

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672

1243 SCOMM 48: HOUSE SPEC. COMMITTEE ON FISHERIES 1985-86

**STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INVESTMENTS**

**COMMERCIAL FISHING LOAN PROGRAM
Alaska Statutes 16.10.310-.370**

SECTION C

(Vessel and Gear Loans to Corporations, Partnerships, or Joint Ventures)

WHAT IS THIS LOAN PROGRAM FOR?

If you are interested in the repair, restoration, or upgrading of your vessels and gear, or in the purchase of gear and vessels, this program may provide financial assistance if no other source of financing is available to you.

WHO CAN APPLY FOR A LOAN?

A corporation, partnership or joint venture may apply for a loan if they are owned 100% by individuals who are 18 years old or older and are two-year residents of Alaska and if 1) they have experience in a commercial fishery during three of the last five years including the season prior to filing a loan application; 2) because of lack of training or employment opportunities are dependent upon commercial fishing; OR 3) are economically dependent upon commercial fishing for earning a living, and for whom commercial fishing has been a traditional way of life in Alaska.

HOW MUCH CAN BE BORROWED?

Depending upon your needs, up to \$100,000 can be borrowed under this loan program.

WHAT IS THE INTEREST RATE?

An interest rate of 10½% per year will be charged on the total amount of the outstanding loan balance.

HOW MUCH TIME IS ALLOWED TO REPAY THE LOAN?

You may be allowed up to 15 years to repay the loan.

IS COLLATERAL REQUIRED?

The State will require collateral to protect its loan investment, such as a security interest in the vessel or gear until the loan is repaid.

WHERE CAN I APPLY FOR A LOAN?

For more information on this program or a loan application form, please contact the office located in your area:

Division of Investments
Pouch D
Juneau, Alaska 99811
Telephone: 465-2510

Division of Investments
675 7th Avenue, Station A
Fairbanks, Alaska 99701
Telephone: 452-8182

Division of Investments
3601 C Street, Suite 740
Anchorage, Alaska 99503
Telephone: 562-3779

Division of Investments
P.O. Box 370
Dillingham, Alaska 99576
Telephone: 842-1087

**STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INVESTMENTS**

**FISHERIES ENHANCEMENT LOAN PROGRAM
Alaska Statutes 16.10.500-.620**

WHAT IS THIS LOAN PROGRAM FOR?

If you are interested in planning, construction, and operation of hatchery facilities, this program may provide financial assistance.

WHO CAN APPLY FOR A LOAN?

A qualified regional association or private nonprofit corporation which has obtained a private nonprofit hatchery permit from the Alaska Department of Fish and Game may apply for a loan.

HOW MUCH CAN BE BORROWED?

Depending upon your needs, up to \$10,000,000 can be borrowed under this loan program.

WHAT IS THE INTEREST RATE?

An interest rate of 9½% per year will be charged on the total amount of the outstanding loan balance. No repayment of the principal is required for an initial period of six to ten years, and no interest will accrue during that time.

HOW MUCH TIME IS ALLOWED TO REPAY THE LOAN?

You may be allowed up to 30 years to repay the loan.

IS COLLATERAL REQUIRED?

The State will require collateral to protect its loan investment such as a mortgage on the hatchery facility, or a security interest in equipment, assignment of enhancement tax receipts, or sale of surplus fish from the hatchery until the loan is repaid.

WHERE CAN I APPLY FOR A LOAN?

For more information on this program or a loan application form, please contact the office located in your area:

Division of Investments
Pouch D
Juneau, Alaska 99811
Telephone: 465-2510

Division of Investments
675 7th Avenue, Station A
Fairbanks, Alaska 99701
Telephone: 452-8182

Division of Investments
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Telephone: 562-3779

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Telephone: 842-1087

**STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INVESTMENTS**

**HISTORICAL DISTRICT LOAN PROGRAM
Alaska Statutes 45.98.010-.070**

WHAT IS THIS LOAN PROGRAM FOR?

If you are interested in restoration, improvement, rehabilitation, or maintenance of historical buildings, this program may provide financial assistance.

WHO CAN APPLY FOR A LOAN?

An individual who is 18 years old or older, a firm, business or municipality may apply for a loan. The building must be located in a historical district and the project must be approved by a local Historical District Commission and by the Historic Sites Advisory Committee.

HOW MUCH CAN BE BORROWED?

Depending upon your needs, up to \$250,000 can be borrowed under this loan program.

WHAT IS THE INTEREST RATE?

An interest rate of 7½% per year will be charged on the total amount of the outstanding loan balance.

HOW MUCH TIME IS ALLOWED TO REPAY THE LOAN?

You may be allowed up to 30 years to repay the loan.

IS COLLATERAL REQUIRED?

The State will require collateral to protect its loan investment such as a mortgage on the building being improved until the loan is repaid.

WHERE CAN I APPLY FOR A LOAN?

For more information on this program or a loan application form, please contact the office located in your area:

Division of Investments
Pouch D
Juneau, Alaska 99811
Telephone: 465-2510

Division of Investments
675 7th Avenue, Station A
Fairbanks, Alaska 99701
Telephone: 452-8182

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Anchorage, Alaska 99503
Telephone: 562-3779

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P.O. Box 370
Dillingham, Alaska 99576
Telephone: 842-1087

**STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS
HOUSING ASSISTANCE DIVISION**

**HOUSING ASSISTANCE LOAN PROGRAM
Alaska Statutes 44.47.360-.560**

Three kinds of loans are available under this program; Nonconforming Housing, Rural Nonowner-occupied and Rural Owner-occupied.

NONCONFORMING HOUSING LOAN PROGRAM

WHAT IS THIS LOAN PROGRAM FOR?

This program provides financing for construction, rehabilitation or purchase of single family or duplex housing which, because of uncommon design, construction practices, materials, foundation systems, utilities and minimum space requirements may not qualify for financing by private financial institutions.

WHO CAN APPLY FOR A LOAN?

Individuals who are at least 18 years old or older, and a resident of the State of Alaska, may apply for a loan. The borrower must occupy one of the units as a principal residence.

HOW MUCH CAN BE BORROWED?

Maximum loans under the program equal the limits set by the Federal National Mortgage Association, currently \$171,000 for a single family residence and \$213,700 for a duplex.

WHAT IS THE INTEREST RATE?

The interest rate for nonconforming housing is $\frac{1}{8}\%$ higher than the rate based on the most current Alaska Housing Finance Corporation bond sale. A one point discount is available to veterans.

HOW MUCH TIME IS ALLOWED TO REPAY THE LOAN?

You may be allowed up to 30 years or the remaining economic life of the property, whichever is less, to repay the loan.

IS COLLATERAL REQUIRED?

The loan must be secured by collateral. The structure being financed is usually sufficient collateral.

WHERE CAN I APPLY FOR A LOAN?

Loans are available through participating lending institutions. Applying for a loan under this program is basically the same as applying for a conventional home mortgage loan.

**STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS
HOUSING ASSISTANCE DIVISION**

For additional information on this program or loan application forms, please contact a participating lending institution or the Housing Assistance Division office located in your area:

Anchorage:

**Housing Assistance Division
949 E. 36th Avenue, Suite 400
Anchorage, Alaska 99508
Telephone: 561-0900
Toll Free Number: ZENITH 4585**

Regional Offices:

**Housing Assistance Division
P.O. Box 41
Nome, Alaska 99762
Telephone: 443-2655**

**Housing Assistance Division
Kuskokwim Office Building
P.O. Box 348
Bethel, Alaska 99559
Telephone: 543-3864**

**Housing Assistance Division
Drift Inn, 2nd Floor
P.O. Box 280
Kotzebue, Alaska 99752
Telephone: 442-3675**

**Housing Assistance Division
Kangliqutaq Office Building
P.O. Box 10041
Dillingham, Alaska 99576
Telephone: 842-2245 or 2255**

**Housing Assistance Division
1514 Cushman St., Room 206
Fairbanks, Alaska 99701
Telephone: 452-4468**

**Housing Assistance Division
Community Building, Room 209
Pouch B
Juneau, Alaska 99811
Telephone: 465-2267**

**STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS
HOUSING ASSISTANCE DIVISION**

**HOUSING ASSISTANCE LOAN PROGRAM
Alaska Statutes 44.47.360-.560**

RURAL NONOWNER-OCCUPIED PROGRAM

WHAT IS THIS LOAN PROGRAM FOR?

This program provides financing for the construction, purchase or rehabilitation of two, up to eight, rural nonowner-occupied rental housing units. Under extraordinary circumstances, the division may finance up to 16 rental units.

WHO CAN APPLY FOR A LOAN?

Individuals who are at least 18 years old and residents of the State of Alaska, and Alaska businesses may apply for a loan. The borrower may not occupy any of the units as a principal balance.

HOW MUCH CAN BE BORROWED?

The maximum loan amount is \$1,250,000.

WHAT IS THE INTEREST RATE?

The interest rate for this program is 10½%

HOW MUCH TIME IS ALLOWED TO REPAY THE LOAN?

You may be allowed up to 30 years or the remaining economic life of the structure, whichever is less, to repay the loan.

IS COLLATERAL REQUIRED?

The loan must be secured by collateral. The structure(s) being financed is (are) usually sufficient collateral.

WHERE CAN I APPLY FOR A LOAN?

Loans are available through participating lending institutions. The division may issue loans directly to borrowers in areas not regularly served by commercial mortgage lending institutions.

**STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS
HOUSING ASSISTANCE DIVISION**

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Anchorage:

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949 E. 36th Avenue, Suite 400
Anchorage, Alaska 99508
Telephone: 561-0900
Toll Free Number: ZENITH 4585**

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Telephone: 443-2655**

**Housing Assistance Division
Kuskokwim Office Building
P.O. Box 348
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**Housing Assistance Division
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P.O. Box 280
Kotzebue, Alaska 99752
Telephone: 442-3675**

**Housing Assistance Division
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**Housing Assistance Division
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Juneau, Alaska 99811
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**STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS
HOUSING ASSISTANCE DIVISION**

**HOUSING ASSISTANCE LOAN PROGRAM
Alaska Statutes 44.47.360-.560**

RURAL OWNER-OCCUPIED PROGRAM

WHAT IS THIS LOAN PROGRAM FOR?

This program provides financing for the construction, rehabilitation or purchase of single family or duplex housing.

WHO CAN APPLY FOR A LOAN?

Individuals who are at least 18 years old and residents of the State of Alaska may apply for a loan. The borrower must occupy one of the units as a principal residence. A borrower is limited to one State subsidized housing loan for owner-occupancy.

HOW MUCH CAN BE BORROWED?

Maximum loans under the program equal the limits set by the Federal National Mortgage Association, currently \$171,000 for a single family residence and \$218,700 for a duplex.

WHAT IS THE INTEREST RATE?

The interest rate is one point less than the rate based on the most current Alaska Housing Taxable Bond Sale. Traditionally, the interest rate for nonveterans under this program has been in the 8 to 11 percent range. an additional one point discount is available to veterans.

HOW MUCH TIME IS ALLOWED TO REPAY THE LOAN?

You may be allowed up to 30 years or the remaining economic life of the structure, whichever is less, to repay the loan.

IS COLLATERAL REQUIRED?

The loan must be secured by collateral. The structure being financed is usually sufficient collateral.

WHERE CAN I APPLY FOR A LOAN?

Loans are available through participating lending institutions. The division may issue loans directly to borrowers in areas not regularly served by commercial mortgage lending institutions.

**STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS
HOUSING ASSISTANCE DIVISION**

For additional information on this program or loan application forms, please contact a participating lending institution or the Housing Assistance Division office located in your area:

Anchorage:

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949 E. 36th Avenue, Suite 400
Anchorage, Alaska 99508
Telephone: 561-0900
Toll Free Number: ZENITH 4585**

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Drift Inn, 2nd Floor
P.O. Box 280
Kotzebue, Alaska 99752
Telephone: 442-3675**

**Housing Assistance Division
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Telephone: 452-4468**

**Housing Assistance Division
Community Building, Room 209
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Telephone: 465-2267**

**STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INVESTMENTS**

**MINING LOAN PROGRAM
Alaska Statutes 27.09.010-.060**

WHAT IS THIS LOAN PROGRAM FOR?

If you are interested in advanced mineral exploration, development, or mining in Alaska, this program may provide financial assistance.

WHO CAN APPLY FOR A LOAN?

Residents of Alaska who are 18 years or older, with five years' mining or prospecting experience in the State may apply for a loan. A partnership may apply if at least half of the partners each have five years' mining or prospecting experience in the State and at least half are residents of Alaska. A corporation may apply if at least 51% of its shares are held by persons with a least five years' mining or prospecting experience in the State and who are residents.

HOW MUCH CAN BE BORROWED?

Depending upon your needs, up to \$5,000,000 can be borrowed under this loan program.

WHAT IS THE INTEREST RATE?

An interest rate of 10% per year will be charged on the total amount of the outstanding loan balance.

HOW MUCH TIME IS ALLOWED TO REPAY THE LOAN?

You may be allowed up to 15 years to repay the loan.

IS COLLATERAL REQUIRED?

The State will require collateral to protect its loan investment such as a mortgage on real property, a mortgage secured by assignment of the leasehold interest in the mining claim, or a security interest in machinery or equipment until the loan is paid.

WHERE CAN I APPLY FOR A LOAN?

For more information on this program or a loan application form, please contact the office located in your area:

Division of Investments
Pouch D
Juneau, Alaska 99811
Telephone: 465-2510

Division of Investments
675 7th Avenue, Station A
Fairbanks, Alaska 99701
Telephone: 452-8182

Division of Investments
3601 C Street, Suite 740
Anchorage, Alaska 99503
Telephone: 562-3779

Division of Investments
P.O. Box 370
Dillingham, Alaska 99576
Telephone: 842-1087

**STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INVESTMENTS**

**RESIDENTIAL ENERGY CONSERVATION LOAN PROGRAM
Alaska Statutes 45.89.010-.500**

WHAT IS THIS LOAN PROGRAM FOR?

If you are interested in purchasing, constructing, or installing energy conservation improvements in an existing residential building, this program may provide financial assistance.

WHO CAN APPLY FOR A LOAN?

If you are 18 years old or older, you may apply for a Residential Energy Conservation Loan.

HOW MUCH CAN BE BORROWED?

Depending upon your needs, up to \$5,000 can be borrowed under this loan program.

WHAT IS THE INTEREST RATE?

The interest rate charged is based upon the municipal bond rate and varies slightly from month to month. For example, the interest rate charged in January 1984 was 10.25% and the rate for April 1984 was 10.05%.

HOW MUCH TIME IS ALLOWED TO REPAY THE LOAN?

You may be allowed up to 10 years to repay the loan.

IS COLLATERAL REQUIRED?

The State will require collateral to protect its loan investment such as a mortgage on the home being improved until the loan is repaid.

WHERE CAN I APPLY FOR A LOAN?

For more information on this program or a loan application form, please contact the office located in your area:

Division of Investments
Pouch D
Juneau, Alaska 99811
Telephone: 465-2510

Division of Investments
675 7th Avenue, Station A
Fairbanks, Alaska 99701
Telephone: 452-8182

Division of Investments
3601 C Street, Suite 740
Anchorage, Alaska 99503
Telephone: 562-3779

Division of Investments
P.O. Box 370
Dillingham, Alaska 99576
Telephone: 842-1087

**STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INVESTMENTS**

**VETERANS' ASSUMPTION
Alaska Statutes 26.15.010-.170**

WHAT IS THIS PROGRAM FOR?

If you are interested in assuming an existing veteran's single or multiple family dwelling, or small business loan, this program may provide financial assistance.

WHO CAN APPLY FOR A LOAN?

If you are 18 years old or older, you may apply to assume a veteran's loan.

HOW MUCH CAN BE BORROWED?

An assumption would be for the amount of the outstanding loan balance.

WHAT IS THE INTEREST RATE?

The interest rate charged would be the same as the rate charged for the original loan. In most cases, the interest rate varies from 7% to 9%.

HOW MUCH TIME IS ALLOWED TO REPAY THE LOAN?

The amount of time allowed to repay the loan would be determined by the term allowed under the original loan.

IS COLLATERAL REQUIRED?

The State will require collateral to protect its loan investment. Generally, in an assumption, the collateral offered is the same as that offered to secure the original loan.

WHERE CAN I APPLY FOR A LOAN?

For more information on this program or a loan application form, please contact the office located in your area:

Division of Investments
Pouch D
Juneau, Alaska 99811
Telephone: 465-2510

Division of Investments
675 7th Avenue, Station A
Fairbanks, Alaska 99701
Telephone: 452-8182

Division of Investments
3601 C Street, Suite 740
Anchorage, Alaska 99503
Telephone: 562-3779

Division of Investments
P.O. Box 370
Dillingham, Alaska 99576
Telephone: 842-1087

The contents of this pamphlet are intended to provide general information on State loan programs. For complete information on a specific loan program, please contact the appropriate State agency.

For additional copies of the State Loan Pamphlet, please contact:

Division of Investments
Pouch D
Juneau, Alaska 99811



Alaska State Legislature

House of Representatives

SPECIAL COMMITTEE ON FISHERIES

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

HEARING DATE:

February 26, 1985

Limited Entry

NAME (Please Print)	ADDRESS	REPRESENTING	TESTIFY (Yes or No)	PHONE NUMBER
KURT SCHELLE	Pouch KB Juneau	C. F. E. C.	Yes	465-4083
Rich Lisowski	Pouch KB	C. F. E. C.	NO	
LORCE THOMLEY	"	"	No	4081
David Garrison	Pouch V	Rep. Jenkins	NO	4453
Jon Newstrom	"	SPEAKER'S OFFICE	NO	3726
GENEVA TAYLOR	P.O. BOX 21235 ALBUQUERQUE, NM	GOLL	NO	—
Cass Puzos	319 Second St.	U.F.A.	NO	6-2820
PAT MALONE	Pouch V	Rep. NAVARRE	No	3893
Debbie Guillaume	Pouch D Juneau	DCED, Div Acctg + Coll.	No	2555
Helen Fisher		Rep. Thompson	NO	—
MAGGIE HAMLEY	POUCH D	DCED	YES	2555
PAUL B. ARNOLD	Pouch A	ACEA - INVESTMENTS	YES	2510
LREG WINEGAR	POUCH D	DEED - INVESTMENTS	NO	2510
HOWARD WAYNE	Pouch V	REP. SUND	NO	4919

[illegible]



Alaska State Legislature

House of Representatives

SPECIAL COMMITTEE ON FISHERIES

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

HEARING DATE:

Feb. 19

Limited Entry

NAME (Please Print)	ADDRESS	REPRESENTING	TESTIFY (Yes or No)	PHONE NUMBER
Bruce Tummley	Pouch KB	CFEC	yes	
Phil Smith	Pouch KB	CFEC	yes	
Rich Lisowski	Pouch KB	CFEC	yes	
Roger Painter	Pouch V	Fisheries Com.	NO	
Walter Fisher	"	Thompson	NO	
LREG WINEGAR	Pouch D	commerce	NO	
MAGGIE HAMLEY	Pouch D	DCED	NO	
Catherine Wallen	Pouch D	Dept. of Commerce	NO	2504
Bob Charles	Juneau	Rep. Binkley	NO	
Chris Huey	"	CFEC	NO	4081
Kurt Schelle	"	CFEC	NO	4081
Greg Baker	Pouch D	DCED / Fisheries	No	2162
David Garrison	Pouch V	Rep. Jenkins	No	4453
Cass Parsons	319 Second St.	UFA	No	6-2820
Jon Newstrom	Cap 208	Speaker's AF	NO	3720



Alaska State Legislature

House of Representatives

SPECIAL COMMITTEE ON FISHERIES

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

HEARING DATE:

March 5, 1985

HB 208
Sta Entry / ANB

NAME (Please Print)	ADDRESS	REPRESENTING	TESTIFY (Yes or No)	PHONE NUMBER
MAGGIE HAMLEY	POUCH D	DLCD - ACCTG + Coll	YES	2555
John McCluskey	P.O. Box 93	Close-up	no	788-3222
Jan Maske	Box 109	Close-up	no	788-3227
Machelle Jim	Box 3	Close-up	no	788-3881
Kurt Gaudin	POUCH KB	C.F.E.C.	—	465-4083
Paul Larson	Dawson	ADF + G	NO	465-4250
Bob Crosby	Box 3-2000	ADF + G	NO	4210
JEFF SMITH	Pouch B	DCRA	NO	4700
JOHN NEWBORN	POUCH V	SPEAKER'S OFFICE	NO	3720
JANET FRIES	POUCH V	REP. HERLMANN	NO	4942
MARGOT KNUTH	Pouch K	Dept of haw	Yes-if asked	3600
Phil Smith	Pouch KB	C.F.E.C.	"	4081
Rich Listowski	Pouch KB	C.F.E.C.	NO	4081
Casey Parnas	319 Seaward St.	UEA	Yes ^{HB} 208	6-2870



Alaska State Legislature

House of Representatives

**SPECIAL
COMMITTEE ON FISHERIES**

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

HEARING DATE:

[illegible]

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

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JANUARY, ALASKA 99511
907-465-3800

May, 1986

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

Jeanie Henry

House Special Committee on Fisheries,	2/19/85, 8:30am
" " " "	2/26/85, 8:30am

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

THE SUPREME COURT OF THE STATE OF ALASKA

GENE MADISON, LUCY CASEY, KEN MCGAHAN,
SR., ANDY JOHNSON, MARGIE KIVI, J. W.
WARE, DICK FRANCIS, DON GROLESKE, KEN
JORDON and SHIRLEY DEVAULT,

Appellants,

v.

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

Appellees,

and

THE ALASKA FEDERATION OF NATIVES,

Intervenor.

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

Appellants,

v.

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

Cross-Appellees.

File Nos. 6824/
7181

O P I N I O N

File No. 7410

[No. 2911 - February 22, 1985]

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.

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

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 Tyonek, English Bay and Port Graham satisfied all ten of the criteria. The board limited the 1981 subsistence catch to these three communities. As a result, the board eliminated from the protection of the state's subsistence statute the majority of Cook Inlet fishermen who formerly fished under subsistence regulations.

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

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 1978 subsistence law, ch. 151 SLA 1978.

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

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

(Emphasis added).

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

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

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

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

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

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

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

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

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

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

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)

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.

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

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

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

Article 2. Boards of Fisheries and Game.

Section

251. Regulations of the Board of Fisheries

255. Regulations of the Board of Game

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) local residency; and

(3) availability of alternative resources.

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

Effect of amendments. — The 1984 amendment, effective July 3, 1984, in subsection (a), substituted "bag limits, harvest levels, and sex and size limitations" for "and bag limits" in paragraph (3), deleted "engaging in biological research" from the beginning of paragraph (7), substituted "and management, conser-

vation, protection, use, disposal, propagation and stocking of fish" for "fish management, protection, propagation and stocking" in paragraph (7), repealed paragraph (9), and renumbered former paragraphs (10)-(12) as present paragraphs (9)-(11). The amendment also added subsection (c).

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(27) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state, but does not include aircraft. (§ 2 art I ch 95 SLA 1959; am §§ 1 — 4 ch 131 SLA 1960; am § 1 ch 21 SLA 1961; am §§ 1, 2 ch 102 SLA 1961; § 9 art III ch 94 SLA 1959; am § 23 ch 131 SLA 1960; am § 1 ch 160 SLA 1962; am §§ 13, 14 ch 31 SLA 1963; am § 2 ch 32 SLA 1968; am § 3 ch 73 SLA 1970; am § 1 ch 91 SLA 1970; am § 4 ch 110 SLA 1970; am § 1 ch 90 SLA 1972; am § 5 ch 82 SLA 1974; am §§ 26, 82 ch 127 SLA 1974; am §§ 18 — 20 ch 206 SLA 1975; am § 12 ch 105 SLA 1977; am §§ 14, 15 ch 151 SLA 1978; am § 1 ch 78 SLA 1979; am § 1 ch 24 SLA 1980; § 4 ch 74 SLA 1982; am § 24 ch 132 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 3, 1984, substituted "AS 16.05 — AS 16.40" for "this chapter" in the introductory language and paragraphs (14), (15) and (20); in paragraph (9), substituted "invertebrate, or amphibian" for "invertebrates and amphibians" and "its" for "their" preceding "life cycle" and added the language beginning "and includes any part of such aquatic finfish"; reworded the con-

tents of paragraph (13); inserted "reptile" near the beginning of paragraph (14); substituted "those chapters" for "it" in paragraph (15); substituted "this paragraph" for "this chapter" in three places in paragraph (19); inserted "of" following "taking" in paragraph (22); deleted "for the purposes of this chapter" preceding "does not include aircraft" in paragraph (27); and repealed paragraph (28), defining "visitor."

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

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

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

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

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

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

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

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

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

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

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

(b) The daily bag and possession limit for halibut is two. No person may possess sport-taken and subsistence-taken halibut on the same

day. (In effect before 1981; am 4/15/81, Reg. 78; am 5/17/81, Reg. 78)

Authority: AS 16.05.060

AS 16.05.251(a)(3),(7),(10) and (b)

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

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

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

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

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

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

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

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

(8) a use pattern which includes the inter-generational transmission of activities and skills;

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

(10) a use pattern which includes reliance on

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

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

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

Authority: AS 16.05.251(b)

ARTICLE 12. PRINCE WILLIAM SOUND AREA

Section

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

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

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

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

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

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

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

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

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

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

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

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

(c) Repealed 6/30/83.

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

Authority: AS 16.05.060
AS 16.05.251

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

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

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

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

Authority: AS 16.05.060

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

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

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

(1) consistent with the statutory priority for subsistence, the harvest of upper Cook Inlet salmon for customary and traditional subsistence uses will be allowed for specific species in appropriate areas, seasons, and periods to satisfy subsistence needs; other beneficial uses, to the

extent they are consistent with the public interest and overall benefit of the people of Alaska, will be allowed in order to maximize the benefits of these resources;

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

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

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

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

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

(b) The department shall

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

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

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

(4) insure that subsistence use priorities are met.

(c) In this section "upper Cook Inlet salmon

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

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

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

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

ARTICLE 4. BOTTOMFISH FISHERY

Section

410. Fishing season

430. Gear

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

Authority: AS 16.05.250(2)

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

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

Authority: AS 16.05.251(a)(4)

ARTICLE 5. SMELT FISHERY

Section

510. Fishing seasons

531. Gill net specifications and operation

534. Identification of gear

535. Minimum distance between units of gear

550. Closed waters

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

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

(c) Smelt may not be taken in freshwater.

Authority: AS 16.05.251(2) and (10)

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

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

MEMORANDUM

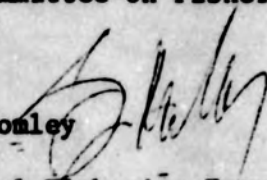
State of Alaska

TO: The Honorable Peter Goll
Chairman and Members of the
House Committee on Fisheries
M/S 3100

DATE: February 19, 1985

FILE NO:

TELEPHONE NO:

FROM: Bruce Twonley 
Chairman
Commercial Fisheries Entry Commission
M/S 0302

SUBJECT: Supplementary CFEC
material

Through your staff I have already submitted a considerable amount of material from CFEC publications, intended to aid you in your review of Alaska's limited entry program and various related issues.

For your information, attached to this memo, are several supplementary items of information:

1. A 2-page list of all fisheries limited in Alaska to date, which includes dates of limitation and dates of the application periods for permits;
2. Two pages summarizing the results of the 1976 election, when the Limited Entry program was before the voters for review;
3. A graph showing the rate at which the Alaska Supreme Court has handed down decisions affecting the CFEC together with a chronological list of those cases.

The Commission would be happy to supply any additional information you may request.

BT:dan
Attachments

<u>Fishery</u>	<u>Qual. Period</u>	<u>Application Period</u>	<u>Evid. Deadline</u>	<u>Issuance Levels</u>	
				<u>Trans.</u>	<u>Non-Trans.</u>
S01A	Orig.19: 1960-1972 Isakson: 1973-1974	12/19/74-05/18/75 01/15/77-09/30/77	07/01/78 09/01/78	20 pts.	--
S03A	"	"		20 pts.	--
S15B	"	"		19 pts.	--
S04D	"	"		16 pts.	--
S01E	"	"		17 pts.	--
S03E	"	"		18 pts.	--
S04E	"	"		6 pts.	0-5
S01H	"	"		17 pts.	--
S03H	"	"		16 pts.	--
S04H	"	"		6 pts.	--
S01K	"	"		20 pts.	--
S02K	"	"		6 pts.	0-5
S04K	"	"		15 pts.	--
S01L	"	"		20 pts.	--
S01M	"	"		20 pts.	--
S03M	"	"		17 pts.	--
S04M	"	"		14 pts.	--
S03T	"	"		17 pts.	--
S04T	"	"		6 pts.	0-5

<u>Fishery</u>	<u>Qual. Period</u>	<u>Application Period</u>	<u>Evid. Deadline</u>	<u>Issuance Levels</u>	
				<u>Trans.</u>	<u>Non-Trans.</u>
G01A	1960-1976	02/25/77-06/25/7	05/01/78	6 pts.	--
G01E	"	"	"	6 pts.	--
G01H	"	"	"	6 pts.	--
G01K	1960-1980	10/15/82-06/30/83	--	41 pts.	--
G34A	1960-1977	03/15/78-08/15/78	12/31/78	10 pts.	--
G34E	1960-1978	02/15/81-10/15/81	--	3 pts.	--
G34K	1960-1980	10/15/82-06/30/83	--	32 pts.	--
S04P	1960-1975	03/10/76-08/10/76	09/01/78	6 pts.	--
S04W	"	"	"	7 pts.	--
S04X	"	"	"	6 pts.	--
S04Y	"	"	"	10 pts.	--
S04Z	"	"	"	9 pts.	--
S08P	"	"	"	7 pts.	--
S05B	1960-1979	03/01/81-10/31/81	--	71 pts.	17

<u>Fishery</u>	<u>Gear Types</u>	<u>Area</u>
S - Salmon	01 - Purse Seine	A - Southeastern
G - Herring	02 - Beach Seine	B - Statewide
	03 - Drift Gill Net	D - Yakutat
	04 - Set Gill Net	E - Prince William Sound
	05 - Hand Troll	H - Cook Inlet
	08 - Fishwheel	K - Kodiak
	15 - Power Troll	L - Chignik
		M - Peninsula Aleutians
		T - Bristol Bay

In areas P, W, X, Y, Z
04 - Combination of
Drift and Set
Gill Net

Each code is indicated by
Fishery Gear Code Area

Example: S 03 T
 Salmon Drift Bristol
 Gill Net Bay

MAJOR EVENTS OF 1976

Election Summary

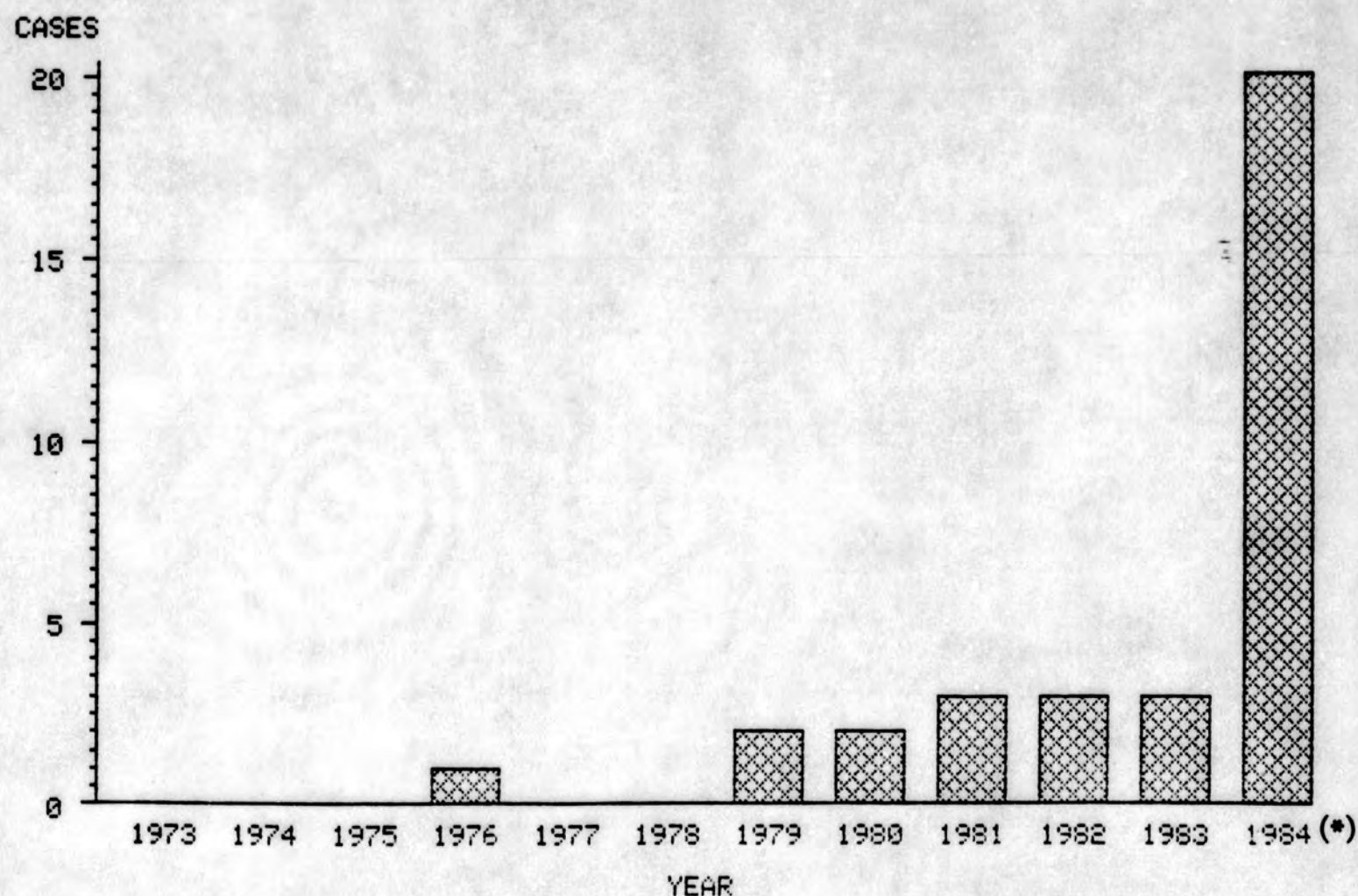
The most significant event affecting limited entry in 1976 was the November General Election. The initiative to repeal limited entry into Alaska's commercial fisheries was soundly defeated by a margin of nearly two to one. The limited entry issue, Ballot Proposition Number 5, became one of the most controversial Alaskan issues in the election and received more total votes than any other ballot or bonding proposition, even more official votes than the capital site selection measure.

Nearly 62% of the registered voters cast ballots in the election, and of those 93.4% voted either for or against the limited entry proposition. A vote "For" the proposition would have repealed the limited entry statute; a vote "Against" the proposition would have retained the law. A summary of the official election returns by district is given on the following page.

BALLOT PROPOSITION NUMBER 5
INITIATIVE TO REPEAL LIMITED ENTRY
VOTES BY ELECTION DISTRICT

District Number	"For"	"Against"	District Name
1	1499	3622	Ketchikan-Prince of Wales
2	1041	1534	Wrangell-Petersburg
3	1268	1727	Sitka
4	2420	6350	Juneau-Lynn Canal
5	1408	2135	Cordova-Valdez-Seward
6	1725	2905	Palmer
7	2537	4567	Anchorage Northwest
8	3142	5840	Anchorage Northeast
9	1590	2858	Anchorage Spenard
10	3623	6077	Anchorage East
11	3740	6758	Anchorage South
12	3359	5843	Anchorage West
13	2155	4474	Kenai-Cook Inlet
14	1335	983	Kodiak
15	659	626	Aleutian Chain
16	681	1312	Bristol Bay
17	1044	1233	Bethel
18	871	865	Wade Hampton
19	1501	1900	Yukon-Tanana
20	6510	11615	Fairbanks
21	1133	770	Barrow-Kobuk
22	1063	1131	Nome
TOTAL	44304	75125	

ALASKA SUPREME COURT CASES
AFFECTING THE
COMMERCIAL FISHERIES ENTRY COMMISSION
(1973 - 1984)



(*) JULY 19, 1983 - ALASKA SUPREME COURT DECIDED OSTROSKY.

MAY 21, 1984 - U.S. SUPREME COURT DECIDED OSTROSKY.

Alaska Supreme Court Cases Affecting
Practices of the Commercial Fisheries Entry Commission (CFEC)

February 11, 1985

1. Isakson v. Rickey, 550 P.2d 359 (5/21/76)
2. State, CFEC v. Templeton, 508 P.2d 77 (8/31/79)
3. Yunker v. AK CFEC, 598 P.2d 917 (8/3/79)
4. CFEC v. Apokedak, 606 P.2d 1255 (2/5/80)
5. CFEC v. Eide, 608 P.2d 769 (4/4/80)
6. Estate of Smith v. State, 635 P.2d 465 (10/23/81)
7. Estate of Miner v. CFEC, 635 P.2d 827 (11/6/81)
8. Vik v. CFEC, State, 636 P.2d 597 (11/6/81)
9. Rose v. CFEC, 647 P.2d 154 (6/11/82)
10. Jones v. CFEC, 649 P.2d 247 (8/13/82)
11. Anderson v. State, CFEC, 654 P.2d 1320 (11/12/82)
12. State v. Ostrosky, 667 P.2d 1184 (7/19/83)
[U.S. Supreme Court May 21, 1984]
13. Rutter v. State, 668 P.2d 1343 (8/26/83)
14. Timperley v. Jeffries, No. 2765 (12/16/83)
15. Spagnola v. State, CFEC, M.O.J. No. 153 (2/1/84)
16. Forquer v. State, CFEC, 677 P.2d 1236 (2/10/84)
17. Ostman v. State, CFEC, 678 P.2d 1323 (3/2/84)
18. White v. AK CFEC, 678 P.2d 1319 (3/2/84)
19. CFEC v. Apokedak, 680 P.2d 486 (3/2/84)
20. Nash v. State, CFEC, 679 P.2d 477 (3/23/84)
21. Wickersham v. State, CFEC, 680 P.2d 1135 (3/30/84)
22. Noden v. CFEC, 680 P.2d 493 (3/30/84)
23. Pete v. CFEC, M.O.J. No. 159 (4/4/84)

24. Wik v. Wik, _____ P.2d _____ (4/24/84)
25. Anderson v. State, CFEC, M.O.J. No. 166 (5/16/84)
26. CFEC, State v. Byayuk, 684 P.2d 114 (5/25/84)
27. Bavilla v. State, CFEC, M.O.J. No. 170 (5/25/84)
28. Lucido v. State, M.O.J. No. 171 (5/25/84)
29. Roehl v. AK CFEC, 684 P.2d 130 (7/6/84)
30. Cashen v. State, CFEC, 686 P.2d 1219 (8/24/84)
31. Moore v. State, CFEC, 688 P.2d 582 (9/14/84)
32. Gursli v. State, M.O.J. No. 182 (9/19/84)
33. Brown v. Baker, No. 2872 (9/21/84)
34. Deubelbeiss v. CFEC, 689 P.2d 487 (10/12/84)
35. Kalmakoff v. State, CFEC, No. 2900 (1/11/85)

PIERRE RAJOTTE, INC.
5484 SHILSHOLE AVE. N.W.
SEATTLE, WA 98107

RECEIVED
FEB 19 1985

COMMERCIAL FISHERIES
ENTRY COMMISSION

LLOYD W MOORE
ST RT A BOX 90-B
HOMER AK 99603



Ark and Dove, Maryland, 1634

© USPS 1984

Dear Permit Holder,

We currently have an offer and deposit to purchase your permit at a net price to you of \$ 115,000. If you are interested in selling at that price, contact our office today for quick results.

(206) 789-7600

Best Regards,

Bill Michell
PIERRE RAJOTTE, INC.



DAVE IRWIN
Agent

1717 Tidewater Road
Anchorage, Alaska 99501
(907) 277-2607



July 18, 83

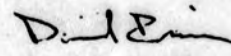
Dear permit holder,

I am looking for Bristol Bay drift permits to sell. In the last few weeks a lot of people have asked me about permits for next year. The paperwork will all be taken care of for you. I have the "intent to transfer" forms which must be sent in to Juneau first, and also the "permanent transfer" forms which are needed when the sale takes place. I will do my best to see that you receive top dollar for your permit, and that the sale and transfer go smoothly.

As an added bonus, if you list your permit with me you will receive two round trip tickets from Anchorage to Hawaii or \$ 1000.⁰⁰, whichever you prefer when I sell it. If another agent in our organization sells it you will receive one round trip ticket, Anchorage to Hawaii or \$ 500.⁰⁰, whichever you prefer.

I am looking forward to being of any service possible to you in your sale of a permit or boat.

Sincerely,


David Irwin

TUNDRA The Drum

AK COMMERCIAL FISHERIES ENTRY
J AKREP
POUCH KB
JUNEAU

AK 99811

VOLUME XIII NUMBER 44

Thursday Evening January 31, 1985

Delta mayors urged to hold fishing permits

by Mary Lenz

Perry Eaton's message to Delta mayors is to hold onto limited entry fishing permits.

Eaton, president of the Community Development Corporation, was keynote speaker at the opening of the Yukon-Kuskokwim Delta Mayor's Conference in Bethel Wednesday.

The conference got off to a slow start, possibly due to travel difficulties from Tues-

day night's high winds and rainy weather. Only a handful of mayors showed up early Wednesday, and opening speeches were delayed.

Eaton told reporters he wanted to emphasize the importance of looking at limited entry fishing permits as a community resource, not an independent possession.

"If you lose a fish permit
Please turn to page 4

Page 4 TUNDRA DRUMS January 31, 1985

MAYORS from page one

you've lost employment, you've lost revenue and you've lost a consumer," Eaton said, explaining that loss of a fish permit means area stores have lost a customer.

"Every village should know who has a permit, and it should be a moral obligation to keep those permits in the village," Eaton said.

"They cost nothing in the beginning, but they are impossible to replace."

Eaton also said he believes tourism is one of the main ways to boost the Delta economy.

"The Delta is a fabulous place in its own right. The problem is it's never been developed," Eaton said. He said development of tourism

or sports fishing to bring in outside dollars means tradeoffs with the subsistence lifestyle.

He said if local residents need "hard green" cash, they have to decide whether to travel out to get them elsewhere, or develop local resources to bring the dollars here.

"The Delta should look for new dollars, and the most obvious and logical place is in

tourism," Eaton said.

He said while many "arm-chair anthropologists" would love to tour a village, villagers have to decide whether they want tourists of that nature trooping through town.

"Development means change," Eaton said. He said the question is "are they willing to change" to bring money to the area.

P.O. Box 281
Anchorage, AK 99510

16 January 1985

State of Alaska
Commercial Fisheries Entry Commission
Pouch KB
Juneau, AK 99811

Dear Sir,

Last winter while I was in the hospital undergoing an operation I recieved many letters from angencies asking if I intend selling my entry permit (SO3T 55472H). How they had me on the mailing list is questionable. Some of the inquirys seemed phony.

Anyway I was determined to continue fishing and not even consider retiring. But since I am 67 years of age it is possible in the future I may have to retire, and if I do I intend to transfer my permit to an Alaskan resident only.

I am still operating the boat I bought in 1969 for \$7,500.00, have never borrowed any money, have fished in the past above average, most of the time fishing alone and am enjoying the challange.

In the Anchorage Times recently there was an item in the newspaper in regards to the above, so please send me a copy of the 1984 edition of "Changes in the Distribution of Permit Ownership in Alaska's Limited Fisheries" also of any regulations or laws of the State of Alaska pertaining to transfers or sales of Limited Entry Permits.

Yors Truly,

Michael N. Economou
MICHAEL N. ECONOMOU

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT DIVISION OF INVESTMENTS

BILL SHEFFIELD, GOVERNOR

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2510

February 25, 1985

The Honorable Peter Goll, Chairman
House Special Committee on Fisheries
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Goll:

I am writing to you, as Chairman of the House Special Committee on Fisheries, to discuss the effects of the current State commercial fishing loan program on the transfer of limited entry permits from rural to urban Alaska. As Director of the Division of Investments for the Department of Commerce & Economic Development which administers the commercial fishing loan program, I believe further discussion will be helpful.

There are at least four reports that have been published by the Alaska Commercial Fisheries Entry Commission (CFEC) that discuss the impact of the commercial fishing loan programs on the transfer of limited entry permits from rural to urban Alaska:

CFEC Report Number 83-8: Low-interest Loans and the Markets for Limited Entry Permits in the Alaska Salmon Fisheries.

CFEC Report Number 84-2: Alaska's Subsidized Fishing Loan Program. A Study of Distributional Aspects of Permit Related Loans During Fiscal Years 1979 Through 1982.

CFEC Report Number 84-8: Alaskan Natives and Limited Fisheries of Alaska. A Study of Changes in the Distribution of Permit Ownership amongst Alaskan Natives, 1975-1983.

CFEC Report Number 84-10: Changes in the Distribution of Permit Ownership in Alaska's Limited Fisheries, 1975-1983.

As you are aware, the commercial fishing loan programs were extensively amended by the Legislature effective June 25, 1982. Consequently, the reports that have been published by the Alaska Commercial Fisheries Entry Commission, for the most part, discuss loan programs that no longer exist. Unfortunately, many readers of these reports erroneously conclude that these reports are discussing the current commercial fishing loan program.

There are some statements and conclusions contained in these reports relating to earlier commercial fishing loan programs administered by the Department of Commerce & Economic Development that I question. Please refer to my memorandum to Kurt Schelle dated April 3, 1984 regarding the draft report for CFEC Report Number 84-3.

I believe highlighting the important changes in the various commercial fishing loan programs would be beneficial and help to put the issues into perspective.

- 6-21-72 **COMMERCIAL FISHING LOAN ACT.** When this loan program was initially established, the statutory policy was to promote the development and continued maintenance of commercial gear and vessels throughout the state by means of long term, low interest loans. An individual must have been a resident for five continuous years and held a commercial gear license for three years. Loans were limited to \$100,000, 7% interest, with a maximum term of 15 years.
- 4-24-73 For the first time, the financing of limited entry permits was allowed; however, permits could not be used as collateral. The statutory policy was also amended by referencing a predominately Alaska resident fishery.
- 6-4-75 The statutory policy was again amended to include language promoting the rehabilitation of the state's fisheries.
- 6-24-77 The loan limit was increased from \$100,000 to \$150,000.
- 6-28-78 Now, for the first time, limited entry permits could be pledged as security for a loan. The loan limit was increased from \$150,000 to \$500,000. The five year continuous residency had to be immediately preceding the date of the loan application and the license requirement now encompassed a crew member or commercial fishing license or ownership of a limited entry permit. The license or permit must have been held for any one of the past five years and the owner must have actively participated in the fishery during that period. Eligibility was expanded to include corporations, partnerships or joint ventures. Bank participation was, for the first time, provided for in the statutes.

- 6-1-79 Retroactive to 7-1-78, the interest rate was increased from 7% to 9 1/2% and other minor miscellaneous changes were made.
- 6-21-80 Language was included to require that all sources of income must be considered in determining whether or not an applicant could service the loan debt.
- 6-21-80 **FISHERMEN'S MORTGAGE AND NOTE PROGRAM.** A new loan program was created in addition to the existing Commercial Fishing Loan Act. The purpose of this new loan program was to curb the outflow of limited entry permits from rural Alaska by alleviating the difficulties in obtaining financing for limited entry permits, vessels and gear. Unlike the existing Commercial Fishing Loan Act, this was an indirect loan program. All loans were first made by banks and the State was then authorized to purchase the loans from the banks. The State was not authorized to make direct loans under this program. To be eligible under this program, an applicant must have been a resident for five years and could not have participated in or qualify for any state or federal loan program for similar loan purposes established under the new Fishermen's Mortgage and Note Program. The applicant must have demonstrated to the satisfaction of the bank that because of the lack of training or employment opportunities in the area of residence the applicant did not have occupational opportunities available other than commercial fishing or was economically dependent on commercial fishing for a livelihood and commercial fishing was a cultural and traditional way of life. Additionally, the applicant had to demonstrate to the satisfaction of the bank that there was a reasonably good chance that the loan debt would be repaid. The banks could consider all sources of income in determining the applicant's ability to repay the loan. The State could not refuse to purchase the loan from the bank due solely to the credit history of the applicant. Loans were limited to \$200,000, 10 1/2% interest, with a maximum term of 15 years.

- 7-1-81 Except for the purchase of limited entry permits, all lending functions of the Commercial Fishing Loan Act were transferred to the Alaska Industrial Development Authority.
- 7-27-81 The Fishermen's Mortgage and Note Program was amended to allow the State to precommit to the banks to purchase loans authorized under this program. The amendment also eliminated a large number of lending restrictions that previously caused banks to refuse to participate in the Fishermen's Mortgage and Note Program. The loan limit was also reduced from \$200,000 to \$100,000.
- 6-25-82 The Fishermen's Mortgage and Note Program, in actuality, was repealed and the Commercial Fishing Loan Act was rewritten. All assets of the Fishermen's Mortgage and Note Program were transferred to the newly rewritten Commercial Fishing Loan Act. Three separate loan sections were established under the rewritten program. SECTION A was exclusively for the purchase of limited entry permits. An individual must have been a resident for five continuous years immediately preceding the date of application for the loan and held a crew member or commercial fishing license or owned a limited entry permit for one of the past five years and must have actively participated in the fishery during that period of time. Loans were limited to \$300,000, 10 1/2% interest, with a maximum term of 15 years. SECTION B was for the purchase of limited entry permits, vessels and gear. An individual must have been a resident for five continuous years immediately preceding the date of application for the loan and, because of the lack of training or lack of employment opportunities in the area of residence, did not have occupational opportunities available other than commercial fishing, or was economically dependent on commercial fishing for a livelihood and commercial fishing was a traditional way of life in Alaska. Loans were limited to \$100,000, 10 1/2% interest, with a maximum term of 15 years. SECTION C was for

the purchase or restoration of vessels or gear. Applicants included corporations, partnerships or joint ventures which were 100% owned by individual commercial fishermen who were state residents for a continuous period of five years immediately preceding the date of application for a loan. Applicants also had to satisfy the remaining eligibility requirements of both Sections A and B. Loans were limited to \$100,000, 10 1/2% interest, with a maximum term of 15 years.

- 4-17-83 The state residency under Sections A, B and C was reduced from five to two continuous years immediately preceding the date of the loan application. In addition, under Section A, the applicant must have had the license or permit the year immediately preceding the date of the loan application and any other two of the past five years. Active participation in the fishery was increased from one to three years, including the year immediately preceding the date of the loan application.

With the creation of the Fishermen's Mortgage and Note Program in June 1980, the Legislature intended to improve the availability of funding for rural Alaskans to purchase limited entry permits, vessels and gear. Under this program this objective was never achieved. During the first year of its existence, no loans were made by the banks, so no loans could be purchased by the State. The reason why no loans were made is simply the fact that the statutes placed so many lending restrictions upon the banks, that the administrative costs outweighed earnings. Most of these restrictions were contained in AS 16.10.710. The following year, AS 16.10.710 was amended and many of the provisions that were objectionable to the banks were removed. All available funds (approximately \$1.8 million) were lent out; however the loan program still proved unprofitable to the banks. Of the 29 loans that were made, virtually all were made by the Commercial Fishing and Agricultural Bank (CFAB) and only two or three were made by other banks. CFAB told the State that they were only processing these loans as a service to their members; however, it was costing considerably more than the \$100 loan application fee they were charging and they were not interested in continuing these losses.

As a result of the shortcomings of FM&N indirect loan program, the statutes were again amended and the program was made a direct loan program under the Department of Commerce & Economic Development. The basic eligibility requirements of the FM&N program were incorporated into Sections B and C of the rewritten Commercial Fishing Loan Act. Since the state was now administering the entire loan program by making direct loans, the administrative costs of the program were borne by the state. The Legislature appropriated sufficient funding to underwrite the loan program and within a very short period of time both the number and dollar amount of loans increased.

An indication of the success of the current commercial fishing loan program is the number of loans that have been made under Section B. Since the inception of Section B through January 1985, 340 loans have been approved and \$16,615,661 has been committed. (During the first seven months of FY 85, 75 loans were approved and \$5,131,400 was committed.) This section is targeted for rural Alaskans. In order to qualify for a loan under this section, the applicant must either live in an area that does not provide occupational opportunities other than commercial fishing, or the applicant must be economically dependent on commercial fishing for a livelihood and commercial fishing must have been a traditional way of life in Alaska. Also, applicants cannot have alternative sources of financing available to them. This criteria is important in understanding the success of the loan program.

If there were no commercial fishing loan program, then I believe there would be little argument that urban Alaska would fare much better than rural Alaska in competing for fishing loan financing in the private sector. The financial institutions are established in the urban areas, borrowers are accustomed to the cash/credit economy and have the collateral to support loan requests. Besides the traditional private sector, CFAB would then be the only other source of financing. CFAB will lend for limited entry permits; however, due to the high risks and losses involved in the commercial fishing industry, CFAB will not take the permit as collateral to secure the loan. The loan must be secured by other collateral. For vessel loans, CFAB requires a minimum 25% cash down payment and 10% additional collateral. Only 65% of the vessel cost can be used as collateral to secure the loan. As a result of these lending restrictions, CFAB has only made approximately six limited entry permit and 12 vessel loans during the last half of 1984. Obviously, these restrictions do not favor rural Alaska. However, in defense of CFAB, they are trying to minimize their losses.

February 25, 1985

If it weren't for the state commercial fishing loan program, particularly Section B, very few commercial fishing loans would be made in rural Alaska. Remember, Section B provides rural Alaska with the capital for the purchase of limited entry permits as well as for vessels and gear in support of the permits. Without vessels and gear to fish the limited entry permits, the permits produce no income, unless sold. Without a Section B loan program, there probably would have been a larger outflow of limited entry permits from rural Alaska. Additionally, without a loan program for Alaskans like the Commercial Fishing Loan Act, there would be greater competition from individuals outside the state for Alaska limited entry permits.

As discussed during the meeting we attended on December 19, 1984, regarding limited entry permit transfer issues, some additional time will be needed to compile data on the commercial fishing loan program. The Division of Accounting & Collections, DCED, has been gathering this data. This entails a sizeable effort as many records have to be manually researched. As soon as this effort is completed, the information will be made available to you.

Sincerely,



Paul B. Arnoldt
Director

PBA/wfs0462C

22585a

Enclosure

cc: Terry Elder, Deputy Commissioner, DCED

Margaret Hamley, Director,

Division of Accounting & Collections, DCED

Greg Baker, Director,

Office of Commercial Fisheries Development, DCED

MEMORANDUM

State of Alaska

TO: Kurt Schelle
Director of Research
Commercial Fisheries Entry
Commission
Department of Fish and Game

FROM: *Paul B. Arnoldt*
Paul B. Arnoldt, Director
Division of Investments
Department of Commerce and
Economic Development

DATE: April 3, 1984

FILE NO:

TELEPHONE NO: 465-2510

SUBJECT: Loan Paper Draft Report
(Commercial Fishing Loan
Program)

Thank you for the opportunity to comment on the draft of your study regarding the distribution of permit related loans. I would first like to address a couple of small details in the introduction section of the report.

On page 13, it states that the Fishermens Mortgage and Note Program was largely unsuccessful because many people were unaware of the program and the application procedure was complicated. This is partially correct in that the legislation creating the program made it virtually inoperable the first year (FY '81) and that private financial institutions did not actively promote the program. However, in FY '82 virtually all of the \$1.8 million appropriated by the Legislature was committed for loans. Also, as you pointed out, in 1982 the Fishermens Mortgage and Note Program was rolled into the Commercial Fishing Revolving Loan Fund. This simplified the application process because an applicant could apply directly to the State without involving a private financial institution.

On page 15, the last paragraph talks about the active participation requirement as amended by the 1983 Legislature. I think that it is important to note that this only affects Section A of the current Commercial Fishing Loan Program and does not affect Section B which is targeted for rural Alaska fishermen.

One of the important issues is the impact of the loan program on rural Alaska. While the data appears to indicate that urban fishermen were more likely to receive subsidized loans than rural fishermen over the 1979-1982 period, this does not mean that the loan program played a significant role in the decline of rural-held permits over that time period. In fact, the statistics in Table 3 and Table 6 would indicate that the loan program played a very slight role, if any, in this process. Table 3 shows that this shift was well underway by 1976 even though the permit loan program was virtually nonexistent until 1979.

There was a significant shift in 1980 when the total number of loans increased from 62 (in 1979) to 159 (in 1980) and the net urban shift increased from 47 to 65. This is understandable because the permit loan program was relatively new and it generally took longer for the word to spread to rural Alaska. However, in 1981 the loan program made another

MEMORANDUM

February 25, 1985

TO: Representative Peter Goll

FROM: Rodger Painter
Staff

SUBJECT: Limited Entry Questions for 2/26 Meeting

1. It seems like a lot of the problems we've encountered with limited entry relate to the restrictiveness of the present system with transfers between members of immediate families. The emergency transfer and permanent transfer options presently available can be very restrictive. To illustrate my point, let me cite an example:

A rural resident in her fifties is suffering from an inflammatory illness that is interfering with her ability to fish. Last year, her son fished the permit under an emergency transfer. She was turned down when she applied this year. If her appeal is denied, she has two options: a permanent transfer or let the permit sit unused. An unused permit means income is lost to the family. A permanent transfer would mean she relinquishes all ownership rights. If her son should drown in a fishing accident, the permit would revert to his wife or children, unless he leaves a will to the contrary. If the son later decides to buy the permit, he would be prevented from using the state loan program to do so, unless he acts within one year of the transfer. If the son for some reason decided to sell the permit, his mother would simply be out of luck.

What do you think about amending the statutes to provide a less restrictive option for transfers between members of an immediate family? Something like a three to five year temporary transfer. How extensively would the act have to be amended to create this new transfer option?

2. How about a state-run brokerage system for the rural areas? If a rural resident is thinking about selling a permit would it be legal for the state to attempt to put that person together with another resident of the area who is looking for a permit? What kinds of costs would be involved? What about Native corporations, village councils or other non-profit groups?

3. Does CFEC envision using non-transferable permits for more fisheries? What kinds of problems would you see with non-transferable permits that revert to the state when unfished for three consecutive years, when tied to a re-issuance scheme similar to the original distribution system?

LOANS

1. How much loan counseling is given to fishing loan applicants? How about individuals from rural areas who may have difficulty understanding repayment requirements because of language and cultural differences?

2. Is the Department concerned about potential defaults with Section B loans? What steps have been taken to deal with this problem?

3. What percentage of the type A loans have gone to rural residents? What percentage of the type B loans are used to purchase permits? Do you have a breakdown on place of residence for applicants for type A and B loans? How about a breakdown on place of residence for type A and B loan recipients? How long would it take you to gather this data? Do you plan to collect it?

Crab
Black Cod
Rockfish
Pot shrimp
Shellfish

HB229-

Loans

- ①  %age of type-B Loans used to buy permits?
- ② Does the Department have plans to analyze the impact of Loans on the transfer of permits from rural areas?
- ③ What's the opinion of the department? Should there be more or fewer type B Loans?
- ④ Tell CFEC & Commerce that we'd appreciate their individual recommendations on how to address the drain of rural permits. Would like to receive them within a week from today.

Happie
will have
it.