlet same as 1957.

1959

General same as 1958.

Cook Inlet--added restrictions that. . .personal use fishing be allowed in the main stem of the Susitna River above the town of Alexander. . with nets less than 30 feet and more than 100 yards from any other set net and from tributary streams-- and identified with name and address of owner.

And personal use fishing must be done in conformance with commercial regulations (This closed Knik Arm and Turnagain Arm).

Many Kenai Peninsula streams closed above ~~markers~~ placed from 3 to 5 miles up from mouth (Anchor, Deep Creek, Stariski and many others).

Added closure of Cooper Creek, Little Willow Creek and Montana Creek. . And. . allowed 30 yards of set nets for use in Knik Arm after August 9, also Fish Creek closed July 21 (snaggers harrassing red run).

1960

General same as 1959.

Cook Inlet--personal use fishing to be allowed
on Northwest shore Knik Arm. . with nets 90 feet
or less and more than 500 yards from terminus of any
salmon stream. . and conform to commercial open per-
iods in Northern district. . and identified with name
and address of owner.

1961

General same as 1960.

Cook Inlet added open fishing season on clams, crabs, and bottomfish. . all in conformance with commercial regulations.

Salmon for subsistence was broken into districts. . . apparently this did away with fishing in main stem of Susitna River above Alexander (see subsistence regulations for Northern district 1961).

1962

General regulations added restrictions--personal use fishing must be done by permit only, issued by commissioner. . . limited subsistence catch to individual regional regulations.

Cook Inlet---same as 1961.

1963

General regulations--new regulation--fish other than salmon may be taken at any time in any area of state by any method except by use of explosives or chemicals, except as hereinafter provided or as provided in the Sport Fishing Regulations of the Department.

Cook Inlet--same as 1962.

1964

General same as 1963.

Cook Inlet--new regulation--must have permit for salmon and all catches by species, location and date of catch must be reported. Freshwater species except for trout, grayling, and char may be taken for subsistence purposes via permit and these permits be issued by commissioner or his representative when deemed warranted.

Also not more than 50 salmon be taken per permit and subsistence fishing is prohibited in any area closed to commercial fishing except for parts of Knik Arm.

And all districts with exception of Outer district, must have name and address of owner on fishing gear. The Outer district regulations were amended to conform with commercial regulations.

Another Cook Inlet regulation was amended-- sports fishing licenses required for clams and/or bottom fish and crab pot floats will contain the name of owner. No sex or size limitations on crab.

1965 through 1969

Outside of minor amendments and a few changes in regulations in the different fishing districts, personal use fishing regulations are about the same for that period from 1965 to 1969.

1969

Cook Inlet--new regulations--

Restrictions:

(a) Subsistence fishermen taking herring and smelt in the Kenai River must be physically present at all times said net is being fished.

(b) A sports fishing license is required when bottom fish are taken with fishing rod and line.

(c) A sports fishing license is required for the digging of razor clams.

Size Limits: There are no size or sex limitations on crab.

1970

Cook Inlet--new regulations--

Salmon - The subsistence fishery on the Northwest of Knik Arm was deleted.

Smelt - In the Kenai River the length of gill nets may not exceed 20 feet in length.

Smelt may be taken in that portion of the Kenai River from its mouth upstream to the Soldotna bridge from April 1 through May 31.

1972

Cook Inlet--new regulations--Smelt - Dip nets may not be used for taking smelt in the waters of the Kenai Peninsula.

4. Problem Areas

1. Northwest Shore Knik Arm: This area is no longer a problem as it was closed to subsistence fishing in 1971. The number of permits issued for this area had increased during the mid-60's to a level of 290 during the last two years of the fishery. (1969 and 1970) The reported catch during this period averaged 3,300 salmon (Table 2). The main justification for closing this area was the declining red salmon escapements into Fish Creek which reached a low of 6,233 in 1969.
2. Mud Bay: The problem here appears to be over-utilization of available fishing space rather than over-utilization of the resource. Commercial fishing, sports fishing, and subsistence fishing all take place in this rather confined area of Kachemak Bay along the Northeast side of the Homer Spit. Peak utilization occurs in mid to late August when approximately 10 seine fishermen, 50 subsistence fishermen and several hundred sports fishermen fish

TABLE 2

COOK INLET SUBSISTENCE SALMON FISHERY
Permits Issued and Total Salmon Catch By District, 1967 - 1972

YEAR	NORTHERN ^{1/}		NORTH and SOUTH CENTRAL		SOUTHERN		EASTERN	
	Permits	Total Catch	Permits	Total Catch	Permits	Total Catch	Permits	Total Catch
1967	218	2,947	13	119	51	942	91	262
1968	276	5,395	30	303	79	953	--	--
1969	290	1,563	40	400	85	1,067	32	929
1970	290	3,448	45	206	78	1,386	36	181
1971	9	10	28	138	112	1,618	19	7
1972	9	<u>2/</u>	5	<u>2/</u>	151	<u>2/</u>	5	<u>2/</u>

^{1/} Northern district represents Northwest shore at Knik Arm

^{2/} Catch data not available for 1972.

this area. The main species being sought are silver salmon and the subsistence catch has averaged about 1,000 since 1967. The commercial catch in the Southern district has averaged 2,500 silvers since 1967 and an estimated 50 percent of these have been taken from Mud Bay proper. Sports harvest figures are not available, however, the average catch since 1967 would probably not exceed 500 fish. Commercial and subsistence harvest figures indicate no decline in abundance of silver stocks in Mud Bay. A tagging study in 1970 indicated the silver stocks of Mud Bay were mostly local stocks bound for upper Kachemak Bay and escapement indices in this area have been consistent in recent years.

Although there is no biological justification for closing Mud Bay, the time has perhaps come for closing a portion of Mud Bay to commercial and subsistence fishing because of user-group conflicts.

For the last several years proposals have been submitted to the Board of Fish and Game asking for either complete or partial closures of Mud Bay. The commercial fish staff has always opposed these closures on the basis that no biological justification exists.

Because of the increasing sports fish utilization there will be a public proposal submitted to the Board of Fish and Game at the November meeting by a Homer commercial fisherman which will ask for a partial closure of the Mud Bay area. The commercial staff intends to support this proposal.

3. Shellfish: Another potential problem is the crab and shrimp pot fisheries which have developed tremendously in the last few years. A considerable volume of gear is being fished in the immediate vicinity of the Homer small boat harbor and again, rather than over-utilization of the resource, the main problem is over-utilization of area. Gear is so concentrated in this one area that navigation has been hindered. A regulation may be necessary in the near future to close a section of the bay in the immediate vicinity of the small boat harbor entrance.

D. Recommendations:

It is the personal opinion of the area biologist that a need exists for subsistence fishing in Cock Inlet and that it should be continued perhaps with some modifications.

The 5 or 10 percent of the people who actually have a legitimate need to subsistence fish should not be denied this right just because the fishery has become recreationally oriented.

Perhaps a fee could be placed on a subsistence permit or license. This might tend to eliminate some of those who are participating more for recreation than need and yet keep the regulation constitutional. For those who could show need, through an application for a waiver on the license fee, a special free permit would be granted. A maximum income level would be established similar to that used in the Food Stamp Program and those falling below the established level would be eligible for the free permit. These measures would probably reduce subsistence fishing by 75 percent in the Cook Inlet area and subsistence fishing would again conform with the true meaning of subsistence.

APPENDIX

1. A copy of the Cook Inlet Subsistence Fishery Instructions of 1972.

COOK INLET SUBSISTENCE SALMON FISHERY, 1972

Salmon may be taken for subsistence purposes under authority of a permit which may be obtained from the local representative of the department.

Each subsistence fisherman taking salmon shall keep accurate records of the catch involved, by species, location caught, date of catch, and other such information as the department may require.

Salmon may be taken for subsistence purposes only by residents.

Identification of fishing gear shall consist of the name and address of the owner and the number of his subsistence permit.

Not more than 50 salmon may be taken under the authority of a subsistence permit.

Only one salmon subsistence permit will be issued to each person during a year.

Each set gill net shall not be longer than 35 fathoms in length and 45 meshes in depth.

The operation of each set gill net shall be performed or assisted by the fisherman whose name it is registered.

No part of a set gill net may be placed or operated within 600 feet of any part of another set gill net.

FISHING SEASONS:

NORTHERN DISTRICT: from 6:00 a.m. July 21 until 6:00 a.m. September 20 during open commercial fishing periods in conformance with all commercial regulations.

NORTH & SOUTH CENTRAL DISTRICTS: from 6:00 a.m. August 18 during open commercial fishing periods in conformance with all commercial regulations.

NORTHERN DISTRICT: from 6:00 a.m. August 18 during open commercial fishing periods in conformance with all commercial regulations EXCEPT that set gill nets may be used in any beach area open to commercial salmon fishing.

SOUTHERN DISTRICT: in conformance with commercial regulations.

SOUTHERN DISTRICT: from June 1 through June 30 during open commercial fishing periods in conformance with all commercial regulations EXCEPT that set gill nets may be used in any beach area open to commercial salmon fishing.

ALASKA BOARD OF FISHERIES FINDINGS
SUBSISTENCE REGULATIONS FOR THE 1985 FISHING SEASON

The Alaska Board of Fisheries, meeting in Anchorage, Alaska on March 26, 1985, finds that the Alaska Supreme Court decision in Madison v. Alaska Department of Fish and Game will require a revision of certain subsistence, personal use, sport, and commercial fishing regulations. However, the board finds insufficient time exists before the smelt, herring, bottomfish, shellfish and salmon seasons to allow for an orderly, comprehensive review of all regulations which may be impacted, considering the need to provide an adequate opportunity for public comment and review. Therefore, to ensure an orderly process allowing the opportunity for all members of the public to participate, and implement the court's decision in Madison as possible in the interim, the board finds:

- (1) The board will, by emergency regulation, authorize the subsistence take of smelt, herring, shellfish and bottomfish as they were allowed under the 1978 subsistence regulations.
- (2) The board will, by emergency regulation, authorize access by all Alaska residents to existing Tyonek, Port Graham, and English Bay subsistence salmon fisheries in Cook Inlet. Existing bag and possession limits, time, gear and area regulations and overall guideline harvest will not be adjusted for the 1985 season. The board finds that such regulations promote an orderly harvest which will reasonably satisfy anticipated subsistence uses. Modification of these regulations at this time is not in the best public interest of the public given the inadequate opportunity for public comment at this time, and uncertainty about 1985 participation levels.
- (3) During 1985, the board will continue the following presently authorized personal use salmon fisheries in Cook Inlet as personal use fisheries:

the spring Kasilof gill net fishery,
the Kasilof and Kenai River sockeye dipnet fishery,
the China Poot hatchery sockeye fishery,
and the shellfish, herring, and smelt fisheries.

The board cannot reasonably modify or eliminate these fisheries without an opportunity for public comment, which is not possible under the present time frame.

- (4) The fall coho set gill net personal use fishery will however, by emergency regulation, be identified as a subsistence fishery, as required by Madison, and will be managed under the regulations used during the 1981 season, except that current reporting requirements will apply.
- (5) The Kachemak Bay salmon set gill net fishery will, by emergency regulation, be identified as a subsistence fishery, as required by Madison, and will be managed under the regulations

Attachment #3

developed for the court ordered fishery. Alaska residents will be able to participate in both of these fisheries.

(6) The board will, by emergency regulation, allow access by all Alaska residents to the following existing subsistence fisheries:

Copper River (salmon)
Iliamna/Lake Clark (salmon)
Naknek River (salmon), and
Angoon (salmon).

The bag and possession, time, area, gear, and overall harvest guidelines of each of these fisheries shall remain as described in existing regulations. The board finds that such regulations are necessary to conduct an orderly fishery and to provide a reasonable opportunity for subsistence needs. Modification of these regulations at this time is not in the best interest of the public given the inadequate opportunity for public comment at this time.

(7) As to the Copper River subsistence and personal use salmon fisheries, which will be combined into a subsistence fishery by emergency regulation, the board will retain existing regulations as to bag and possession limits, time, area, gear, and overall harvest guidelines, except that rather than separate regulations based on domicile, the regulations developed for those domiciled in the Copper Basin and other specified communities will be applied to the fishwheel fishery and those developed for those not so domiciled will be applied to the dip net fishery. The board finds these regulations to be necessary to conduct an orderly fishery and to provide a reasonable opportunity for subsistence needs. Further, the overall harvest guidelines, bag limits, and areas represent historical harvest. The dip net portion of this guideline represents a total harvest which was not taken during the 1984 season. The harvest limit is necessary to manage the downriver commercial salmon drift gill net fishery to ensure escapement for reproductive needs and the upriver subsistence fishery. The bag and possession limits, while different for dipnetters and fishwheel fishermen were developed by the board after extensive public testimony and information demonstrating that the differing bag limits reflected historical use by each group.

The board hereby calls for proposals from the public on all subsistence and personal use regulations to be considered at the fall/winter 1985 finfish meeting. The board will consider all proposals to establish, eliminate or modify any or all subsistence or personal use regulations. Any changes in commercial or sport fishery regulations required by such regulations.

Ron Jolin, Chairman Board of Fisheries

March 27, 1985

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.

Attachment #4

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.

G. Cook

AR

RECEIVED
MAY 23 1980
CLERK OF THE TRIAL COURTS
STATE OF ALASKA
THIRD DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

NATIVE VILLAGE OF TYONEK, et al.,)
Plaintiffs,)
vs.)
ALASKA BOARD OF FISHERIES, et al.,)
Defendants.)

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT
MAY 23 1980
Clerk of the Trial Courts
By *[Signature]* Deputy

CIVIL ACTION NO. JAN-80-3073

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs' motion for a preliminary injunction in the above-entitled action having come on for hearing on the 22d day of May 1980, all parties having been heard and plaintiffs' motion having been granted, the Court hereby enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The village of Tyonek is an Athabascan Indian village of approximately 300 people and 80 households located on the west side of Cook Inlet. Tyonek has been inhabited for generations by the Tanaina group of Athabascans who succeeded the Eskimo population which originally settled in the area in prehistoric times. Today, the village still retains its ethnic identity and has the same characteristics of a rural Alaska Native community as those of Native villages in other areas of the state.

*** not to be used*

2. The Susitna River king salmon stock enters upper Cook Inlet and is the only stock of king salmon to pass by the village of Tyonek. The Susitna River stock enters Cook Inlet the beginning of May, and begins to pass by the village of Tyonek in mid-May.

NORMAN A. COHEN
ATTORNEY AT LAW

(1) Attachment #5

The Susitna River stock run peaks at the village at the end of May or the beginning of June and is usually completely past the village by the latter ^{end} part of June.

3. The mid-May to mid-June king salmon fishery is a customary and traditional subsistence use by residents of the village of Tyonek of the Susitna River king salmon stock in that this fishery has been in existence for generations, that the harvest of the king salmon at this time is an essential component of the cultural life of the village, that the art of cutting ^{king} salmon has been handed down through generations, that the early king salmon is the first fresh food of the spring, that king salmon are oiler than other species of salmon and therefore better suited for drying and preserving for winter use, that unlike other species of salmon king salmon are not susceptible to damage while drying from insects and seabirds, and that drying is usually completed prior to the start of summer rains.

4. The residents of the village of Tyonek fish for king salmon with set nets from the beach in front of their fish camps immediately south of the village.

5. Since 1964, the residents of the village of Tyonek have been prevented from participating in their customary and traditional mid-May to mid-June king salmon subsistence fishery by regulations adopted by defendants and their predecessors. These regulations were initially adopted due to poor escapement of the Susitna River king salmon stock.

6. In 1977, the defendant Alaska BOARD OF FISHERIES adopted a Comprehensive Management Policy for The Upper Cook Inlet Salmon Stocks which stated that stocks which move in Cook Inlet to spawning areas prior to June 30th would be managed ^{for} ~~exclusively~~ for recreational uses. No mention was made in the management policy

for management of such stocks for subsistence uses ^{as the} ~~Board of Fisheries, Executive Order Proclamation~~
~~for subsistence uses.~~

NORMAN A. COHEN
ATTORNEY AT LAW

see 5/1/81

ALB

Stock
Group
Conclusion

7. In 1978, the Alaska State Legislature enacted ch 151 SLA 1978 (A.S. 16.05.251(b)) which requires that whenever it is necessary to restrict the taking of the ^{fish} ~~Susitna River king salmon~~ stock to assure the maintenance of such stock on a sustained-yield basis or to assure the continuation of subsistence uses of such king ^{fish} salmon stock, subsistence use of such stock shall be the priority use over sport and commercial uses.

8. A.S. 16.05.251(b) ^{also} requires defendant ALASKA BOARD OF FISHERIES to adopt subsistence fishing regulations for Susitna River king salmon stocks, which implement the priority for subsistence uses referred to in paragraph 7, unless it determines that adoption of such regulations will jeopardize or interfere with the maintenance of Susitna River king salmon stocks on a sustained-yield basis.

9. Prior to the ^{December 1979} March 1980 meeting of defendant ALASKA BOARD OF FISHERIES, said defendant, on behalf of plaintiff NATIVE VILLAGE OF TYONEK, published ^{statements of use} proposed regulations pursuant to the Administrative Procedures Act to open a subsistence king salmon fishery for the residents of the village of Tyonek, between May 15 and June 15.

10. On March 26, 1980, defendant ALASKA BOARD OF FISHERIES held a public hearing and received testimony on the proposed regulations from the Alaska Department of Fish and Game, residents of the village of Tyonek and other members of the public.

11. Testimony presented at the public hearing indicated that the residents of the village of Tyonek ^{have} customarily and traditionally harvested king salmon for subsistence uses between May 15 and June 15 ^{under the traditional}.

12. Though evidence was presented that restrictions on taking by all user groups of the Susitna River king salmon stock were necessary, no evidence was presented at the hearing by the Alaska Department of Fish and Game that adoption of the proposed

Norman A. Cohen
Attorney at Law

regulations would jeopardize or interfere with the maintenance of the Susitna River king salmon stock on a sustained-yield basis and the defendant ALASKA BOARD OF FISHERIES made no finding to that effect. *The Board continued to express concern over the effect of the fishermen's traditional harvesting practices.*

13. The defendant ALASKA BOARD OF FISHERIES rejected the plaintiffs' proposals but adopted proposals authorizing the harvest of 13,100 Susitna River king salmon by sports fishermen. *for subsistence fishing in Cook Inlet in streams.*

14. As a result of the failure of the defendant ALASKA BOARD OF FISHERIES to adopt proposed regulations opening a king salmon season for the residents of the village of Tyonek, the plaintiffs are threatened with irreparable harm in that plaintiffs' customary and traditional use of the Susitna River king salmon stock will be denied to them. Consequently, residents of the village of Tyonek will lose access to a valuable subsistence resource and the customary and traditional way of life of the village will be disrupted.

lifted
* 15. No other species of salmon available to the residents of the village of Tyonek can replace the Susitna River king salmon stock *harvested between May 23 and June 15, 1980* as a subsistence resource or substitute for the role of the Susitna River king salmon stock in the customary and traditional way of life of the village.

16. Defendants will be adequately protected if the residents of the village of Tyonek are permitted to harvest 3,000 king salmon from the Susitna River king salmon stock between May 23 and June 15, 1980.

17. Plaintiffs have raised serious and substantial questions. The failure of defendant ALASKA BOARD OF FISHERIES to adopt the proposals submitted on behalf of plaintiff NATIVE VILLAGE OF TYONEK and the adoption of proposals authorizing the harvest of 13,100 Susitna River king salmon by sports fishermen is a violation of A.S. 16.05.251(b) in that whenever it is necessary to restrict

the taking of Susitna River king salmon to assure the maintenance of that fish stock on a sustained-yield basis, or to assure the continuation of subsistence uses of such resource, subsistence use shall be the priority use.

CONCLUSIONS OF LAW

1. Unless the preliminary relief requested by plaintiffs is granted plaintiffs will suffer irreparable harm in that plaintiffs customary and traditional use of the Susitna River king salmon stock will be denied to them. Consequently, residents of the village of Tyonek will lose access to a valuable subsistence resource and the customary and traditional way of life of the village will be disrupted.

2. Defendants and the resource will be adequately protected if the residents of the village are permitted to harvest 3,000 king salmon from the Susitna River king salmon stock between May 23 and June 15, 1980.

3. Plaintiffs have raised serious and substantial questions in that:

a. Whenever it is necessary to restrict the taking of a fish stock 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 of such stock.

b. The residents of the village of Tyonek have a customary and traditional use of the Susitna River king salmon stock between May 15 and June 15.

c. Adoption by defendant ALASKA BOARD OF FISHERIES of regulations which allow for the sport fishing of Susitna River king salmon without first adopting regulations which provide for the customary and traditional use of such stock by the residents of the village of Tyonek is a violation of the subsistence priority set forth in A.S. 16.05.251(b).

ROBERT A. COHEN
ATTORNEY AT LAW

4. No bond is required of the plaintiffs prior to the issuance of the preliminary injunction.

DATED this 23rd day of May, 1990.

Victor Carlson
JUDGE OF THE SUPERIOR COURT

I certify that on 5-30-90
a copy of this document was sent to:
 Attorney(s) of record, or

Other: _____
at address of record.

D. O. E. _____
Clerk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

NATIVE VILLAGE OF TYONEK, ^{Case 12} et al.,)
Plaintiffs,)
vs.)
ALASKA BOARD OF FISHERIES, ^{Case 12} et al.,)
Defendants.)

CIVIL ACTION NO. 3AN-30-3073

AGREEMENT OF SETTLEMENT

WHEREAS, a civil action has been brought by the Native village of Tyonek and several residents of the village of Tyonek, in which plaintiffs allege inter alia that the decision of the Alaska Board of Fisheries rejecting proposed regulations for king salmon fishing for subsistence uses in the upper Cook Inlet between May 15 and June 15 by residents of the village of Tyonek was a violation of A.S. 16.05.251(b) and request declaratory and injunctive relief; and

WHEREAS, on May 22, 1990, this Court granted plaintiffs' motion for a preliminary injunction and on May 23, 1990, entered findings of fact and conclusions of law restraining defendants from enforcing regulations which prohibit residents of the village of Tyonek from subsistence fishing for king salmon in the ^{vicinity of} ~~Cook Inlet~~ ^{Tyonek} between May 23, and June 15, 1990, and requiring defendants to adopt emergency order regulations to authorize the residents of the village of Tyonek to harvest king salmon ~~in the upper Cook Inlet~~ in the vicinity of Tyonek for subsistence uses between May 23, 1990 and June 15, 1990, with a limit of 50 king salmon per household not to exceed a total of 3,000 king salmon

and regulated to minimize the impact on any one stream.

WHEREAS, the parties in order to avoid the uncertainty of further litigation, wish to resolve this matter by means of settlement;

NOW, THEREFORE, the parties, through their attorneys and subject to the approval and order of this Court, hereby agree as follows:

STATEMENT OF FACTS

1. Plaintiff NATIVE VILLAGE OF TYONEK is a nonprofit corporation organized under the Indian Reorganization Act of 1934, 25 U.S.C. 461 et seq., to provide for the general health, safety, and well-being of the Athabascan Indian residents of the village of Tyonek, a substantial number of whom customarily and traditionally harvested king salmon in the vicinity of Tyonek during May and June for subsistence uses prior to the closure of the Tyonek king salmon subsistence fishery by Alaska Board of Fish and Game in 1964, and would harvest king salmon in the vicinity of Tyonek for subsistence uses in 1980 but for the fact that defendant ALASKA BOARD OF FISHERIES did not adopt proposed regulations for subsistence king salmon fishing in the vicinity of Tyonek by residents of the village of Tyonek between May 15 and June 15.

2. Plaintiffs NELLIE CHICKALUSION, FEDORA CONSTANTINE, PETER CONSTANTINE, and SAVA STEPHAN are Athabascan Indian residents of the village of Tyonek who customarily and traditionally fished at Tyonek for king salmon for subsistence uses in May and June prior to the closure of the Tyonek king salmon subsistence fishery by the Alaska Board of Fish and Game in 1964, and who (with the exception of plaintiff PETER CONSTANTINE) would harvest king salmon in the vicinity of Tyonek in May and June for

subsistence uses in 1990 if defendant ALASKA BOARD OF FISHERIES had adopted proposed regulations for subsistence king salmon fishing in the vicinity of Tyonek by residents of the village of Tyonek. Health problems would prevent plaintiff PETER CONSTANTINE from harvesting king salmon in the vicinity of Tyonek for subsistence uses in 1980, but residents of the village of Tyonek would share their king salmon subsistence harvest with plaintiff PETER CONSTANTINE as is the customary and traditional practice of the residents of the village of Tyonek with respect to the distribution of subsistence resources to the elders of the village.

3. Defendant ALASKA BOARD OF FISHERIES is established by A.S. 16.05.221 for the purposes of the conservation and development of the fishery resources of the state. The board is required by A.S. 16.05.251(b) to adopt regulations permitting the taking of king salmon in the vicinity of Tyonek for subsistence uses.

4. Defendant RONALD O. SKOOG is the Commissioner of the Alaska Department of Fish and Game and is required by A.S. 16.05.020 to manage the fish resources of the state in the interest of the economy and general well-being of the state. These fish resources include king salmon in the vicinity of Tyonek. Defendant RONALD O. SKOOG is the ex officio secretary of defendant ALASKA BOARD OF FISHERIES and has authority pursuant to A.S. 16.05.060 to open and close seasons and periods on fish.

5. Defendant WILLIAM R. NIX is the Commissioner and principal executive officer of the Alaska Department of Public Safety. Pursuant to A.S. 44.41.020 the Alaska Department of Public Safety is charged with responsibility for the administrative functions relative to the protection of life and property including enforcement of fishing regulations adopted by defendant ALASKA BOARD OF FISHERIES.

6. Tyonek, a community on the west side of Cook Inlet, is an Athabascan Indian village of approximately 350 people, over 95% of whom are Athabascan Indians. Tyonek has been inhabited for generations by the Tanaina group of Athabascans who succeeded the Eskimo population which originally settled the area in pre-historic times. The present residents of the village are the descendants of the Tanaina group. Today, the village still retains its ethnic Athabascan identity, is a rural Alaska Native village and has not abandoned its customary and traditional use of king salmon.

7. For the purposes of this Agreement of Settlement, "fish" means the Susitna River king salmon which enter Cook Inlet waters the beginning of May and begin to pass by the village of Tyonek in mid-May and spawn primarily in streams located in the Susitna River drainage.

8. Susitna River king salmon peak at the village at the end of May or in early June and are usually completely past the village by the end of June.

9. The mid-May to mid-June king salmon fishery is a customary and traditional subsistence use by residents domiciled in the village of Tyonek of the Susitna River king salmon in that this fishery has been in existence for generations, that the harvest of the king salmon at this time is a customary and traditional component of the cultural life of the village, that the art of cutting large king salmon has been handed down through generations, that the early king salmon are the first significant subsistence fresh salmon of the spring, that Susitna River king salmon are oilier than other species of salmon found in Cook Inlet in the vicinity of Tyonek and therefore better suited for drying and preserving for winter use and less susceptible to damage while

drying from insects and seabirds, and that drying takes approximately three weeks and is usually completed by the end of June.

10. The residents of the village of Tyonek harvest king salmon with set nets from the beach in front of their fish camps immediately south of the village.

11. Since 1964, the residents of the village of Tyonek have been prevented from participating in their customary and traditional mid-May to mid-June king salmon subsistence fishery by regulations adopted by defendants and their predecessors. These regulations were initially adopted due to poor escapement of the Susitna River king salmon.

12. Prior to the December 1979 and March 1980 meetings of defendant ALASKA BOARD OF FISHERIES, said defendant, on request of plaintiff NATIVE VILLAGE OF TYONEK, published summaries of regulations proposed by said plaintiffs pursuant to the Administrative Procedure Act to open a subsistence king salmon fishery for the residents of the village of Tyonek, between May 15 and June 15.

13. On March 26, 1980, defendant ALASKA BOARD OF FISHERIES held a public hearing and received testimony on the proposed regulations from the Alaska Department of Fish and Game, residents of the village of Tyonek and other members of the public. Public testimony was also received at the December 19, 1979 meeting of defendant ALASKA BOARD OF FISHERIES.

14. Testimony presented at the public hearings indicated that the residents of the village of Tyonek customarily and traditionally harvested king salmon for subsistence uses between May 15 and June 15 prior to the closure in 1964.

15. Though evidence was presented to defendant ALASKA BOARD OF FISHERIES that restrictions on taking by all user groups of Susitna River king salmon in Cook Inlet were necessary, no

evidence was presented stating that adoption of the proposed subsistence regulations would jeopardize or interfere with the maintenance of Susitna River king salmon on a sustained-yield basis and the defendant ALASKA BOARD OF FISHERIES made no finding at the March meeting to that effect.

16. The defendant ALASKA BOARD OF FISHERIES rejected the plaintiffs' proposals for subsistence fishing in Cook Inlet but adopted proposals which resulted in authorizing the sport harvest of up to 13,100 Susitna River king salmon pursuant to 5 AAC 60.030(a).

17. A failure of the defendant ALASKA BOARD OF FISHERIES to adopt regulations opening a king salmon season for the residents of the village of Tyonek, between May 15 and June 15 of each year, threaten plaintiffs with irreparable harm in that plaintiffs' customary and traditional use of Susitna River king salmon from May 15 to June 15 will be unnecessarily denied to them. Access to a significant customary and traditional subsistence resource in accordance with A.S. 16.05.251(b) will be lost and the customary and traditional cultural life of the village will be disrupted.

18. No other species of salmon available to the residents of the village of Tyonek can fully replace Susitna River king salmon harvested between May 15 and June 15 as a subsistence resource or substitute for the role of Susitna River king salmon in the customary and traditional cultural life of the village.

CONSENT DECREE

1. Under A.S. 16.05.240(6) and (26), subsistence uses of fish are the customary and traditional uses in Alaska of such fish for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of such fish

evidence was presented stating that adoption of the proposed subsistence regulations would jeopardize or interfere with the maintenance of Susitna River king salmon on a sustained-yield basis and the defendant ALASKA BOARD OF FISHERIES made no finding at the March meeting to that effect.

16. The defendant ALASKA BOARD OF FISHERIES rejected the plaintiffs' proposals for subsistence fishing in Cook Inlet but adopted proposals which resulted in authorizing the sport harvest of up to 13,100 Susitna River king salmon pursuant to 5 AAC 60.030(a).

17. A failure of the defendant ALASKA BOARD OF FISHERIES to adopt regulations opening a king salmon season for the residents of the village of Tyonek, between May 15 and June 15 of each year, threaten plaintiffs with irreparable harm in that plaintiffs' customary and traditional use of Susitna River king salmon from May 15 to June 15 will be unnecessarily denied to them. Access to a significant customary and traditional subsistence resource in accordance with A.S. 16.05.251(b) will be lost and the customary and traditional cultural life of the village will be disrupted.

18. No other species of salmon available to the residents of the village of Tyonek can fully replace Susitna River king salmon harvested between May 15 and June 15 as a subsistence resource or substitute for the role of Susitna River king salmon in the customary and traditional cultural life of the village.

CONSENT DECREE

1. Under A.S. 16.05.250(b) and (c), subsistence uses include the customary and traditional uses in Alaska of such fish for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of such fish.

taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption.

2. The residents of the village of Tyonek have a customary and traditional subsistence use of Susitna River king salmon between May 15 and June 15 for all of the reasons set forth in paragraph 9 of the Statement of Agreed Facts. The role of the harvest of Susitna River king salmon in the cultural life of Tyonek and the handing down of information about the harvest, preparation, and use of such fish from generation to generation are significant factors in determining whether use of such fish for personal or family consumption is a "customary and traditional" subsistence use of such fish.

3. Defendant ALASKA BOARD OF FISHERIES is required to adopt regulations which authorize the subsistence fishing of Susitna River king salmon by residents of the village of Tyonek in the upper Cook Inlet in the vicinity of the village of Tyonek between May 15 and June 15 each year, unless such defendant determines, in accordance with the Administrative Procedure Act, that any subsistence fishing for Susitna River king salmon by the residents of the village of Tyonek will jeopardize or interfere with the maintenance of such fish on a sustained-yield basis.

4. The parties agree and the Court approves, for the purposes of achieving an agreement to this litigation, that whenever defendant ALASKA BOARD OF FISHERIES makes a finding that any subsistence fishing for Susitna River king salmon by residents of the village of Tyonek will jeopardize or interfere with the maintenance of such fish on a sustained-yield basis, such finding shall be made on the record and shall detail the biological information which forms the basis of such finding. The finding (including the biological information) shall be reduced to writing.

5. Regulations setting bag limits, gear types, and open

fishing periods for the subsistence fishing of Susitna River king salmon by residents of the village of Tyonek shall cause the least adverse impact upon such residents, and shall be consistent, insofar as practicable, with sound fishery conservation practices, such as minimizing the impact on the return of such fish to any one stream.

6. Whenever it is necessary to restrict the taking of Susitna River king salmon to assure the maintenance of such fish on a sustained-yield basis, or to assure the continuation of subsistence uses of such fish, customary and traditional subsistence use by the residents of the village of Tyonek shall be the priority use under A.S. 16.05.251(b). The defendant ALASKA BOARD OF FISHERIES shall not adopt regulations which allow for the commercial (between May 15 and June 15) and sport fishing of Susitna River king salmon, without first adopting regulations which provide for this subsistence priority over such commercial and sport use unless the Board has made a finding, as required by A.S. 16.05.251(b), that any subsistence fishing for Susitna River king salmon by the residents of the village of Tyonek will jeopardize or interfere with the maintenance of such fish on a sustained-yield basis.

7. Defendants ALASKA BOARD OF FISHERIES, RONALD O. SKOOG, and WILLIAM R. NIX and their successors in office are hereby permanently restrained from enforcing regulations which prohibit residents of the village of Tyonek from subsistence fishing for Susitna River king salmon in the upper Cook Inlet in the vicinity of the village of Tyonek between May 15 and June 15 of each year without defendant ALASKA BOARD OF FISHERIES first finding, in accordance with the Administrative Procedure Act, that such subsistence fishing will jeopardize or interfere with the maintenance of such fish on a sustained-yield basis.

8. Counts I, II and IV of plaintiffs' complaint are dismissed with prejudice.

9. This Court shall retain jurisdiction over this civil action until July 1, 1931.

DATED: _____

DATED: _____

Larri Spengler

Norman A. Cohen

DATED: _____

DATED: _____

John Gissberg
Attorneys for Defendants

Donald C. Mitchell
Attorneys for Plaintiffs

ORDER

The above Agreement of Settlement and Consent Decree are approved.

DATED: _____

Victor Carlson
Superior Court Judge

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 *DWC*
Commissioner
Department of Fish and Game

SUBJECT: Management Issues
Arising From the
Madison Decision

Ron Jolin

4

March 15, 1985

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.

Attachment #6

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 *DWC*
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

Attachment #7

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.

Don W. Collinsworth, Commissioner

Public Communications
Box 3 - 2000
Juneau, Alaska 99802
(907) 465-4113



Alaska Department of Fish & Game

NEWS

FOR IMMEDIATE RELEASE

MARCH 21, 1985

Boards of Fisheries and Game to Discuss Madison

JUNEAU--The Board of Fisheries will take public testimony on March 25, 1985 during its spring meeting in Anchorage regarding impacts of the recent Madison decision. On February 22 the Alaska Supreme Court handed down its decision on Madison vs. ADF&G, reversing lower court decisions on the board's interpretation and application of Alaska's 1978 subsistence law. Although the court case was brought by Cook Inlet fishermen, the decision affects the Board of Fisheries and Board of Games interpretation of the 1978 subsistence law in all of the state's subsistence regulations.

The boards had interpreted the 1978 law as a mandate to protect customary and traditional uses of fish by rural Alaskans. This interpretation was consistent with standards set out in Alaska National Interest Lands Conservation Act.

-MORE-

RECEIVED
MAR 25 1985

Attachment #8

March 21, 1985

The Alaska Supreme Court held that the board's interpretation was incorrect, and said that under the current statute the board must allow all Alaskans to participate in subsistence fisheries, unless fish stocks have declined to the point that commercial and sport fisheries have been eliminated. Unless the statute is amended many of the board's regulations will need revision.

At a minimum, the court's ruling apparently means that the board must recommend a regulatory plan for the 1985 fishing season. It is unclear whether the board will be asked to reauthorize every subsistence net fishery which existed, but board records indicate that this could include set net fisheries on king, sockeye and coho on the the east and west sides of Cook Inlet. The board may also have to examine subsistence salmon fishing regulations for the Copper River, Naknek--Kvichak, Lake Iliamna--Lake Clark, Angoon, and other areas.

Department of Law reviewed the Madison decision for the Board of Fisheries and the Board of Game during their joint meeting March 18, 1985, at the Captain Cook Hotel in Anchorage. This gave the boards an opportunity to discuss the regulatory impacts of the Madison decision. After

-MORE-

March 21, 1985

public testimony on March 25, 1985 at the Captain Cook Hotel, the Board of Fisheries will discuss plans for this summer's fisheries. The Board of Game may hold similar discussions on April 2, 1985 (also at the Captain Cook Hotel in Anchorage).

#####

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
PUBLIC COMMUNICATIONS SECTION
P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000



Alaska Sportfishing Association

3605 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

April 10, 1985

RECEIVED
APR 12 1985

Senator Mitch Abood
Pouch V
Juneau, Ak 99811

231

Dear Mitch,

The Alaska Sportfishing Association wishes to identify our priorities for this legislative session and comment on the apparent current action that is taking place.

1. HB 288 (SB231) Subsistence. The Administration proposed these bills and we have submitted a substitute bill with a "sunset clause". It is there for your consideration since we do not feel that, even though valiant attempts have been made by the House Resources Committee to gain public input, a fully informed public can be achieved in the limited time remaining for this session. It is probably the most important and complex issue of this decade. There still remain in Alaska cases where dependency on subsistence is crucial to life. There are thousands that would love to have the priority offered by subsistence, thousands more jealous of those with that priority, and thousands that don't have the foggiest idea of what is going on. We feel that a joint committee from the House and Senate of legislators honestly and sincerely interested in arriving at a fair, legal, and just solution to the subsistence issue needs to be formed and start getting public input as soon as possible.
2. HB 93. Establishing a system of recreational rivers. This bill has now been diluted so badly that it represents a mockery of the original bill. The purpose was to protect the environment around several excellent rivers in the Mat-Su area. It is now call "a system of special use rivers" wherein we would designate those rivers that we will allow placer mining to destroy. Will we do the same for a cyanide manufacturer if they wish to establish a plant in Alaska? The result is the same...no fish. Clear creek (Chunilna) has been deleted from the list, Chelatna Lake has been deleted at the head waters of Lake Creek (a stream we are trying to save from an abandoned mine that has started pouring muddy run-off into the head waters of a famous fishing stream and a spawning ground for thousands of salmon. Sedimentation into the stream bed of any river eventually cakes the bed and salmon and native trout can no longer spawn there. Multiple uses have been added to these areas that do not protect the habitat. Allowing gravel extraction for public use will still accelerate muddy run-off that clogs up stream beds. Salmon don't differentiate between public use run-off and private use run-off. Lumbering too close to the streams has destroyed hundreds of rivers in the lower 48 and will here if allowed to occur. Grazing of cattle in close proximity to streams also increases erosion and run-off. Protection is what we are asking for and that no longer exists in the bill.

Attachment #9

3. HB's 29,36,& 43. Access to Susitna drainage streams. Little if any action to date. Money is the problem we are told. There is \$1.969 million available to the State in D-J funds that are from federal excise taxes on the sale of sportfishing equipment. That money is not to be used to replace State money in already existing programs for fisheries but is to go to new uses for improvement of recreational fisheries. Currently \$760,000 is being diverted illegally from this fund to replace FRED division funds that were formerly funded by the State. Though cleverly designed, this use will not stand federal scrutiny and will result in the loss of the funds. Rather than face that scene wouldn't it be far more beneficial to the State to use those funds for their intended purpose and when the bill comes up in Congress in 1988 for renewal we can say they are going for a good cause and demonstrate to them by enumerating projects such as the above three bills. FRED division enhancement projects are extremely expensive to keep up year after year, but year after year they keep coming in for more money. Some programs on barren streams appear well thought out but others only justify the job position and salary. Why not put the money for that salary into the deleted fishery biologist position in Homer? Of all places on the peninsula it would seem that that fishery warrants close observation and study.

A quick look at the last two points and it is obvious that we are supporting long term preservation of a very important renewable resource for the people of Alaska, the sportfishing and tourist industry, and the commercial fishing industry. It is very difficult to sit on the sidelines and watch such crucial bills be used as trade-offs for some other piece of legislation. We intend to take it to the public and the courts if necessary to assure that future generations do not have to put up with the blunders that have been made already in the lower 48. The learning curve is already there.

Please assist in anyway you can to get these bills on track.

Sincerely,

Bob Hunter

Robert L. Hunter
Chairman, Legislative Committee

Would appreciate any help you can give us on straightening out the HB's and getting them moving.



PRINCE WILLIAM SOUND
AQUACULTURE CORPORATION

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

SB 23/

P.O. Box 1110
Cordova, Alaska 99574
(907) 424-7511

March 25, 1985

Senator Mitch Abood, Chairman
State Affairs Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Senator Abood:

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

This form of "self help" resource development by the harvesting fishermen, which was created by the Alaska State Legislature in 1975 has set a responsible standard for enhancement that is without parallel in the rest of the United States. We project that our total enhancement program will generate annual revenues to the commercial fishery alone of \$20 million within ten years. Moreover, the Esther Hatchery will produce coho and chinook salmon fry to be stocked in nearby lakes, which we project will return 7500 coho and 6000 chinook salmon adults to the developing sport fishery near Whittier. Salmon from this hatchery will also be available to a future subsistence fishery.

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

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

Attachment #10

RECEIVED
MAR 27 1985

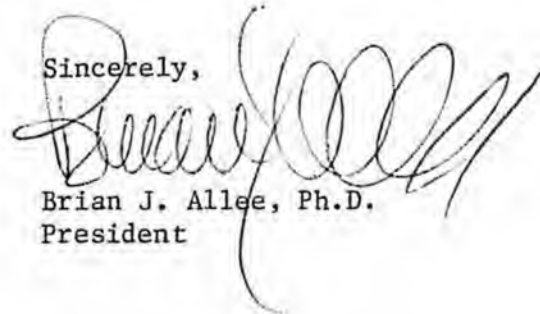
Page Two
Senator Mitch Abood
March 25, 1985

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

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

Thank you for your support.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brian J. Allee". The signature is written in dark ink and is positioned above the typed name and title.

Brian J. Allee, Ph.D.
President

BJA/mb1



Mr. & Mrs. Max Wiese



Box 47
Cordova, Alaska 99574
424-3667

26 March 1985

Senator Abood, Chairman
Senate State Affairs Committee
Juneau, Ak. 99811

Dear Sir:

In regard to Senate Bill #231, I am concerned with the issue of who is to use and manage the fish and game resources, specifically, in my area of Cordova and the salmon of the Copper River fishery. I was born and raised on Cordova, have fished for 21 of my 35 years, and depend entirely on these resources for my livelihood. I would like to see the management of our resources handled, so that I, and the many other residents of Cordova who depend solely on the Copper River, will be ensured of my continued use of this resource.

Thank you for your time and consideration in this matter.

Sincerely,

Max Wiese

RECEIVED
MAR 28 1985

Attachment #11



CORDOVA DISTRICT FISHERMEN UNITED

P.O. Box 939

Cordova, Alaska 99574

(907) 424-3477

March 25, 1985

RECEIVED
MAR 28 1985

Senator Mitch Abood
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Abood:

I am writing to urge you to schedule SB #231 for public hearing in the State Affairs committee. It is crucial to Cordova and its fishing fleet that we have a full gillnet season in the Copper River area in 1985. The town of Cordova and its fishermen will be in dire financial need without the income derived by this 1985 fishing season.

It is imperative that the Board of Fisheries and Fish and Game are able to manage the resources for the good of all user groups in the State of Alaska. In the case of the Copper River, 50% of the salmon are Copper River stocks and the rest are Delta stock. This creates a management problem causing possible over-escapement and confusion in controlling small salmon runs ie; in the Delta and Copper River.

Alaska Dept. of Fish and Game, PWSAC, and Regional Advisory Boards combined efforts to design and implement a management plan for the Copper River. This accomplishment was a result of tremendous research and allowed for a balance to provide access to the resource for all user groups. The Copper River Management Plan has successfully been implemented by experts in fishery management. It is critical to the resource that this legislation receives your endorsement and immediate action.

Attachment #12

March 25, 1985
Senator Abood
Page 2

Our livelihood needs to be protected this year to insure the survival of Cordova and the many people that depend on the commerical fishing industry as their only source of income.

I urge you again to push SB #231 through the Senate for the good of all Alaskans. Your cooperation on this important matter to Cordova and its fishing industry is greatly appreciated.

Sincerely,

Jerry McCune
Jerry McCune
Vice President
CDFU

JM/gf

Box 281
Cordova, Alaska
3/23/85

Senator Abood
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Abcod:

We are writing to urge you to support Senate bill #231 or similar legislation that would give the Alaska Board of Fish and Game back the power to regulate and manage our fish and game resources! If this isn't accomplished before the commercial fishing is due to open in May of this year the affect it will have on the residents and town of Cordova will be DISASTROUS! I have lived in Alaska for 38 years and my husband has been here 17 years. My father, two brothers, and my husband are commercial fishermen. Our whole livelihood depends on fishing! We have three boys all of whom fish with their Dad and hope to continue in the family tradition! We have two boat loans through the state which ~~without a fishing season~~ we will be unable to meet our payments! We feel that if management is not turned back to Fish & Game and our commercial Gillnet fishing is closed the town of Cordova will become a ghost town and people will no longer be able to live here. Please we urge you to support this bill and push for quick passage. Thank you.

Sincerely,

Charlitta J. Carroll
Virgil S. Carroll

RECEIVED
MAR 27 1985

Attachment #13

Cordova Chamber of Commerce

P.O. Box 99
Cordova, Alaska 99574
(907) 424-7260



March 20, 1985

Senator Mitch Abood
Chairman State Affairs Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Abood:

Enclosed is a resolution passed by the Cordova Chamber of Commerce in support of HB 288 and SB 231. Commerical fishing is truly the only source of revenue in Cordova.

We appreciate your consideration of SB 231.

Sincerely,

CORDOVA CHAMBER OF COMMERCE

Margy Johnson
President

RECEIVED
MAR 27 1985

Attachment #14

Cordova Chamber of Commerce

P.O. Box 99
Cordova, Alaska 99574
(907) 424-7260



March 19, 1985

R E S O L U T I O N

WHEREAS commercial fishing is the backbone of the economy of Cordova and other Prince William Sound Communities, and

WHEREAS the Madison Decision severely impairs the opportunity for commercial gillnetting on the Copper River Flats, and

WHEREAS a speedy resolution is necessary in order to allow the 1985 commercial gillnet fishing to start as scheduled, now therefore

BE IT RESOLVED that the Cordova Chamber of Commerce supports the passage of HB 288 and SB 231 and urges members of both the House and Senate to put their support behind these bills.

CORDOVA CHAMBER OF COMMERCE

Margy K. Johnson
President

Cordova Outboard, Inc.

211 Breakwater Avenue-P.O. Box 960
Cordova, Alaska 99574
(907) 424-3220 or (907) 424-7202

March 20, 1985

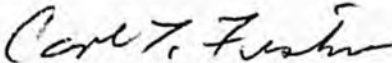
Senator Mitch Abood
Chairman State Affairs Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Mitch Abood,

We are writing to you concerning Bill #231. In the interest of our local community, fishermen, and business PLEASE see that this bill gets to the public hearing right away. The gill net season for the Copper River opens May 15, 1985. We are, as you know are a fishing community and our business serves the fishing fleet both with mechanics and parts. The gill netters are our main income and if they do not fish it will cut off our business and many in Cordova! We employ between seven to nine people each season. These people too will be affected and probably laid off if we do not have a gill net season. Already with the lack of the crab fishery our community suffers during the winter. This winter has been long and hard financially.

Please--Please help us stay on the map by helping us with our gill net fishery. Move Bill #231.

Sincerely,


Carl T. Fisher, President

RECEIVED
MAR 22 1985

Attachment #15

Regional Specialties

Eyak

Select Provisions

Box 1131
Cordova, Alaska 99574
(907) 424-5300

Eyak Packing Company

Smoked & Fresh Alaska Salmon
of the Finest Quality



March 19, 1985

Senator Mitch Abood
Chairman State Affairs Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Hello Senator Abood,

We know that you are very busy so we'll make this short. Please push for the scheduling of hearings on SB#231 through the Senate committees (Judiciary, Finance, State Affairs and Resources) and push for quick-fix legislation (SB#231) before this year's fishing season.

Here in Cordova all preparation for the Copper River salmon run is at a halt as we await the outcome of the subsistence argument.

Thank you for your help.

231
21

Sincerely,

Gerald Masolini

Diana Masolini

Gerald Masolini
Diana Masolini

RECEIVED
MAR 22 1985

Attachment #16

April 3, 1985

Honorable Bill Sheffield, Governor
Honorable Don Bennett, President of the Senate
Honorable Ben Grussendorf, Speaker of the House
Juneau, Alaska
99811

231

Gentlemen:

Our sportfishing groups are deeply concerned about the potential chaos, damage to the resource, public safety and user group impacts in the event there is no legislation passed for protecting the fisheries in 1985. The potential exists for a resource calamity.

The attached suggested "band-aid" bill as a substitute for Senate Bill #231 endeavors to accomplish three basic purposes:

1. Returns the authority to manage fish and game to the status quo that existed prior to the Madison decision of February 21, 1985.
2. Provides a "sunset" clause for this legislation of March 31, 1986. We feel that the legislative and the executive branch will not have the time to deal with this very complicated subject as there is less than 40 days remaining in this session. We hope and encourage the legislature to hold state wide hearings during the balance of this year and develop a permanent long term solution to this very sensitive issue. The section-by-section analysis attached, illustrates some of the questions that we feel will need to be answered in the long term legislation to be enacted next year.
3. Our bill refers to criteria that establish rural subsistence uses as has been done historically in the past by ADF&G regulations numbers 5 AAC 99.010, 5 AAC 01.597. These criteria are attached as an exhibit for your reference.

Section 3 is proposed to allow the Commissioner of Fish and Game to reinstate as an emergency provision the regulations that were allowed in 1984. We have suggested this section to assure that statutory time limitations do not preclude implementation of such a law. We are available for public discussion. We respectfully request your consideration.

Very truly yours,

Bob Penney

Kenai River Sportfishing Association
Robert C. Penney, Chairman
2819 Dawson Street
Anchorage, Alaska 99503
(907)561-5221

Hunter Fisher

Alaska Sportfishing Association
Hunter Fisher, President
3605 Arctic Blvd, Suite 800
Anchorage, Alaska 99503
(907)562-4536

cc: Legislators

RECEIVED
APR 8 1985

Attachment #17

Original

Draft Substitute for S.B. 231
Suggested by the Kenai River Sportfishing Association
and
The Alaska Sportfishing Association
April 3, 1986

IN THE SENATE

SENATE BILL NO.

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 providing for an effective date."

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

* Section 1. FINDINGS. The legislature finds that

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

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

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

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

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

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

* Sec. 3. For the 1985 fishing and hunting seasons, the Commissioner of Fish and Game shall use his authority, in AS 16.05.060, to issue emergency regulations in order to provide

for subsistence as it occurred in 1984; provided however, that in this instance a biological emergency need not exist as is otherwise required by AS 16.05.060.

* Sec. 4. This Act shall take effect immediately in accordance AS 01.10.070(c).

Section by Section Analysis
of
Draft Substitute for S.B. 231
Proposed by Kenai River Sportfishing Association
and
the Alaska Sportfishing Association
April 3, 1985

INTRODUCTION

The recent decision of the Alaska Supreme Court, in Madison v. Alaska Board of Fisheries, has already resulted in opening several subsistence fisheries to all Alaskans, and there is a widespread opinion that subsistence everywhere in the state, for both fish and game, is now open to all Alaskans. Because of the Madison decision, the Board of Fisheries has opened to all Alaskans the subsistence fisheries on the Kenai Peninsula, in the Iliamna and Lake Clark areas, on the Naknek River, on the Copper River, and at Angoon. Those subsistence fisheries will be opened to all Alaskans unless the legislature acts quickly to maintain the status quo until there is a better opportunity for public input.

The impact of the Madison decision, and the need for legislative remedies probably cannot be adequately assessed in the remaining days of the current legislative session. Therefore, the substitute bill proposed by the Kenai River Sportfishing Association and the Alaska Sportfishing Association is designed as a temporary "band-aid", in order to maintain subsistence, sport and commercial uses generally as they occurred in 1984. This "band-aid" approach will protect the resources and protect subsistence users most dependent on those resources, until the legislature and the public have had an opportunity to consider more long-term solutions necessary to protect subsistence and yet provide for sport and commercial uses. The substitute allows a year for the legislature to hold statewide hearings and to act.

SECTION BY SECTION ANALYSIS

Section 1 --

Section 1 of the draft substitute contains the following findings which justify this temporary solution of maintaining the status quo for one year:

(1) that rural subsistence by those individuals who are dependent on the resources is important to protect;

(2) that in order to protect subsistence, sport and commercial uses, and in order to protect the health of the fish and wildlife resources that are so important to all Alaskans, it

is necessary to regulate those uses in generally the same manner as occurred in 1984.

(3) that the remaining days of this legislative session probably are insufficient to allow reasonable consideration of long-term solutions to subsistence issues. This last finding is particularly important because it recognizes that complicated issues related to subsistence deserve thorough, unhurried examination. Among those questions, which the legislature and the public may wish to consider, are:

(a) whether the subsistence priority should be defined in terms of being available to rural Alaskans only;

(b) whether the legislature should give guidance to the Board of Fisheries and the Board of Game in order to assist them in defining the use of the word "rural";

(c) whether better legislative language exists -- rather than the restriction of subsistence to an undefined rural population -- in order to more adequately protect subsistence users dependent on the resources, while thereby providing more opportunity for sport and commercial users; such a solution will reduce conflict between sport, commercial and subsistence users;

(d) whether the legislature should give additional guidance to the Board of Fisheries and the Board of Game in order to assist them in defining "customary and traditional subsistence uses", as they are protected but not defined in state and federal statutes related to Alaska subsistence;

(e) whether in some circumstances it may be appropriate to prohibit subsistence use of certain fragile species or stocks of wildlife.

(f) whether the legislature should give guidance to the boards to establish criteria for focusing subsistence on more abundant stocks of fish and wildlife.

These are the some of questions that need to be answered after thorough public and legislative consideration, which can only occur if more time is available. Sport, commercial, Native, rural and urban interests will all need to participate. We also urge the Department of Fish and Game to take an active role in suggesting long-term solutions to the state's subsistence issues.

Section 2 --

This section ratifies, for the 1985 fishing and hunting seasons and only until March 31, 1986, the previous criteria, in existing regulations at 5 AAC 99.010 and 5 AAC 01.597, that have been used by the boards until now and prior to the Madison

decision for determining customary and traditional subsistence use. This section takes the situation back to the status quo and will protect rural subsistence as it was managed in 1984.

Section 3 --

This section directs the Commissioner of Fish and Game to use his emergency regulatory authority to protect rural subsistence, and sport and commercial uses, as they were managed in 1984. This is temporary authority for the 1985 season only.

Section 4 --

This section provides that the legislation takes effect immediately.

SUBSISTENCE CRITERIA USED PRIOR TO THE RECENT SUPREME COURT DECISION

JOINT BOARD'S SUBSISTENCE POLICY

CHAPTER 99.
SUBSISTENCE USES.

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 principal and compatible with the public interest;

(2) each board will identify subsistence uses of fish and 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 in which that pattern of subsistence uses 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 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 on game populations on a sustained yield basis.

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

FINFISH

COOK INLET AREA

4,200 king salmon may be taken in the Tyonek subdistrict during the period 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.

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 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 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.