

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672

1249 SCOMM 43: HOUSE SPEC. COMMITTEE ON FISHERIES 1985-86

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

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the Board of Fisheries.

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

5. AS 16.05.251(b) states:

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

(Footnote Continued)

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

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

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

(2) local residency; and

(3) availability of alternative resources.

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

6. AS 16.05.251(a) states:

The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedures Act (AS 44.62) for

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

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

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

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(9) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote fish research, management, education and information and to train persons for fish management;

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

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

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

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

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

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

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

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

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

CHARACTERISTICS OF SUBSISTENCE FISHERIES.

(a) The Board of Fisheries finds that certain customary and traditional practices

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) a use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.

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

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

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

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

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

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

On appeal, Madison and Gjosund seek reversal of the two trial court decisions. They claim that the board did not act within the legislative authority granted by AS 16.05.251(b) and AS 16.05.940(22) and (23) when it adopted the ten characteristics ultimately codified as 5 AAC 01.597.¹⁰

II. STANDARD OF REVIEW

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

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

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

In Kelly v. Zamarello, 486 P.2d 906, 917 (Alaska 1971), we stated that the "reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations." However, the issues in this case concern statutory interpretation of the words "customary and traditional" and the question whether the board has acted within the scope of its statutory authority. Such issues "fall into the realm of special competency of the courts." Alaska Public Utility Commission v. Municipality of Anchorage, 555 P.2d 262, 266 (Alaska 1976). See also State, Commercial Fisheries Entry Commission v. Templeton, 398 P.2d 77, 80 (Alaska 1979).

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

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

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

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

III. LEGISLATIVE HISTORY OF THE 1978 SUBSISTENCE LAW

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

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

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

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

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

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

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

The House Special Committee on Subsistence drafted a letter of intent for House Bill 960¹¹ that supports our interpretation. With respect to AS 16.05.251(b) (which was § 6 of House Bill 960),¹² the letter of intent made clear the priority to be given subsistence uses in general over sport and commercial uses and explained the two-tier system among subsistence users.

Sections six and seven: These two sections, which are virtually identical for the Boards of Fisheries and the Board of Game, are intended to statutorily set out the priority given to subsistence use of fish and game resources. . . . Further, these sections set forth a priority of users if restrictions are needed because of the unavailability of resources. The priority list is an attempt to insure that those with the most dependence upon the fish and game resources are the last to be restricted.

If there is a need to restrict the taking of fish or game in order to avoid damaging the fish stocks or game populations, or in order to assure that subsistence users may continue to take fish or game, it is the intent of the Committee that sports or commercial use be restricted before

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

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

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

(Emphasis added).

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

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

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

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

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

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

(Emphasis added).

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

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

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

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

(Emphasis added).

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

[I]t is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs and traditions of Alaskan residents. The legislature further finds that beneficial use of those resources by all state residents should be carefully monitored and regulated with as much input as possible from the affected

users, so that the viability of fish and game resources is not threatened and so that resources are conserved in a manner consistent with the sustained yield principle.

(Emphasis added).

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

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

(Footnote Continued)

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

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

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

(Footnote Continued)

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

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

15. The board stipulated in 1982 that it violated

(Footnote Continued)

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

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

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

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

(Footnote Continued)

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

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

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

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

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

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

(Footnote Continued)

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

The board's regulation, 5 AAC 01.597, is inconsistent with the legislative intent to provide guidelines for the protection of subsistence fishing. The regulation exceeds the authority delegated to the board because it operates too restrictively in its initial differentiation between subsistence and non-subsistence uses. Under a statute designed to protect subsistence uses, the board has devised a regulation to disenfranchise many subsistence users whose interests the statute was designed to protect.

The decision of the two trial courts that 5 AAC 01.597 is consistent with AS 16.05.251(b) and AS 16.05.940(22) and (23) is REVERSED.

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

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

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

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

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

Article 2. Boards of Fisheries and Game.

Section

251. Regulations of the Board of Fisheries

255. Regulations of the Board of Game

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**PART 8.
SUBSISTENCE HUNTING, FISHING,
AND TRAPPING**

Chapter

99. Subsistence Uses

**CHAPTER 99.
SUBSISTENCE USES**

Section

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) live closest to the resource;

(2) have the fewest available alternative resources; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Authority: AS 16.05.060

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

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

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

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

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

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

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

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

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

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

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

(10) a use pattern which includes reliance on

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

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

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

Authority: AS 16.05.251(b)

ARTICLE 12. PRINCE WILLIAM SOUND AREA

Section

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

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

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

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

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

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

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

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

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

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

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

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

(c) Repealed 6/30/83.

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

Authority: AS 16.05.060
AS 16.05.251

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

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

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

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

Authority: AS 16.05.060

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

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

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

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

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

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

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

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

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

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

(b) The department shall

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

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

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

(4) insure that subsistence use priorities are met.

(c) In this section "upper Cook Inlet salmon

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

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

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

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

ARTICLE 4. BOTTOMFISH FISHERY

Section

410. Fishing season

430. Gear

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

Authority: AS 16.05.250(2)

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

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

Authority: AS 16.05.251(a)(4)

ARTICLE 5. SMELT FISHERY

Section

510. Fishing seasons

531. Gill net specifications and operation

534. Identification of gear

535. Minimum distance between units of gear

550. Closed waters

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

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

(c) Smelt may not be taken in freshwater.

Authority: AS 16.05.251(2) and (10)

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

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

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

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

TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

FINDINGS

16 USC 3111.

Sec. 801. The Congress finds and declares that—

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

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

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

43 USC 1601
note.

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

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

POLICY

16 USC 3112.

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

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

scientific principles and the purposes designated, or expanded by or pursuant to this Act, the purpose of this title is to protect the subsistence uses of rural residents engaged in a subsistence way of life.

(2) nonwasteful subsistence uses of renewable resources shall be the priority on the public lands to restrict taking in order to assure the continued viability of fish or wildlife population or the taking of such population, the taking of subsistence uses shall be given priority over other consumptive uses; and

(3) except as otherwise provided by law, Federal land managing agencies shall give priority to subsistence activities on the public lands and to the viability of all wild renewable resources over adjacent landowners, Native Corporations, appropriate and other nations.

DEFINITIONS

Sec. 803. As used in this Act, the following definitions shall apply: (1) "family" means all persons living in the same household on a permanent basis; and (2) "barter" means the exchange of goods, services, or other items for subsistence uses, taken for subsistence uses.

(A) for other fish or game; (B) for other food or for other items if the exchange is for a limited period.

PREFERENCE FOR SUBSISTENCE

Sec. 804. Except as otherwise provided by Federal laws, the taking on public lands of nonwasteful subsistence uses shall be given priority over other consumptive uses. However, it is necessary to restrict the taking of fish and wildlife on such lands for subsistence uses to assure the continued viability of such population. The following shall be implemented through the application of the following criteria:

- (1) customary and direct dependence on the resource as the mainstay of livelihood;
- (2) local residency; and
- (3) the availability of alternative resources.

se of protecting their suitability for ending revision of the initial plans; and authorized by Congress the Department of conduct any further statewide roadless ion of National Forest System lands in e purpose of determining their suitability National Wilderness Preservation

ENCT MANAGEMENT AND USE

FINDINGS

and declares that—
the opportunity for subsistence uses by ka, including both Natives and non-ands and by Alaska Natives on Native ive physical, economic, traditional, and o non-Native physical, economic, tradi- ce;
aska is unique in that, in most cases, no s are available to replace the food gathered from fish and wildlife which pendent on subsistence uses;
e opportunity for subsistence uses of other lands in Alaska is threatened by n of Alaska, with resultant pressure on y sudden decline in the populations of h are crucial subsistence resources, by f remote areas containing subsistence ng of fish and wildlife in a manner mis principles of fish and wildlife

he policies and purposes of the Alaska nt Act and as a matter of equity, it is s to invoke its constitutional authority its constitutional authority under the commerce clause to protect and provide tinued subsistence uses on the public Native rural residents; and
st in the proper regulation, protection, h and wildlife on the public lands in tion of the opportunity for a subsistence f rural Alaska require that an adminis- lished for the purpose of enabling rural onal knowledge of local conditions and meaningful role in the management of subsistence uses on the public lands in

POLICY

red to be the policy of Congress that— ound management principles, and the populations of fish and wildlife, the lands in Alaska is to cause the least n rural residents who depend upon esources of such lands; consistent with wildlife in accordance with recognized

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

Ante. p. 2377.

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

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

DEFINITIONS

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

16 USC 3113.

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

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

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

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

PREFERENCE FOR SUBSISTENCE USES

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

16 USC 3114.

Priority criteria.

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

(2) local residency; and

(3) the availability of alternative resources.

LOCAL AND REGIONAL PARTICIPATION

16 USC 3115.

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

- (1) at least six Alaska subsistence resource regions which, taken together, include all public lands. The number and boundaries of the regions shall be sufficient to assure that regional differences in subsistence uses are adequately accommodated;
- (2) such local advisory committees within each region as he finds necessary at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in paragraph (3)(D)(iv) of this subsection; and
- (3) a regional advisory council in each subsistence resource region.

Regional advisory council, authority.

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

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

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

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

Annual report to Secretary.

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

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

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

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

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

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

(c) The Secretary, in performing his monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary may choose not to follow any recommendation which he determines is not supported

by substantial evidence, violates recognized wildlife conservation, or would be detrimental to subsistence needs. If a recommendation is not supported by substantial evidence, the Secretary shall set forth the factual basis for his decision.

(d) The Secretary shall not implement this section if within one year from the date the State enacts and implements laws of subsistence uses which are consistent with, and which provide for, the participation specified in sections 804 and 805, unless and until repealed, shall supersede such sections govern State responsibility for the taking of fish and wildlife on the public lands. Laws establishing a system of local advisory councils consistent with section 805 shall not be subject to State rulemaking authority shall consider the recommendations of the regional councils concerning wildlife populations on public lands within the region for subsistence uses. The regional councils shall have the authority to make recommendations to the State rulemaking authority during the administrative proceedings of such authority. The Secretary may choose not to follow any recommendation which he determines is not supported by substantial evidence, violates the principles of fish and wildlife conservation, or would be detrimental to subsistence needs. If a recommendation is not supported by substantial evidence, the Secretary shall set forth the factual basis and the reasons for his decision.

(e)(1) The Secretary shall reimburse the State for the costs of the regional advisory councils established by the State pursuant to paragraph (2) of subsection (d) and the operation of the State committees so long as such committees are established pursuant to paragraph (2) of subsection (d). Such costs shall be verified in a statement by the Secretary and shall be determined to be adequate and accurate. Such costs shall be in addition to any grant to which the State is entitled from appropriations of the Interior.

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

FEDERAL MONITORING

SEC. 806. The Secretary shall monitor the subsistence preference set forth in section 804 and the Committee on Interior and Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources and Public Works of the Senate annually

D REGIONAL PARTICIPATION

otherwise provided in subsection (d) of this Act, the date of enactment of this Act, the State shall establish—

ask a subsistence resource regions which, the all public lands. The number and boundaries shall be sufficient to assure that regional subsistence uses are adequately accommodated; or, committees within each region as he may determine, after notice to the existing State fish and game advisory council, to adequately perform the functions of the local council set forth in paragraph (3)(D)(iv) of this subsection.

advisory council in each subsistence resource

council shall be composed of residents of the following authority:

1. evaluation of proposals for regulations, plans, and other matters relating to subsistence wildlife within the region;

2. a forum for the expression of opinions and persons interested in any matter related to the taking of fish and wildlife within the region; 3. representation of local and regional participation in the decisionmaking process of this title in the decisionmaking process of the taking of fish and wildlife on the public lands for subsistence uses;

4. of an annual report to the Secretary which,

5. information on current and anticipated subsistence wildlife populations within the region; 6. information on current and anticipated subsistence wildlife populations within the region; 7. a strategy for the management of fish and wildlife within the region to accommodate subsistence uses and needs; and 8. recommendations concerning policies, standards, and regulations to implement the strategy. The State fish and game advisory committees or such local committees as the Secretary may establish pursuant to paragraph (2) of this subsection may provide advice to the regional advisory councils in carrying out the functions in this paragraph.

9. The Secretary shall assign adequate qualified staff to the State and make timely distribution of all available scientific support data to the regional State fish and game advisory committees or committees as the Secretary may establish pursuant to subsection (a).

10. The Secretary shall perform his monitoring responsibility and in the exercise of his closure and other over the public lands, shall consider the needs of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their subsistence uses. The Secretary may choose not to act if he determines that the action is not supported

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

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

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

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

FEDERAL MONITORING

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

Implementation.

Reimbursement to States.

Report to Congress.

Report to congressional committees.
16 USC 3116.

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

JUDICIAL ENFORCEMENT

Civil actions.
16 USC 3117.

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

Hearing.

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

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

PARK AND PARK MONUMENT SUBSISTENCE RESOURCE COMMISSIONS

16 USC 3118.

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

Subsistence hunting program.

investigations conducted jointly or separately by the administrative personnel of the State and the Department of the Interior, information submitted by, and at the request of, appropriate local advisory committees and boards, and any testimony received in a public hearing by the commission prior to preparation of the report, shall be a location or locations in the vicinity of the monument. Each year thereafter, the commission, after consulting with appropriate local committees and regional boards, shall collect relevant data and holding one or more public hearings in the vicinity of the park or park monument, shall submit a report to the Secretary and the Governor for any action thereon, and its implementation which the commission deems appropriate. The Secretary shall promptly implement any action approved by the Governor.

(b) The Secretary shall promptly implement recommendations submitted to him by each committee. If the committee finds in writing that such program or recommendation is in accordance with recognized principles of wildlife conservation and that the establishment of a monument is contrary to the purposes for which the monument is established, or would be detrimental to the subsistence needs of local residents, the Governor, the Secretary shall take no action on the recommendation for sixty days during which period the committee may propose changes in the program or recommendation. If the committee approves the commission which the Governor provides for the establishment of the monument, the Secretary shall implement the recommendation.

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

COOPERATIVE AGREEMENT

SEC. 809. The Secretary may enter into contracts or otherwise cooperate with other Federal agencies, corporations, other appropriate persons acting through the Secretary of State, other agencies, and other persons for the purposes and policies of this title.

SUBSISTENCE AND LAND USE

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

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

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

views on the effectiveness of the implementing the State's provision of such preference, any other administrative authority to which such views or uses, the views of the State, and any other views.

OFFICIAL ENFORCEMENT

ents and other persons and organizations through the State or the Federal Government to submit evidence uses set forth in section 804 (or as set forth in a State law of general application) has fulfilled the requirements of section 804 of any State or Federal (as appropriate) law which may be available, file a civil action in Court for the District of Alaska to require such actions as are necessary to provide for the priority. If the State, the Secretary may be joined as a party. The court may grant preliminary injunctive relief if the granting of such relief is appropriate and the action is based. No order granting such relief shall be issued until after an opportunity for a hearing has been afforded. If filed against the State, the court shall grant preliminary relief, by directing the State to take such action as is necessary to satisfy the requirements of section 804; such regulations shall be incorporated in the order, and such order shall be valid only if it is in accordance with the rules normally provided by State law for the enforcement of such orders against residents and other persons and organizations. The costs and attorney's fees in an action filed pursuant to this section shall be paid by the parties and attorney's fees.

to this section shall be assigned for
ible date, shall take precedence over other
cket of the United States district court at
edited in every way by such court and any

e Federal judicial remedy created by this
d other residents who, and organizations
1 failure of the State to provide for the
; set forth in section 804.

NT SUBSISTENCE RESOURCE COMMISSIONS

ear from the date of enactment of this Act, the Governor shall each appoint three members to the commission for each national park or park monument. If no such uses are permitted by this Act, the commission established pursuant to section 805 shall be composed of three members to be appointed by the Governor within the area in which the park or park monument is located. The Governor shall appoint three members to the commission from either the regional advisory council or a committee of citizens within the region and also engages in the park or park monument. Within eighteen months of the enactment of this Act, each commission shall submit to the Secretary and the Governor a program of management for the park or park monument. Such program shall include technical information and other data required for the park or park monument to be produced by necessary field studies or

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

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

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

COOPERATIVE AGREEMENTS

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

16 USC 3119.

SUBSISTENCE AND LAND USE DECISIONS

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

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

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

16 USC 3120.

Hearing.

Program and recommendation implementation.

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

Notice and hearings.

42 USC 4332.

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

48 USC note prec. 21.

48 USC 1601 note.

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

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

ACCESS

16 USC 3121.

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

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

RESEARCH

16 USC 3122.

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

PERIODIC REPORTS

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

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

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

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

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

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

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

(6) a description of those actions taken or to be taken in the future, to permit the continuation of activities relating to subsistence uses;

(7) such other recommendations that the Secretary may deem appropriate.

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

REGULATIONS

SEC. 814. The Secretary shall prescribe regulations necessary and appropriate to carry out his authority under this title.

LIMITATIONS, SAVINGS

SEC. 815. Nothing in this title shall be construed to—

(1) granting any property right in a resource of the public lands or as pertaining to the use of fish and wildlife within a conservation area, or be inconsistent with the conservation of natural and healthy wildlife. No privilege which may be granted to an individual with respect to subsistence uses shall be granted to any other individual;

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

(3) authorizing a restriction on the use of public lands for nonsubsistence uses on the public lands and park monuments) unless it is necessary to protect healthy populations of fish and wildlife, or pursuant to other applicable law;

(4) modifying or repealing the provisions of any law governing the conservation or protection of fish and wildlife, including the National Wildlife Refuge Act of 1966 (80 Stat. 927; 16 U.S.C. 661-669), the Service Organic Act (39 Stat. 535, 16 U.S.C. 1631-1639), the Act of 1966 (80 Stat. 1091; 16 U.S.C. 1631-1639), the Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531-1544), the Mammal Protection Act of 1972 (86 Stat. 1361-1407), the Act entitled "An Act to provide for the protection of the Bald Eagle", approved June 8, 1947 (60 Stat. 742a-754), the Migratory Bird Treaty Act of 1918 (40 Stat. 755; 16 U.S.C. 703-711), the Federal Aid in Wildlife Conservation Act of 1939 (51 Stat. 917; 16 U.S.C. 669-669i), the Fishery Management Act of 1976 (90 Stat. 331; 16 U.S.C. 1801-1818).

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

CLOSURE TO SUBSISTENCE USES

16 USC 3126.

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

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

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

SUBMERGED LANDS STATUTE OF LIMITATION

43 USC 1631.

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

43 USC 1601
note.

subsection shall be a de novo determination
parcel which is the subject of the action.

(b) No agency or board of the Department (the Bureau of Land Management) shall have the navigability of water covering a parcel of land determined by a Native Corporation or Native Group under the Native Claims Settlement Act unless a determination of Land Management that the water covering the land is not navigable was validly appealed prior to the date of enactment of this Act. The conveyance or patent (whichever is executed) by the Bureau of Land Management conveying a parcel of submerged land to a Native Corporation or Native Group shall be the final determination of the Secretary of the Interior with respect to a decision by the Secretary of the Interior that the water covering such parcel is not navigable, unless the determination was validly appealed prior to the date of enactment of this Act.

(c) If the court determines that a parcel of land is the subject of a civil action described in subsection (b), the Native Corporation or Native Group to which the parcel is pursuant to the Alaska Native Claims Settlement Act awarded a money judgment against the plaintiff, the court shall award the plaintiff its costs and attorney's fees, including costs incurred on appeal.

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

(1) the statutes of limitation set forth in the applicable laws of the United States have expired with respect to every parcel of such land owned by such Corporation or Group; and

(2) a final judgment or order not subject to appeal or not obtainable in every civil action filed pursuant to this chapter.

(e)(1) Whenever a parcel of submerged la-
Native Corporation or Native Group is locate
of a conservation system unit such Corpor
State of Alaska may mutually agree that suc
by and conveyed to the State under the pro
the Alaska Statehood Act.

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

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

COMMENTS ON INTRODUCTION OF SUBSISTENCE LEGISLATION

MARCH 11, 1985

REP. JACK FULLER

465-3789

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

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

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

SUBSISTENCE COMMENTS, CONTINUED

MARCH 11, 1985

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

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

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

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

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REPRESENTATIVE
BEN GRUSSENDORF

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LEGISLATIVE COUNCIL

DISTRICT 3
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Alaska State Legislature



House of Representatives
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PRESS RELEASE #7

March 12, 1985

COMMENTS ON SUBSISTENCE BY REP. BEN GRUSSENDORF

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

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

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

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

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



STATE OF ALASKA
HOUSE OF REPRESENTATIVES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MAR 7 RECD

Alaska Fish and Wildlife Federation and Outdoor Council

and

Alaska Fish and Wildlife Conservation Fund
3780 McGinnis Dr.
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SPECIAL NOTICE

Alaska Supreme Court Subsistence Ruling

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

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

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

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

The Court opinion emphasized the following points:

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

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

The Administration Proposal

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

The Alaska Outdoor Council Position

The following points and options should be considered:

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

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

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

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

Bennett: Subsistence bill not likely this year

JUNEAU Empire 3-14-85

By DEAN FOSDICK
The Associated Press

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

obvious when he assigned the measure (SB331) to four different Senate committees after it was introduced Wednesday.

"It's highly controversial," Bennett told a reporter. "It needs to be studied. It involves resources and it's a legal problem," he said. "Many net users aren't happy with it. That's also the

case with various sports users and guides.

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

But Bennett's plan to ensure the measure gets lengthy hearings in the Senate runs counter to the prevailing

mood in the Democrat-led House, where a companion bill (HB388) was introduced Wednesday and routed to just two committees.

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

C2 Anchorage Daily News Wednesday, March 13, 1985

Sheffield to propose new subsistence law

By BRUCE SCANDLING
The Associated Press

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

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

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

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

Two groups of fishermen from Homer and along Cook Inlet sued the state over a fisheries board

ruling that only three small Cook Inlet villages qualified to set salmon nets for subsistence use.

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

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

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

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

Lawmakers said Tuesday the issue must be addressed, but they

want to approach the matter carefully.

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

Fuller chairs an organization of Bush lawmakers.

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

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

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

The ruling said subsistence use must be protected at the expense of other users such as commercial fish-

ermen, sport fishermen and big-game guides.

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

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

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

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

Ruling may reduce sports fishing on Kenai

By CRAIG MEDRED
Daily News reporter

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

Assistant Attorney General Larri Spengler and Deputy Commissioner of Fish and Game Steve Pennoyer told 400-members of the Alaska Sportfishing Association that an

Alaska Supreme Court ruling mandating a priority for subsistence makes it difficult for the state to regulate subsistence harvests in Cook Inlet.

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

Since there are no surplus salmon available for harvest in the

Kenai, he added, either sport or commercial fishermen are going to have to give up some fish to the new subsistence fisheries.

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

A group of subsistence fishermen filed suit. They said the board's decision illegally eliminated a fishery that had provided them with

food for many years. The Supreme Court agreed.

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

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

Attempt to limit fishery will bring suit, lawyer says

By RONNIE CHAPPELL
Daily News reporter

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

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

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

of the state's fish and game.

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

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

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

Fisheries Board member Bill Bonney is also concerned by the legislation proposed by the gover-

nor. The bill doesn't define what a rural Alaskan is.

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

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

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

Not everyone will choose to par-

ticipate in the subsistence fishery, he said. Between 1978 and 1981, the Cook Inlet subsistence catch increased from 3,735 to 14,755.

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

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

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

Anchorage Daily News 3/13/85

Subsistence law may be reworked

By BRUCE SCANDLING
The Associated Press

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADN 3-6-85

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News-Miner 24 pages

March 5, 1985

Governor ponders subsistence change

By DAN JOLIN
News-Miner Bureau

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

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

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

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

and Port Graham are on the other side of inlet, 10 miles southwest of Seldovia.

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

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

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

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

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

(See GOVERNOR, page 3)

GOVERNOR...

(Continued from page 1)

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

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

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

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

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

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

Subsistence priority at stake

Chitina status likely to change

By DERMOT COLE
Staff Writer

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

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

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

The Supreme Court offered its

News Analysis

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

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

Federal officials have warned in the past that unless the rural subsistence priority is enforced by the state, the federal government may step in to control fish and game on

federal lands because of provisions in the Alaska Lands act.

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

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

As Parr predicted, that actually happened last year when the state Board of Fisheries set up a system under which only residents of the (See *SUBSISTENCE*, page 3)

SUBSISTENCE . . .

(Continued from page 1)

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

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

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

The Supreme Court quoted Dillingham Rep. Nels Anderson, floor manager of the bill, as saying at the time "where people from Fairbanks make it a custom to go down to the Chitina area and if it was de-

termined that that resource was down to the point where only subsistence would be allowed, those people would be taken care of under this section."

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

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

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

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

Supreme Court drops subsistence bombshell

TUNDRA
DRUMS

Feb. 28, 1985

by Mary Lenz

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

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

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

And increased pressure on resources by a greatly expanded subsistence fishery near urban areas could set off another showdown with sportsmen's groups. In 1982, a petition backed by sports

groups to wipe out Alaska's statutes protecting subsistence was defeated.

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

Please turn to page 27

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

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

Fisheries Board spokesmen declined to comment.

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

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

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

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

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

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

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

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

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

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

Tundra Drums Feb. 28 (cont.)

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

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

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

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

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

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

Sparck said that federal law is very specific.

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

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

Lonner said he wrote a list of criteria in 1980 defining subsistence, but after he left the Fish and Game Department, the board added language that sub-

sistence was "rural only," which basically excluded communities connected by roads to cities of over 7,000 population.

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

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

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

State seeks grace period

by David Ramoer
Times Washington Bureau

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

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

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

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

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

Sheffield's comments came as he was wrapping up nearly a

week of meetings here with congressional and federal officials.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On other issues, Sheffield:

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

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

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

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

Enc Times 2/28/85

Court rejects Cook Inlet subsistence ruling

By DAVID FOSTER
Associated Press Writer

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

The regulation, adopted by the board in 1981, limited subsistence salmon fishing around Cook Inlet to residents of Tyonek, English Bay

and Port Graham, all small villages.

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

District and Superior court judges upheld the fish board's regulation, but the Supreme Court re-

versed those judgments, citing a 1978 state law enacted to protect subsistence hunting and fishing.

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

Moore delved into the 1978 law's legislative history, saying lawmakers meant to protect, not limit, the

"customary and traditional use of Alaska's fish and game."

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

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

term conflicts squarely with the legislative intent."

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

The court's opinion quotes state figures showing the number of subsistence permits issued in Upper

Cook Inlet jumped from 323 in 1978 to 1,331 in 1980. The number of salmon caught by subsistence fishermen increased from 3,735 to 14,755.

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

In 1981, the board adopted a set of

10 criteria to apply to all individuals and groups applying for subsistence permits.

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

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

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Subsistence decision could trigger federal-state conflict

By DERMOT COLE
Staff Writer

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

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

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

The court said Friday that subsistence is not limited to rural Alaskans and that in carrying out the law meant to protect "customary

and traditional" uses, other Alaskans should not be excluded.

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

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

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

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

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

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

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

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

(See RULING, Page 3)

RULING. . .

(Continued from page 1)

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

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

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

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

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

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

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

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

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

DRAFT

2. Sport fishing for king and other species of salmon on the Kenai and Naknek rivers and in the Susitna drainage may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to prevent that result.
3. Non-subsistence hunting, including commercial guiding activities may be significantly restricted and, in many cases, eliminated. Prior to the Madison decision the Board of Game had adequate regulatory flexibility to accommodate these users reasonably.

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

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

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

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

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

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



Official Business

Alaska State Legislature

House of Representatives

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Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

DATE: March 21, 1985
TO: House Resources Committee
SUBJECT: Special Committee on Fisheries
Comments on Subsistence

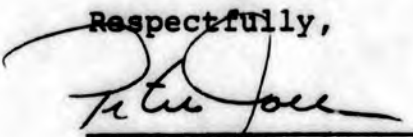
The Madison decision by the Alaska Supreme Court on subsistence has the potential of seriously disrupting the management of Alaska's fish and wildlife resources. According to testimony before the Special Committee on Fisheries, the Madison decision could force radical shifts in established patterns of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

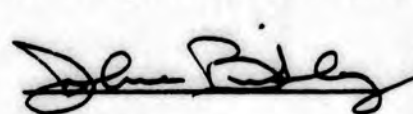
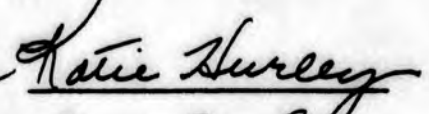
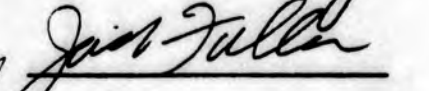
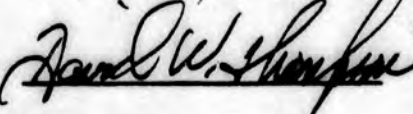
The Fisheries Committee received testimony on the Madison decision from the Department of Law, Department of Fish and Game, and chairman of the Joint Boards of Fisheries and Game. Although the state's fish and wildlife managers are still in the process of developing specific management strategies responsive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

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

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

Respectfully,


Peter Goll, Chair

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May, 1986

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

Jeanie Henry

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



KENAI RIVER SPORTFISHING ASSOCIATION

3301 "C" Street Suite 202
Anchorage, Alaska 99503
Phone (907) 276-1451



To: Alaska State Legislators

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

"We favor interim legislation this session having a sunset clause of December 31, 1985 that accomplishes:

- (1) Return of the regulatory jurisdiction of fish and game back to the boards of fish and game as it existed prior to the Madison decision of February 22, 1985 by the Alaska Supreme Court.
- (2) That the legislature then cause to have public hearings held state wide prior to the 1986 legislative session that would frame legislation that would accomplish a permanent solution to the relationship between subsistence, sport, commercial and personal use fisheries as well as all aspects of recreational and subsistence hunting."

Chaos must be remove from the management of our fish and game resource until a permanent solution be gained from public input from all citizens of the State of Alaska on the permanent use and allocation of fish and game. We cannot allow any situation to continue that has the potential of causing severe damage to the fishery resource. Resource regulation must be preserved.

Buy Bonnie

By: Bruce Wamack
Introduced: 03/11/85
Postponed: 03/11/85
Adopted: 03/14/85

RESOLUTION NO. 85-024

**A RESOLUTION IN SUPPORT OF HOUSE BILL NO. 253,
"AN ACT ALLOWING MUNICIPALITIES TO EXEMPT LAND
FROM PROPERTY TAXES AND FROM SPECIAL ASSESSMENTS
FOR FIRE PROTECTION SERVICE . . ."**

WHEREAS, the Fairbanks North Star Borough has a large portion of its population unprotected by Fire Service Districts; and

WHEREAS, the Fairbanks North Star Borough Fire Service Areas have had difficulty in getting total acceptance of proposals to create such Fire Service Districts, largely because larger land owners have not been able to be a part of the process; and

WHEREAS, the Fairbanks North Star Borough has supported differential land and improvement taxation for the past five years, and has investigated many potential taxation methods in order to provide safety and protection to areas of the Borough through equitable taxation; and

WHEREAS, the Assembly of the Fairbanks North Star Borough has reiterated its position during public meetings and public hearings in support of taxation only on improvements, including personal property affixed to the improvements upon the lands, and exemption of the assessment upon the land value.

NOW, THEREFORE, BE IT RESOLVED by the Assembly of the Fairbanks North Star Borough that we urge adoption of House Bill No. 253 to allow municipalities to exempt land from property taxes and from special assessments for fire protection services and fire protection facilities.

PASSED AND APPROVED THIS 14TH DAY OF MARCH, 1985.

Sandra Scott Stinger
Presiding Officer

ATTEST:

Mona Lisa Spence
Clerk of the Assembly