

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672

1248 SCOMM 48: HOUSE SPEC. COMMITTEE ON FISHERIES 1985-86



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

SCOMM

#48:9

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

DIVISION OF BOARDS

BILL SHEFFIELD, GOVERNOR

BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4110

February 13, 1986

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

Dear Representative Goll:

At the 1985 Southeast finfish meeting, the Hoonah Advisory Committee's Proposal #338 requested that the Alaska Board of Fisheries ask the Legislature to identify charter vessel operations as a separate user group for which separate regulations could be written. The board agreed, and so I am writing to you as the Chairman of the House Special Committee on Fisheries and Hoonah's representative. The board also asked the Southeast Regional Council members to make their views known to their legislators.

For the past several years we have received a number of proposals which address charter boat fishing. It is apparent that most people view charter operations as a discrete classification. However since AS 16.05.251, which outlines the board's authority, does not refer to charter operations, the Department of Law has told us that we are on very shaky legal ground when we adopt regulations like the six line limit for charter vessels in Southeast.

This regulation was strongly supported by the Southeast charter vessel operators, who continue to be concerned that this regulation could be overturned in court. As this industry grows, I believe that more and more fishermen will want the board to address it separately. In order to avoid at least some confusion, it would be helpful if the board's authority to do so were clear.

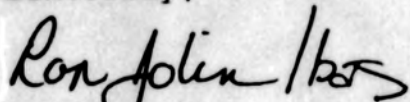
The Honorable Peter Goll

-2-

February 13, 1986

If the board can provide any further clarification, please do not hesitate to contact us.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ron Jolin" followed by a stylized flourish or initials.

Ron Jolin
Chairman
Alaska Board of Fisheries

cc: The Honorable Richard Shultz
Co-Chair, House Resources Committee
The Honorable Adelheid Herrmann
Co-Chair, House Resources Committee
The Honorable Arliss Sturgulewski
Chair, Senate Resources Committee
Southeast Advisory Committees

**NOTICE OF PROPOSED CHANGE
IN THE REGULATIONS OF THE
ALASKA BOARD OF FISHERIES**

Pursuant to the Administrative Procedure Act, Alaska Statutes 44.62, notice is hereby given that the Commissioner of the Alaska Department of Fish and Game, under authority vested by AS 16.05.251, as authorized by delegation of the Board of Fisheries under AS 16.05.270, proposes to adopt, amend, or repeal regulations contained in Title 5 of the Alaska Administrative Code which implement, interpret, or make specific the provisions of Title 16, Alaska Statutes.

Regulations to be the subject of this proposed action concern marking requirements for sport fishing charter vessels.

The department may adopt, amend, repeal, or take no action on the subject matter of the proposed regulatory change in the following informative summary.

Amend 5 AAC 39.119 so that charter vessels in all areas of the state except the Southeastern Alaska and Yakutat areas, not otherwise used for commercial fishing, are exempt from the requirement that each vessel's ADF&G number be displayed in one-foot high, one-inch wide numerals.

This action is not expected to require an increased appropriation.

Notice is also given that anyone interested may present written statements or arguments relevant to the actions proposed in this notice. Written comments should be received by the Alaska Department of Fish and Game, Division of Boards, Box 3-2000, Juneau, Alaska 99802, by 4:30 p.m. on May 23, 1986.

Anyone interested in or affected by charter vessel fishing regulations is hereby informed that, by publishing this legal notice, the department may consider all of the subjects covered by the proposed changes contained in this notice. THE DEPARTMENT IS NOT LIMITED BY THE SPECIFIC LANGUAGE OR CONFINES OF THE ACTUAL PROPOSAL. The department's actions are limited to the subject matter given in this legal notice, but pursuant to AS 44.62.200(3), the department may review the full range of activities appropriate to any of the subjects listed. On its own motion, after public hearing, the department may adopt, amend, reject, supplement, or take no action on these matters.

In addition, the department may adopt other regulations necessary to implement, administer, or enforce the regulations adopted. Anyone interested in or affected by the subject matter contained in this legal notice should make written comments if they wish to have their view considered by the department.

Date:

4.17.86



Don W. Collinsworth
Commissioner
Alaska Department of Fish
and Game

Register __, _____ 1986

FISH AND GAME

5 AAC 39.107

5 AAC 39.119

CHAPTER 39
GENERAL PROVISIONS

5 AAC 39.107 (b),(c), and (e) are amended to read:

5 AAC 39.107. OPERATION OF GEAR.

(b) Throughout the period of operation of mobile net gear, a person who holds a valid CFEC permit for that gear must be physically present on-board the vessel from which the net gear is operated.

(c) A CFEC permit holder shall personally operate or assist in the operation of mobile net gear. "Personally operate or assist in the operation" means assisting or supervising some portion of the immediate operation.

(e) A person who holds a CFEC permit for the operation of stationary net gear or fishwheels must be within a reasonable distance of his gear when at a point of sale or at the location of other stationary gear of that permit holder. A "reasonable distance" means a distance that ensures that the CFEC permit holder retains competent supervision of his gear. (In effect before 1983; am 4/16/83, Register 86; am 5/31/85, Register 94; am __/__/86, Register __)

Authority: AS 16.05.251
AS 16.05.253

5 AAC 39.110 (c) and (e) are amended to read:

5 AAC 39.110. CREW MEMBER FISHING LICENSE REQUIREMENTS.

(c) A crew member licensee who does not hold a valid CFEC permit card may crew in any fishery if the holder of a valid CFEC permit card for that fishery is in compliance with 5 AAC 39.107(b) and (c), or with (e).

(e) In this section, "crew" means the activities of a commercial fisherman as defined in AS 16.05.940(4), who is actively engaged in the operation of fishing gear that is operated in compliance with 5 AAC 39.107(b) and (c), or with (e). (In effect before 1982; am 4/14/82, Register 82; am __/__/86, Register __)

Authority: AS 16.05.251

5 AAC 39.119 is added to Article 1 to read:

5 AAC 39.119. VESSEL IDENTIFICATION. (a) Unless otherwise specified, commercial fishing vessel required to be licensed under AS 16.05.490 must display its permanent vessel license plate number

- (1) in permanent symbols at least 12 inches in height and with lines at least one inch in width that contrast with the background;
 - (2) on both sides of the hull, cabin, or mast;
 - (3) in a manner such as to be plainly visible and unobscured;
- and
- (4) at all times when registered to fish.

(b) In addition to the requirements of (a) of this section, each registered salmon hand troll vessel must display the letters HT in permanent block letters. Each letter must be painted on both sides of the vessel hull or cabin in a color contrasting with the background, at least eight inches in height, at least one half inch in width, plainly visible and unobscured at all times. The letters must be displayed at all times until the end of the calendar year.

(c) The following vessels are exempt from the requirements of this section:

- (1) those exempt from licensing under AS 16.05.495;
- (2) seine skiffs operating with a seine vessel;
- (3) charter vessels used exclusively for sport fishing in freshwater. (Eff. __/__/86, Register __)

Authority: AS 16.05.251

5 AAC 39.165(1) is amended to read:

5 AAC 39.165. TRAWL GEAR UNLAWFUL. It is unlawful to use any type of trawl gear for any commercial fishing purposes in the following locations:

- (1) waters of Prince William Sound enclosed by lines from Point Whitshed to Point Bentinck, from Cape Hinchinbrook to Seal Rocks (60°10'N.lat., 146°50'W.long.) to Zaikof Point, and from Montague Point to Knowles Head, except that trawls may be used to take herring during the open commercial herring food and bait season (September 1 through January 31); (In effect before 1985; am 7/14/85, Register 95; am __/__/85, Register __)

Authority: AS 16.05.251

April 23, 1986

VTITLEV VFIRSTV VLASTV
VADDRESS LN 1V
VCITYV, VSTATEV VZIPV

Dear VTITLEV VLASTV:

The House Special Committee on Fisheries will be sponsoring a teleconference hearing concerning sport fishing charter operations Thursday, May 1, from 8:30-10:00 a.m.

The teleconference has been scheduled at the request of several legislators interested in discussing two issues: (1) Board of Fisheries regulations requiring 12-inch identification numbers to be displayed on sport fishing charter vessels; and (2) a request by the Board of Fisheries for statutory authority to manage sport fishing charter operations as a separate gear group.

There is no legislation on the issue pending before the committee, and the deadline for special committees to introduce bills has long passed. This hearing will be strictly to provide a forum for discussion of the issues.

I look forward to the opportunity for an airing of the issues involved. I hope you are able to participate.

Sincerely,

Representative Peter Goll
Chairman

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*
* ORIGINAL
* SENT: 05/05/86 TIME: 08:19
* FROM: LIOSOL
* SUBJECT: FINAL STATS
* PRINT DATE: 05/05/86 TIME: 08:19
*

* * * FINAL STATS * * *

DATE: 5/1/86
SITE: SOLDOTNA
SPONSOR: HOUSE SPECIAL FISHERIES COMMITTEE
SUBJECT: SPORTSFISHING CHARTER VESSELS



TESTIFIED:

- 1. JIN JOHNSON 44526 STERLING HWY, SOLDOTNA, 99669 262-5357
- 2. GREG DAVIS 10819 SPUR HWY #139, KENAI, 99611 262-7360
- 3. RANDY BERG BOX 4177, SOLDOTNA, 99669 262-5727

OBSERVED:

- 1. TIM BERG BOX 4177, SOLDOTNA, 99669 262-5727
- 2. RON LATSCHAND BOX 668, SOLDOTNA, 99669
- 3. DAN RING BOX 2037, SOLDOTNA, 99669
- 4. JOE RAY SKRHA BOX 1991, SOLDOTNA, 99669 262-4747
- 5. RON WEILBACKER BOX 1918, SOLDOTNA, 99669 262-9600
- 6. ROD BERG 266 REDWOOD CT., SOLDOTNA, 99669 262-6064
- 7. DAN ECK
- 8. TRACY JEWETT

TOTAL TESTIFIED: 3
TOTAL OBSERVED: 8

TOTAL: 11

 *
 * DELIVER TO: TCJNU
 *
 *
 * ORIGINAL
 * SENT: 05/01/86 TIME: 17:02
 * FROM: LIOVAL
 * SUBJECT: SPORTSFISHING TC
 * PRINT DATE: 05/01/86 TIME: 17:02
 *

*** FINAL T/C STATS ***

DATE: _____ MAY 1, 1986 _____
 SITE: _____ VALDEZ _____
 SPONSOR: _____ HSE SPEC CMTE ON FISH _____
 SUBJECT: _____ SPORTSFISHING CHARTER VESSELS _____
 LOCAL MODERATOR: _____ PAT VON BARGEN _____

TESTIFIED: 0
 NAME/REPRESENTING ADDRESS PHONE

OBSERVED: 1
 NAME/REPRESENTING ADDRESS PHONE
 1. MARK E. BUCHNER, BOX 1103 835-4435
 COHO CHARTERS VALDEZ, AK 99686

TESTIFIED _____ 0 _____ ON LINE - TIME START: ____ 8:35 A.M.
 OBSERVED _____ 1 _____ TIME END: ____ 10:15 A.M.*
 TOTAL _____ 1 _____

*OFF LINE; PARTICIPANT HAD TO LEAVE.

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* DELIVER TO: TCJNU
*
*
* ORIGINAL
* SENT:          05/02/86  TIME: 08:26
* FROM:          TCGLN
* SUBJECT:       MESSAGE
* PRINT DATE:    05/02/86  TIME: 08:26
*
*****

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TO: TC CREW

FROM: REBA-GLENNALLEN

RE: MESSAGE FOR H SPEC. COMM. ON FISHERIES

PLEASE SEND A COPY OF THE MINUTES FOR THE T-C ON SPORTSFISHING,
HELD 5-1-86 AT 8:30 AM TO:

ROBERT HOLMES
BOX 78
COPPER CENTER, AK 99573

THANKS

* ORIGINAL
* SENT: 05/05/86 TIME: 08:19
* FROM: LIOSOL
* SUBJECT: FINAL STATS
* PRINT DATE: 05/05/86 TIME: 08:19
*

* * * FINAL STATS * * *

DATE: 5/1/86
SITE: SOLDOTNA
SPONSOR: HOUSE SPECIAL FISHERIES COMMITTEE
SUBJECT: SPORTSFISHING CHARTER VESSELS

TESTIFIED:

1. JIN JOHNSON 44526 STERLING HWY, SOLDOTNA, 99669 262-5357
2. GREG DAVIS 10819 SPUR HWY#139, KENAI, 99611 262-7360
3. RANDY BERG BOX 4177, SOLDOTNA, 99669 262-5727

OBSERVED:

1. TIM BERG BOX 4177, SOLDOTNA, 99669 262-5727
2. RON LATSCHAND BOX 668, SOLDOTNA, 99669
3. DAN RING BOX 2037, SOLDOTNA, 99669
4. JOE RAY SKRHA BOX 1991, SOLDOTNA, 99669 262-4747
5. RON WEILBACKER BOX 1918, SOLDOTNA, 99669 262-9600
6. ROD BERG 266 REDWOOD CT., SOLDOTNA, 99669 262-6064
7. DAN ECK
8. TRACY JEWETT

TOTAL TESTIFIED: 3
TOTAL OBSERVED: 8

TOTAL: 11

*
* DELIVER TO: LTCJ *
*
*

* ORIGINAL *
*

* SENT: 05/01/86 TIME: 12:45 *

* FROM: TCHOM *

* SUBJECT: PARTICIPANTS NAMES *

* PRINT DATE: 05/01/86 TIME: 12:45 *

*

TO: TCJNU

LTCJ LISA

FROM: CHARLENE IN HOMER

TC 5-1-86, SPORTFISHING CHARTER VESSELS

PARTICIPANT LIST TO TESTIFY:

1. F. H. INGRAM OF LANDS END MARINE CHARTER, BOX 1594, HOMER, AK. PHONE 235-7809
2. D. A. MARIANO OF K-BAY CHARTERS, BOX 3223, HOMER, AK. PHONE 235-8119
3. DONNA HINKLE, BOX 402, HOMER, AK. PHONE 235-8792

PARTICIPANT LIST TO OBSERVE:

1. DANNY PARKS OF CENTRAL CHARTERS, BOX 2708, HOMER, AK. PHONE 235-8796
2. RICHARD FROST OF CENTRAL CHARTERS, BOX 254, HOMER, AK. PHONE 235-7518
3. ROBERT BUCK, BOX 254, HOMER, AK. PHONE 235-7518
4. MYRON MICKEY, BOX 120, HOMER, AK. PHONE 235-7962
5. JIM VAN DER SANDEN OF SEA KATCH, 628 RANGEVIEW, HOMER, AK. PHONE 235-7229
6. JIM THOMPSON, 44224 STERLING HWY., SOLDOTNA, AK. PHONE 262-9071
7. RICHARD PONDREY OF ANCHOR MARINE CAPTS. CHARTERS, BOX 317, ANCHOR POINT, AK. PHONE 235-7409
8. WYMAN KEEN OF IRISH MIST, CAPTS. CHARTERS, BOX 3847, KENAI, AK. PHONE 283-4785

* ORIGINAL
 * SENT: 05/01/86 TIME: 13:19
 * FROM: JUNE GALLEY
 * SUBJECT: KTN. T/C SPORTFISHING 5/1
 * PRINT DATE: 05/01/86 TIME: 13:19
 *

*** FINAL T/C STATS ***

DATE: MAY 1, 1986_____
 SITE: KETCHIKAN_____
 SPONSOR: HOUSE SPEC. COMM. ON FISH_____
 SUBJECT: SPORTSFISHING CHARTER VESSELS_____
 LOCAL MODERATOR: JUNE GALLEY_____
 ✓

TESTIFIED:

NAME/REPRESENTING	ADDRESS	PHONE
1. WILLI HERFF, WATERFALL RESORT, P. O. BOX 6440, KTN., AK.		99901 225-9461
2. JIM GREEN, SEABREEZE CHARTERS, 1033 MILLAR ST., KTN., AK.		99901 225-5317
3. TOM RAMISKEY, CHINOOK CHARTERS, 428 TOWER, KETCHIKAN, ALASKA		99901
4. MARK BURGOYNE, AK. SALMON CHARTER, BOX 5186, KTN., AK.		99901 247-2306

OBSERVED:

NAME/REPRESENTING	ADDRESS	PHONE
1. DON WRIGHT, WRIGHT'S MARINE CHARTERS, P.O. BOX 5953, KTN., AK.		225-9277
2. THAD LANE, ALASKA SALMON CHARTERS, P.O. BOX 7195, KTN., AK.		99901 225-1506
3. NORMA GREEN, SEABREEZE CHARTERS, 1033 MILLAR ST., KTN., AK.		99901 225-5317
4. JIM DAHL, BOX 8080, KETCHIKAN, AK.		99901

TESTIFIED: ____4____

TIME START: ____8:30AM____

OBSERVED: ____4____

TIME END: ____10:30AM____

TOTAL: ____8____

*
* DELIVER TO: TCJNU
*
*
* ORIGINAL
* SENT: 05/01/86 TIME: 16:16
* FROM: TCGLN
* SUBJECT: FINAL STATS-SFORTSFISHING
* PRINT DATE: 05/01/86 TIME: 16:16
*



LEGISLATIVE TELECONFERENCE NETWORK

E_I_N_A_L____S_I_A_I_S

DATE: 05-01-86
SITE/MODERATOR: GLENN ALLEN-REBA
SPONSOR: H S C ON FISH
SUBJECT: SPORTSFISHING

1 TESTIFIED
0 OBSERVED
1 TOTAL

TC BEGAN: 8:35 AM
TC ENDED: 10:55 AM
MODERATOR AIIN LISA

NAME-REPRESENTING

ADDRESS-PHONE

TESTIFIED:

1. JON BREIVOGEL- RIVERS UNLIMITED COPPER CENTER 99573 822-3535

 *
 * DELIVER TO: TCJNU
 *
 *
 * ORIGINAL
 * SENT: 05/01/86 TIME: 15:14
 * FROM: ELAINE SUNDE
 * SUBJECT: FINAL STATS HOONAH, HAINES, TBAY
 * PRINT DATE: 05/01/86 TIME: 15:14
 *

TO JUNEAU T.C.
 FR ELAINE, SITKA

FINAL STATS 5/1/86 SEORBI FISHING & CHARTER VESSELS ✓

***HOONAH:

1. GORDON PEDERSON, BOX 384, HOONAH - TESTIFIED ON BEHALF OF
 HOONAH F&G ADVISORY COMMITTEE

***HAINES:

1. MR. CARMEN DE FRANCO, BOX 765, HAINES 766-2255 - TESTIFIED AS
 A CHARTER OPERATOR ✓
 2. DON CRAKE, BOX 74, HAINES 766-2303 - OBSERVED ONLY

***THORNE BAY:

1. KEN CLINE - DO NOT HAVE ADDRESS FOR HIM. ✓

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*
* DELIVER TO: TCJNU
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*
* ORIGINAL
* SENT: 05/01/86 TIME: 10:53
* FROM: LIOKOD
* SUBJECT: KODIAK FINAL STATS
* PRINT DATE: 05/01/86 TIME: 10:53
*
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*** FINAL T/C STATS ***

DATE: MAY 1, 1986
 SITE: KODIAK LEGISLATIVE INFORMATION OFFICE
 SPONSOR: SPECIAL COMMITTEE ON FISHERIES
 SUBJECT: SPORTFISHING CHARTER VESSELS
 LOCAL MODERATOR: MARY JO SIMMONS

TESTIFIED:

NAME/REPRESENTING	ADDRESS	PHONE
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1. TED NELSON/PRES. KODIAK ISLAND CHARTER BOAT ASSOCIATION
ISLAND MARINE CHARTER SERVICE
PO BOX 814 KODIAK 99615, 486-3672
2. BOB LOCHMAN/KOD. ISLAND CHARTER
PO BOX 2023 KODIAK 99615, 487-2546
3. JIM BAGLIEN/KOD. SEA CHARTER
PO BOX 2156 KODIAK 99615, 487-2683
4. ERIC STIRRUP/KOD. SEA CHARTER
PO BX 1694 KODIAK 99615, 486-5079



OBSERVED:

NAME/REPRESENTING	ADDRESS	PHONE
-------------------	---------	-------

1. ED SAUNDERS/AK. EXPERIENCE INC., PO BX 1271 KODIAK 99615,
486-3929
2. KEN LESTER/AK. EXPERIENCE INC., PO BX 373 KODIAK 99615,
486-3376

TESTIFIED: 4
 OBSERVED: 2
 TOTAL: 6

TIME START: 8:30AM
 TIME END: 10:53AM

*

* DELIVER TO: TCJNU

*

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* ORIGINAL

* SENT: 05/01/86 TIME: 14:29

* FROM: LIODLG

* SUBJECT: FINAL STATS 5\01\86 CHARTER

* PRINT DATE: 05/01/86 TIME: 14:29

*

DATE: MAY 01, 1986 - THURSDAY

SITE: DILLINGHAM, ANNA MAY

SPONSOR\SUBJECT: HOUSE SPECIAL COMMITTEE ON FISHERIES

T\C STARTED 8:30 A.M.

T\C ENDED- WENT OFF LINE AT 10:50 A.M.

DILLINGHAM HAD NO PARTICIPANTS BUT WE DID RECORD PART OF T\C FOR
LARRY MURPHY OF ALEKNAGIK.

EOM

*
* DELIVER TO: TCJNU
*
*
* ORIGINAL
* SENT: 05/01/86 TIME: 11:34
* FROM: LIOPSG
* SUBJECT: SP.COMM.ON FISH/SPORTS/CHARTER
* PRINT DATE: 05/01/86 TIME: 11:34
*

*** FINAL T/C STATS ***

DATE: MAY 1, 1986
SITE: PETERSBURG
SPONSOR: ~~SEN. STEVENS~~
SUBJECT: PRESS CONFERENCE
LOCAL MODERATOR: DOROTHY PENTTILA

*These stats are really
for sport fishing
Dorothy called 5/1/86
Get notify us
later.*

TESTIFIED:

NAME/REPRESENTING	ADDRESS	PHONE
1. JAMES R. SCHRAHEK	BOX 745	772-3337
2. MARILYN GEORGE	BOX 1031	772-4515
3. ROBERT T. ROGERS	BOX 3297	772-3297

OBSERVED:

NAME/REPRESENTING	ADDRESS	PHONE
1. ENID MAGILL	BOX 444	772- 4476
2. SU RAPPLEYE KFSK	BOX 149	772-3808
3. LOREN CROXTON	BOX 1410	772-3622
4. HARRY ROGERS	BOX 189	772-4271

TESTIFIED: 3 TIME START: 8:30
OBSERVED: 4 TIME END: 11:00
TOTAL: 7

EOM

*
* DELIVER TO: TCJNU
*
*
* ORIGINAL
* SENT: 05/01/86 TIME: 11:18
* FROM: LIOSIT
* SUBJECT: FINAL STATS 5/1
* PRINT DATE: 05/01/86 TIME: 11:18
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*
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TO JUNEAU T.C.
FR ELAINE, SITKA

FINAL_STATS_5/1_SPORT_FISHING/CHARLES

TESTIFIED:

1. BILL FROUST, ALASKA TROLLERS BOARD, 3009 HPR, SITKA 747-8170
2. JAY B. MYER, J & J CHARTER, 104 SUNSET DRIVE, SITKA 747-3624
3. CHUCK JOHNSTONE, SITKA CHARTER ASSOC., 1408 SMC, SITKA 747-3931
4. ANN L. LOWE, TROLL-PAC, 415 ARROWHEAD, SITKA 747-8023

OBSERVED:

1. JESS ROCKWELL, BOX 2481, SITKA - NO PHONE

TOTALS: 4 WITNESSES, 1 OBSERVER = 5 PARTICIPANTS

*
 * DELIVER TO: TCJNU
 *
 *
 * ORIGINAL
 * SENT: 05/01/86 TIME: 13:36
 * FROM: JUNE GALLEY
 * SUBJECT: T/C WRG.--SPORTSFISHING
 * PRINT DATE: 05/01/86 TIME: 13:36
 *

*** FINAL T/C STATS ***

DATE: MAY 1, 1986_____
 SITE: WRANGELL_____
 SPONSOR: HOUSE SPEC. COMM. ON FISH_____
 SUBJECT: SPORTSFISHING CHARTER VESSELS_____
 LOCAL MODERATOR: MABEL FENNIMORE_____

TESTIFIED:

NAME/REPRESENTING	ADDRESS	PHONE
-------------------	---------	-------

1. DOUG SMITH, BOX 1201, WRANGELL, AK. 99929. 874-3447
2. JIM GOVE , BOX 307, WRANGELL, AK. 99929. 874-2381

OBSERVED: 0

TESTIFIED: ___2_____
 OBSERVED: ___0_____
 TOTAL: ___2_____

TIME START: ___8:30AM___
 TIME END: ___10:30AM___

* DELIVER TO: TCJNO

* ORIGINAL

* SENT: 05/01/86 TIME: 13:49
* FROM: HARRY MANDREGAN
* SUBJECT: FINAL STATS T/C 05/01/86
* PRINT DATE: 05/01/86 TIME: 13:49

*** FINAL T/C STATS ***

DATE: __MAY 1ST, 1986__
SITE: __ANCHORAGE, ALASKA__
SPONSOR: __HOUSE SPECIAL COMMITTEE ON FISHERIES__
SUBJECT: __SPORTFISHING CHARTER VESSELS__
LOCAL MODERATOR: __DAVID J./HARRY T.M./JEAN M.____

TESTIFY:

NAME/REPRESENTING

ADDRESS

PHONE

OBSERVE: NAME/REPRESENTING

ADDRESS

PHONE

1. KAREN BRANDT

267-2315

TESTIFIED: __0__

TIME START: __8:30 AM__

OBSERVED: __1__

TIME END: 11:00 AM__

TOTAL: __1__

Testimony To The Fisheries Special Subcommittee

Alaska Trollers Association

Our Association contends that guided sportsmen, especially in Southeast Alaska, must be defined as a separate user group since there is an alarming growth in both charter and guided lodge fishing operations which threaten to upset the delicate allocation balance for species such as king and coho salmon.

It is important to explain that there is a finite number of fish available. King and coho salmon are a fully utilized resource in Southeast Alaska. Chinook are the most highly-regulated salmon under the U.S./Canada Treaty. They are also the most highly sought after by the sports fishing interests. The abundance of king salmon under the treaty rebuilding quota is such that commercial fishermen must: (1) curtail directed fishery to limit harvest of king salmon to times when they can coincidentally catch other species or target directly on hatchery kings and, (2) they must face lost opportunity in harvesting other species of salmon by trying to minimize their king salmon harvest. This minimizing of king salmon harvest is done to reduce any type of mortalities caused by a by-catch of kings which could occur once the quota number of king salmon is caught. This available abundance during rebuilding is attractive to unregulated fisheries. The U.S./Canada Treaty clearly states that we cannot institute new fisheries, nor should we increase effort on these king salmon. Our Association is greatly concerned that future increases in charter boat and/or guided trips will increase fishing effort, thus

causing a ripple effect in all commercial and sport fishing in Southeast Alaska. Such increased efforts by guided sportsmen would certainly lead to quotas being met early in the season which would result in increased "non-retention-type fisheries". Studies done by Fish and Game have shown, for example, that guided fishermen on the Kenai River are really "super fishermen" (that is, they are not just sportsmen, but are super sportsmen). They show that only 20% of the sportsman on the Keni are guided, yet they capture half of the sports catch.

Unregulated fisheries have potential for massive growth. Note that handtrollers went from 250 boats in 1972 to 3,000 in 1978. Charter boats in Southeast Alaska have increased from 97 boats in 1984 to 172 in 1985. Since much of the charter increase is occurring in high mixed stocks, these charter operations are working on fixed-number, or fixed-allocated fish. As shown elsewhere, the charter boat fishery is a large growth fishery, and growth under the U.S./Canada Treaty of any effort, cannot occur. The increased efficiency of guided sportsmen would result in increased catches of king salmon. Unless the number of fish available increase, then their take must come from other users. By taking fish from commercial fishermen, you are not creating a new industry with new fish and new dollars, but are transferring fish and dollars from the commercial industry. If you are taking dollars from commercial industry, especially an industry like trolling which is 87% resident, then you are talking about lost revenues, and lost taxes (both Local and State). The commercially caught fish yield a raw fish tax which goes both to State and

Local governments. Also, since the fishermen are mostly resident, the ripple effect on property tax, and employment factor can certainly be demonstrated. The reduced number of fish going through processing plants could effect processor and other forms of local employment. The ripple continues in effecting the values of limited entry permits in a commercial fishery.

Certainly the first to be effected by increased charter catches would be the sportsfishermen; next would be trollers. Because of how our regulations are presently made, professional guides are hiding under the guise of "sportsfishermen". As guides increase catch, mostly to non-residents, it effects sportsfishermen's allocation. This problem occurred on the Kenai River. Allocation numbers for sportsfishermen would not remain openended with any increase in growth.

It is certainly important to understand that regulations cut both ways - it can both protect existing charter fishermen from overgrowth from outside, in other words non-residents, as we're seeing at present, but it also can cause regulation/allocation. Presently, most of our charter fishermen and guides are small operations, and the 6-line limit that exists is important for them to stave off the influx of large out-of-State charter boats. While actually defining charter guides so that they can be regulated by the Board of Fish, existing resident charter and guide fisheries would receive well-needed protection under the Law.

In summary:

- 1) There is a limited number of fish legally available during rebuilding under the U.S./Canada treaty.

- 2) Commercial users are strictly controlled.
- 3) All users must remain within the allocation balance during Treaty rebuilding.
- 4) Sport fishing with a guide is a different method of fishing because of increased efficiency.
- 5) Our Association feels it is extremely important that guided lodge fishing operations and charter boats must be definable outside the realm of the general term "sportsfishermen" so that both commercial and existing charter fishing operations can be protected.

UFA —

Would like to support apparent desire of Charter Boats to be recognized as a commercial industry but not necessarily a commercial fisheries group.

Would like to support Charter Boats' desire to be a separate sports fisheries.

Would invite Charter Boats to provide inputs of thoughts to UFA so that UFA might be able to support wherever appropriate.



Alaska State Legislature

House of Representatives

SPECIAL COMMITTEE ON FISHERIES

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

HEARING DATE:

May 1, 1980

Sport Fish Charter
Operations

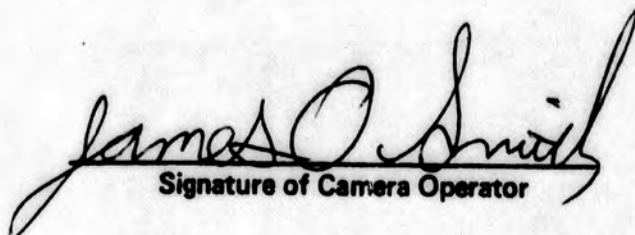
NAME (Please Print)	ADDRESS	REPRESENTING	TESTIFY (Yes or No)	PHONE NUMBER
✓ LT. Conrad Seibel	Dept. Public Safety - Juneau		Yes	789-2161
✓ Beth Stewart	AK Dept. of Fish & Game Juneau		No	465-4110
✓ Dick Logan	AK Dept of Fish & Game Juneau		No	465-4180
✓ Paul Troeth	AK Div. of Ins -	Div of Ins & (3-elf- Charter)	Yes	465-2515
✓ Ted Museth	Elfin Cove	ADPAC Bd of Fisheries	Yes	465-4110
✓ Earl Krygier	130 Second #213	Alaska Trollers Assoc	Yes	586-9400
✓ Don Kubly	Box 210207 AKBN	Club Pacific	Yes	789-5451
✓ Lorry Spangler	Br K Juneau	AG Office	Yes	465-3500
Sack Cadigan	Senate Bldg Juneau	UFA	Yes	586-7920

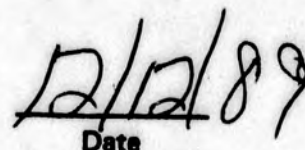


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Official Business

Alaska State Legislature

House of Representatives

Special Committee on Fisheries

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

M E M O R A N D U M

DATE: March 20, 1985

TO: Members of the Press Corps

FROM: Peter Goll *Peter Goll*
Chairman
Special Committee on Fisheries

SUBJECT: Subsistence Briefing on Thursday, March 21

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

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

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

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

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

SUBSISTENCE ISSUES PACKET

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Rep. John G. (Jack) Fuller
Bush Caucus Chairman
March 15, 1985

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

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 288

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

10 * Section 1. FINDINGS. The legislature finds that

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

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

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

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

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

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

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

1 size limitations on the taking of fish;

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

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

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

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

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

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

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

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

25 (12) personal use fishing.

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

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

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

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

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

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

16

HB 288

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

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

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

A zero fiscal note was attached.

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

"Dear Representative Grussendorf:

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

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

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

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

HB 288

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

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

Sincerely,

/s/

Bill Sheffield
Governor"

MEMORANDUM

State of Alaska

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

DATE: March 15, 1985

FILE NO:

TELEPHONE NO: 465-4100

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

SUBJECT: Management Issues
Arising From the
Madison Decision

INITIAL ASSESSMENT

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

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

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

COOK INLET/KENAI RIVER/SUSITNA RIVER SALMON

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

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

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

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

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

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

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

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

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

NAKNEK RIVER SALMON

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

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

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

COPPER RIVER/PRINCE WILLIAM SOUND SALMON

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

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

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

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

MEMORANDUM

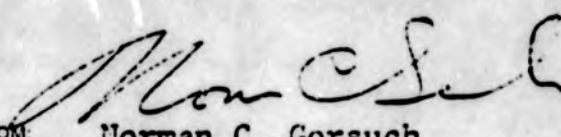
State of Alaska

TO: Hon. Jolin, Chairman
Joint Boards of Fisheries and Game

DATE: March 11, 1985

FILE NO: 366-375-85

TELEPHONE NO: 465-3600

FROM: 
Norman C. Gorsuch
Attorney General

SUBJECT: Subsistence

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

The state statutes require:

- That subsistence hunting and fishing be allowed, unless the resource would be harmed.
- That subsistence be given a priority, if restrictions are necessary.

Before Madison:

- These special protections applied to fishing and hunting by rural Alaskans.
- Because subsistence consisted only of those rural harvests, the boards were able to accomodate non-state resident and guided hunting, personal use net fishing by non-rural Alaskans, sport fishing, and commercial fishing.
- The state was in compliance with ANILCA.

After Madison:

- All Alaskans may engage in subsistence fishing or hunting.
- Subsistence fishing or hunting on a resource by all Alaskans cannot be restricted unless all non-subsistence uses are first eliminated.
- Example: The Prince William Sound commercial fishery may need to be restricted or even closed if necessary to accommodate the dip net fishery in the Copper River.

- Example: The Kenai River and Susitna drainage sport fisheries may need to be restricted or even closed if "subsistence fishing" by gill net must be allowed in large areas of Cook Inlet closed in recent years.
- Example: All Alaskans could subsistence fish near Tyonek for kings, near Angoon for cohos, in the Naknek River for kings, sockeye, and coho, and in the Iliamna-Lake Clark drainage for sockeye, unless any associated sport or commercial fishery were closed.
- Example: For any permit hunt, non-state resident and guided hunting may need to be eliminated.
- If the boards cannot protect fishing and hunting by rural Alaska residents under the state statutes, non-compliance with ANILCA could mandate some federal action.
- It is unclear precisely what federal management would entail, but it has been argued that besides all federal land, all navigable waters would be affected, and that possibly some state lands would be affected if migratory species were involved.

NCC/LIS:rn

MEMORANDUM

State of Alaska

TO: Don Collinsworth, Commissioner
Department of Fish and Game

DATE: March 8, 1983

FILE NO: 166-423-83

TELEPHONE NO:

FROM: Norman C. Gorsuch
Attorney General

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

By: Larri I. Spengler
Assistant Attorney General
Natural Resources-Anchorage

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

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

4. Critical
Shortage*

Total closure
necessary

No uses may be
allowed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Department of Fish and Game
166-423-83

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

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

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

LIS/jmo

MEMORANDUM

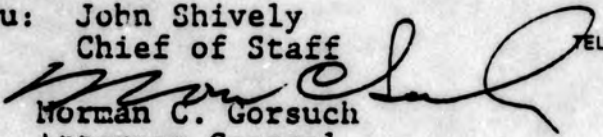
State of Alaska

TO: Honorable Bill Sheffield
Governor

DATE: March 6, 1985

Thru: John Shively
Chief of Staff

FILE NO: 366-375-85

FROM: 
Norman C. Gorsuch
Attorney General

TELEPHONE NO: 465-3600

SUBJECT: Briefing memorandum:
subsistence

I. Suggested Attendees

- A. Governor Sheffield and appropriate staff
- B. Department of Fish and Game
 - 1. Don W. Collinsworth, Commissioner
 - 2. Dennis D. Kelso, Deputy Commissioner
 - 3. Steven R. Behnke, Director, Division of Subsistence
- C. Department of Law
 - 1. Norman Gorsuch, Attorney General
 - 2. Larri Irene Spengler, Assistant Attorney General

II. Issue Summary

- For several years, the Boards of Fisheries and Game have implemented the state subsistence law in a way which protected fishing and hunting by rural Alaskans.
- At the same time, the boards provided reasonably for other uses, such as personal use net fishing by non-rural Alaskans, sport fishing, and commercial fishing.
- This exercise of regulatory authority had been certified as complying with the federal subsistence law, ANILCA.

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

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

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

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

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

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III. Necessity for Governor's Briefing

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

IV. Background

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

1. The legislature in 1978 intended to protect fishing and hunting by individuals who reside in rural areas and communities in which the taking of fish stocks and game populations for personal and family consumption is a significant part of the local economy.
2. The eight criteria developed by the joint boards correctly identified subsistence uses in rural areas and communities.
3. Fishing by net for personal use by people from other areas of the state could be accommodated through the personal use fishing category established by the Board of Fisheries in regulation.
4. Personal use fishing did not have a priority over sport fishing and commercial fishing.

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

1. The legislature in 1978 did not intend that subsistence uses were to be limited to hunting and fishing by rural Alaska residents.
2. The legislature in 1978 did not intend subsistence uses to be identified in terms of the uses of an area or community.
3. Conversely, the legislature in 1978 did not intend a "grandfather" rights, limited entry-type system to control eligibility for subsistence.
4. The legislature in 1978 intended that subsistence uses could be restricted only if it is necessary for sustained yield purposes and if non-subsistence uses -- sport and commercial fishing, and by analogy, non-state-resident and trophy hunting, and big game guiding -- have already been eliminated.
5. If a situation requires restriction of subsistence uses, distinctions among subsistence users will be based on the three criteria contained in the statute: customary and direct dependence on the resource, local residency, and availability of alternative resources.

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V. Relevant Laws

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

B. Federal law:

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

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

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

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

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VI. Alternatives

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

1. All hunting and all net fishing for personal use by all Alaskans is now defined as "subsistence uses," which must be authorized unless the resource will be harmed, and which must be given a priority over sport and commercial uses.
2. As participation increases in a subsistence fishery, sport and commercial fishing must be closed before subsistence fishing can be restricted. (For example, theoretically the Prince William Sound commercial fishery could be closed because of an increase in "subsistence fishing" in the Copper River.)
3. Similarly, all commercial big game guiding and all non-state-resident and trophy hunting would have to be eliminated before subsistence hunting by Alaska residents could be restricted.
4. Subsistence fishing would probably have to be authorized any place in the state where it had been authorized in the past, unless the resource would be harmed. (For example, Madison could require areas in Cook Inlet closed to subsistence fishing for years to reopen, possibly affecting the Kenai River and Susitna drainage sport fisheries.)

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5. Assuming non-compliance with ANILCA, the following could result:
 - a. Federal management of some kind on all federal lands and possibly all navigable waters of the state could be asserted by the Department of Interior, or sought through judicial action.
 - b. One million dollars in matching federal funds authorized by ANILCA would be lost to the state.
 6. It would not be possible for the state to resume marine mammal management.
- B. Amend the current statutes to return the regulatory authority that the boards exercised before Madison.
Consequences:
1. By inserting the words "rural Alaska residents" into the definition of subsistence uses, the scope of uses qualifying for the protection and priority of the subsistence law would be narrowed.
 2. By inserting the words "rural Alaska residents" into the definition of subsistence uses, compliance with ANILCA could be assured.
 3. By establishing the personal use fishing category in statute, harvest opportunities for people who do not qualify for subsistence uses could be protected, without giving those uses a priority over sport and commercial fishing.

MEMORANDUM

State of Alaska

TO: Hon. Bill Sheffield
Governor

DATE: February 25, 1983

FILE NO: 166-448-83

TELEPHONE NO:


FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Subsistence law:
real and perceived
problems

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

OVERVIEW

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

STATE LAW

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

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

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

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

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

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

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

FEDERAL LAW

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

ACTUAL PROBLEMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PERCEIVED "PROBLEMS"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

Sec. 16.03.251. Regulations of the Board of Fisheries.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.050) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources. (§ 3 ch 206 SLA 1975; am § 2 ch 215 SLA 1976; am § 4 ch 151 SLA 1975; am §§ 1, 2 ch 110 SLA 1980)

Sec. 16.05.255. Regulations of the Board of Game.

(b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.050) permitting the taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of game resources on a sustained-yield basis. Whenever it is necessary to restrict the taking of game to assure the maintenance of game resources on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board

shall establish restrictions and limitations on and priorities for the consumptive uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources. (§ 3 ch 206 SLA 1975; am § 5 ch 151 SLA 1973)

Sec. 16.05.940. Definitions. In AS 16.03.010 — 16.03.950 /

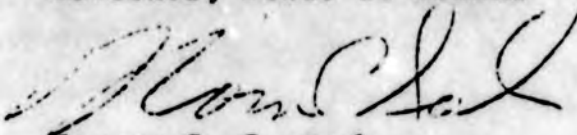
(26) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife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

ATTACHMENT B

MEMORANDUM

State of Alaska

TO: Honorable Bill Sheffield
Governor, State of Alaska

FROM: 
Norman C. Gorsuch
Attorney General

DATE: February 22, 1985

FILE NO: 822-642-82

TELEPHONE NO: 465-3600

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

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

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

- The legislature in 1978 intended to protect fishing and hunting by individuals who reside in rural areas of the state which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the area.
- The eight criteria developed by the board correctly identified subsistence uses in rural, reliant areas.
- The harvest of people in other areas of the state could be accommodated through the personal use fishing category, created in regulation by the Board of Fisheries.
- Personal use fishing did not have a priority over sport fishing and commercial fishing.

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

- The legislature did not intend that subsistence uses were to be limited to rural uses, and the boards do not have the authority to do so.
- The legislature did not intend subsistence uses to be identified in terms of the uses of a community or area.
- The legislature did not intend that people qualify for subsistence fishing on an individual basis, and there is no authority to develop a "grandfather" rights system with respect to subsistence.

Honorable Bill Sheffield
Governor, State of Alaska

February 22, 1985
Page 2

- The legislature intended that subsistence uses could be restricted only if it is necessary to restrict harvest for sustained yield purposes and if sport and commercial uses have already been eliminated.
- If a situation requires restriction of subsistence uses, distinction among subsistence users will be based upon the three statutory criteria, customary and direct dependence on the resource, local residency, and availability of alternative resources.

With regard to the federal subsistence law:

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

LIS:rn

cc: (with attachment)

Don Collinsworth
John Shively
Lenny Boston
John Greeley
Molley McCammon

ALASKA COURT SYSTEM NEWS RELEASE

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

Court Strikes Down Fisheries Regulation

Madison v. Alaska Department of Fish and Game

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

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

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

The Alaska Supreme Court Friday struck down a Board of Fisheries regulation designed to identify eligibility for subsistence fishing in the Cook Inlet region.

Under the regulation, certain residents of the Kenai coastline and an area near Homer were forbidden to fish for subsistence purposes. The regulation had been declared valid by Superior Court Judges Victor D. Carlson and Paul B. Jones.

The supreme court, in an opinion by Justice Daniel A. Moore, Jr., held that the board erred in denying subsistence permits to certain residents who had fished with set nets for personal and family use for many years.

The supreme court found that the board's regulation on subsistence uses was inconsistent with Alaska law because the regulation was too restrictive.

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

END

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, 19

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

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

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

MOORE, Justice.

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

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

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

I. SUMMARY OF FACTS

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

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

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 297 (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)