

ALASKA LEGISLATURE COMMITTEE FILES 1905-1900 00/2

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200 rural communities throughout Alaska" and "the economic importance of subsistence uses to the rural economy." H.R. Rep. No. 1045, 95th Cong., 2nd Sess. 10 (1978). Congress commented on the "subsistence-dependent villages in the area," and the tension over subsistence "between the rural and urban communities in the State." H.R. Rep. No. 97, 96th Cong., 1st Sess. 158 (1979). It was also intended that former residents of communities reliant on subsistence who were currently living in a larger population center would not be eligible to participate in "subsistence uses." Id. at 192.

Congress was concerned with the issue because "Alaska's more than 200 rural villages are unique in that they are the last communities in the United States in which a substantial number of residents are still dependent upon the harvest of renewable resources...." S. Rep. No. 413, 96th Cong., 1st Sess. 230-231 (1979). Additionally, Congress intended to protect "subsistence uses" which "have played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation." Id. at 269.

Those are but a few examples of Congress's concern with communities reliant upon resources. The clearest statement of that is included in the remarks of Representative Morris K. Udall, the chief sponsor of H.R. 39, just before ANILCA became law in December 1980:

It should also be noted that customary and traditional subsistence uses must be evaluated on a community or area basis rather than an individual basis.

126 Cong. Rec. H10546 (daily ed. Nov. 12, 1980) (statement of Rep. Udall). (Emphasis added.)

The fact that Congress was so concerned in enacting the federal subsistence law with communities reliant upon fish and game resources augments the evidence demonstrating that the board in adopting criteria which identified communities in Cook Inlet reliant upon fish and game resources was acting reasonably.

4. Conclusion

In providing guidelines for the board, the Alaska legislature created a definitional framework for "subsistence uses." The legislature thus avoided imposing a more rigid approach which would have entailed inherent risks identified by one commentator:

[S]ome content for the term "subsistence" must be agreed upon before a management scheme can be developed. This does not mean that such agreement should necessarily be in the form of a legislative definition. A too-rigid meaning ... could impinge on at least three other criteria: flexibility and assurances to both subsistence ... and nonsubsistence interests.

....

... An exhaustive statutory list of harvestable resources and permitted takers, methods, and uses not only would be difficult to generate but also would be too narrow and too rigid for practical administration. Use of animals and plants has varied widely among geographical regions, cultural groups and time periods. Harvesting methods have continued to evolve--particularly since introduction of high-powered hunting arms and motorized vehicles. Concentrations and locations of

resources, populations and users have also changed. These diverse factors will undoubtedly move rapidly in the future, and a legislative description of the uses intended to be permitted should provide both breadth and flexibility to deal with new conditions.

D. Kelso, "Legal Issues in Federal Protection for Subsistence on Proposed National Interest Lands," (unpublished) (1976), reprinted in H.R. Rep. No. 16, 95th Cong., 1st Sess. 273 (1977), at 407 and 412 (footnote omitted).

The board correctly determined that the legislature intended the definition of "subsistence fishing" to be narrowed by the 1978 amendments, and carried out its delegated responsibility to identify "subsistence uses" in a reasonable manner, consistent with the legislative guidelines of "customary and traditional."

C. The Board's Violation of the Public Meetings Law while Developing the Criteria in December 1980 Is Moot

A. explained in the statement of the case, the board in December 1980 gathered a great deal of information about the uses of salmon in Cook Inlet. In order to sort through that information, a committee was appointed, and its meetings were announced during the board meetings, and held during board recesses. (Volume 3, at 122-126) However, the state has stipulated that the committee meetings in December 1980 were conducted in violation of AS 44.62.310, which requires public meetings to be open. (M File 7, at 371-372)

Action taken contrary to the public meetings

requirement is void. AS 44.62.310(f). In University of Alaska v. Geistauts, 666 P.2d 424, 430 (Alaska 1983), the consequences of such voidness are discussed. The court concludes that the process which led to the void result must "begin anew." Id. Since that has already occurred three times since the violation in December 1980, the Madison court correctly concluded that count II, alleging procedural irregularities, was moot. (M File 4, at 296)

The first rehabilitation of the violation occurred in the same December 1980 meeting. After the committee reported to the board, with the first draft of the ten criteria, the board discussed the criteria and supporting reasoning in great detail. (Volume 10, at 8-54) The board concluded that the ten criteria accurately summarized the common threads that had appeared throughout the testimony and that had emerged from the information presented, and the full board then adopted the ten criteria. (M File 3, Exhibit H)

The second time the process began anew was in the spring 1981 meeting, which was not twice in regard to subsistence. The first notice was the board notice of proposed changes for March 1981, which stated in part:

The issues that will be before the board are the establishment of a subsistence salmon fishing permit system for Cook Inlet ...

(M File 3, Exhibit O) The second notice was the Cook Inlet subsistence fishing special notice, which stated in part:

The session will focus on the application of the State's subsistence law to salmon fishing in Cook

Inlet. The law sets a priority on certain customary and traditional uses of subsistence resources. The board intends to examine different methods for providing the priority in Cook Inlet.

(M File 3, Exhibit P)

As set out in the statement of the case, additional oral and written testimony was received during the spring 1981 meeting, and the board readopted the ten criteria, after slightly amending them. (M File 3, Exhibit I)

The third time the process began anew was in the December 1981 board meeting. The general legal notice for that meeting listed the subjects open for consideration, including the Cook Inlet subsistence fishery, which was noticed broadly. (M File 3, Exhibit W) The board could adopt, amend, repeal or take no action on the following:

set characteristics that describe or define subsistence uses and users that will be used by the board to identify subsistence fisheries; set locations open and closed to subsistence fishing; set fishing seasons, periods, gear requirements and restrictions; set conditions and requirements for obtaining subsistence fishery permits; set harvest limits; set fish marketing requirements.

(Id. at 3)

In addition to the general subject area being opened and noticed, a specific proposal in the board's proposal packet outlined the ten criteria already adopted by the board. (M File 3, Exhibit X)

Alaska law is clear that courts should not decide issues not actually in controversy. Greater Anchorage Area Borough v. City of Anchorage, 504 P.2d 1027 (Alaska 1972).

Mootness precludes judicial determinations. Jefferson v. Asplund, 458 P.2d 995 (Alaska 1969). The consequence of the voidness resulting from the violation of the public meetings law during the December 1980 board meeting is that the process must "begin anew." Since that has occurred on three occasions since the violation occurred, the matter is moot, and the court should not consider it.

D. The Board May Use the Criteria to Identify "Subsistence Uses" of Cook Inlet Salmon Regardless of the Biological Status or the Target Stocks

As discussed, prior to the board's development and application of the ten criteria, the "subsistence fishing" which was authorized in Cook Inlet was simply fishing for personal use with set gill nets, under the pre-subsistence law definition of that term. After the board developed the ten criteria, and it determined that no communities on the Kenai Peninsula except English Bay and Port Graham had evidenced "subsistence uses" of Cook Inlet salmon. (M File 3, Exhibit L) Thus, "subsistence fishing" was not authorized. However, in 1982 the board did authorize "personal use fishing." 5 AAC 77.546 and 5 AAC 77.547.

The Gjosund court upheld the ten criteria as a mechanism to identify "subsistence uses" which is consistent with the intent of the subsistence law. (G File 2, at 260-261, ¶¶ 6-8) However, the court then concluded that the board could not apply the criteria to see if what had been authorized as "subsistence fishing" was still "subsistence fishing" under the new definitions supplied by the subsistence law unless the target fish

stocks were in such jeopardy that the fishing required restriction. (Id. at 261, ¶¶ 9, 10.)

In reaching this conclusion, the court misconstrued AS 16.05.251(b) by melding its three distinct statutory mandates to the board. In order to understand the misconstruction upon which the court's conclusion is based, it is necessary to understand how AS 16.05.251(b) operates.

The first sentence of AS 16.05.251(b) states:

The Board ... shall adopt regulations ... permitting the taking of fish for subsistence uses unless ... adoption of the regulations will jeopardize ... sustained-yield....

Thus, unless sustained yield is jeopardized, the board is required to allow opportunities for "subsistence uses." Identifying these uses is implicitly authorized in the requirement to provide for them. At the same time, the board may, under AS 16.05.251(a) allow opportunities for nonsubsistence uses, such as "personal use fishing."

The second sentence of AS 16.05.251(b) states:

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

Thus, if increase in competition or decrease in harvestable surplus result in a relative resource shortage, restriction of some harvest opportunities may be necessary, and, if so, the priority for "subsistence uses" would come into play. The board can use any of the many management options available to it in imposing the needed restrictions on nonsubsistence uses and in

continuing to regulate "subsistence uses" in a way that protects the opportunity for "subsistence fishing." Of course, in extreme cases the option of precluding nonsubsistence uses would remain available.

The third sentence of AS 16.05.251(b) states:

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.

Thus, a more serious resource shortage resulting from greater increase in competition or decrease in harvestable surplus may require still further restriction of harvest opportunities, even after only "subsistence uses" remain. At that point, the criteria listed in the statute would form a basis for distributing the allowable harvest among the participants in "subsistence uses."

The statutory mandate contained in AS 16.05.251(b) that sustained yield always be the paramount concern is consistent with the constitutional requirement contained in article VIII, section 4 of the Alaska Constitution. If the status of a fish stock is such that maintenance of sustained yield requires that all harvest cease, no use (including subsistence) may be allowed.

The first requirement of AS 16.05.251(b) is that the board authorize the taking of fish for "subsistence uses." The board has determined in the ten criteria that "subsistence uses"

of salmon in Cook Inlet are targeted on specific stocks during specific seasons. 5 AAC 01.597(a)(3). Thus, "subsistence fishing" must be permitted on those specific stocks during those specific seasons. No matter what the biological status of the stocks is, the board may wish to examine the fishing that has been called "subsistence fishing" to determine what segment of it is really "personal use fishing" that may be authorized reasonably on whatever stocks and in whatever seasons the board selects, under its discretionary authority in AS 16.05.251(a), rather than being mandated on specific stocks and in specific seasons.

It is implicit in the requirement that the board authorize "subsistence uses" that it have the authority to identify those uses. That task is separate from the later portions of AS 16.05.251(b) which come into play when the priority has been triggered and when the biological status of the target stocks is relevant. The Gjosund court confused the relevance of the biological status of the resource at the priority stage with the requirement that "subsistence uses" be provided at the first stage.

E. The Classification Described by and Resulting from the Application of the Criteria Do Not Violate Equal Protection

1. Equal protection standards

Although plaintiffs allege violation of both the state and federal equal protection clauses, their brief focuses only on the state test, which generally has been discussed in connection with article I, section 1 of the Alaska Constitution, providing

in part that "all persons are equal and are entitled to equal rights." See also Alaska Constitution art. VIII, § 17.

The equal protection guarantees are designed to ensure that those situated similarly with regard to the subject matter and purpose of a law will be treated equally under that law. Ketchikan Gateway Borough, Alaska v. Breed, 639 P.2d 995 (Alaska 1981). A classification must bear "a fair and substantial relationship to a legitimate governmental objective." Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1264 (Alaska 1980). However, equal protection does not demand absolute perfection in the classification system. Id. at 1267. As the court noted in Rose v. Commercial Fisheries Entry Commission, 647 P.2d 154, 160 (Alaska 1982):

The focus of our inquiry under Alaska equal protection analysis is whether the legislative classification is a reasonable means to accomplish a legitimate state purpose.

2. The classifications described by the criteria

The basic classifications at issue in this appeal are those individuals eligible to participate in "subsistence fishing," and those individuals who are not. As discussed above in section B, use of the ten criteria results in the identification of rural communities reliant upon fish and game resources. The board has determined that people residing in rural communities reliant on fish and game resources in the Cook Inlet area are differently situated with regard to fish and game resources than individuals residing elsewhere in the Cook Inlet area. Again, as discussed above in section B, this determination is consistent

with the intent of the subsistence law, and is reasonable.

Not only is the identification of "subsistence uses" in Cook Inlet as uses by residents of rural communities reliant upon fish and game resources reasonable, but it also bears a fair and substantial relationship to a legitimate governmental objective, as required by the equal protection test. Commercial Fisheries Entry Commission v. Apokedak, supra, at 1264. State v. Tanana Valley Sportsmen's Association, Inc., 583 P.2d 854, 859-860 n. 2 (Alaska 1978), acknowledged the critical importance in Alaska of preserving and protecting "subsistence uses," and in Kenai Peninsula Fisherman's Cooperative Association v. State, supra, at 903, the court noted that the subsistence law addressed the important issue on a statewide basis.

The classifications described by the ten criteria are "a reasonable means to accomplish a legitimate state purpose," and do not violate equal protection. Rose v. Commercial Fisheries Entry Commission, supra, at 160.

3. The classifications resulting from the application of the criteria

To the extent that plaintiffs challenge the specific results of the application of the criteria to their communities, and allege that they are "similarly situated" to those living in communities in Cook Inlet which are eligible under 5 AAC 01.597 for "subsistence uses," the equal protection issue is not ripe for review. A superior court decision which remands an issue for further proceedings is not a final judgment for purposes of appeal. City and Borough of Juneau v. Thibodeau, 595 P.2d 626,

629 (Alaska 1979). The Madison court remanded count IV, questioning the application of the ten criteria to the Madison plaintiffs, to the board with instructions to consider under 5 AAC 01.597, containing the ten criteria, any proposals to authorize "subsistence fishing" in Cook Inlet. (M File 4, at 293)

The remand occurred because plaintiffs were apparently claiming that they are similarly situated to those individuals residing in the qualifying Cook Inlet communities, English Bay, Port Graham, and Tyonek, with respect to their use of fish and game resources. See 5 AAC 01.580(a). However, on the evidence before it the board could not reach that conclusion, and neither could the Madison court. The board's findings of fact regarding subsistence fishing in Cook Inlet first discusses the communities of English Bay, Port Graham, and Tyonek, and measures them against the ten criteria, finding customary and traditional uses present. (M File 3, Exhibit L, at 1-9) Then, the board measures some of the other Cook Inlet communities against the ten criteria, and finds them all lacking on the evidence presented. (Id. at 9-10) The board's determination means that individuals residing in those communities are situated differently for the purposes of the subsistence law with regard to fish and game resources than individuals residing in English Bay, Port Graham, and Tyonek.

Specifically, the board finds that no showing had been made that a long-term, stable and reliable use pattern applied to

any community or subcommunity. The board finds that lack extremely important, viewing the other criteria which may have been demonstrated as less persuasive, in light of the absence of long-term, stable and reliable use patterns. The board acknowledges that some groups, such as the Kachemak Bay Subsistence Group, had shown the existence of a community of interest at the present time, but the board finds that the members were either too widely dispersed or were too heterogeneous to be considered identifiable as a community. The board acknowledges that in parts of Cook Inlet there was targeting on specific stocks, use of the most efficient and productive gear, reasonable geographic proximity to the town sites, and easy and direct access to the resource. However, the board points out that only the Kenaitze Indians had made an adequate showing of handling salmon by traditional modes (e.g., using all the parts of the fish, including the heads, fins, tails and eggs; drying, smoking). The board finds that no user concentration showed technique and skill transmittal within and between families, distribution throughout the entire user concentration, nor reliance on a wide range of wild resources taken in proximity to the community. (Id.)

The board did not close the door on further proposals seeking to demonstrate "subsistence uses" in Cook Inlet communities, and in fact stated:

As with all its determination, the Alaska Board of Fisheries will consider additional information from the public during its next regulatory proposal cycle, if such information is offered. In the event adjustments to the findings or regulations are necessary, appropriate changes can be

made at that time. However, no extension of eligibility ... is warranted on the present record.

(Id. at 10)

Since the board reasonably did not find on the evidence before it that plaintiffs were similarly situated to those residing in Cook Inlet communities authorized to participate in "subsistence fishing," and since the Madison court remanded this issue to the board, a violation of equal protection cannot be found in the board's application of the ten criteria.

F. The Board Is Authorized to Establish "Personal Use Fishing" as a Category for Regulatory Purposes

In 1982, the board established "personal use fishing" as a category which it can use in regulating fishing in the state. 5 AAC 77.001. This action is consistent with the board's statutory authorities and is reasonable, and thus, it should be upheld. Kelly v. Zamarello, supra, at 911.

AS 16.05.251(a)(6) authorizes the board to make regulations it deems necessary for "classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes." (Emphasis added.) Plaintiffs' assertion that the provision only authorizes the board to use categories established by the legislature is inconsistent with the language itself, which delegates that authority to the board.

Under AS 16.05.251(a)(6), the board may employ "other categories" only if to do so is "essential for regulatory purposes." In establishing the category of "personal use fishing," the board made specific findings on the necessity. The board

found that before the subsistence law, individuals could fulfill their personal use requirements by "subsistence fishing," but that now "subsistence fishing" is narrower in scope, and does not include all such previously authorized personal use fishing. The board found that "commercial fishing" was not the proper category for that activity, since the sale of fish is not involved. Further, "sport fishing" has become so associated with hook and line, rather than nets, that to classify personal use net fishing as sport fishing would be confusing to the public. Thus, it was necessary to establish "personal use fishing." 5 AAC 77.001(a).

Assuming the board is correct in its interpretation that the new definition of "subsistence fishing" is narrower than the previous one, it seems odd that plaintiffs would challenge the board's authority to establish "personal use fishing," since the category was established in order to provide for fishing which cannot now be called "subsistence fishing." Plaintiffs are incorrect in characterizing "personal use fishing" as a matter of "charity;" the board made clear that "personal use fishing" could be authorized whenever it "is in the broad public interest." 5 AAC 77.001(b). The board can thus authorize it in its discretion under AS 16.05.251(a), just as it does commercial fishing and sport fishing.

The board was authorized to establish "personal use fishing" as a category, since it is essential for regulatory purposes. Indeed, if it had not done so, there would be no mechanism for it to authorize fishing for personal use by set

gill nets by plaintiffs.

G. The Board Has Not Violated Plaintiffs' Substantive Due Process Rights by Not Authorizing "Suosistence Fishing" Opportunities for Them, but instead Authorizing "Personal Use Fishing"

Substantive due process, guaranteed in article I, section 7 of the Alaska Constitution, protects people against arbitrary governmental action, and encompasses "our traditional concept of fair play and substantial justice," "fundamental principles of liberty and justice," and "fundamental fairness." Green v. State, 462 P.2d 994, 996-997 (Alaska 1969). Thus, the board may not take arbitrary or unreasonable action. Kelly v. Zamarello, supra. Plaintiffs assert that they have been treated unreasonably; however, an examination of their allegations demonstrates that the board has not violated plaintiffs substantive due process rights, and has not treated them arbitrarily.

Plaintiffs first assert that they have been treated unreasonably because of the violation of the public meetings act which occurred during the December 1980 board meeting. As discussed above in section C, that violation has been cured, and is moot.

Plaintiffs next assert that they have been treated unreasonably because there was not a biological need to restrict the "subsistence fishing" that was authorized in Cook Inlet under the old definition. Plaintiffs refer to a report that purportedly confirms that "subsistence fishing" occurs in their part of the inlet, but that report speaks in the terms used in the years reported on, which were terms related to the old definition.

(G File 4, at 1-97) As discussed above in section D, the board may identify "subsistence uses," regardless of the biological status of the target stocks.

Plaintiffs third claim of unreasonable treatment is that the board in applying the ten criteria undertook an administrative function which the board is prohibited from engaging in under AS 16.05.241. That claim is based on a misconception that the board was granting and denying "subsistence fishing" opportunities to particular individuals. In fact, the board was identifying "subsistence uses," which can be participated in by anyone in Cook Inlet living in a community where "customary and traditional uses" exist. Kenai Peninsula Fisherman's Cooperative Association v. State, supra, at 901-902, noted that the board has no administrative powers, but simultaneously held that the board

has the power to make decisions effecting the utilization of fishery resources in this state.

Id. at 903.

What the board did in applying the ten criteria was to identify "subsistence uses" and provide for them. For the 1982 season the board also identified and provided for "personal use fishing," for which any Alaska resident qualifies. 5 AAC 77.015, 5 AAC 77.546, and 5 AAC 77.547. Kenai Peninsula Fisherman's Cooperative Association v. State, supra, states that the board is not prohibited from:

differential treatment of such diverse user groups as commercial, sports, and subsistence fishermen.

Id. at 904. Thus, in identifying "subsistence uses" and

providing for them pursuant to AS 16.05.251(b), the board is not improperly exercising administrative powers. In fact, although plaintiffs suggest that somehow the Department of Fish and Game should apply the criteria (brief of appellant/cross-appellee at 45-46), that task has been delegated to the board, not the department.

Plaintiffs fourth assertion is that the board has treated them unreasonably by allegedly excluding them from fishing opportunities. It is true that after the board identified and provided for "subsistence uses" for the 1981 season, it did not authorize any other fishing for personal use with set gill nets for that season. At that time, the board had not yet established "personal use fishing" as a category under which it could accommodate individuals such as plaintiffs.

Additionally, the board was very cognizant of its responsibility in weighing biological factors with the interests of different user groups and making a decision that would be in the greatest public interest. The board extensively discussed its reasons for not authorizing any fishing for personal use with set gill nets for 1981, other than "subsistence fishing." (Volume 28, at 42-72) The board expressed concern that the net fishing was too efficient, and involved too many people, so that even though it had historically existed, it might not be reasonable to allow a large number of people to continue to use the most efficient gear type. (Id. at 51) The board felt that if the more efficient set gill nets harvested the fish before they

reached their home streams, a few people could benefit disproportionately, whereas the maximum benefit to the maximum people could be provided by restricting the fishing to rod and reel (sport fishing), thus allowing more fish to reach their home streams. (Id. at 44-45) The set gillnet fishing was compared to snagging, which has also been discontinued:

I don't look at any differently then say, for instance, snagging in the sport fishery. For a long time snagging was -- was permitted in the sport fishery. The board came to a point where it was too efficient, there were too many people in it, there was harvesting at a higher rate than what the board felt was prudent as far as the conservation of the resource. And so, even though historically snagging had existed for a long time the board decided that it was just not something that could be justified as far as the conservation of the resource.

And so, I look at this net fishery in a similar fashion, and in order to live up to the mandates of the constitution to -- for providing the resources for the maximum use of its people you can no long -- when you get to a point where you have a limited resource you -- you cannot continue to allow the most efficient means of harvest.

(Id. at 44) The board noted net fishermen had alternative means to meet their protein needs, and that they would have access to the resource by use of rod and reel. (Id. at 48)

In light of those reasons, the board for the 1981 season did not authorize fishing for personal use with set gill nets, other than "subsistence fishing," in Cook Inlet.

However, by the time the board considered the matter again for 1982, it had established "personal use fishing" as a category it could employ. 5 AAC 77.001. The board authorized "personal use fishing" in both the southern and central districts

of Cook Inlet, under the same individual harvest limits that had been in effect for what was called "subsistence fishing" in those areas previously. 5 AAC 77.530(a), 5 AAC 77.546 and 5 AAC 77.547.

The Madison plaintiffs would like to fish on coho salmon in the central district of Cook Inlet in the fall. Instead, the board authorized a fishery on sockeye salmon in the central district in June. (M File 6, at 365-366, ¶¶ 17, 18) A consequence of the absence of "subsistence uses" is that the board retains the discretion to authorize "personal use fishing" on whatever stocks and in whatever seasons it determines best serve the public interest, just as it retains discretion for when and where to authorize commercial fishing and sport fishing. AS 16.05.251(a). Kenai Peninsula Fisherman's Cooperative Association v. State, supra, recognized that the board is authorized to make allocation decisions. The factors upon which those allocations are based may change over time, and the allocations may shift accordingly. Such allocations are consistent with the board's statutory authority. AS 16.05.221(a) and AS 16.05.-251(b).

Thus, the board must authorize "subsistence fishing" on the specific stocks and in the specific seasons with which the "subsistence uses" are associated. See AS 16.05.251(b) and 5 AAC 01.597(a)(3). On the other hand, the board has the latitude to direct "personal use fishing" to any stock or season, as long as its decision is reasonable and not arbitrary. Kelly v.

Zamarello, supra, at 911. The Madison court determined that the shift from the fall coho to the summer sockeye was reasonable and not arbitrary. (M File 6, at 368-369, ¶¶ 11, 12)

The plaintiffs finally assert that they have been treated unreasonably because particular board members allegedly had a biased attitude toward them. 19/ The incidents that plaintiffs rely upon to attempt to demonstrate the "unreasonable" attitude of particular board members all involve board action that plaintiffs did not like. The board did not authorize "subsistence fishing" for plaintiffs, but the criteria that the board used in that process were consistent with the intent of the subsistence law and reasonable, and under the remand to superior court, plaintiffs are free to submit proposals to the board and show why, under the criteria, they do in fact engage in "subsistence uses." See sections B, D, and E above.

It is true that no fishing for personal use with set gill nets was authorized for plaintiffs in 1981, but as the earlier discussion shows, the board based that action on resource

19/ AFN asserts that plaintiffs are alleging that the board as an institution suffers from unconstitutional bias. (Brief of intervenor/amicus curiae at 37-45.) That is not an accurate characterization of plaintiffs' allegations, which instead are directed at the attitudes of particular board members. For example, the contempt allegations in Gjosund were dismissed by stipulation "based upon a significant change in the membership and leadership of the [board]..." (M File 7, at 371) AFN asks that the purported issue be remanded to superior court to develop a record. In fact, the reason there is no record is that no such issue has been raised or briefed in either Gjosund or Madison.

and allocation concerns. However, before 1982, the board reconsidered, and authorized "personal use fishing" in which plaintiffs can participate.

The "personal use fishing" authorized by the board in the central district of Cook Inlet is on the summer sockeye, instead of the fall coho preferred by plaintiffs, but, as discussed above, that decision is within the discretion of the board and reasonable. AS 16.05.251(a). (M File 6, at 368-369, ¶¶ 11, 12)

Plaintiffs may not have made the decisions that the board made on these matters. That does not mean, however, that the board decisions were arbitrary, and, in fact, as the discussion shows, the decisions were reasonable.

Thus, the actions objected to by plaintiffs do not violate substantive due process.

VI. CONCLUSION

This appeal is not about mere semantics. It is about important legislative changes in the definition of "subsistence fishing" which are being put into effect in a reasonable manner consistent with the legislative intent to protect rural areas of the state which historically have been dependent upon hunting and fishing as a significant characteristic of the social and economic life of the area. In Cook Inlet, "subsistence fishing" is now being authorized for rural communities reliant upon fish and game resources, and "personal use fishing" is being authorized for individuals, such as plaintiffs, who do not live in such reliant communities.

The state requests that the holdings of the Madison court be affirmed, that the holding of the Gjosund court which is the subject of this appeal be reversed, and that the request by AFN for a remand on an issue that is not at issue in this consolidated appeal be denied.

DATED: *January 26, 1984*

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: *Larri Irene Spengler*
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April 10, 1985

Representative M. Mike Miller, Chairman
House of Representative, Judiciary
Pouch V
Juneau, Alaska 99811

Dear Mr. Miller,

I believe that the subsistence issue is of utmost importance at this time. The detrimental effects of the Supreme Court's decision in the case of Madison vs. Alaska, on the communities and individuals involved in sport and commercial fishing, demands immediate attention to avert both short and long term financial disaster. (Not to mention true subsistence users.)

We need immediate action on the part of those in a position of power and leadership.

Please do all in your power to give House Bill #288 or similar legislation your attention and support.

Thank you.

Ralph Lohse

4/4/85

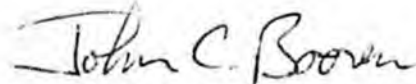
Dear Representative,

I would like to urge you to support HB-288 or any legislation that will keep the Alaska Board of Fish and Game as managers and regulators of our fish and game. I live in Cordova and fishing is my only means of making a living. I have four months to make a years waige and the Copper River fishery makes up to 70% of my income. If we loose any time fishing, especially the first part of the run, where 50% of the fish go up river in 2-3 weeks, it is definately going to make it hard, if not impossible, to make my financial ends meet.

Please support HB288 and please push to get the issue resolved this season. Fishing is scheduled to begin May 13, 1985.

Thank-you very much,

Sincerely,

A handwritten signature in cursive script that reads "John C. Booren".

John C. Booren

Rep. Mike M. Miller

In light of the stand that the A.F.N. took last week in the House Resource Committee teleconference that if SB. 231 + H.B. 288 or similar legislation are not enacted into law A.F.N. will seek Federal Intervention to protect their rural subsistence way of life. The State of Alaska became a state so we could manage our resources ourselves. So far the Board of Fish & Game have been doing a good job of working with all user groups of all our renewable resources. Admittedly there are some problem areas, as there is with managing any resource. Regulations adopted by these boards are not set in cement they are open to proposals every year so those problem areas can be worked on. Anyone in the state can propose changes & present grievances with the boards. Re Allocations have been made every year to cope with increased pressure by different User groups. A Personal Use Fishery was implemented to give Urban residents access to the fish while still protecting the rural communities subsistence way of life. Please support SB. 231 & H.B. 288 as a permanent fix. I do not view them as a quick fix I feel these bills are a permanent & equitable solution allowing change where & when its needed and is imperative to the stability of the Fishing Industry and the State as a whole. The State of Alaska in my view is the greatest State in the Union. That's why I live here. Let's keep Alaska Great. Support SB. 231 & H.B. 288. We need the Stability Thank You

John Mehelich
Box 968
Cordova AK 99574

Mrs. Denny Kay Weathers
P.O. Box 837
Cordova, Alaska. 99574
Resident; Hawkins Island
Lot 6, Deep Bay VHF ch. 6

Dear Alaska State Legislators;

I am a homemaker & mother, I live (5) water miles Northwest of Cordova on the North end of Hawkins Island in the Deep Bay area.

I am strongly in support of Senate Bill # 231 and House Bill # 288, and urge all Senate and House Chairman and Co-Chairman to work as quickly as possible at resolving these major issues.

My personal reasons are as follows; Fishing is our only source of an income which in turn is our survival. Survival meaning we must purchase fishing and hunting license, shells, fuel to even go get game meat.

In order to make jelly, bread or even grow a hand full of potatoes it takes an income to purchase flour, sugar or seed potatoes, and much work to even try to grow a small kelp box garden, do to our poor gardening conditions in this area, compared to Anchorage, Palmer and Fairbanks with such good growing seasons.

You must take in to consideration, our moose and deer, in the Prince William Sound, Copper River and the surrounding Cordova area. All the moose and deer were transplanted here prior to Statehood. This makes a limit on all the game meat in this area, which is set up to ensure that our children will have moose and deer when they grow up. The Alaska Fish and Game regulate these rules to ensure future stocks, this is done in the best interest of the people.

If the State was to open subsistence hunting to all residents it would destroy all that the dept. of Fish and Game has worked so hard to protect for the future of all Alaskans.

As for the Copper River Red Salmon run; in 1982 my husband caught 2,865 red salmon, 1983 was 1,323 red salmon, 1984 was 741 red salmon. Each year we have been cut back on our take of the Copper River Red Salmon to ensure the brood stock and to assure that the subsistence fisherman get thier increased quota of Red Salmon each year.

My husband in 1982 paid \$57.30, 1983 paid \$26.46, 1984 \$14.82, this was just the Aquaculture asesment for Copper River Red Salmon and by the time the cannerys mached the \$.02 per fish it totaled \$98.58 paid out for our catch to ensure the preservation of our future Copper River Red Salmon through the Aquaculture. Please also note that the subsistence fisherman do not pay the \$.02 per fish nor do they quit fishing during the closers by the State of Alaska Dept. of Fish and Game. These closers are designed to give proper escapement to ensure the proper amuont of brood stock escapement.

If the Copper River Fishermen have to cut back much more there will not be a Copper River Fisherman left.

Please understand , I beleave that subsistence is very important but not to the point of destruction-meaning our resources can not handle every resident becoming a subsistence user. Please study this issue with the up-most care, because rivers, streams, forests and fields can only provide just so much and when it's gone it's gone forever. The Alaska State Fish And Game have been slowly accomplishing a goal, why not leave it there at least they have some facts and figures and a future to work with.

To me subsistence means a need and a need means necessity which brings us back to subsistence which is the minimum food and shelter necessary to support life-not the want for the food.

I beleave hunting and fishing is still a privilege and honor that the State of Alaska provides by over seeing the resources and keeping them balanced.

People that have a good income, meaning average income or higher should be willing to purchase a hunting or fishing license and leave the subsistence to the person or persons that truly need it for the reasons of survival, not for the want or greed. Remember the key words to subsistence is in the Websters Dictionary. Thank you for your concerns and time on thhse important issues.

Denny Kay Weathers

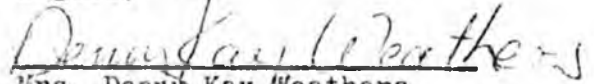
Mrs. Denny Kay Weathers
P.O. Box 837
Cordova, Alaska 99574
Resedent; Hawkins Island
Lot 6, Deep Bay VHF ch. 6

(Face Letter)

Dear Committee Chairman;

Could you please see that all the members of your committee recieve a copy of my letter in support of Senate Bill #231 and House Bill #288 to help ensure the safety and future of all our natural resourses and wildlife throughout all Alaska. Thank you all for your time and hard work, If I can be of any help to any one of our legislators with our fishing records please let us know.

Signed;


Mrs. Denny Kay Weathers

Mrs. Denny Kay Weathers
P.O. Box 937
Cordova, Alaska. 99574
Resident; Hawkins Island
Lot 6, Deep Bay VHP ch. 6

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Denny Kay Weathers



Mr. & Mrs. Max Wiese



Box 47
Cordova, Alaska 99574
424-3667

29 March 1985

Rep. M. Mike Miller, Chairman
House Judiciary Committee
Juneau, AK

Dear Rep. Miller:

In regard to House Bill #288, I am concerned with the issue of who is to use and manage the fish and game resources of the state, specifically, of my area of Cordova, and the salmon of the Copper River. I was born and raised in Cordova, have fished for 2 of my 53 years, and depend entirely on the Copper River for my livelihood. I would like to see the management of our resources handled, so that I, and the many other residents of Cordova who also depend on the Copper River, will be ensured of our continued use of this resource.

Thank you for your time and consideration in this matter.

Sincerely,

Max Wiese

Max Wiese

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 8512

A RESOLUTION OF THE CITY OF VALDEZ, ALASKA
URGING IMMEDIATE PASSAGE OF SENATE BILL 231
AND HOUSE BILL 288, RELATING TO SUBSISTENCE
FISHERIES, BY THE ALASKA STATE LEGISLATURE

WHEREAS, the Supreme Court of the State of Alaska recently found the Alaska Board of Fisheries Regulation, 5 AAC 01.597 inconsistent with the Legislative intent to provide guidelines for the protection of subsistence fishing, and

WHEREAS, the court found the regulation exceeds the authority delegated to the Board because it operates too restrictively in nonsubsistence uses, and

WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and nonsubsistence fishery issues, and

WHEREAS, the economy of the City of Valdez is critically dependent on the revenue and employment resulting from the commercial and sport fisheries, and

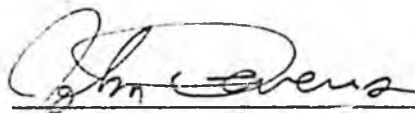
WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, that

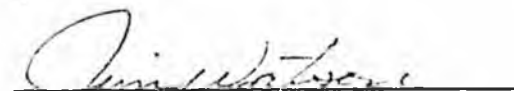
Section 1. There be immediate consideration and enactment of Senate Bill 231 and House Bill 288 as proposed by Governor Sheffield.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA this 1st day of April, 1985.

CITY OF VALDEZ, ALASKA


John Devens, Mayor

ATTEST:


Jim Watson
City Manager/City Clerk

Dear Mr. Miller :

My name is Dan Strickland. I am 31 years old and live with my wife Pamela in Cordova. We just had our first child, a son, 14 days ago. I came to Alaska 13 years ago and have worked for the Department of Fish and Game for 4 years, and as a commercial fisherman for 9.

I realize the complexity of a subsistence definition and the politics of relating this definition to fish and game management, from my work with the Eskimos and their marine mammal harvest, but I can hardly believe the recent Supreme Court decision making all Alaskans, rural and urban both, subsistence users with first priority.

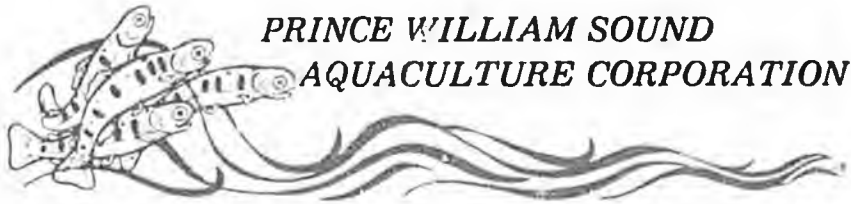
You know all the arguments pro and con I'm sure. I would just like to add my voice in support of Senate Bill #231 and House Bill #288.

With the support of the state of Alaska my wife and I have built a lifestyle for the last 9 years. Please, please, do not obliterate what we have struggled for for the last decade. Support passage of Senate Bill #231 and House Bill #288. Thank you very much.

Sincerely,



Dan Strickland
P.O. Box 1517
Cordova, Alaska 99574
424-5277



**PRINCE WILLIAM SOUND
AQUACULTURE CORPORATION**

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

*P.O. Box 1110
Cordova, Alaska 99571
(907) 424-7511*

March 26, 1985

Rep. M. Mike Miller, Chairman
House Judicial Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Rep. Miller:

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

This form of "self help" resource development by the harvesting fishermen, which was created by the Alaska State Legislature in 1974, has set a responsible standard for enhancement that is without parallel in the rest of the United States. We project that our total enhancement program will generate annual revenues to the commercial fishery alone of \$20 million within ten years. Moreover, the Esther Hatchery will produce coho and chinook salmon fry to be stocked in nearby lakes, which we project will return 7500 coho and 6000 chinook salmon adults to the developing sport fishery near Whittier. Salmon from this hatchery will also be available to a future subsistence fishery.

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

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

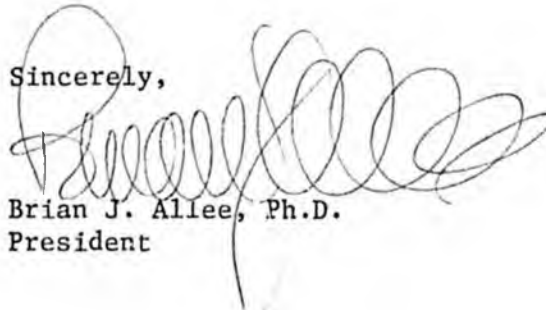
Page Two
Rep. M. Mike Miller
March 26, 1985

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

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

Thank you for your support.

Sincerely,



Brian J. Allee, Ph.D.
President

BJA/mbl

4/3/85

APR 9 1985

Dear Representative Miller,

I am writing to urge you, this session, to support HB#288 or whatever legislation you can devise to insure the Alaska Board of Fisheries and Game the power to regulate the Copper River fishing grounds this spring as it has in the past.

I am a Cordova resident and commercial fisherman, and 90% of my income is gained from the Copper River delta area. Loss of this income this spring would bring much hardship to my family and many others like us.

The town of Cordova's only industry is commercial fishing, and the good management of this resource is of prime importance to us all.

Sincerely, Rhoda deVillie

Box 254
Cordova, Alaska
April 1, 1985

8 1985

Representative Mike Miller, Chairman
House of Representative Judiciary
Alaska State Legislature
Fouch V
Juneau, Alaska 99811

Dear Representative Miller;

I am writing to request your support on HB 288 or any similar legislation that would give the Alaska Board of Fish and Game the power back to regulate and manage our fish and game resources. If not passed this could virtually destroy Cordova. Cordova's main industry is fishing and the only industry that is keeping Cordova alive today. We cannot depend on Tourism.

Many Cordova fishermen would lose their boats and their only way of making a living if they are not able to fish (gillnet). Does the state want to see this happen? Nearly all of the Cordova fleet is financed thru the state. What will this do to the state?

My husband has been in the fisheries since 1969. We make our home here in Cordova. This is our only means of employment, We are not young and certainly do not wish to lose our boat. We prefer to be employed and not on Welfare.

I urge you, along with all of Cordova, to please give this bill your support.

Sincerely,

Kathy Crow

Kathy Crow

APR 6 1985

March 30, 1985

Dear Rep. Miller,

I am writing to request your support of House Bill # 288 regarding the future of commercial fishing on the Copper River Flats; and thus, the future of the Cordova community. I have happily been a year round resident of Cordova for five years. I am not a permit holder, but have worked at fishing related as well as non-fishing related jobs. My experiences show me that all facets of employment in Cordova are heavily dependent on the success of our fishermen.

I urge you to take a close look at the problems we Cordovans are facing if these bills do not pass. How you vote is a decision only you can make, but a matter of such consequences deserves your attention. Thank you very much.

Sincerely,

Carol J. Roderick

Box 1532 Cordova, AK 99574

APR
8 1985

Dear Rep. Miller

I'm writing in regards to H.B. # 288, it's a necessity to me that this bill or something similar be passed. I'm a second generation fisherman of Cordova, and the family head of four. I have always made my living as a fisherman, and don't have an alternative resource should the Copper River be closed to commercial fishing. 70% of my income derives from the Copper River fisheries. I've invested heavily in my trade, depending on this fisheries without it it will be impossible for me to make my payments as well as support my family. Lack of support of this bill does not only hurt myself, and other gillnetters of this area, but will also be crucial to the economy of Cordova. Also, it would force us to leave our community in which we were reared, to try and seek employment elsewhere. I believe we need to keep our faith in the Board of Fish, where the sport, dipnetters and subsistence fisherman all had a fair and equal opportunity to the fish due them. We have always gone fishing in May - PLEASE HELP KEEP IT THIS WAY, and SAVE OUR COPPER RIVER FISHERY.

Thank YOU,
Mr. Kim Sagar

APR

April 4 1985
Monna Alwine
P.O. Box 609
Cordova, Alaska 995

To whom it may concern:

I am concerned about the situation that may develop in Cordova if adequate steps are not taken to ensure the commercial fisherman's livelihood. The ruling by the Alaskan Supreme Court on the subsistence use of salmon threatens Cordova's economy which is based entirely on the commercial fishing of salmon. The laws need to be changed or modified to protect this way of life. Subsistence use of salmon by all Alaskans, rural and urban, is a knife in the back to the commercial fisheries. The economic repercussions of the decline or total loss of the commercial fisheries in Cordova, would be felt by all Alaskans.

Is the right of all Alaskans to the salmon worth the complete demise of a way of life for the fisherman? I don't think so! I would appreciate anything you could do to protect our commercial fisheries.

Sincerely yours,
Monna Alwine



APR 2 1985



RAINBIRD FISHERIES, Inc.

P.O. Box 1065
Cordova, AK. 99574
March 31, 1985

M. Mike Miller, Chairman
House of Representatives Judiciary
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Sir:

I support Senate Bill #231 and House Bill #288 to give back the power to the Alaska Board of Fisheries and Game to manage our fishery resources. We urgently request your support as, if this legislation is not passed, this will have a very serious impact on the Town of Cordova.

It is most important that this issue be resolved during this Session; I thank you very much for your efforts.

Very truly yours,

A handwritten signature in cursive script that reads "R. J. Shaw".

R. J. Shaw

F/V Belen-C
Joe and Belen Cook, Jr.
P. O. Box 215
Cordova, Alaska 99571
Phone (907) 424-3507

APR 2 1985

Dear Guy,

I am writing this letter because of my great concern of what has happened in the past month's dealing with substance.

I would just like to start by telling you a little about myself and family.

Both my husband and I work on our 28 ft coopper boat starting May 15 to Sept each year, salmon fishing on the Copper River Flats. I also do the bookkeeping for the business, I am also a member of the Inland Sea, Inland Sea Council as this was not our will way of the problems we have had in the past.

I was on the Board of Game Advisory Committee, which was first decided to bring before the Board of Fish having three user groups Substance Personal Use, and Commercial. Was very happy to see it pass, since I believe this to be an excellent way to manage the



F/V Belen-C
Joe and Belen Cook, Jr.
P. O. Box 215
Cordova, Alaska 99574
Phone (907) 424-3507

(2)

resource.

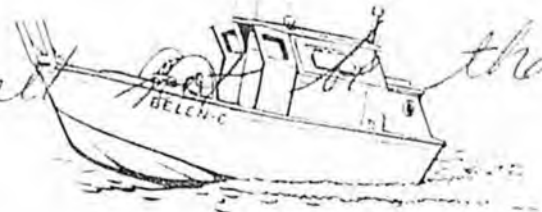
I do not want to give you the impression that I am only involved in fishing interests, because this is not the case! I am also on the Cordova Hospital Auxiliary, and The Homer's Resource Center, which I am a board member of.

My husband was born a commercial fisherman, and he was 13 years old and he is now 44 years old. Our livelihood depends on fishing, we depend on the Copper River Flats for 80 percent of our living and 15 percent on the Prince William Sound.

Besides fishermen, the community of Cordova also depends on fishing, thus the Belen H.B. 288 must pass and pass in the season.

If it is not simple if a fisherman cannot meet our obligations to our creditors, they in turn cannot meet theirs, which can cause great problems in the near future as far as economic hardship.

I am positive Cordova will be the only community



F/V Belen-C
Joe and Belen Cook, Jr.

P. O. Box 215
Cordova, Alaska 99574
Phone (907) 424-3507

1.57

affected in this manner in Alaska
So I ask you again to support HB 288

Sincerely,

Joe Cook



APR 2 1985

Dear Legislator

3-31-85

I am writing in support of Governor Sheffield's subsistence bill.

I was raised in Anchorage since 1956 and my family relied heavily on sport caught moose, caribou and salmon. We never considered ourselves subsistence users. This food was incidental to our hunting and fishing. It was the sport and not the food which sent us to Alaska's wilds.

In 1972 my wife and I moved to the Alutian chain for four years. Here we witnessed people living a true subsistence lifestyle. Their wealth is their knowledge of the land and resultant ability to provide the majority of their needs from it. To these people the need for food, not sport, was the compelling factor.

In 1976 my family moved to Nabesna in the Copper River Basin. The majority of these people live in a more cash orientated economy. Subsistence is important to supplement their lifestyle.

The subsistence lifestyle is a part of Alaska's past and present which should be protected.

I would not favor a system of subsistence which "Doles" out fish and game like welfare on a needs basis. The subsistence lifestyle deserves to be encouraged and lived with pride.

Under Governor Sheffield's bill, subsistence would be regulated as in the past based on rural residency. I feel this is a good solution as it is less need orientated. One of our subsistence groups our Alaska natives have traditionally shared

On the Copper River personal use was created to protect both the true subsistence users and commercial fisherman by giving a lower priority to recreational dipnetting. I have nothing against recreational dipnetting so long as it is called such and managed as such.

Today we are back at square 1 with Anchorage and Fairbanks recreational dipnetting having a priority over commercial fishermen and threatening the priority of the true subsistence users to this resource.

What is the future of the Copper River commercial fisherman and true subsistence users as our state population grows?

What is the future of our sport fishing, commercial fishing, sport hunting and subsistence users in other areas of the State of Alaska?

Will recreational gillnetting close the world famous Kenai sport fishery?

Please address this problem rationally, responsibly and quickly by passing Governor Sheffield's subsistence bill.

Lud Dison

STAR RT. BOX 6700-E

WASILLA, ALASKA
99687

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

APR 2 1985

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3-31-85

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food within the community. Today their most successful hunters are those who can afford the use of snowmachines, outboards ect. To deprive these people subsistence opportunity thru a needs based program, would affect many others within this community.

The recent ruling by the Alaska Supreme Court creates a situation, which cheats the true subsistence user. The subsistence lifestyle needs to be protected by priority. To allow everyone to become a subsistence user cheats the true subsistence user, of his protection by priority. I further feel it is a joke to allow Anchorage and Fairbanks residents equality under subsistence as subsistence is a lifestyle that cannot coexist in a city environment. We must address this problem immediately to restore balance to our subsistence program. If we delay, we will create a new user group, the city subsistence user. I feel this would impact true subsistence, commercial fishing, sport fishing and sport hunting. It will be harder to solve in the future than now as undoubtedly some will not want to loose their new found subsistence rights.

The Copper River stands as an excellent example of a new user group being created under the pretext of subsistence. You can argue that the Copper River deplet fishing is done more for a weekend outing, rather than based on a need to put food on the table. Often more is spent on this recreational outing to catch these fish than if these [?] subsistence users had bought these fish from the market at home.

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Please address this problem rationally, responsibly and quickly by passing governor Sheffield's subsistence bill.

Fred Dusen

STAR RT. Box 6700-E

WASILLA, ALASKA
99687

Dear Representitve Miller,

There appears to be considerable concern over the Salmon Fish allocation on the Copper River and other rivers as regards to the State supreme court rulling on Subsistance Fishing as haveing total piority over sport, and personal use and Comercial Fishermen. The Cordova Fishermen are concerned that they will be prohibited from comercial fishing the main run of the Copper river salmon which occures in the first ~~three~~ ^{four} weeks of from May 15th to about June 15th say.

If hhis run is allowed to go by with out any comercial fishing during those weeks or severly restricted, then in effect there will be no allocation to the comercial fishermen and there will be a sever economic impact on , not only the 450 fishermen but also on the emplyment in Cordova and the ^{Valdez and Seward and Whittier} investment in cannerys and boats and gear, in which the State of Alaska has loaned millions of dollars.

We as comercial Fishermen are being told that the pioritys for Salmon use on the Cooper river are first Subsistance Fishermen then personal use Fishermen, then Sport Fishermen, then last in line are the comercial Fishermens needs.

I feel this is a complete reversel of what the prioritys should be. The Comercial Fisherman has a greater economic need than dose any one including the subsistance Fisherman

The Cordova Comercial Fisherman

Has at least 150,000 dollars invested in Boats, licenses, and equipment, plus his home. His lifes work is tied up here. His total employment is here. Food production, and Cannery employment depend on his getting the opportunity to fish.

Now compare this need to a subsistance fishermans needs.

Or a personal use fishermans needs, and most certainly to a Sport Fishermans needs.

Can you in all honesty rank the comercial fisherman last in line for pioritys to th Cooper river run of Salmon?

If ever there was a term that would apply to Comercial Fishermen

If would have to be subsistance Fishing, all thier substance comes from this.

Comercial Fishermen are locked into one area to fish

Via the Limited entery program, If we are denied Fishing rights on the Cooper river, We can not relocate to Bristol bay say.

We have to stay here, as per the state limited entery law.

Sport fishermen on the other hand, can go any where, and fish for any snicie of fish. We as Comercial Fishermen if we do not have a limited entery permit for Herring, can not fish herring Or crab or as in the case of Halibut are allowed prehaps 6 days a year. often during conflicting seasons. As far as I know Subsistance Fishermen can go any where in the state and fish any species any time they are available.

None of them have any investment even slightly comparable to the

Comercial Fisherman.. investment, in Money, Time, and lifes work.
way of life,in any aspect you can think of.

We may well be a minority in Numbers, but we are by far the
Majority in food production, labor employment, and in economic
need.

In conclusion, No comercial Fisherman I know of wishes to
prohibit the Subsistance fisherman from fishing, Many of us

are natives them selves, no one wishes to deprive the native
who operated a Fish wheel one fish he needs.

There are only a very few of these,Its the man who works on the pipe
line and desires to call himx self a subsistance fisherman
or says that his Sport fishing needs are greater than our

Comercial Fishing needs, these are the Falacies we object to.

~~Sincerely yours~~

Please facilitate passage of Senit Bill No 231
and House Bill No 288

Sincerly yours

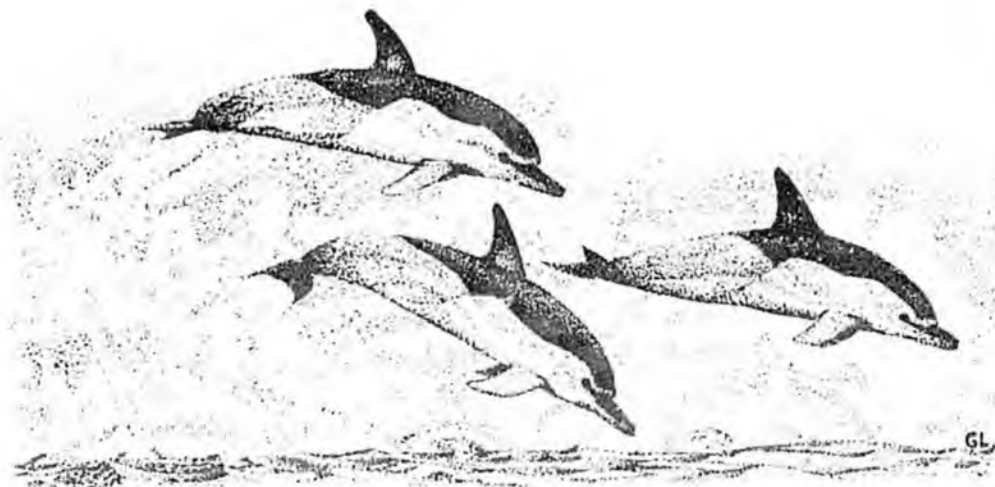
Stanley Samuelson

4-1-55

Dear Representative Miller,

I urge you to support HB 258
and Senate Bill 231. We are
Cedar fishermen and our livelihood
depends on our ability to commercially
fish the Copper River Flats.

Sincerely,
Mike. Alan Phillips



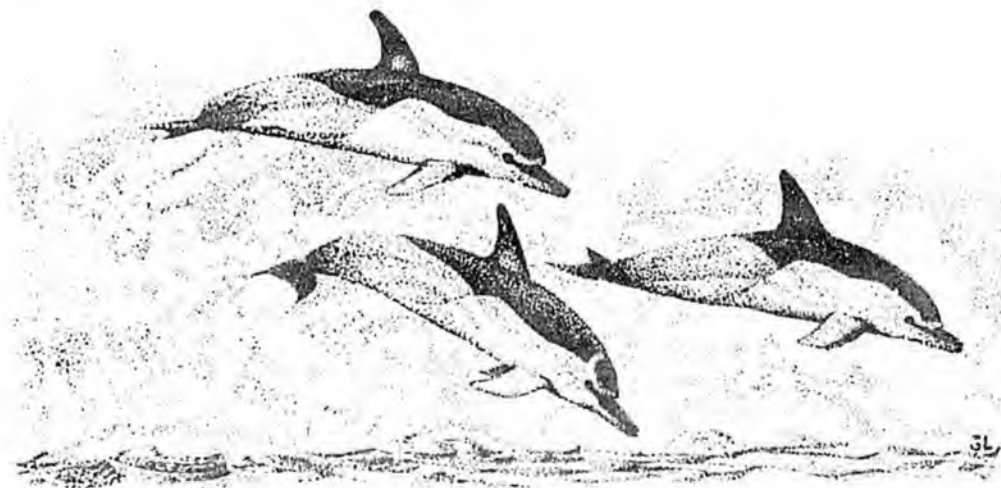
4-1-55

Dear Representative Miller,

I urge you to support HB. 258 and Senate Bill 231. We are Cordova fishermen and our livelihood depends on our ability to commercially fish the Copper River Flats.

Sincerely,

Mr & Mrs E. L. Chikwa
7304 116
Cordova, Alaska
99574



Box 993
Cordova, Al
99574
March 26, 1985

Dear Representative:

I'm writing to you on behalf of the Subsistence Fishing Order. I think that the Legislature should find some way to solve the fishing problem Alaskans are faced with. My father is a commercial fisherman, and without the money he makes during the fishing season, we may starve this winter.

I'm sincerely hoping that you'll give the matter at hand some thought and fast action.

Sincerely,
Adam Garland
age 14

Box 993

Cordova, Alaska, 99574

March 27, 1985

Dear Representative,

Please take immediate action,
Concerning Senate Bill # 231 or House
Bill # 288.

Unless Susan's Game opens the
Copper River fishing by the beginning
of May, our family and the city of
Cordova will have no income to
sustain them. Cordova's only industry
is fishing.

My husband, age 42, has been fishing
in Cordova all of his life and the
early red run may be as much
as 90% of his yearly income.

It is hard to understand how it
could be allowed for people who
have regular jobs and or sources
of income to take fish they don't
need and put others out of work.

I am hoping that the Judiciary
and Finance Committees will waive
Senate Bill # 231 so this can be
resolved in time.

Thank you,
Kellie Galand

Rep. Miller,

4/1/85
2 1985

I urge you to read my
enclosure which expresses
my feelings much better than
I can.

I also urge you to support
Senate Bill # 231 / House Bill # 288.

Commercial fishing is my
living and I want to go on living.
Please help me and the rest
of the Copper River commercial
fishermen.

C. M. DeWitt

Main Trails & Bypaths.

We recently passed the opinion that sportsman anglers should not be allowed to fish salmon after the fish have entered their fresh-water spawning streams . . . and we were bitterly taken to task by at least one Anchorage resident whose opinion was that we were "far out of touch with Alaskans and especially South-Central and Western Alaska sport-fishing enthusiasts."

Well, Mr. Anchorageite . . . "we" (that's polite for editorial use to keep from using the big personal pronoun) have fished an awful lot of Alaskan rivers for more than half a century, and we've seen the changes in both regulations and the type of fisherman in Alaska. In years past, nobody except a few Natives took salmon out of spawning streams. It just wasn't done. There were markers at the mouths of streams beyond which commercial fishermen were not allowed, and, maybe because there were not too many of us sports fishermen, it was natural that since we didn't have to fish spawning salmon runs, we didn't.

The problem, reduced to simple terms, is largely with numbers and attitude. Now, we'll agree that it is great for folks to be able to go catch, with rod and reel, bright sockeye and bright silvers . . . even bright kings . . . for their annual stuffing of the freezer or the Sears canning equipment . . . but for folks to think pink-sided or black-joweled kings or silvers are "trophy" is kind of hard to swallow for a guy who grew up with bright sea fish. And for anybody to think a turned humpback or dog salmon is good fodder . . . that just shows they "don't know no better."

People ask this old-timer once in a while as to "What changes do we notice in Alaska, over the years?" Well, we'll have to be honest and say that the "new breed" of sports fishermen who've arrived in Alaska in recent years, and the biologists and the fish management programs that have resulted, are among the greatest . . . and most serious changes . . . we've noticed.



The question put to us by our outraged Anchorage reader deserves some discussion. Times have changed. A lot of people have changed. And it may be a good time to begin bringing out a lot of untouchable subjects and begin fashioning a little more thoughtful ethic among all fishermen . . . Native as well as White . . . and their administrators.

Our Anchorage complainer accused us of leaning to the Native subsistence fishermen and "against" non-Native fishermen . . . sportsmen. The answer to that criticism is yes and no . . . "yes," because we believe time-honored (and against the total fish run numbers, extremely small) traditional takings of spawning fish were . . . and note we said "were" . . . legitimate, and "no" because what is being lost in the shuffle of this whole "subsistence" fishing management problem is that there are probably more whites than there used to be Natives, qualified for "subsistence" fishing on spawning streams, plus the fact that for a variety of legal and economic reasons, there are now many more Natives than there were before . . . you don't have to be "half," you can be "quarter" . . . the collective Native health and living conditions have greatly improved . . . In many instances, it is more profitable to be Native . . . and, not insignificantly, there is no longer stigma in being non-white.

The old Native, in his fewer numbers, did not take much. The new Native, and his white neighbors privileged to have subsistence, are not only legally allowed salmon from spawning streams, but where in years past fishing in streams for salmon was discouraged for Natives in any great numbers and totally disallowed in any commercial sense, and prohibited altogether for whites, now a new generation of biologists and fish and game administrators

has abandoned all old stream-watching protection systems and has jumped headlong into political administration of fish stocks . . . for votes . . . trying to answer pressure from all gear groups and certainly answering to pressure from Native groups . . . and we hasten to emphasize here, a "new" kind of Native group . . . not the old-time folks who truly lived off the land, but the modern day political corporations spawned by whites, themselves.

In actual administration practices for fish and game protection, no longer are stream watchmen put out for a few weeks or a few months at the mouths of important salmon streams to inhibit or prevent poaching of salmon above the markers. Any number of important fish runs are being gradually whittled down to dangerous stock levels by legal subsistence fishing. Many runs could be wiped out in a season, for all time, if a handy market should appear.

White rights? What rights does a pair of white school teachers pulling \$50 to \$100 thousand a year in wages have for "subsistence" so keve they can take from a spawning stream with a drag net or with other gear?

Sooner or later we are going to have to come to grips with the fact that the blood lines between Natives and whites have become blurred . . . even the political rights of inheritance for Native rights and for fish permits have become blurred.

Political fights, gear fights, and racial fights . . . plus the importation of new "sportsman" fishing ethics . . . have collided in places like the crowded Kenai River and the Russian. Probably only improved polteting and sharing rules will smooth things out on the Kenai, but there are other rivers where rules and regulations might be better adjusted before the fact. We need more ethic, more concern for preserving what we can of what used to be.

Let us understand that there are too many new whites, too many only partly native Natives, too many politicians and too many fish and game administrators controlled by politicians. It is a time for soul searching.

Kreaky, our bald headed eagle at Angoon, was sure nice and white in the head and tail feathers in November, when this was being written. Probably fresh winter feathers, and he wasn't getting them so stained with spawning salmon. Incidentally, with the herring into winter holes, salmon runs over, and bottom fish moved out to deeper water, Kreaky was



making a meal the other day of a big starfish. He'll be after the unwary duck or sea gull soon.

Asked about subsistence fishing, Kreaky says, "At the best it's lousy, this subsistence fishing. Some years there are hardly any fish in the streams at all. Maybe one day there won't be any salmon. Hope there will still be herring . . . but if all the eggs get shipped to Japan . . . can we have herring without eggs?"

Robert G. Heming
 (Publisher)

GILBERT L. URATA, D.M.D.

GENERAL DENTISTRY

BOX 518

CORDOVA, ALASKA 99574

APR 2 1985

March 26, 1985

Alaska State Legislature
Pouch 5
Juneau, Ak. 99811

Dear Legislator:

Am asking for your immediate support of Senate Bill 231 and House Bill 228 for the following reasons.

1) Subsistence merely means existence or an aid to existence. Not all people of Alaska need to catch fish in order to exist. Those that do, ought to have the opportunity to do so, those that don't should be restricted. The ADFG and Board of Fisheries have, and need to be allowed to continue to regulate such. Many residents of the state can't use 200 fish. The fish are not in prime condition as they are at the mouth of a river. Others waste or sell their subsistence fish, or are actually sport fishing, driving hundreds of miles for an outing while others indeed need the resource.

2) The state legislature is not qualified, able, and definitely lacks the time to regulate a fisheries. Therefore, give the proper agency the ADFG, the authority to do so. Shelving both of these bills will eventually undermine commercial fishing in all fishing districts in Alaska. Besides the Copper River and Cook Inlet regions, others will be invaded as access improves. The dipnetters and true subsisters have been getting their fair share of fish. They don't require expensive boats, gear, and permits. Look at Oregon and Washington. They allowed a judge to kill their fisheries, especially during difficult times with their other industries. How about the Stikine River? Fishing there is practically wiped out following Canadian fishing at the headwaters. When salmon survive the difficult cycle back to their spawning grounds, let em.

3) My final reason deals with the community of Cordova and others like it. Who's to pay for the vessels and permits? How are the banks to withstand the defaults? Who wants to foot our welfare checks? Class action litigation against the state, including legislators and the CFEC will undoubtedly follow. How can the state deny a resident the right to make a living he or she's had for a lifetime?

Please, urge for quick action on this matter. Passage must be concluded prior to May 1, 1985. The red season peak (highest priced reds in Alaska) lasts only 2-3 weeks starting in May. Most fisherman make their boat and permit payments from reds and use the silver season to survive the winter. Keep a historic way of life alive.

Cordially,



Gilbert L. Urata DMD

SUBSISTENCE

With the recent Supreme Court decision, the State now has the direction and opportunity to assure to All Alaskans the equal consideration to take fish and game for their own personal consumptive use. This decision supports the Constitution's provision that "Wherever occurring in their natural state fish, wildlife and waters are reserved to the people for common use." The court stressed that common 'use' and not priority 'users' was the main intent and should be the effect of the subsistence regulations. They found that all consumptive users, and not just rural residents, are eligible priority subsistence users.

Government and its laws should apply even handedly to All Alaskans and make sure that whatever criteria is used is not unjustly discriminatory in intent or effect. The Constitution does not on a whole and should not have severe restrictive provisions. This same need should be observed by any legislation and should be used to make sure that its clear intent is to protect and insure the equal and just consideration of All Alaskans.

But the same politics that supported the illegal discriminatory subsistence regulations are at work to speedily fix their court failure. Their main weapon, now as in the past, is their threats aimed at the majority of Alaskans. One such threat is that the over 200,000 sportfishermen will be severely impacted by the Supreme Court decision. The court, in fact, said that all personal consumptive users were to be given equal consideration. As most so-called sport fishermen eat the fish that they catch, any priority subsistence use must include them. And those 'pure sport fishermen' who catch and release are not harvesters of the resource, therefore have a negligible impact. With an annual harvest of well over 100,000,000 salmon, All Alaskan should be entitled to the equal opportunity to take fish for their own dinner table.

Another political threat used is that the federal government will deny our State the right to manage our fish and game unless the subsistence priority is based on rural residency. When the Feds mandate that the resource must be managed as they say, the State has in fact already lost the right of management authority. This restriction resulted from State politics that requested and supports such residency discrimination. When Ron Sommerville, Alaska's representative during early d-2 / ANILCA, opposed this federal mandated discrimination he was removed from his Washinton D.C. post. Governor Hammond admitted in a public meeting of the Boards of Fish and Game that Sommerville was removed because of Native pressure. His replacement, John Katz, has compromised the Alaskan public's constitutional rights on this and many other issues. For the State not to politically and judicially oppose this discriminatory action, which specifically denies equality to all residents of Anchorage, Fairbanks, Juneau and Ketchikan, shows a planned sell out of our rights. This plan includes the continued lobbying action of Larry Spengler, Attorney General office, supporting a priority subsistence use of Alaska's fish and game to be as discriminatory and restrictive as has been politically motivated. Alaska would be better served if our Attorney General would be motivated by a responsibility to assure that all residents are not discriminatorily restricted in their rights.

The history of Governor Sheffield's stern actions has been a well known threat to any state employee who would question these unconstitutional subsistence regulations. He fired Fish and Game Commissioner Ron Skoog and Game Division Chief Ron Sommerville because of their private personal stands against these regulations. And he then requested the resignations of all Board of Fish and Game members when they began questioning the balatare directions ordered by Larry Spengler. It is time that All Alaskans are again equal under the law, no matter where they reside, and that such equality is promoted by our State and is not necessitated by continued court challenges by its residents.

Dale Bondurant

Dale Bondurant
SR 1 Box 2516
Chugiak, Alaska 99567

APR 1 1985

ALASKA POWER SERVICES

P.O. BOX 822 • CORDOVA, ALASKA 99574
(907) 424-3300

March 25, 1985

M. Mike Miller, Chairman
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear M. Mike Miller:

I am writing this letter as a private business owner in the city of Cordova in support of HB#288. Alaska Power Services is solely dependent upon the commercial fisheries in Cordova, providing mechanical services and parts to the gillnet fleet of Cordova. If HB#288 is not acted upon by May 1, the survival of my business and many others in Cordova are doubtful this year. There are many resident's livelihoods at stake pending the decision of this bill. We urge that you make every effort to pass this bill as quickly as possible.

Business has dropped off sharply due to the confusion and uncertainty created by the Madison decision, whether or not the gillnet fleet will fish May 15 or not.

We, the owners and employees of Alaska Power Services urge you to act immediately on HB# 288 to ensure a stable economic base for Cordova and its work force.

Your cooperation in this important matter in Cordova is greatly appreciated.

Sincerely,

Charles E Maxwell

APR 1 1985

Dear Sir,

As a commercial fisherman who is very dependent upon the Copper River gillnet fishery for my livelihood, I am very concerned about the current threat by subsistence usage and possible loss of this fishery to commercial fishermen.

I think the problem lies with the definition of subsistence. As for us fishermen we really are completely dependent upon these fish. Our homes, vehicles, and vessels are centered around this fishery. We are the ultimate subsistence users. We are not casual users as seems to be the case with many urban up-river people who travel hundreds of miles to fish under the guise of subsistence.

I urge you to support SB 231 (and HB 228) and manage the Copper River fishery as has been done successfully under the Board of Fishes per Madison decision plan. This plan was agreed upon by the various factions involved: true rural subsistence users, sports

fishermen, and commercial fishermen.
Your support of this bill will help
keep our fishing industry which is very
important to the State of Alaska,
alive and healthy.

Sincerely

W. F. Fleming
Box 363
Cordova, Alaska

House Judiciary Comm.

Mr. MIKE Miller

SIR.

I ASK your Support on H.B. #288 or
any other Legislation that would put the
State Board of fish and game BACK IN POWER
To Regulate The Resources as they have in the
PAST.

The future of the Copper River
Commercial Fishermen is at stake and
also the Economy of Cordova.

Thank you

Paul Kettel
Box 489
Cordova, Alaska

47 1985

P.O. Box 1142
Coriova, Alaska 99574
March 24, 1985

House of Representatives
Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Sirs,

As a resident of Coriova, Alaska, and a Prince William Sound
Drift Gillnet permit holder I am urging your support of
SB 7288 and any similar legislation restoring the Alaska Board
of Fisheries and Game to their previous management position
of fish and game. The impact of the Madison Decision on my
community and myself is catastrophic. Please reinstate the
Board of Fisheries and Game as the managing body for our
fisheries.

Sincerely,

Karol R. Marx

Karol R. Marx

1127

Dear Sir

3-21-85

I am writing to urge you to pass House bill
288 and give back to the board of fisheries the
flexibility to manage the resource for the
user groups.

Thank you
Jeff Davis

Cordova Chamber of Commerce

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



March 20, 1985

Rep. Mike Miller, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Rep. Miller:

Cordova is a one industry town. We depend on commercial fishing.

I am enclosing a copy of a resolution passed March 19, by the Cordova Chamber of Commerce. The resolution urges support of SB 231 and HB 288.

The Cordova Chamber of Commerce backs these bills to protect our businesses and our way of life.

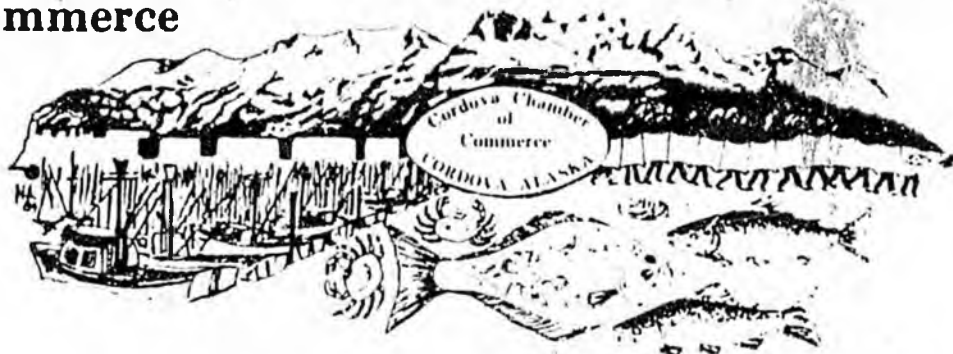
Sincerely,

CORDOVA CHAMBER OF COMMERCE

Margy Johnson
Margy Johnson
President

Cordova Chamber of Commerce

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



March 19, 1985

R E S O L U T I O N

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

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

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

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

CORDOVA CHAMBER OF COMMERCE

Margy K. Johnson
President

M. Mike Miller, Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Chairman,

I live in Cordova and I run a small fish business, along with Tom Johnson also of Cordova. The whole of our business runs strictly off the Copper River red and king salmon run.

I'm writing to you now in the hopes that you will support House Bill #288. If this bill is not passed, I'm afraid the future of the people of Cordova and our children will be limited to handouts from the state welfare. I know this sounds drastic but everything in this small fishing town is centered around the commercial fishing fleet. Personally the affects on myself if this bill is not passed will be devastating as I have no other means from which I depend. I feel stuck between a rock and a hard spot as we who depend on commercial fishing are a minority. I only hope you will take our livelihoods into serious consideration.

Thank You for your time and effort.

Sincerely

Betty J. York

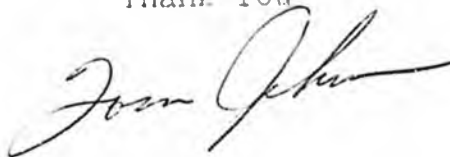
W. Mike Miller, Chairman
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Miller,

I was born and raised on the Copper River, and I have been a commercial fisherman for 19 years. Over the past few years the fishing time on the Copper River has been restricted time and time again due to escapement reasons and increasing pressures on the upper Copper River. Over 90% of my annual income is generated from gillnetting on the Copper River. I am also a partner in a small fishing co-op. We started this five years ago with 12 fishermen, and our operation has been selling fresh reds and kings to various restaurant markets throughout the country. The entire success of the operation is based on the early fishing we have had and solely relies on the Copper River.

I live in Cordova 12 months a year and 90% of what I buy is bought in Cordova. In my opinion the gillnet fleet cannot survive without utilizing the Copper River fisheries. Therefore I'm asking you to support House Bill #288. I feel that this would be devastating to the economy of Cordova, and I feel that the community itself would have a hard time surviving it if this bill is not passed.

Thank you





Box 1210 602 Railroad Avenue
Cordova, Alaska 99574
Phone: (907) 424-3237
or 424-3238

"The Friendly City"

March 20, 1985

Leonard V. Pingatore
Mayor

Richard J. Leland
City Manager

Donna M. Sherby
City Clerk

Council Members

Joe Gunderson
Phyllis Day
Oliver Osborn
Lew L. Cochran
R. L. Van Brocklin
John Wheeler

Representative Miller, Chairman
House Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Chairman Miller:

On March 13, 1985, Governor Sheffield introduced Senate Bill 231 and House Bill 288 relating to the taking of fish and game for subsistence and personal use. As you know, this was necessitated by the Supreme Court's findings in the matter of Madison et al versus the Alaska Department of Fish and Game and the Alaska Board of Fisheries. The intent of the proposed legislation is to provide definition and clarification to the Board of Fisheries' authority to manage Alaska's most valuable renewable resource.

We, in Cordova, have reviewed the proposed legislation with representatives of the commercial and sport fishing industry as well as those who participate in the personal use fisheries. While it is clear that additional work will be necessary to define the various fisheries and the role of the Board of Fisheries over the long term, we feel it is imperative that the Legislature enact the proposed legislation immediately to assure a fishing season in 1985.

On behalf of my colleagues and the City Council and all Cordovan's who depend on a well-managed fishery, I strongly urge your immediate passage of Senate Bill 231 and House Bill 288.

Sincerely,


LEONARD V. PINGATORE
Mayor

Enclosure: Resolution 85-9

CITY OF CORDOVA, ALASKA

RESOLUTION 85-9

A RESOLUTION OF THE CITY OF CORDOVA, ALASKA URGING IMMEDIATE PASSAGE OF SENATE BILL 231 AND HOUSE BILL 288, RELATING TO SUBSISTENCE FISHERIES, BY THE ALASKA STATE LEGISLATURE

WHEREAS, the Supreme Court of the State of Alaska recently found the Alaska Board of Fisheries Regulation, 5 AAC 01.597 inconsistent with the Legislative intent to provide guidelines for the protection of subsistence fishing, and

WHEREAS, the court found the regulation exceeds the authority delegated to the Board because it operates too restrictively in non-subsistence uses, and

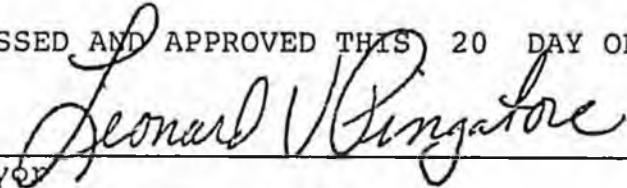
WHEREAS, Governor Sheffield has proposed legislation in the form of Senate Bill 231 and House Bill 288 which provides the necessary definition and clarification of the subsistence and non-subsistence fishery issues, and

WHEREAS, the economy of the City of Cordova is critically dependant on the Copper River Fishery, as is the State of Alaska dependant on the revenue and employment resulting from the commercial and sport fisheries, and

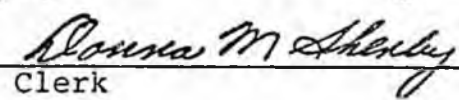
WHEREAS, the proposed Senate Bill 231 and House Bill 288 when enacted will serve to the benefit of subsistence, personal use, commercial and sport fisheries, and the Board's management of Alaska's most valuable renewable resource.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Council of Cordova, Alaska, recommend and urge the immediate consideration and enactment of Senate Bill 231 and House Bill 288 as proposed by Governor Sheffield.

PASSED AND APPROVED THIS 20 DAY OF March 1985.



Mayor



City Clerk

M. Mike Miller, Chairman

PAGE I

Addressing House of Representatives Judiciary

Dear Representative, as a Copper River Commercial Salmon Gillnet Fisherman and a ten year resident of Alaska, I urge you to support House Bill # 288 or similar legislation to save the Copper River Salmon Fishery, my profession, and the town of Cordova. Failure to stop unlimited subsistence usage by the Urban masses of the state will end the Traditional 70 year old Commercial Fishery on the Copper River, as well as take 75% of my yearly earned income away. As a Gillnet Fisherman for Salmon, the Copper River Fishery provides the bulk of my yearly catch, and supports my livelihood. Cutting off the Copper River Commercial fishing season would put a serious threat to the town of Cordova's very existence. Cordova's local economy depends on the revenue generated thru the Copper River Fishery. All local business would face the possibility of closing their doors in the event of No Commercial Fishing on the Copper River. Without this Fishery my profession as a Gillnetter would be seriously jeopardized. I rely totally on the income from Salmon Fishing. If the fishery is taken away from me, I have no way to make a living and have limited training in other fields of work. How would you as a legislator like it if a law was passed that basically eliminated politicians as a bread earning profession, thus forcing you to find another way to earn a living?

You would probably react the same way I am and make an effort to protect your way of life and career. My Career as a Drift Gillnetter is likely to be finished without the Copper River Fishery. I strongly urge you to support legislation that would return the power back to the Alaska Board of Fisheries and Game to regulate the resource. They have studied the Copper River Fish Stocks and have a set management plan. We must protect the resource above all else. Unlimited subsistence harvests would soon eventually wipe out the Copper River Salmon runs. I feel subsistence should be based on the individual's needs and traditional use basis. Those individuals who need the Salmon to help survive should be able to take what they can personally consume. For one individual to take 200 Salmon or a Family 500 Salmon when they cannot in all probability consume that many fish is absurd. That makes an under-the-table fish sale situation likely for illegally dealing with the surplus fish. It turns every subsistence fisherman into a commercial fisherman on the 200 fish quota system. How many families actually eat that many fish? There are only a few choices with that many fish, sell them, smoke them, or blatantly waste them! I myself eat a lot of Salmon annually. Including Canning, Smoking, and gifts to relatives,

(Cont.)

I have personal use of 30 to 50 Salmon at the most, and I am a professional Fisherman! There should be a personal use fishery for all resident Alaskans, but it should be regulated by need. Those residents who need the fish to subsist on would get them under House Bill #288. This Bill would also allow Traditional use groups, such as Commercial Fishermen, and Copper River Valley residents to be able to continue our set way of existence and help assure management of future stocks of Salmon. I have my whole life's investment tied up in the industry at age 32. I have State backing on a resident loan from the Alaska Commercial Fishing and Agriculture Bank. All in all I have over \$100,000 tied up in my fishing business. I live a modest existence and work hard and take many risks against the ocean just to get by on most years I have participated in this fishery. So it's not as easy or lucrative as many might seem to think about the life of an Alaskan Commercial Fisherman. It should be my constitutional right to be allowed to continue this traditional way to make a living. Why is my profession any different than anyone's **elses**? Give me a chance to earn a living! With Alaska's concern over falling oil revenues, the State should be concerned about enhancing its Commercial Fishing Industry, not pinching it out of existence and those who earn their livings from it.

Fishing Vessel

"NATAD"

Sincerely,

John C. Gregory

John C. Gregory

Copper River
Salmon DRIFT
GILLNETTER

Teklanika. Park officials hope to open the road as far as Toklat, at Mile 53, by May 25 and to Wonder Lake by early June.

\$10.

Any organization wishing to be included in *Outdoors Around Town* should send the appropriate information to The Anchorage Times Sports Department, c/o the outdoors writer, P.O. Box 48, Anchorage, 99518.

Monday, 12:10 p.m. Tuesday and 12:55 p.m. Wednesday.

Razor clam diggers are reminded that a sports fishing license is required for anyone 16 or older. The cost is \$10 for Alaska residents. The limit is 60

seen rolling off Deep Creek. But none had been reported caught. It's still awfully early for kings."

Some dip netting for boolligan has begun in Turnagain Arm, but again, sizeable runs aren't expected to start for another week or 10 days.

Legislature can prevent a fish-and-game subsistence crisis

No matter who says what about subsistence these days the message is one of panic.

Ever since February's so-called Madison decision — the Alaska Supreme Court ruling which gave subsistence-user rights to all state residents — every outdoor group in Alaska has been acting out the tale of Chicken Little and yelling "the sky is falling."

The popular scenario of what may happen runs as follows: because the decision eliminated any distinction between rural and urban subsistence use, every Alaskan now qualifies to be a subsistence hunter or fisherman.

As a result hordes of city people intend to descend upon the streams feeding Cook Inlet and catch every fish north and south of Anchorage. Unmitigated disaster will follow as the fish disappear. Tens of thousands of anglers will be unable to wet a line and everyone with a commercial interest will go broke. In short, chaos and consternation will prevail throughout southcentral Alaska.

Sport fishing groups are approaching apoplexy. They are worried sick their season will be shut down or curtailed because they are the first to be cut off if there is a shortage of fish stocks.

The guides are paranoid. They believe their season will be cut for the same reason and some have even begun to make application to subsistence fish with rod and reel.

The personal use fishing people believe a conspiracy exists to eliminate them.

Setnetters think they will be next in line and see their number of fishing days shortened by emergency closures.



Rising to the Bait

Dan Sisson

The drift fleet — next to last in the order of those to be cut — are wondering what or they too may face a limited season.

Even the natives — the original subsistence users who live in rural areas and have fished with little interference — are looking askance at the potential hordes who may compete with them.

The fisheries biologists fear they will have their carefully constructed management systems knocked into a cocked hat.

But if you think the fishing folk are running around claiming the end is near, you should talk to the game management people. Madison has absolutely paralyzed them. They realize that if everyone is a subsistence hunter and can shoot moose, caribou and bear anywhere, at anytime during the season — just because they need the meat — no intelligent game management is possible.

The moose will be exterminated regardless of sex because there simply aren't enough to go around. The 25-year effort to build up herd bulls in specific units will have been in vain. And just ponder what position big-game guides are in: if any type of hunting is to be eliminated non-resident and

guided hunts will be the first to go.

The most horrifying aspect of this looming crisis is the possibility of the federal government taking over management of the state's fisheries and game. A deputy undersecretary of the Interior Department, Bill Horn, has stated: "Our preliminary review of the Madison decision indicates that it put the state in a position of non-compliance. . . . It is possible someone could pursue the judicial remedy specified in the Alaska National Interest Lands Conservation Act and argue that we must take immediate action."

The implications of Horn's statement points to yet another dimension of the crisis: if the federal government — now facing an acute budget crisis — were to take over management of Alaska's fish and game resources where would they find the money?

Where would they find the expertise? Would the state's biologists — who often find themselves at loggerheads with federal policy — cooperate? Or would they find innumerable points of conflict?

If most people think there is potential chaos at present what would a forced return to the fish and game management policies of territorial days mean?

Even more frustrating is the complexity of the subsistence law. Rooted in federal, as well as state, law it is understood by only a few people — mainly lawyers who have studied it for more than a decade. The average sportsman doesn't comprehend it and can't be expected to. And this is part of the problem.

Most sportsmen want a quick fix and then want to go fishing. They don't have time to study the ra-

tionale of courts and judges or the opinions of attorneys general and they are light years from coming to grips with the will of Congress on subsistence.

Yet the scenarios listed above are all possible and some say even probable. If this is true then it is incomprehensible why anyone — especially a state legislator — would not want to accept a bill that returns subsistence to the pre-Madison status quo before anything drastic happens.

But the state senate appears to be running just that risk. Its leadership claims that a year's study — at least — is needed to address the problem. So it proposes to ignore the administration's efforts to restore the status quo by refusing to pass the only legislation proposed so far to avert the coming crisis.

Anyone who has taken even an elementary course in government knows that any law can be amended or changed as circumstances warrant.

The same is true of the subsistence bill now in the legislature. If passed, it would allow fish and game management personnel to proceed in an orderly manner. If further changes in the law are needed, they can be enacted at a later date. No crisis is necessary.

The irony of this situation is that if a real crisis does occur it will be a managed — even orchestrated — one, and the fishermen, guides and biologists should place the blame where it belongs and not tear one another apart.

Dan Sisson, an outdoors author and college instructor living on the Kenai Peninsula, is a contributor to *Field and Stream* magazine.

From Governor's office

5-2-85

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

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

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

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

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

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

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

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

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

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

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

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

TESTIMONY OF JANIE LEASK, PRESIDENT OF THE
ALASKA FEDERATION OF NATIVES, BEFORE THE
SENATE STATE AFFAIRS COMMITTEE ON THE
COMMITTEE SUBSTITUTE FOR HB 288

Mr. Chairman, members of the committee, my name is Janie Leask. I am president of the Alaska Federation of Natives. The board of directors of AFN is composed of a representative of each of the thirteen Native regional corporations formed under the Alaska Native Claims Settlement Act - a representative of each of the twelve Native regional nonprofit associations - and twelve representatives of IRA councils and other village organizations.

On behalf of AFN, I would like to express our appreciation for the opportunity to testify this morning on the Senate State Affairs Committee substitute for House Bill 288.

As you are aware, Alaska is unique in that it is the only one of the fifty states in which the health, safety, and general well-being of such a significant number of residents is dependent upon the continued harvest of fish, game, and other wild renewable resources for personal and family consumption. The economy of rural Alaska is dependent upon the continuation of these uses.

In 1978 the Alaska legislature recognized this reality by enacting the state subsistence law. The law requires the

Board of Fisheries and Board of Game to adopt regulations which afford subsistence uses a priority in situations in which the harvestable surplus of a fish stock or game population is not large enough to safely accommodate a harvest for all uses. In 1980 the Congress established a federal subsistence priority which operates in similar fashion.

In 1982 a small, but vocal, group of Alaskans who had opposed enactment of the 1978 law obtained enough signatures to place an initiative to repeal the law on the general election ballot. As a result, the subsistence issue was thoroughly debated during the months preceding the 1982 election. And by an overwhelming margin, urban and rural Alaskans joined together to vote against the initiative and in favor of retaining the subsistence priority.

Throughout the debate on the subsistence repeal initiative, all Alaskans - both those who supported the 1978 law and those who opposed it - assumed that the subsistence priority was limited to hunting and fishing by residents of rural Alaska. No one thought the 1978 law provided a subsistence priority for those of us who live in Anchorage and Alaska's other large urban centers.

However, early last year the Alaska Supreme Court decided that that was what the 1978 legislature had intended. In *Madison v. Alaska Department of Fish and Game* the Court held that once a customary and traditional use of a particular fish stock or game population had been

established in a particular area, all Alaskans - whether they live in Anchorage or Tuluksak - must be afforded a subsistence priority over other user groups.

The Governor and the members of the the Board of Fisheries and Board of Game immediately recognized that implementation of the Madison decision would seriously disrupt the normal hunting and fishing activities of urban Alaskans. As a result, Governor Sheffield asked the legislature to amend the 1978 law to limit the identification of subsistence uses of fish and game to hunting and fishing by residents of rural Alaska.

The House of Representatives held a series of statewide hearings on the subject and passed a bill to limit the identification of "subsistence uses" of fish and game to hunting and fishing by rural Alaskans.

Unfortunately, the Senate took no action prior to the adjournment of the 1985 legislative session.

Urban Alaskans suffered the consequences. The Board of Game was compelled to implement the Madison decision by establishing so-called Tier II subsistence hunts from which most urban hunters were excluded. Although sport fisheries on the Kenai Peninsula were not similarly disrupted, it was only because no one attempted to fish for salmon with set nets in rivers usually devoted to rod and reel fishing. However, several weeks ago criminal charges were dismissed against a person caught snagging salmon on a Kenai Peninsula river. This decision establishes the precedent that

snagging and set net fishing for Cook Inlet salmon stocks normally harvested by sport fishermen in freshwater rivers is protected by the Madison subsistence priority.

In addition to the disruption which the Madison decision has caused to normal hunting and fishing activities, because the state subsistence priority is no longer limited to hunting and fishing by rural Alaskans, Assistant Secretary of the Interior William P. Horn has informed the State of Alaska that its subsistence management program is no longer in compliance with the federal regulatory standards set forth in title VIII of the Alaska National Interest Lands Conservation Act. If the State program is not brought back into compliance with title VIII, the Board of Fisheries and Board of Game must begin adopting hunting and fishing regulations pursuant to federal - rather than state - law. And should they refuse to do so, the Secretary of the Interior will be compelled to adopt his own subsistence regulations.

Mr. Chairman, the events of 1985 have provided ample evidence that the 1978 statute should be amended. The question is how. The simplest way to solve the problems created by the Madison decision and bring the 1978 statute into compliance with ANILCA is to limit the definition of "subsistence uses" to hunting and fishing by rural Alaskans.

Last session individuals who have long been opposed to any subsistence priority attempted to convince legislators who represent urban districts that urban Alaskans oppose a