

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 80/2

3554 HRES HB 288 (FILE 1) 2130

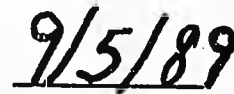


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File #1

House Resources Committee
Packets on HB 288
An Act Relating to the Taking of Fish and Game for Subsistence and
Personal Use

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HOUSE BILL 228

AND

FISCAL NOTE

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

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 288

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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

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

10 * Section 1. FINDINGS. The legislature finds that

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

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

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

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

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

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

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

1 size limitations on the taking of fish;

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

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

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

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

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

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

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

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

25 (12) personal use fishing.

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

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

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

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

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

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

16

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

FISCAL DETAIL

Bill/Resolution No.: HB 288
 Title: An Act relating to the taking of fish & game for subsistence & personal use
 Sponsor: Rules Comm. at Gov. request
 Requestor: Rules Comm. at Gov. req.
 Date of Request: March 13, 1985

Agency Affected: Department of Fish and Game
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____
 All ADF&G BRU's

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING	0	0	0	0	0	0
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Passage of bill will reduce management costs substantially. Failure to adopt will require a major increase in funds for monitoring growing subsistence fisheries.

If state is found to not comply with federal requirements, then state may lose federal matching grants and revenues

Prepared By: Steven R. Behnke *Steven Behnke*
 Division: Subsistence

Phone: 465-4147
 Date: 3/12/85

Approved by Commissioner: *James L. Pape*
 Agency: Department of Fish and Game

Date: 3-12-85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

GOVERNOR'S TRANSMITTAL LETTER



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 13, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

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

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

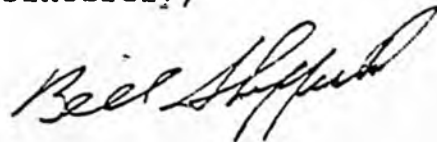
Alaska is characterized by a diversity of socioeconomic systems and patterns of resource use. ... It seems clear that the economic and social stability of many communities depend upon access to and utilization of renewable fish and wildlife resources. Disruptions of the relationships between the community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

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

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

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

Sincerely,



Bill Sheffield
Governor

COMMENTS BY

THE SPEAKER OF THE HOUSE

LEGISLATIVE
BEN GRUSSENDORF

P.O. Box 928
SITKA, ALASKA 99870
(907) 747-6458

RULES COMMITTEE
LEGISLATIVE COUNCIL

DISTRICT 3
E. FIN COVE
REPUBLICAN
BEN GRUSSENDORF
SITKA
TENAKEE

Alaska State Legislature



House of Representatives
SPEAKER OF THE HOUSE

WHILE IN JUNEAU
POLICE
JUNEAU, ALASKA 99801
(907) 465-3824
(907) 465-3710

PRESS RELEASE #7

March 12, 1985

COMMENTS ON SUBSISTENCE BY REP. BEN GRUSSENDORF

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

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

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

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

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

COMMENTS BY THE CHAIRMAN OF THE BUSH CAUCUS

COMMENTS ON INTRODUCTION OF SUBSISTENCE LEGISLATION

MARCH 11, 1985

REP. JACK FULLER

465-3789

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

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

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

SUBSISTENCE COMMENTS, CONTINUED

MARCH 11, 1985

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

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

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

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

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LETTER FROM
THE HOUSE SPECIAL COMMITTEE ON FISHERIES
AND
MINUTES FROM
THE HOUSE SPECIAL COMMITTEE ON FISHERIES
SUBSISTENCE HEARINGS



STATE OF ALASKA
HOUSE OF REPRESENTATIVES

MEMORANDUM

March 21, 1985

TO: Representative Dick Schultz
Representative Adelheid Herrmann
Co-Chairs, House Resources Committee *all*

FROM: Representative Peter Goll *P. Goll*
Chairman, House Special Committee on Fisheries

SUBJECT: Subsistence Hearings

The House Special Committee on Fisheries has been studying the impacts of the Madison decision since shortly after the Supreme Court made its ruling. I will be making a verbal presentation to the Resources Committee as you begin consideration of House Bill 288.

Attached is a letter from the members of the Fisheries Committee addressing the subsistence issue and a resolution adopted by the Joint Board of Fisheries and Game which urges adoption of the governor's subsistence legislation. A transcript of the Fisheries Committee's March 21 briefing on subsistence is being prepared and will be forwarded to the Resources Committee as soon as it is completed and reviewed. We also will transmit other information on the subsistence issue as it becomes available.

The Fisheries Committee found the briefings to be very helpful, particularly the hands-on perspective offered by members of the Board of Fisheries and regional fisheries managers. While the verbatim transcript of our hearings would be a useful research and reference tool, the document cannot replace the value of interaction between committee members and fisheries managers.

As your committee deals with the complexities of the Madison decision, I believe the perspective of those who are responsible for formulating and implementing management policies would be invaluable.

*Oct - Please let me know if you need any help and support.
P. Goll*



Official Business

Alaska State Legislature

House of Representatives

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

Special Committee on Fisheries

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

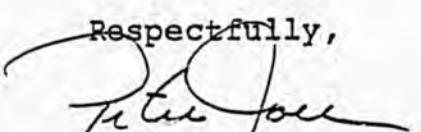
The Madison decision by the Alaska Supreme Court on subsistence has the potential of seriously disrupting the management of Alaska's fish and wildlife resources. According to testimony before the Special Committee on Fisheries, the Madison decision could force radical shifts in established patterns of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

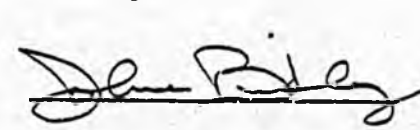
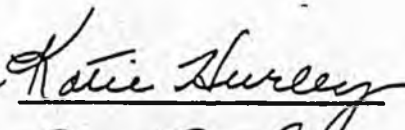
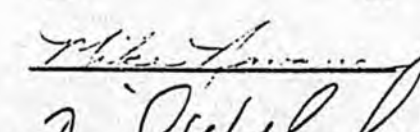
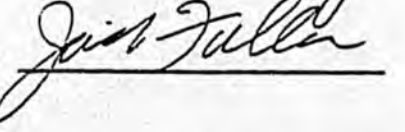
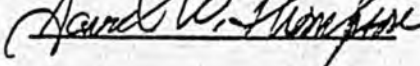
The Fisheries Committee received testimony on the Madison decision from the Department of Law, Department of Fish and Game, and chairman of the Joint Boards of Fisheries and Game. Although the state's fish and wildlife managers are still in the process of developing specific management strategies responsive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

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

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

Respectfully,


Peter Gøll, Chair

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

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

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

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

DRAFT

2. Sport fishing for king and other species of salmon on the Kenai and Naknek rivers and in the Subitna drainage may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the Madison decision the Board of Fisheries had adequate regulatory flexibility to prevent that result.

3. Non-subsistence hunting, including commercial guiding activities may be significantly restricted and, in many cases, eliminated. Prior to the Madison decision the Board of Game had adequate regulatory flexibility to accommodate these users reasonably.

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

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

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

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

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

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

House Special Committee on Fisheries
Governor's Conference Room
March 21, 1985
8:30 a.m.

Members Present: Representative Peter Goll, Chair
Representative Mike Navarre
Representative Kate Hurley
Representative Roger Jenkins
Representative John Binkley
Representative David Thompson

Members Absent: Representative Andre Marrou

Legislators Present: Representative Walt Furnace
Representative Jack Fuller
Representative Randy Phillips
Representative Steve Frank

Legislative Staff Present: Offices of Senators: Zharoff, Sturgulewski, and Senate Advisory Committee. Representatives: M. M. Miller, Sund, Binkley, Jenkins, Thompson, Wallis, Boucher, Navarre, Larson, Reiger, Grussendorf Hermann, Szymanski, and Fuller.

COMMITTEE CALENDAR: Briefing on Subsistence and HB 288 by the Department of Law, the Department of Fish and Game and Alaska Board of Fisheries. Some members of the departments and Alaska Board of Fisheries participated via teleconference.

WITNESS REGISTER:

James R. Ayers, Special Assistant
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99802
Telephone: 465-4100
Position Statement: Conference Moderator

Elizabeth A. Stewart, Director
Division of Boards
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99802
Telephone: 465-4100
Position Statement: Via Teleconference

Ken Parker, Director
Division of Commercial Fisheries
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99802
Telephone: 465-4100
Position Statement: Via Teleconference

Steven R. Behnke, Director
Division of Subsistence
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99811
Telephone: 465-4120
Position Statement: Via Teleconference

Kenneth R. Florey
Regional Supervisor/Region II
Division of Commercial Fisheries
333 Raspberry Road
Anchorage, Alaska 99502
Telephone: 267-2104
Position Statement: Via Teleconference

Bob Clasby, Fisheries Biologist IV
Division of Commercial Fisheries
Alaska Department of Fish and Game
P. O. Box 3-2000
Juneau, Alaska 99802
Telephone: 465-4100
Position Statement: Via Teleconference

Ron Jolin, Chairman
Alaska Board of Fish
P. O. Box 2022
Kodiak, Alaska 99615
Telephone: 486-5949
Position Statement: Via Teleconference

Bix Bonney, Vice Chairman
Alaska Board of Fish
3101 C Street, Suite 301
Chalis 1 Building
Anchorage, Alaska 99503
Telephone: 561-5115
Position Statement: Via Teleconference

John Garner
Alaska Board of Fish
P. O. Box 448
Juneau, Alaska 99802
Telephone: 586-9500
Positions Statement: Via Teleconference

Larri Spengler
Assistant Attorney General
Alaska Department of Law
Pouch K
Juneau, Alaska 99811
Telephone: 465-3600
Position Statement: Via Teleconference

Heidi Borson-Paine
House Research Agency
Alaska State Legislature
Pouch V
Juneau, Alaska 99811
Telephone: 586-3991
Position Statement: Observer

Ron Sommerville
Alaska Outdoor Council
Juneau, Alaska 99801
Telephone: 789-3450
Position Statement: Observer

Rupert Andrews
National Rifle Association
Juneau, Alaska 99801
Telephone: 789-7422
Position Statement: Observer

Cass Parsons, Executive Director
United Fishermen of Alaska
319 Seward Street
Juneau, Alaska 99801
Telephone: 586-2820
Position Statement: Observer

James Martinez
Alaska Native Brotherhood
Klawock, Alaska 99925
Position Statement: Observer

Richard McKinley
Alaska Native Brotherhood
Juneau, Alaska 99801
Telephone: 789-0971
Position Statement: Observer

Woodrow F. Morrison
Bureau of Indian Affairs - Subsistence
Juneau, Alaska 99801
Telephone: 586-7177
Position Statement: Observer

Ron Williams
Alaska Native Brotherhood
Juneau, Alaska 99801
Telephone: 586-7613
Position Statement: Observer

Richard Stitt
Sealaska
One Sealaska Plaza
Juneau, Alaska 99801

Telephone: 586-1512
Position Statement: Observer

Jackie Martin
Bureau of Indian Affairs - Subsistence
Juneau, Alaska 99801
Telephone: 586-7177
Position Statement: Observer

Marilyn Heiman
Alaska Environmental Lobby
204 North Franklin, Suite 3
Juneau, Alaska 99801
Telephone: 586-2345
Position Statement: Observer

Barbara Basham
3601 C Street, Suite 740
Anchorage, Alaska 99503
Telephone: 562-3719
Position Statement: Observer

Bob Richardson
3601 C Street, Suite 740
Anchorage, Alaska 99503
Telephone: 562-3779
Position Statement: Observer

Dale Bondurant
SR-1, P. O. Box 2516
Chugiak, Alaska 99567
Telephone: 688-2692
Position Statement: Observer

Sam McDonnell
336 East 23rd Avenue
Anchorage, Alaska 99501
Telephone: 272-6605
Position Statement: Observer

Mary Bishop
1555 Guss'Grind
Fairbanks, Alaska 99701
Telephone: 455-6151
Position Statement: Observer

ACTION NARRATIVE:

TAPE 12, SIDE A

Recording

Number 003

Chairman Goll called the special meeting on subsistence to order at 8:39 a.m. and listed those present: We have a number of distinguished guests representing a variety of organizations and interest groups. We are here today to receive a briefing by the Department of Fish

and Game, its various divisions, the Department of Law and to receive an announcement and some information from the joint boards of fisheries and game regarding their position on the subsistence bill and their guidance on the issue in general. So with that I would invite Mr. Ayers representing the Commissioner's office of the Department of Fish and Game to open our meeting.

Number 015 Jim Ayers, Alaska Department of Fish and Game: Thank you Mr. Chairman, members of the committee and other Representatives. I appreciate this opportunity. My name is Jim Ayers, I'm Deputy Commissioner of the Department of Fish and Game. What we would like to do this morning is provide a framework from which we think that you will be able to construct and a reasonable discussion and action regarding the Governor's bill and most particularly as it relates to the Madison decision. We're here in the spirit of cooperation. We're here to assist in any way we can and to hopefully, help us all understand that the Madison Decision has removed the board's ability to achieve balance. It has removed the board's ability to obviate the potential divisiveness that was throughout our state for a while. We would like to discuss in this presentation three major aspects: One, a review of the Madison decision and the legal holdings; two, the implications that we think are there with some definition and some implications that are potentially there with regard to federal law; and the third aspect is of course, the potential impact on users as a result of the Madison decision. God willing there are participants in Anchorage at the board meetings who are going to make the majority of this presentation. And so I will become a pretty face and a listener as you all are. The participants in Anchorage are Bix Bonney, a member of the fish board, Beth Stewart, who is the director of our boards' division; Steve Behnke who is the director of the subsistence division; Larry Spengler who is assistant attorney general from the Department of Law; Ron Jolin, who is the chairman of the joint boards and chairperson of the fish board; Ken Florey who is a regional supervisor with the Department of Fish and Game; John Garner, who is a board member of the fish board; if there are others there that I have not mentioned, I'm sure they will identify themselves as the need arises. What we thought would be most helpful is if we began with a presentation from Ron Jolin who is the chairman of the joint boards. Ron, hopefully, is awaiting my silence and will then discuss with you what he believes the current situation is and give you the boards' perspective. I will mention one other thing and that is that we have distributed a copy of the resolution that was passed by the joint boards yesterday. And so Ron will know you have in front of you a copy of their resolution. With that said, Mr. Chairman, and with a gentle reminder that we are here in a spirit of cooperation and to work with you in any way we can to resolve this potential conflict. And with that I would hope, Mr. Chairman, that we can then move to Anchorage to hear from Ron Jolin.

Number 115 Chairman Goll: Thank you very much Mr. Ayers. Yes, we will move to Anchorage. I'd like to request of you and all the other participants today to the extent possible that you send us your comments in writing. What we'd like to do is make sure that other members of the House and Senate who are not present today are thoroughly briefed and by getting either your written comments or transcripts of your comments telecopied down to us here in Juneau, we would take it upon ourselves to get that distributed. Secondly, I'd like to say we were hoping to go until 11

o'clock this morning, but there's a majority caucus at 10:00 and things may wrap up earlier, so that gives us about an hour and a half, a little less to get our business done and I just wanted all participants to be aware of the schedules. Thank you very much and once again back to you and back to Anchorage.

Ayers: Ron Jolin are you in Anchorage?

Number 118 Ron Jolin: Yes, good morning Mr. Chairman and ladies and gentlemen of the House Committee on Fisheries. I'll give a little overview on what the boards' perspective is of the Madison decision. As you know under Title 16, the boards' responsibilities are the preservation and enhancement of the resource for the people of Alaska. And the allocation of those resources to the different user groups in the state of Alaska. I think the board feels that prior to Madison, we were following a process that was working fairly well. Maybe I can give you some of our perspectives of what the Madison decision means to the board or what we feel are some of the problems we would be facing under the decision. We would have some problems in trying to accommodate our commercial and sport users in the state of Alaska. I think that under the decision we are put in a position of having to allocate fish to one user group in preference over all user groups in the state, especially the commercial and sport fishermen. It's taken away a lot of flexibility of the board to regulate our fisheries. I think that as we move into this we will be getting a more indepth report on that from our legal staff, from the AG's office and from some of the people in the department. HB 288 would return the flexibility that we need to regulate and manage our fisheries resources. It's not an easy job in a state as large as Alaska to try and allocate all of the resources in an equitable manner to all of our user groups. But we really feel that we're doing the best job that could be done under the circumstances. I think that anything that we can do to return our regulatory authority to the balance that we had prior to Madison, would be in the best interests of all people and all user groups in the state. I suppose as we move into this we'll be getting into some of the worst-case scenarios and what might happen - what might not happen this year and in following years if we do indeed not get back to our previous position before Madison and if we do return to our position. If we can find the support that we need to pass both bills. With that maybe I'll turn it over to Larri and she can run through some of the AG's perspectives.

Number 167 Larri I. Spengler: Thank you. This is Larri Spengler with the Department of Law. What I'm going to do is give a very brief overview of Madison, the decision which put us all in this position and also of the series of events that led up to the Madison case and the holdings of Madison, generally how they impact the board's authority and also briefly how that has implications with regard to the federal subsistence law. After that, the different people from the Department of Fish and Game, and to whatever extent I can be of assistance in that, along with board members will talk about the various specific situations that we know we'll need to address under Madison if the Governor's bill does not pass. We thought it might be most useful for questions to be asked after each section, rather than waiting to the end of the whole presentation. So when I'm done with the legal overview, if there are any questions on that maybe we could take them then and then after we talk about each resource

situation, if the committee has questions on that we could take those questions at that time before getting into the next one.

The Madison case is the first time that the State Supreme Court has had an opportunity to evaluate the state's subsistence statutes and what it means. In doing that the court basically turned on its head the authority the board had thought it was exercising up to that point and made it very difficult for the board to continue the balance and the ability to accommodate all of the different uses that had been thought to rest in the board earlier.

Madison is a case that came out of Cook Inlet. It's a case that was filed by people living in Kenai and Homer. The board's approach to subsistence in Cook Inlet is perhaps a useful microcosm to how it has been approaching subsistence throughout the state as well. And therefore the chronology that led up to this case, to this lawsuit, provides a good background against which to look at Cook Inlet in more detail and also to look at the other situations.

The state subsistence statute was passed in 1978. Before 1978, the board of Fisheries had been delegated from the Legislature the authority to authorize commercial fishing, sport fishing and subsistence fishing in the board's discretion. Subsistence fishing at that time, before 1978, was simply described as fishing by net for personal use. Sport fishing was defined as fishing by rod and reel for personal use and commercial fishing was defined as fishing for profit. What the Legislature did in 1978 was take away some of the board's discretion with regards to subsistence fishing. The Legislature said that if there were subsistence uses on a fish stock or a game population, for the game board, then the board no longer had the discretion to authorize or not authorize that. It had to authorize fishing unless it would hurt the resource. So it removed some of the board's discretion and it also said that if there was a resource situation that required restriction, subsistence would have the priority. So, the law was passed in '78 and several years went by. No real effort was made or no real examination was made of the law and what it required by the board of fisheries. In 1980, there were three lawsuits filed by different individuals around Cook Inlet and communities.

And that brought the board's attention and the state's attention generally sharply into focus on the subsistence law and what it required. The state lost all three cases simply because the board had not really been looking up to that point at the subsistence law and what it required.

Those cases came from the Homer, Kenai and Tyonek areas. As a result of that summer, the board in a winter meeting of 1980 and the spring of 1981 examined the uses around Cook Inlet and examined which of those uses were subsistence uses of salmon under the state law and in order to do that they had developed criteria against which they would examine a use of salmon to determine if it was a customary and traditional use of salmon. That was, customary and traditional being some of the catch words in the definition of subsistence uses. Under those criteria, the board determined that in Cook Inlet only three communities qualified for subsistence uses: Tyonek, English Bay and Port Graham. The board

authorized subsistence uses for those communities and then looked at the rest of the Inlet. Elsewhere in the Inlet, there had been subsistence fishing authorized since statehood and before, under the definition of net fishing for personal use. Now, the board had determined that that fishing was not subsistence fishing because it did not meet the criteria that they had developed and in the spring of 1981 before the 1981 summer the board did not authorize any net fishing for any one else in Cook Inlet for their own personal use except for the subsistence fishing which was to occur in Tyonek, English Bay and Port Graham. That summer, the summer of 1981, individuals from Homer and Kenai filed two different lawsuits. In both cases, the people claimed that they were subsistence fishermen and always had been, and should be able to continue to subsistence fish, But, also claimed that in any event, they ought to be able to have some kind of access to the fishery with nets because they had historically done so. The court in Madison at the lower level refused to overturn the board's assessment, that there were no longer subsistence uses existent in the Kenai area, but also said that the board had to treat those people fairly and could not eliminate that historic use without some good reason. And that basically that in treating them fairly they might have to set up some kind of personal use fishery that would allow those people, Mr. Madison, the plaintiff in that case, and others in the area, access to the fish. So, the board then established, after the summer of 1981, established the personal use fishing category in regulation. Personal use fishing was defined, basically the way subsistence fishing had been defined before the subsistence law was passed: fishing by net for personal use. Subsistence fishing was now defined as fishing for subsistence uses, customary and traditional uses for certain purposes. So subsistence fishing was a subset after 1978 of what subsistence fishing had been before 1978. It was, under the board's interpretation, narrowed. The definition of subsistence fishing had been narrowed in 1978 to protect the uses and harvests in rural communities and areas. Ok, so the board set up a personal use fishery and authorized personal use fisheries opportunities for Mr. Madison and everyone else in the Anchorage area, Kenai area Homer area on sockeye in the summer in Cook Inlet and some coho in the fall. What the lawsuit was filed over was a more extensive coho fishery in the fall, that's what the people had been seeking. The court, as I said in Madison, said these criteria that you've been applying are the right approach to identifying rural communities in the areas that are reliant on fishing for personal uses and a significant component of the economy of the community or area. And that's exactly what the Legislature meant in 1978. You're doing it right, board go ahead. So the board went ahead and in combination with the joint board adopted 8 criteria which eventually replaced the 10 criteria from Cook Inlet which both boards would use on a statewide basis to identify subsistence uses of fish stocks and game populations.

The board of fisheries applied those criteria in various situations, including the Copper River and we'll get into that a little bit more later. At the end of February the Supreme Court issued its ruling in Madison. All along since 1981, the case had been slowly winding its way through the court system and finally reached the State Supreme Court. The court said that the board's implementation of the statute was inconsistent with the statute. The court did not rule on any constitutional issues, but rather looked at what the court thought the Legislature in 1978 meant. And the court determined that the Legislature

in 1978 had not meant nor had authorized the board to identify subsistence uses as rural uses in rural communities and areas. That the Legislature had not authorized the board to look at the uses of communities or areas. And conversely that the Legislature had not authorized the board to look at individuals to see at first instance who gets in to be able to subsistence fish.

Mr. Jones can because he's lived here for 20 years, Mr. Smith can't because he's been here for two years is not a system that the board had ever tried, but the court said by the way, don't try it because that wasn't meant either. What this left us with is a situation where, under the court's ruling, if there has been a subsistence fishery at any time on a particular fish stock, the board has to authorize subsistence fishing on that stock unless any fishing would be dangerous to the stock. The board cannot say who can go and fish in that fishery. All Alaskans can go and fish until or unless all sport and commercial fishing on that relevant stock has been eliminated. So an example which we'll talk about more in the Cook Inlet section is the village of Tyonek across the inlet from Cook Inlet. The board established a subsistence fishery for which only residents of Tyonek could qualify on king salmon in the spring. They took approximately 2000 king salmon in a year in that fishery. Now, there is no question in that fishery is a customary and traditional fishery, the board will have to authorize it and cannot exclude anyone from participating in it. So anyone from Anchorage or from anywhere else can go over there and fish and the board cannot restrict that until and unless the sport fishery in the Susitna drainage afterwards and any relevant commercial fishery have been closed down.

The Madison case then left us with two different sets of problems. One is the potential disruption to the balance that the boards have achieved among the different use groups. And the other is a probably inconsistency with federal law. If it's acceptable, I'll go straight on into the federal law problem and then pause for questions, unless someone would like some now. (no questions)

The federal subsistence law, ANILCA Title 8, allows the state to continue its traditional management on all of the federal land in the state, which makes up 60% of the land, it's not just the parks and monuments, it's all federal land. If the state by a law of general applicability provides for three things which are specified in ANILCA: one is the advisory committee and regional council system, which the state already has; another is the subsistence priority which the state has; and the third is the definition of subsistence uses that is found in ANILCA. ANILCA defines subsistence uses identically to the state with the exception that it is specifically stated in the statute that subsistence are customary and traditional uses by rural Alaska residents. Up until the Madison decision, we were in compliance with ANILCA because the boards had been interpreting our subsistence law as the intention of the law was to protect the harvests of fish and game in rural communities and areas which were dependent on the resource. So, we were in compliance. Now the court has said that the boards are not authorized to identify subsistence uses as rural uses. If the boards cannot protect rural uses as subsistence uses, separately from other uses then we will not be in compliance with ANILCA and the federal government may be required to take some action to impinge upon the board's

regulatory authority over fish and game. There are several questions with regard to this. One aspect of this, as I mentioned, is taking over the management of the federal land in the state. Land is defined in the statute as water and there is an argument to be made, although the state has not and would not concede this, that navigable waters are included under the definition. So, if that were the case, then the federal government would have to exercise some management over all of the navigable water.

The other thing to keep in mind is that even if the federal government doesn't particularly want to take over management there is a section in the federal law that allows another private party to go into court and sue the federal government to make them do their duty as such under the law. So, a private party or group could go into court and sue the federal government and say: 'federal government, the state is not now authorized to protect rural uses as opposed to other uses and that means that you have to go in and do something.' And the court might well order them to do something.

Another consequence of this is financial. Because the statute says that if the state is in compliance we will receive and we have been receiving matching money in the amount of about \$1 million dollars a year from the federal government to support the advisory committee and regional council system. And maybe Jim Ayers could summarize the financial consequences before we take any questions.

Number 376 Ayers: Thank you Mr. Chairman. I will do two things actually, I will mention Larri and to Beth Stewart who, hopefully, is waiting to discuss some other aspect of the impacts subsequent to this. We are under a time line here and maybe, Mr. Chairman, you could give us some direction.

Chairman Goll: Yes, Jim, thank you. Rep. Fuller has just come back and advised us that we will be able to continue until 10:30 a.m. So that's a little bit better, but we will still have to move rapidly if we are going to get through all of the facets of your presentation.

Ayers: Those of us who are inclined to enjoy the sound of our own voice will try to restrain ourselves. Thank you Mr. Chairman. The financial implications with regard to the federal funds are most specifically those ANILCA funds that we receive from the federal government to ensure that we carry out the intent of the federal language with regard to rural Alaskans and subsistence use. The subsistence way of life has given cause to the federal government to provide funds to the state of Alaska to ensure that the advisory committees and the regional councils have sufficient funds to address their own issues in the names of solving their own problems and bring those forward to the board. Those funds also assist the department through the division of Subsistence in providing support staff to address questions such as resource uses in rural areas, and those funds total a million dollars. Those are on a reimbursable basis, so what we have is a reimbursement from the federal government each subsequent year to the expenditure.

There's a million dollars of the ANILCA fund. A question that would arise is other federal funds - for example we have as some members who might have attended the finance discussions what is referred to as Dingell/Johnson or now Dingell/Johnson/Wallop/Breaux funds. Those funds come as support funds for the sport fishing industry from the federal government to us. It is not clear what the status of those funds would be and I won't belabor that point unless there are specific questions. There also Pittman/Robertson funds, those funds come from the federal government as a result of hunting activities. Both of those funds are based on a formula that have to do with hunting license and area and those kinds of things. So it's not clear what the status of those funds would be, although as the Department of Law has mentioned, there is some question about whether guiding, outside activity, sport fishing, hunting, what the results would be and therefore those funds could be called into question by the federal government. But we have no information at this time which direction the federal would go with regard to those funds.

Those funds total a little over \$5 million. So you have a direct question on a little over a million dollars. There is a subsequent question of probably another \$5 million. With that said, Mr. Chairman, perhaps the best thing to do is to answer any questions at this point and of Mr. Jolin, the board chair, Larri Spengler of the department of Law and her overview or of myself and then we'll go immediately to some specific concerns and potential impact on users.

Number 436

Representative Furnace: Mr. Chairman, a question.

Goll: Rep. Furnace.

Representative Furnace: Mr. Chairman, a request to Mr. Ayers. I'd like to have a more detailed breakdown on these federal funding sources. Perhaps you could track that over several years as to what those funds have been and the specific sources and conditions.

Ayers: Mr. Chairman, Rep. Furnace, we'll have that by tomorrow for you.

Goll: Mr. Jolin, do you have any other comments in behalf of the board that you're planning to make during this presentation. Are other board members going to be making further presentations?

Jolin: No, we're just going to talk about them in the context of each situation as we discuss them.

Goll: Then maybe it would be helpful to the people present if maybe you or I were to briefly read the resolution of the board of fisheries and game. Is that now the position of the board? Has that been officially voted on and are we to take this as the joint boards' stand on this issue?

Jolin: That was voted on yesterday by the joint boards and that is our joint resolution and our stand on the issue.

Goll: Then with the permission of the members I'll just quickly read this statement so that all the people with us today will be aware of where the boards stand and then go on as Mr. Ayers suggested. The statement reads:

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

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

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

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

2. Sport fishing for king and other species of salmon on the Kenai and Naknek rivers and in the Susitna drainage may need to be significantly restricted in 1985 or, eventually, even closed. Prior to the "Madison" decision the Board of Fisheries had adequate regulatory flexibility to prevent that result.

3. Non-subsistence hunting, including commercial guiding activities may be significantly restricted and, in many cases, eliminated. Prior to the "madison" decision the Board of Game had adequate regulatory flexibility to accommodate these users reasonably.

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

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

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

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

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

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

Thank you very much. Mr. Jolin and Mr. Ayers please proceed.

Ayers: Mr. Chairman, the next brief presentation that we have designed is from Beth Stewart, who is director of our board's division. We're going to ask Beth to talk a little bit about the boards approach in current potential problems from the perspective of proposals or petitions. Perhaps Beth could lead that off. Mr. Chairman, members of the committee - Beth Stewart, if you're in Anchorage.

Number 534 Beth Stewart: The boards have two situations facing them at this meeting. Some of the proposed changes to the regulations which are before them will have to be considered in light of Madison and the changes that it has imposed on the board. Also, the boards have situations that are not before them at this meeting, that were not regularly scheduled that they may have to contemplate changes in the regulations to for next summer. In both of those situations, the uncertainty about the status of the subsistence law, whether it remains as it currently is written and under the Supreme Court's interpretation or whether it changed makes the boards task extremely difficult. At this meeting, both boards are probably going to spend a great deal of time discussing alternative approaches to the proposals before them. Also, preparing alternative approaches to the situations that may occur this summer. For the fisheries board in terms of the situations that may occur this summer, there has been little or no opportunity for people to come before the board to request changes in the current regulations under Madison. We don't have the kind of regulatory time frame available to us that would allow a full-scale board of fisheries hearing and regulatory cycle. So if changes in the regulations must be made, to conduct fisheries this summer, the board most probably will not be meeting at the time those changes would need to be made. And under the delegation of authority to the commissioner of fish and game, the boards would ask Commissioner Collinsworth to adopt emergency regulations to conduct fisheries this summer.

Both boards plan to meet again in joint session, on March 25, which is the last day of the board meetings to discuss directions to the Commissioner for emergency regulations for this summer. Those

directions may not end up being very specific since neither one of the boards will have had the kind of public input that would guide them in making specific recommendations. I'll just stop here in a second. The way that people may have access to the regulatory system now that no call for proposals is out or no proposals are being solicited is through petition. The Administrative Procedures Act allows anyone to petition any regulatory agency in the state for a regulatory change.

That's the sort of unpredictable portion of what the board and the department may be facing this summer. We have no way of knowing whether people will petition us for changes in the regulations to authorize additional subsistence fisheries and no way to really predict how those can be handled come summer. And with that I'll just close.

Aver: Thank you Beth. Are there any questions of Beth or Mr. Jolin about the issues confronting the board at this point? At least those that we can see?

Number 594 Representative Furnace: I'd like to pose a question to Ms. Stewart and perhaps Mr. Jolin of their specific intent of perhaps holding hearings, realizing that there is somewhat a shortage of time. It appears that this is an important issue which the public does deserve its ability to participate in.

Number 643 Stewart: Mr. Chairman, the board doesn't have a special hearing scheduled at this time, the decision came out well after the board's regular announcements for public hearings and proposals had already been well underway. The board is going to provide an opportunity on the 25th, as I said, for people to come in and speak to the board about the Madison decision and what they think its implications will be. But at this point we have no plans to conduct hearings under any other circumstances. We don't have, for instance, the time to call for proposed changes to the regulations. The board of fisheries has a very complex and lengthy process that it undergoes for soliciting proposed changes to its regulations. About 120 days before the board meets, we issue a call for proposals. We have about a month and a half available for people to mail proposed changes in. Then we must compile those proposals and send them to the printer, then have them distributed to over, I think we have over 3,000 people on our mailing list now. We provide about another 2 months for people to comment on those proposed changes and hold advisory committee and regional council meetings. Then we actually conduct the board meeting and allow people to comment on specific proposals. At that point then, if the board adopts changes, the changes are reviewed by the Department of Law and then sent to the Lt. Governor and then become effective 30 days after the Lt. Gov. signs them. That time alone from when a change is adopted to the time it becomes effective is about 90 days, so as I said earlier, about the only way to change the regulations this summer would be through the emergency regulation process.

Goll: Thank you very much Ms. Stewart, would the next person now like to come forward and speak to the issues affecting their division?

Ayers: Mr. Chairman, there are division directors and as well as perhaps a board member in Anchorage and its my understanding that we would first like to speak about the Cook Inlet area. So, let's go directly to Anchorage, Mr. Chairman, and if people are prepared there why don't you introduce yourself and step right off.

Number 675 Mr. Chairman, this is Ron Jolin again, maybe we'll let everyone introduce themselves so you'll have an idea of who's here.
(Anchorage participants introduce themselves, see witness register)

Jolin: I'd like to pose a question to Larri. Larri, under the Madison decision, do we now have to open all fisheries restricted to local to all residents of Alaska?

Spengler: Yes, Mr. Chairman, at least at the first instance. And in the Cook Inlet situation the management people can talk about this more specifically, I believe there are three fisheries currently which are open to residents of particular communities; Tyonek, English Bay and Port Graham. The Madison decision would require that those fisheries be opened to everyone until or unless any sport or commercial fisheries on the same stock had been closed. The Madison decision also requires that if there has been a subsistence use of fish that the board authorize that use and now that the court has said the board does not have the authority to speak in terms of rural uses. This would apply to any area of Cook Inlet, whether it was rural or not. Maybe what would be useful is for Ken Florey who is directly involved with Cook Inlet to talk about where those uses might be in Cook Inlet and what affects that might have.

Number 724 Ken Florey: Yes, thank you Larri. Well under your definitions you just gave we do have the three local area fisheries that were defined by the board after a 1981 board meeting as being subsistence fishing. Those being the early spring fishery in Tyonek for chinook salmon, king salmon; and then the two fisheries in Port Graham and English Bay which go on throughout the year, through the summer months - the spring through the fall months for local residents. Under my understanding or how it's been presented, those no longer would be open only to local residents or those domiciled in those areas, but anyone who's a resident of the state of Alaska can participate. As far as other fisheries in Cook Inlet, it's my understanding that those that we've called personal use would now be under a subsistence name and that those could also be opened and would be opened to any participants who wanted to get involved in that fishery. There are depending upon how far back you want to go with the old subsistence laws those would be primarily all the beach areas in Cook Inlet and taking to an extreme even some fresh water areas in Cook Inlet, primarily the Susitna drainage and Knik Arm, parts of Turnagin Arm that have been closed upwards to 25 years. And then all of the eastside beaches and the current setnet commercial areas in upper sub district and northern district of Cook Inlet.

Spengler: It might helpful for the committee if some of the board members could talk about what impact they would see that those fisheries being open would have on different use groups depending of course on the level of participation in those subsistence fisheries.

Number 752 Bix Bonney: Mr. Chairman this is Bix Bonney, board member and more or less representing the sport fishery groups in the Anchorage area. I was contacted by the two major groups the Kenai Sport Fishing Association and the Alaska Sport Fishing Association to attend steering committee and board meetings to get their thoughts out. Essentially their thoughts will be enclosed in a letter...

CHANGE TAPE # TO SIDE TWO

Number 003 ... public hearings throughout this time information can be gathered to more definitively approach the subsistence problem. They essentially are worried that, in their words, "chaos and confusion" that result with no regulation going on and the short circuiting or the cutting off of the fish that would get into the traditional sport areas, particularly the Kenai River. Whether they are right or wrong they can foresee where there could be subsistence nets out on the eastside beaches cutting off the run of the king salmon as it approaches the Kenai River. They don't want that at all. They said they are not subsistence fishermen, never thought of themselves that way. They're sport fishermen and they want to continue that way. That's essentially what's happened. These two groups represent an aggregate made up membership of about approximately 2,000 sport fishermen and there will be letters from both groups going out, one went out yesterday and the other will be going out this afternoon. If there's any questions, I'll be happy to answer them.

Ayers: Bix, with your approval, I have a telecopy version of the letter of which you speak of the Kenai River Sport Fishing Association. If you would like I would distribute that if you think that there have been modifications, I'll hold it. It's at your pleasure.

Bonney: Jim, the first one that went out, that's complete. The second one is essentially the same as the first one, only the second one comes from the Alaska Sportfishing Association and the trend of their reasoning is just about exactly the same, they're just now getting the words put down they hope in a litt'ler cleaner manner than the first letter. But that's definitely there and it's coming.

Goll: Well, thank you very much. We are having that copied at this time and it will be distributed out to the folks present today.

John Garner: This is John Garner, a board member. I think that it might be useful, Larri, if you could explain to us what the Madison decision says about keeping the harvest limits on the subsistence fisheries, both as to the overall harvest and in terms of individual bag limits so that we can get some feel of the impact.

Number 103 Spengler: Yes, this is Larri Spengler with the Dept. of Law, The Madison decision basically requires that customary and traditional uses must be authorized and the people must be given a reasonable opportunity to participate in those uses unless sport and commercial have been eliminated first. Customary and traditional uses are spoken of by the court in terms of individual Alaskans reliance and dependence on resources and that is their reading of what the Legislature in 1978 was concerned

about. There are two different concepts of levels of tasks that I suppose would be considered. The first thing to understand is that the Madison decision does not mean that subsistence fishing would be unregulated. Regulation must reflect however, customary and traditional levels. So, for example, in Tyonek, the customary and traditional levels of the King salmon harvest has been 70 fish per household. So that is what is authorized under the current regulations. Because before the Madison decision came out only the people in Tyonek were fishing, as I mentioned before that fishery only took about 2,000 fish a year. If that fishery had to be opened to everyone as it does under Madison, then those 70 fish per family per household, bag limits must be retained, because that is the customary and traditional use level that is supposed to be perpetuated. The question of whether an overall allocation could be made to the subsistence fishery in Tyonek, say, so that, for example, perhaps the board might want to say well, this will open and everyone can go fish at 70 fish per household until the whole fishery has taken - I'll just make something up - 8,000 fish and then it will close. That question of whether a harvest cap can be put on a fishery was not addressed directly in the Madison decision. The strong implication in the decision is that that cannot be done. That is partly because the fishery then could conceivably be diluted in the sense that if there were a lot of people going to fish people would not get anywhere near the 70 fish per household that was customary/traditional or that if the first group of people all got 70 fish per household, then it would close and nobody else would get to go. So they'd be cut off from the opportunity entirely. It might be useful to ask Ken Florey or Ken Parker or maybe Bob Clasby what might help in Cook Inlet if the Governor's bill doesn't pass and the Tyonek Fisheries has to be opened to everyone at the normal limit and, assuming the board can't put a cap on it, which seems to be the implication of the case, what that might mean and what other fisheries might be affected by that.

Ken Parker: This is Ken Parker, director of commercial fisheries. It's difficult to anticipate exactly all the impacts of such an action. But, if you took the worst case scenario where we did have a large immigration of effort into that fishery, the first thing the department would have to do of course is very accurately monitor the harvests that are occurring in that area and then evaluate that in terms of our reproductive needs of the stocks that are contributing to the fishery. If we got to the point where we were pushing against our escapement needs then we would have to take regulatory actions on the fisheries that also impact that stock and of course under the Madison decision, it seems that the first fisheries that would have to be impacted would be commercial or recreational uses. So, I think in that we don't have any commercial activity in those Chinook stocks, of course we would have to direct our attention to the recreational fisheries and I would suspect that if we got to a point where we were concerned about our escapements, we would be obliged to close those recreational fisheries, until we were at least felt confident about our escapement levels in the various contributing stocks. Essentially that would be our action as a department: we would have to closely monitor the fishery, and then take appropriate regulatory action to ensure that our escapement needs are met. If we sense that the subsistence harvest was progressing at a rate that they were threatening escapement then we would also have to implement restrictions in that subsistence

fishery according to the law and restrict to the most dependent users as you mentioned earlier.

Spengler: Ken, where does the recreational fishery take place, on the same stocks at Tyonek fishing ground?

Florey: Yes, Larri, We don't have a sport fish division representative here, but maybe I can answer that. There's several tributaries within the Susitna System both on the east side and the west side; there'sfisheries primarily in the Deshka River, Lake Creek, up several other systems on the other side being Willow Creek, Montana Creek,, some of those are open seven days a week and there's other smaller stocks primarily on the east side that are week end only fisheries. Depending on what the harvest level were those would be the fisheries we would have to watch quite closely. A question that we have is trying to determine how we would try to manage this if this were to be confined to the area we now have open for the Tyonek subsistence fishery is one thing, but if it were to be open to a large portion of the beach, I know we could not monitor it closely enough to have an accurate catch harvest. When we're faced with those situations, fisheries managers are normally more conservative, not knowing what's going on unless we could have accurate catch figures. I just know from the area we were talking about if it were extended beyond the current boundaries, that we could not accurately monitor that fishery.

Spengler: Before we move onto Copper River, maybe it would be useful to talk a little bit about what the effect would be on the east side of Cook Inlet and if the the eastside beaches were opened at various times during the summer, true subsistence fishing, depending on the level of participation in that fishery, which fisheries might be affected and what measures the department might want to consider.

Number 116 Representative Thompson: My question is addressed to Mr. Parker, I want to make sure I understood what you just said and I don't want to put words in your mouth, but I thought I understood you to say that Fish and Game would be obliged to close sport fisheries if there was an imbalance as a result of this decision. Is that correct?

Parker: If we sense exploitation at Tyonek, and that subsistence fishery was occurring at such a level and it was confined to a certain limited period of time that essentially would perhaps focus that exploitation on a few of the contributing stocks, we would be obliged to implement closures in the recreational fishery to ensure that our escapement objectives are achieved. Of course, this is our mandate under Title 16 to provide for the proper conservation and protection of the resource so that they can continue to support fisheries in future years. So we would have to react to those exploitations and take whatever appropriate actions we felt necessary given the data at hand. As Ken Florey points out, if the fishery was expanded beyond the confines of Tyonek, it would be essentially impossible for the department to accurately monitor that fishery. Then, I think in that situation we would also be compelled to take a very restrictive action in any other fisheries that may impact the stock.

Thompson: Could you give me some sense of your time... how long would it take Fish and Game to study an issue like that before it could lift such a ban?

Number 128 Florey: That is a very difficult question to answer, not knowing how expansive the fishery would be. If it were quite restrictive in an area we could easily monitor, we could get the information just based on interviews with the fishermen. If the area was very large, and we were really unable to monitor the amount of use say other than aerial surveys to get a generalized number, it would be extremely difficult within a timely manner where those fish are going to be available to those different sport fisheries to monitor in a fast enough manner where we could say close and reopen and have an effective fishery because within a very short period of time those fish move out of those areas that sport fishermen are allowed to participate in up into the closed waters. So it's almost impossible to answer your question any clearer than that. It's just a difficult situation to try to assess until we get into it. If we had lots of stocks of fish and very few participants, there probably wouldn't be any impact. If we had returns of chinook on that earlier run that were very weak, which we have not had, in the number of years we've had very good returns and we had a fair number of people over there trying to harvest them, then we'd have to be more conservative. But I just can't be more specific than that.

Goll: Thank you very much, if you care now Larri to proceed with the presentation on the issues that you were leading up to.

Larri Spengler: Thank you. Yes, I had just asked Ken Florey if he could please talk a little bit about what the effects might be if the board were required by Madison to open subsistence fishing on various stocks on the eastside beaches at various times during the summer.

Number 159 Florey: Currently within Cook Inlet we manage the summer salmon runs under a plan that was adopted by the board of fisheries, the Cook Inlet Salmon Management Plan, which specifically states periods of time when certain users will be given preference or primary use of the resource. During the times of July 1 through August 15, it's primarily for commercial uses and the stocks migrating through Cook Inlet at that time, especially on the eastside beaches are now primarily taken by commercial users with secondary uses on certain stocks by sport fishermen. I don't feel that we would have many problems managing those stocks during that time period just based on the fact that we now have a very intensive commercial fishery and were able to monitor them quite well and do very well at it. The problem that you would have would be the social problems between the subsistence net users trying to compete for or establish beach areas with the commercial users and that could be quite dramatic and traumatic for those that try to monitor it. Because it would be very, very difficult to do and I'm afraid you could have some real problems that way. From a biological standpoint I don't foresee any major problems during that time period. After August 15 and say prior to July 1, we're looking at a totally different situation. We have one sockeye stock moving in Cook Inlet at that time primarily destined for the Russian River on the Kenai Peninsula which is a heavily used Sport fishery. It's not a large returning number of fish. We haven't had a commercial fishery on it for a good

number of years. A net fishery on that stock could be very, very dramatic, on those beaches and would probably mean having to close the Russian River to sport fishing determining what the escapement levels are. The other stocks during that early time, would be the early Chinook return, a king return to the Kenai River, and some to the Crooked Creek which is a hatchery return on the Kasilof River. A large net fishery if it were effective and that is yet to be determined, by subsistence users early, could have an impact on the early returning Chinook or king salmon return to the Kenai River, probably not much of an impact on the hatchery supported return to Crooked Creek. In the late fall, the late coho return which is one that the original petitioners or subsistence users wanted to target on that would totally depend on run strength. Last year we had a very large return of coho to the Kenai River, over probably in the neighborhood of 70,000 harvest by sport fishermen. In a year like last year, I don't think it would be that big of a concern. But on years when we'd go back to an historic level if you had a large net catch or subsistence catch on that late run it would probably mean having to curtail the sport fishery within the Kenai River or close it.

Number 205 Bonney: One of the real worries that has come up is there's an extremely heavy fishery on the early run king, particularly on the Anchor River and the Ninilchik and Deep Creek. It's probably as big as the second largest city in the state during those particular weekends. It's worried that if the beaches are open to subsistence fishing could and would cut off the early kings in June going into these streams and effectively have those streams shut off to sport fishing. It would be rightly so because the run would be jeopardized. That's a real worry as well as having an early run into the Kenai River which is heavily fished also jeopardized by the possibility of subsistence nets along the beach. The subsistence nets could be mesh size that are equipped to specifically catch king salmon whereas now the commercial nets are set for sockeyes and its an incidental catch in the commercial nets. But if they were to get a specific mesh size that would select the king salmon it would be extremely detrimental to the runs in the recreational fishery that go on during June.

Number 213 Goll: One of the questions that has been posed to me as chairman and I think to some of the committee members as well has been whether or not the threat to sport fishing is as serious as it is described. But your comments suggest to me, and you are probably the most experienced in the sport fish industry present at this meeting today. We don't have the representative from the department, division of sport fish, so from your comments I gather that the threat to sport fishing is very real and significant and one way or another something that really should be dealt with before this summer season commences. Is that a correct understanding of your position?

Bonney: Yes, it certainly is. The potential is one that we can't really live with. We don't know what will happen, but the potential is there for the very worst scenario that you could think of. And one of the worst ones I can think of is when you have the large urban area of Anchorage sitting here is to have the subsistence fishery..right in so that it would have to have the recreational fishery shut off. That's the worst possible thing that could happen and the potential is very definitely there. Whether it would happen or not, is another story.

That's why we have to buy some time to start finding out where we are in this situation.

Goll: Thank you very much.

Number 241 Garner: I think that comment sort of summarizes the position that the board took in our resolution. Our concern is that it's unclear what kind of regulatory restrictions we can impose on customary and traditional subsistence users. If the worst case situation is correct, if Madison requires us to allow bag limits that are customary and traditional, if Madison does not allow us an overall quota on these fisheries then these kinds of impacts are very likely. It has the potential to remove the ability of the board to balance the interests of each of these groups.

Spengler: If there are any more questions about Cook Inlet, maybe this is the time to take them before we move on to the Copper River situation.

Number 259 Stewart: Mr. Chairman, maybe to make one thing a little more clear before we go into the Copper River, I spoke to you about petitions earlier. The question that board is having to deal with at this meeting and that the department will have to deal with throughout the summer is if someone walks in this summer with a petition to open a subsistence fishery in Knik, for instance, the department is struggling with whether or not that would have to be done instantly. During the time that the boards were dealing with applying the subsistence law in Cook Inlet, we received a great deal of testimony from people who had fished in various parts of Cook Inlet in the past with subsistence gill nets. One of those areas was Knik, another area was Eklutna. Virtually the records the board has behind it includes almost every place in Cook Inlet that was accessible. Perhaps Larri could speak to whether or not we would be in the position of having to authorize fisheries all summer long on demand.

Spengler: It is fairly clear from Madison that if a customary and traditional use has occurred it doesn't matter whether it's in a rural area or not and the board is mandated by the law to authorize that unless there's a biological problem and the sport and commercial fishery have been closed. So, given the record that the board has in Cook Inlet, a very thorough record, that indeed subsistence fishing has existed everywhere, basically. There would be practically no legal excuse not to grant those petitions as they came in and open fisheries throughout the summer and make any necessary adjustments in sport and commercial fisheries. Are there any further comments on Cook Inlet or questions from Juneau?

Number 289 Florey: As I earlier stated, depending upon the extent in Cook Inlet, we would have to open fisheries those limited number stocks both earlier in the summer and late in the summer now under the management plan are primarily recreational uses we feel would probably be the ones most impacted. That is not the case in the Copper River. It's a total reversal of that situation. In the Copper River we have an extensive gill net fishery that operates in salt water at the mouth of the river then almost two to three weeks delay time until we get to Chitina where we have a large dip net fishery which we last year defined as a personal use

fishery. And also a subsistence fishwheel fishery. Under our interpretation, or my understanding or as it's been told to me, now we have a subsistence fishery as it used to be in the Upper Copper River open to any resident who wants to. Under the current bag limits, which have been established by the board, if we did not have a lid on that, it could be a major impact trying to ensure that we could get enough fish through the commercial fishery, well, we could do it easily enough, close the commercial fishery, not knowing how many people we were going to have show up at Chitina two weeks later. We struggled with this and have struggled with it for years. We come up with a plan the last two years that has worked quite well. Now we have a quota for the old personal use fishery in the neighborhood of 60,000 sockeye salmon. The highest number that that fishery took prior to the new plan was about double that in the neighborhood of 120,000. We do not know how many people would show up, but given we had to give them an opportunity at current bag limits it would be very difficult to manage the Copper River commercial fishery to ensure those numbers would escape. First of all, our biological goals, by stock, second of all the subsistence fishery in the Chitina area from Chitina all the way up to Salana and thirdly then to provide for the Copper River fishery on the flats. One of the major problems we have is that although the Upper Copper River is a large component of that system it only contributes, or it has in the last few years, about 50% of the returning sockeye to the Copper River, the other being the Delta stock which do not have and have not had any fishery other than a commercial fishery on them to any extent. So we would have to forego a rather large portion of the harvest for the commercial fishermen on the Delta stocks to ensure we would have enough fish upriver for the subsistence users. It would be extremely difficult management situation, not impossible.

Number 333 Garner: Just to make it clear it's my impression that there's no other opportunity to harvest those Delta stocks. The only opportunity that we have is as they come in mixed with the upriver stock.

Florey: Yes, John that is correct. Only with the net fishery at the mouth of the river there is no other opportunity to harvest Delta stock.

Beth Stewart: Ken, at the time the board was dealing with the Copper River and the Chitina personal use or subsistence fishery there were a lot of questions about being able to know how many fish were coming out of that upper river harvest. Knowing exactly what the subsistence take is during the summer, maybe you could speak to that a little bit.

Florey: Yes, Beth, are you saying what's the upriver component in the commercial fishery is? I don't quite understand your question.

Stewart: I'm sorry Mr. Chairman. No, what the actual take is by subsistence fishermen, monitoring that catch.

Florey: Well, under the plan that we implemented this last year we set the days of the week that they could fish depending upon what our predetermined quota for that week would be and the fact that they

king salmon fishing. It's not a large stock, we're only talking anywhere from 10-15,000 king salmon. We could have an impact there and we would have to probably have to curtail the sport fishing in the Naknek River, but for sockeye, I don't anticipate any problem.

Spengler: Any questions on the Naknek fishery or any comments by anyone else here before we move on to Angoon?

Number 428 Bob Clasby: For southeastern Alaska, there are only two subsistence coho fisheries. That's one at Klukwan and the other one is in Angoon. The one in Angoon was opened by the board at its December 1980 meeting was restricted only to residents of Angoon. With Madison decision that fishery would now have to be open to all, I assume 12-month, Alaska residents. Certainly if my memory serves me right, the harvest level in the last year for Angoon has been around 1,000 or 2,000 coho salmon. The fishery takes place in Salt Lake and Mitchell Lake. Apparently that's also a very popular coho sportfishing area. I'd like to go back and say there's no way for us to even guess at what level of participation or harvest might come out of that fishery with it being opened to all Alaska residents. Because I think I mentioned before, except for Klukwan, there have been no subsistence coho fisheries allowed in Southeast. So, you don't have any past harvest data to even guess at. If one does get an increase in that harvest above probably the 2-4,000 level, it's probably going to result in closures to the sports fishery in that Salt Lake-Mitchell Bay area. The other harvesters on those stocks, of course, are primarily the hand troll fish fishery. Primarily the troll fishery on the inside that fishery occurs before the subsistence fishery so there'd be no time to react and make closures on that troll fishery ...probably to substantially increase the amount of coho moving in to Mitchell Bay. One would make the assumption if you carry the scenario that the fishery has to be open to all Alaska residents into the future and the harvest levels increase, it's going to mean reductions to the troll harvest. And of course that's probably going to have a very significant impact on the residents of Angoon also, because I think as far as cash income to that community, they are very heavily dependent on that hand/troll catch. I think that's about all I have to say on it if there's any questions from the committee members.

Number 478 Spengler: We will not go into detail about the Illiama-Lake Clark fishery which has a similar restriction as the Naknek fishery did, which is that currently only residents of Illiama-Lake Clark drainages can fish in those drainages and under Madison those would have to be opened to everyone. Also, in trying to give you a sense of the impact, it has been impossible to predict where as Beth Stewart mentioned in Cook Inlet, but in other places throughout the state people may petition to open areas which formerly had been closed and now the board will not be able to refuse to open them based on any criteria of ruralness or other concepts. For example, most of the road systems in the larger Southeast communities are closed currently to subsistence fishing and if petitions are received, those would probably have to be opened. I believe we're basically concluded with the Anchorage portion of the presentation. Ron Jolin, chairman of the joint board has a few concluding remarks and then we'll turn it back to Jim Ayers.

Number 493 Jolin: Thank you Larri. I really don't have an awful lot to put in at the conclusion of this meeting. I think I brought most of it up when we started. The crux is that the boards feel that we need the flexibility that we had prior to the Madison decision in order to regulate. In order to regulate our fisheries and game issues. We feel now that our hands are somewhat tied and we're really unsure what might happen in the following year. So, if we can get back to that position, it would certainly help the boards to do their job.

Number 509 Ayers: Do you have any further comments in Anchorage, Larri, or Ron or anyone else there? (none)

Number 511 Rep. Fuller: I think most people are aware, but on the 25th and 26th the Resources Committee will be having an informational hearing on HB 288. At that time we're going to ask to have nets open throughout the state so that people can be informed of what's going on. This is an informational hearing. Then after these hearings we're going to open it up throughout the state for people to participate in it. I just want to make everybody aware of that. I don't know whether Ron Jolin will be available on the 25th or not, because I know we're getting ready to adjourn, but I wanted everyone to know about it. Thank you, Mr. Chairman.

Goll: Thank you very much Rep. Fuller. I'd like also to assure people that this would be a good opportunity to Resources hearing to follow this issue as we move it through the House. Mr. Ayers?

Number 553 Ayers: Thank you Mr. Chairman. I will be brief in my concluding remarks. There have been a variety of rumors and comments regarding the effects of Madison and what we are trying to do, as I mentioned earlier, is work with you in a cooperative spirit to provide you the information and the framework that will allow you to take immediate action to return regulatory jurisdiction to the boards. Our effort and the governor's bill, HB 288, is focused on restoring harmony in the use of our fish and wildlife resources. Let me also say that that bill is basic and thorough in renewing a system that has been working. You've heard today from a variety of people talking about the Madison decision and the potential impacts and a plea for your assistance to restore that harmony. They have respectfully, but strongly, requested your assistance and guidance in restoring sufficient regulatory flexibility to the boards that will ensure all Alaskans that they are provided fair and reasonable access to our fish and game populations. Anything we can do Mr. Chairman, to assist you in moving this bill and restoring that harmony, we are at your pleasure. Thank you very much for this opportunity as well as the members in coming forward. We are available. Thank you.

Number 569 Goll: Thank you very much Mr. Ayers, and all of you in Anchorage. It's really a favor to us that you come forward and provided us with this information and we're very grateful and hope the people gathered here today have benefited from your presentation.

I'd like at this time to read a letter which I'd like to send to the House Resources Committee. The letter basically restates some of the comments made today and asks for expedient action in looking for a solution to these problems. It does not recommend specific action,

but simply asks that the Resources Committee move as rapidly as they can to get the issue solved. I'd like to read the letter for the record at this time and seek unanimous consent from the members of the committee. Also other members of the Legislature who wish to sign on the letter are certainly invited to do so.

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

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

1) Sport and commercial fishing in Cook Inlet may have to be cut back to accommodate anticipated increases in non-commercial net fishing.

2) The commercial drift net fishery in Prince William Sound may have to be sharply restricted to provide increased dip-netting opportunities in the Copper River.

3) Many of Alaska's big game guides may be forced out of business because of major decreases in non-resident hunting activities.

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

I would ask unanimous consent from the members that I submit this letter to House Resources. Rep. Hurley...

Number 614 Rep. Hurley has moved the letter and asked unanimous consent. Are there any objections. Hearing none, then we will send this letter to House Resources today and distribute it to members of the Legislature and members of the public. I thank you.

I have a couple of brief announcements before we adjourn. Number one, I'd like to state that the next meeting of the House Fisheries Committee will be held at 4:30 p.m. on Friday a week from tomorrow. If any member has a problem with that. We will be getting in touch with you to firm up those arrangements.

(discussion of HESS committee schedule and the calendar for the next meeting)

Number 621 I'd also like to just take a moment to express in behalf of the committee our grave sadness at the passing of Mr. John Clark who was the director of the habitat division and one of the most dedicated and competent public servants I've ever met. And I'd like to just say in behalf of the committee, we would like to extend our sympathies to Mrs. Clark and recognize his contribution to the state.

Rep. Hurley: In that regard, I believe that I'd like the minutes to reflect the contribution of the late Senator Al Owen who appeared before this committee just one month ago. And who died last week in Kodiak.

Number 670 Goll: Let the record show that we recognize the passing of this Alaskan and his great contribution to the state. It's certainly been a tragic week and I hope that with this meeting will go on the upward track. Once again thank you all for attending today. This meeting of the Special Committee on Fisheries is adjourned, the time is 10:11 a.m.

FLOOR SPEECH BY

THE HOUSE SPECIAL COMMITTEE ON FISHERIES CHAIRMAN



STATE OF ALASKA
HOUSE OF REPRESENTATIVES

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

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

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

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

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

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

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

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

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

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

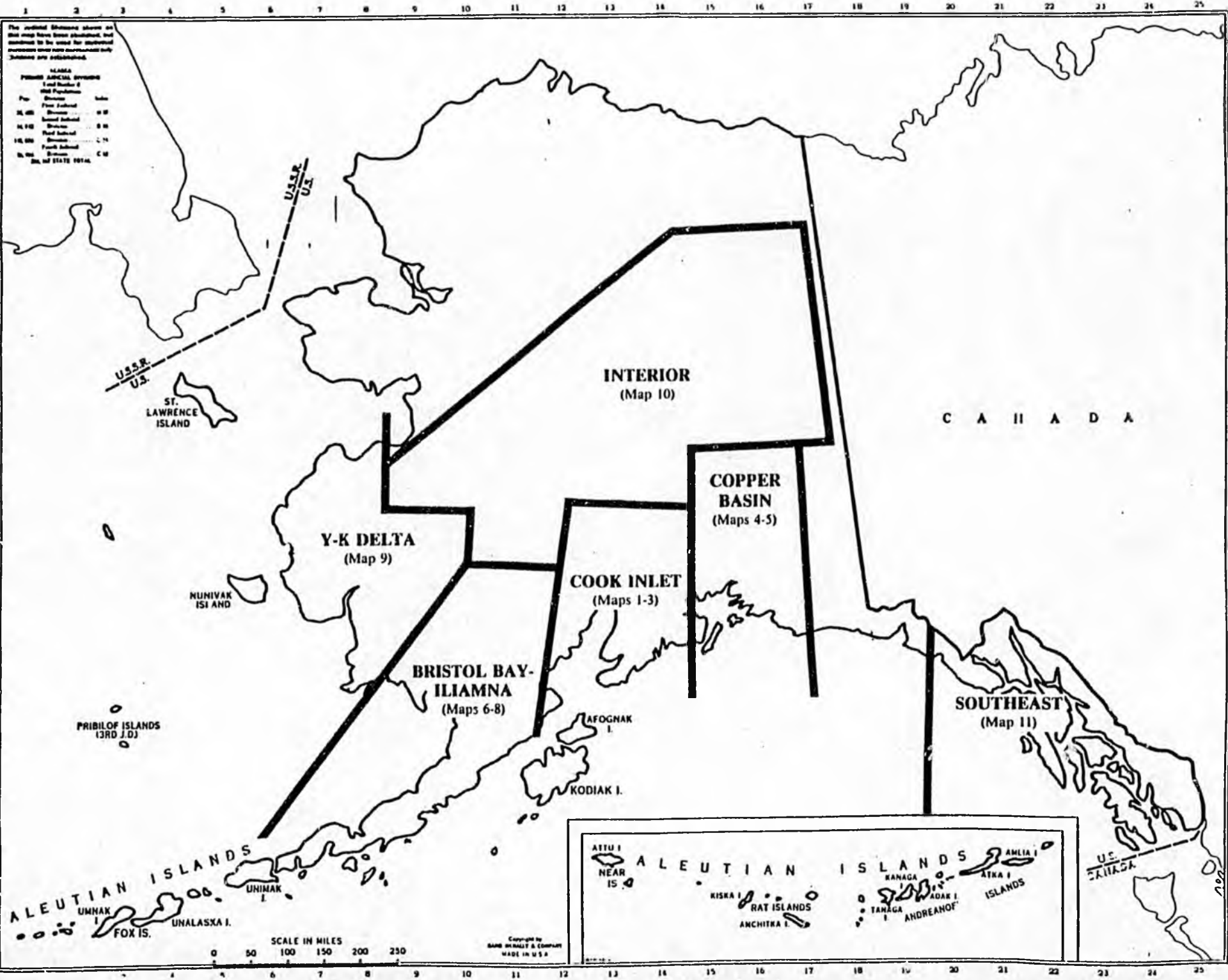
GOVERNOR SHEFFIELD HAS PROMISED TO INTRODUCE LEGISLATION EARLY NEXT WEEK THAT WOULD RETURN FISH AND WILDLIFE MANAGEMENT TO THE BALANCE ACHIEVED PRIOR TO THE MADISON RULING. AS WE CONSIDER THE BILL AND ATTEMPT TO RESOLVE THE PROBLEMS CREATED BY MADISON, THE LEGISLATURE MUST KEEP TWO THINGS VERY FIRMLY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

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

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

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

MEMORANDA FROM THE
ALASKA DEPARTMENT OF FISH & GAME



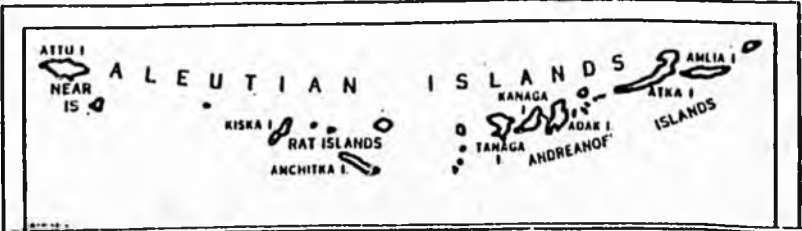
The statistical information shown on this map was derived from censuses and is intended to be used for statistical purposes only. Accuracy is not guaranteed.

ALASKA	
Present Political Divisions	
1960	1950
Area (sq. miles)	Area (sq. miles)
Population	Population
Per sq. mile	Per sq. mile
Area (sq. miles)	Area (sq. miles)
Population	Population
Per sq. mile	Per sq. mile
Area (sq. miles)	Area (sq. miles)
Population	Population
Per sq. mile	Per sq. mile

Map 1

SCALE IN MILES
0 50 100 150 200 250

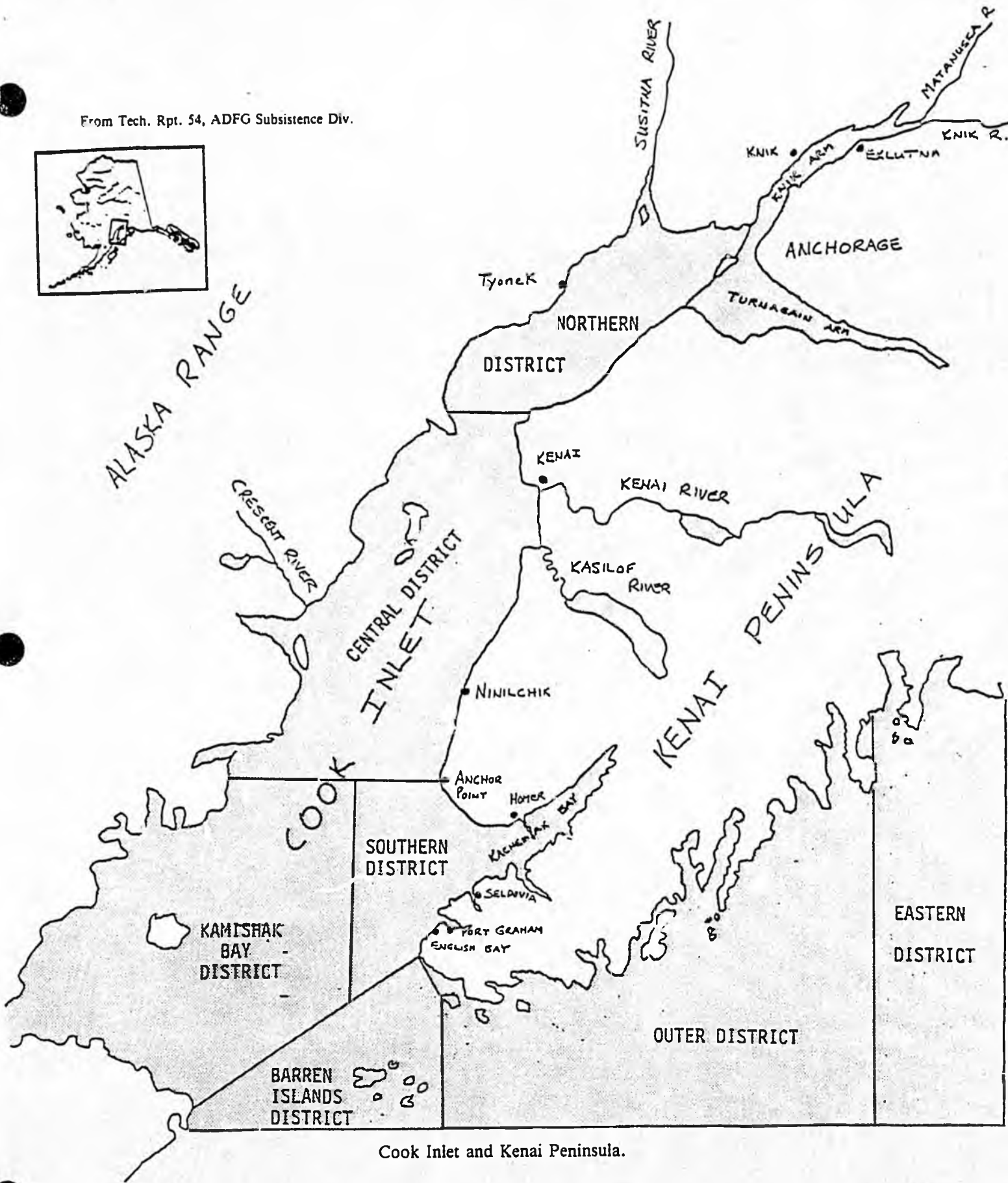
Copyright © 1960
GPO: 1960 O - 350-000
MADE IN U.S.A.



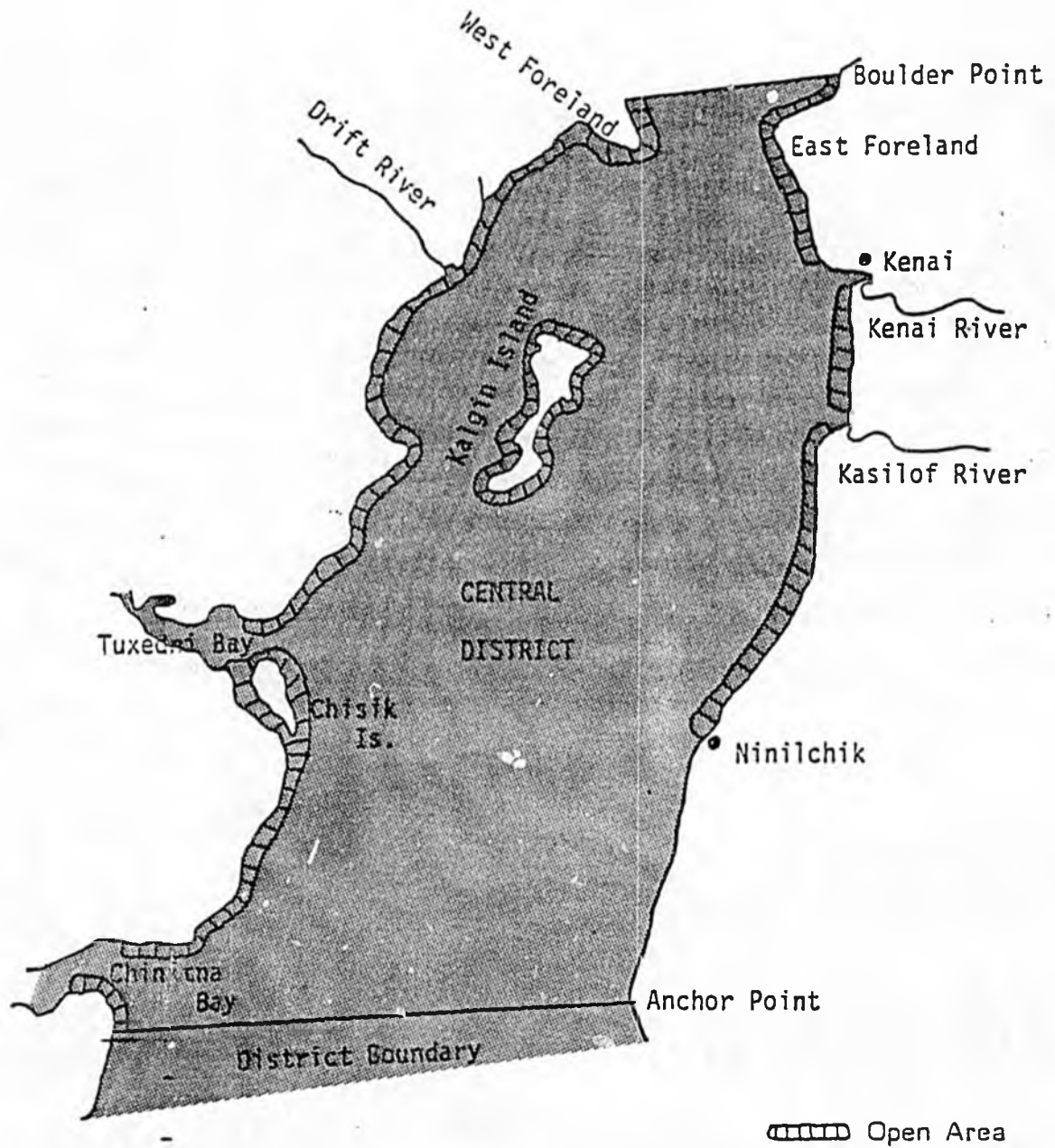
C A N A D A

U.S.
ALASKA

From Tech. Rpt. 54, ADFG Subsistence Div.

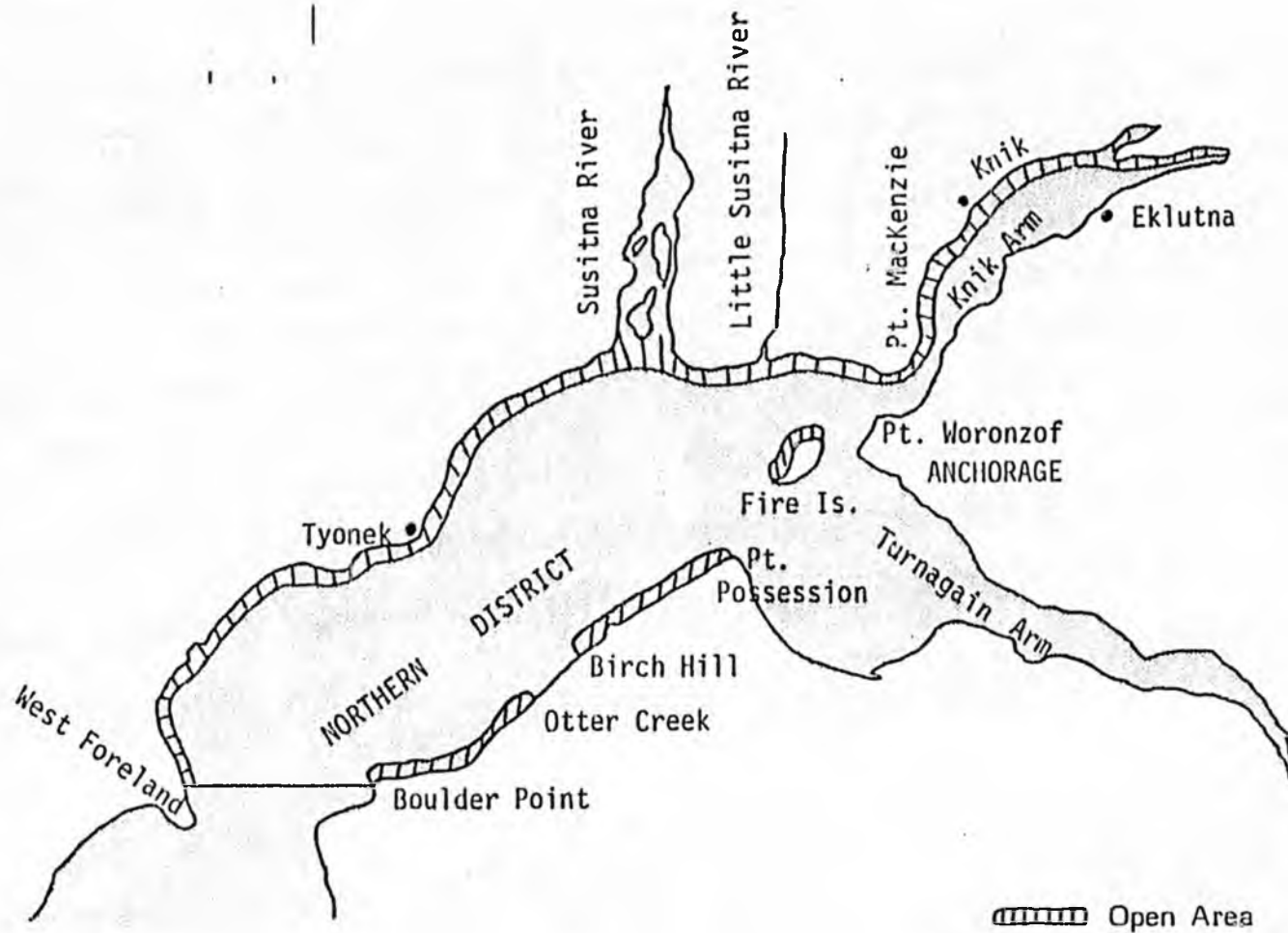


Cook Inlet and Kenai Peninsula.

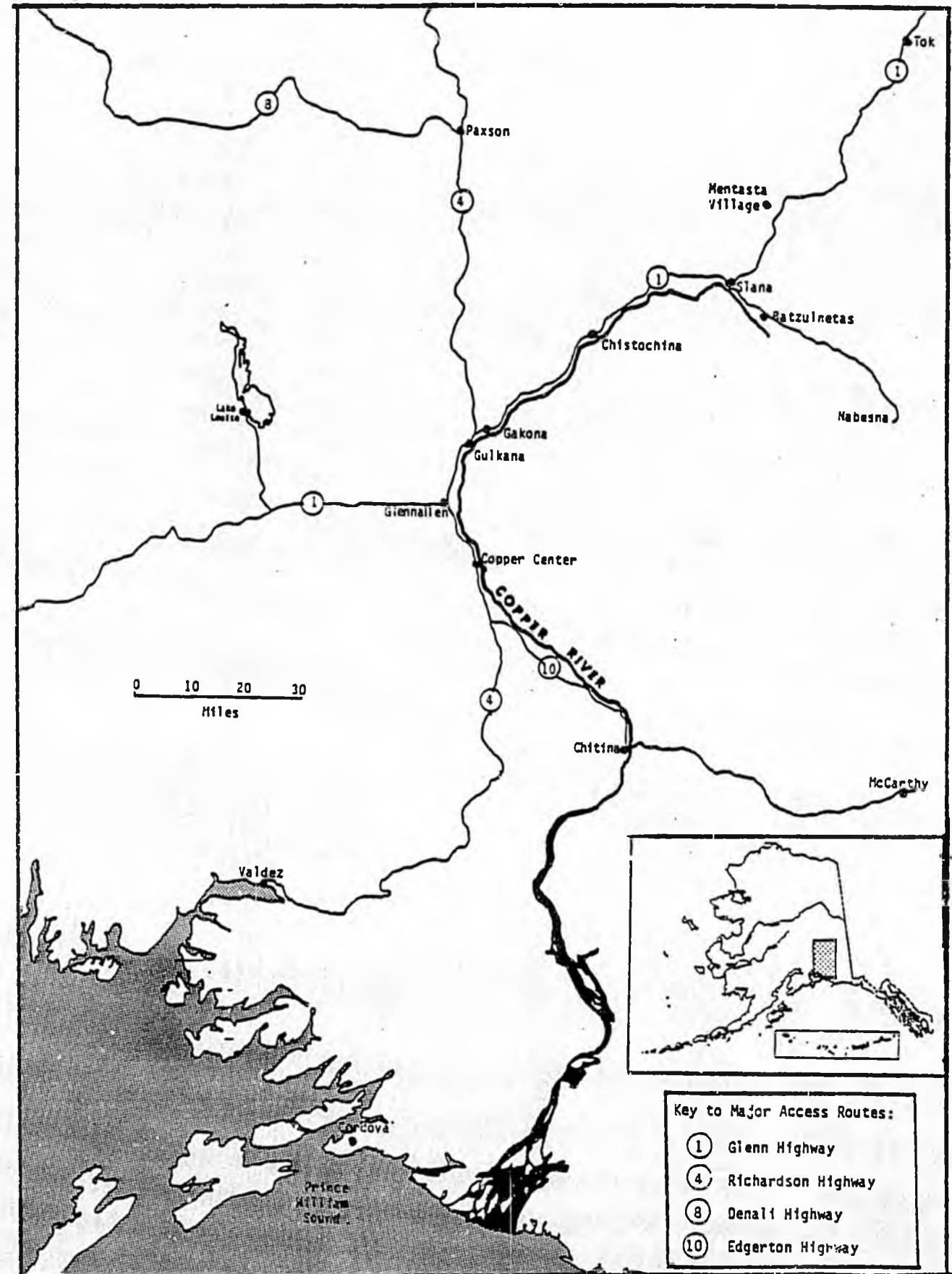


Area Open to Subsistence Fishing in the Central District of Cook Inlet, 1960-1978 (except closures within one mile of various river mouths).

From Tech. Rpt. 54, ADFG Subsistence Div.

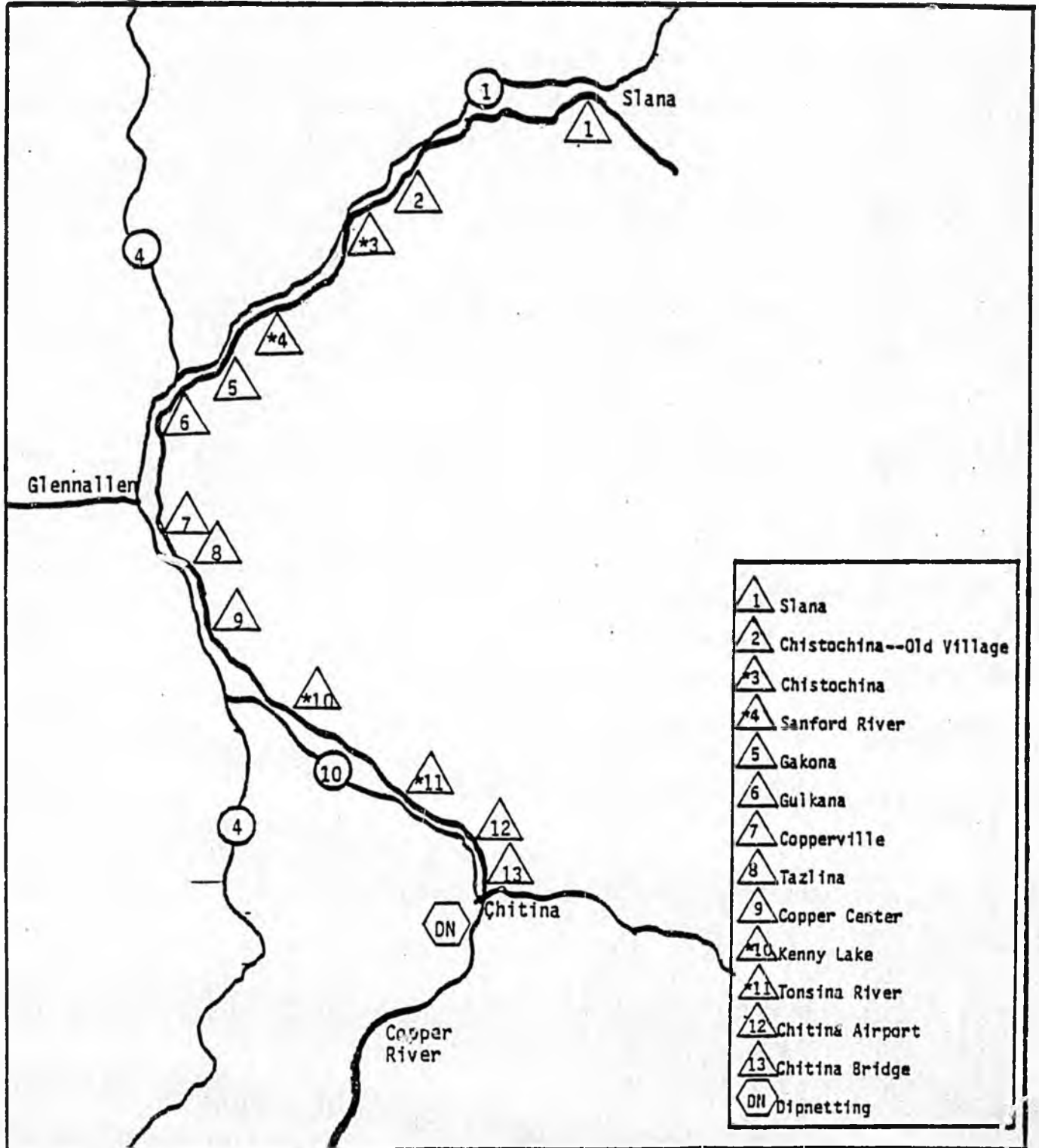


Area Open to Subsistence Fishing in the Northern District of Cook Inlet, 1960-1979 (except closures within one mile of various river mouths).



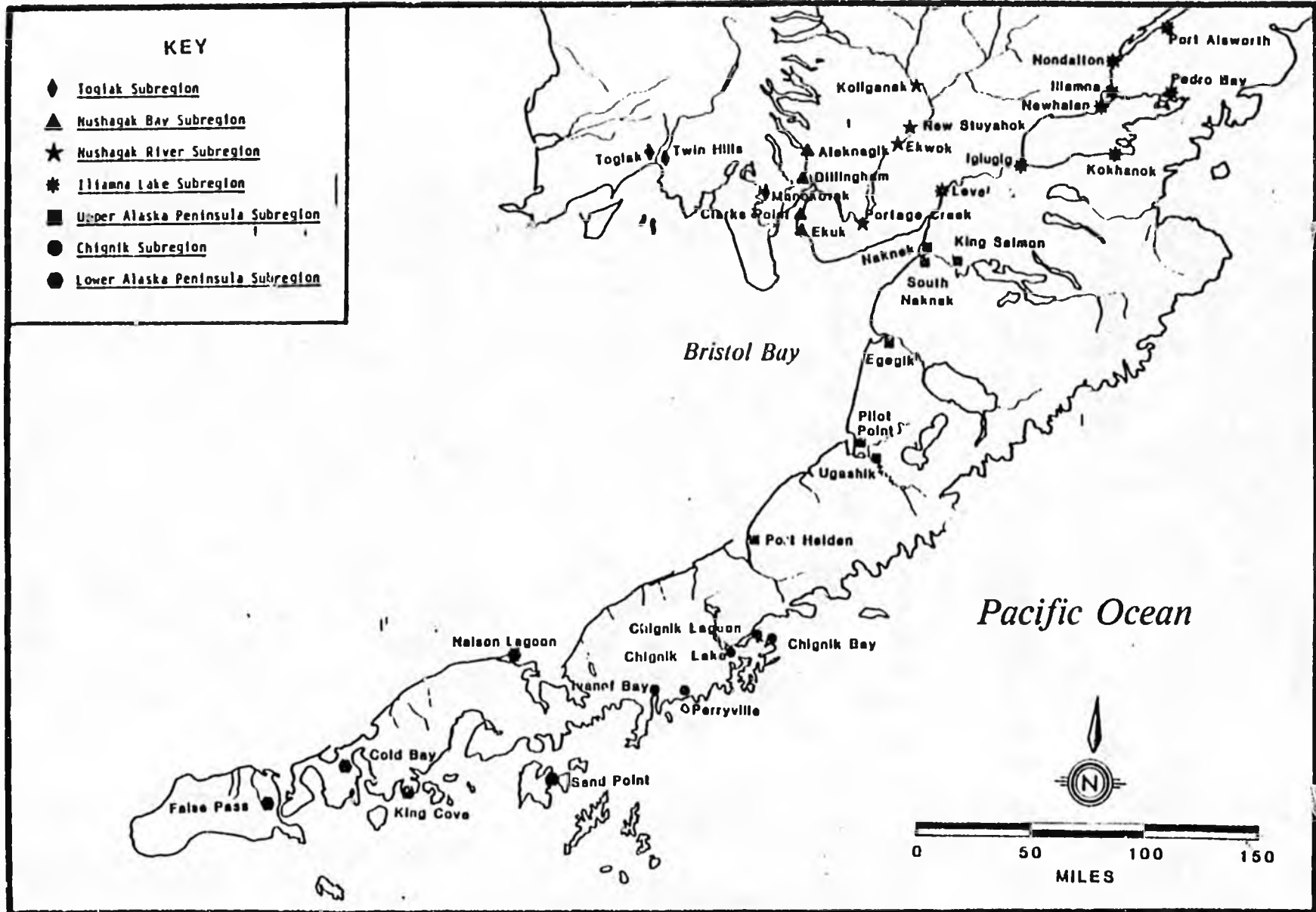
Copper Basin and Cordova.

From Tech. Rpt. 37, ADFG Subsistence Div.



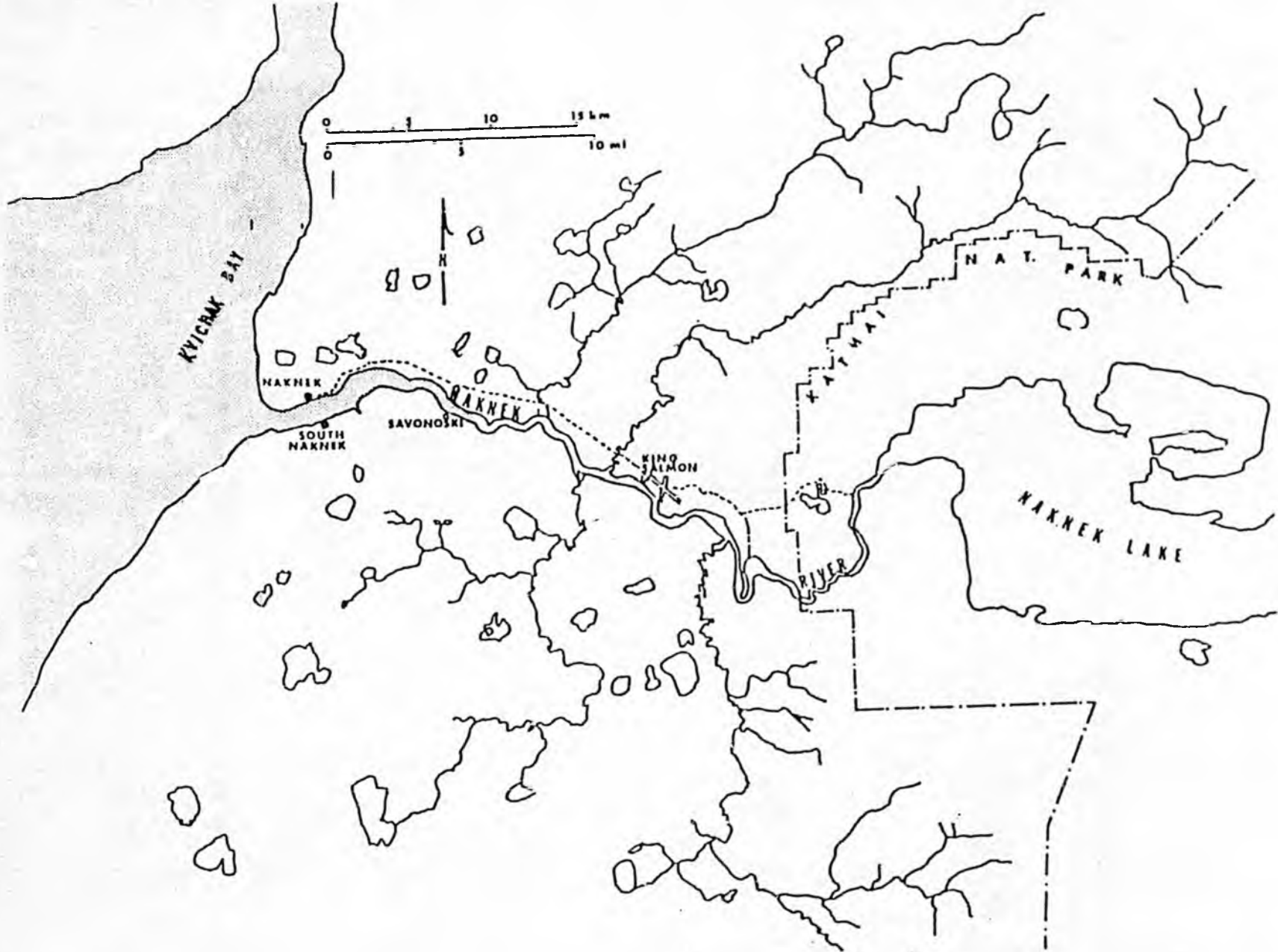
Fishwheel and Dipnet Areas, Copper Basin.

From Tech. Rpt. 114, ADFG Subsistence Div.

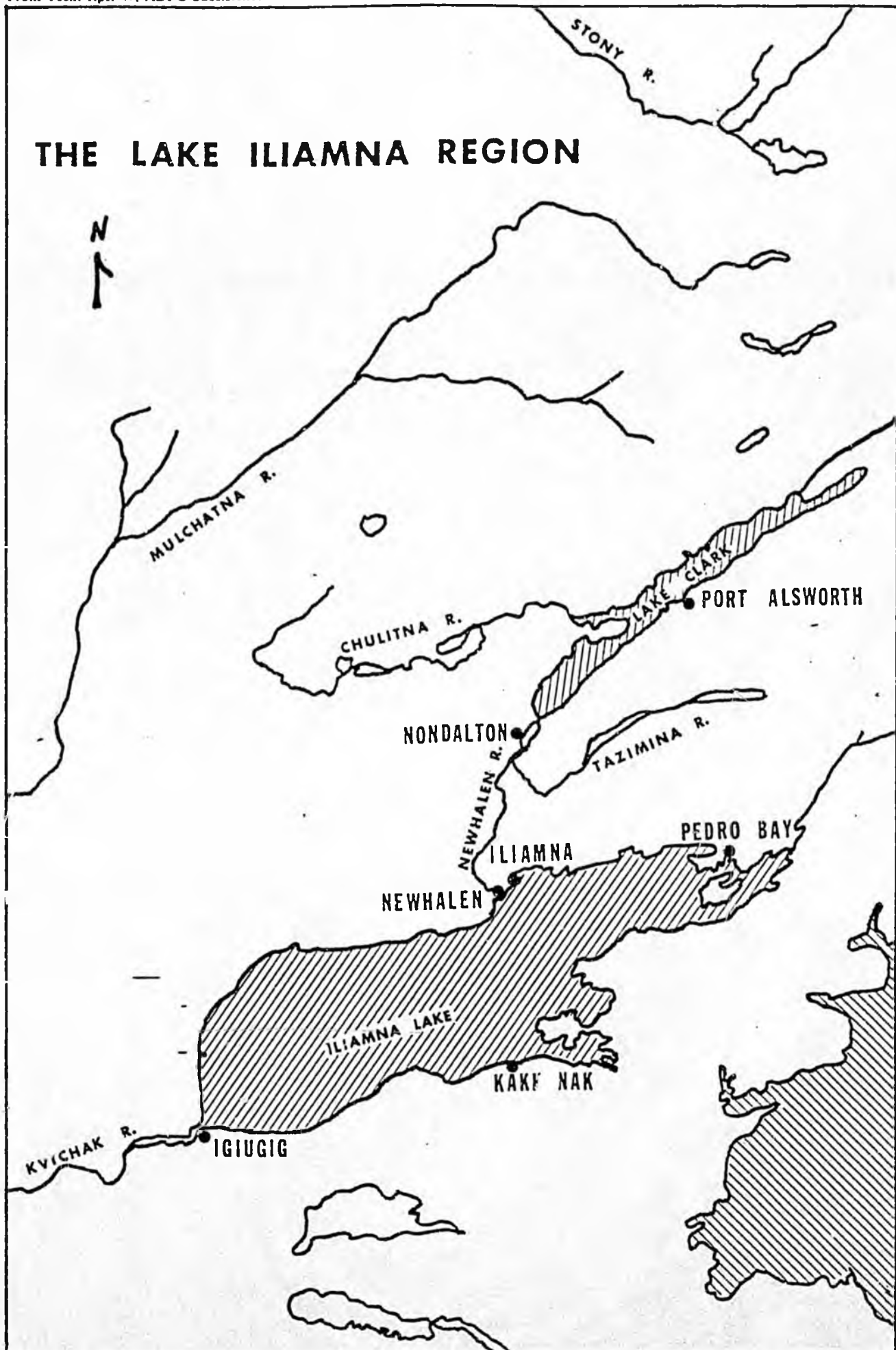


Bristol Bay-Iliamna Region.

From Tech. Rpt. 48, ADFG Subsistence Div.



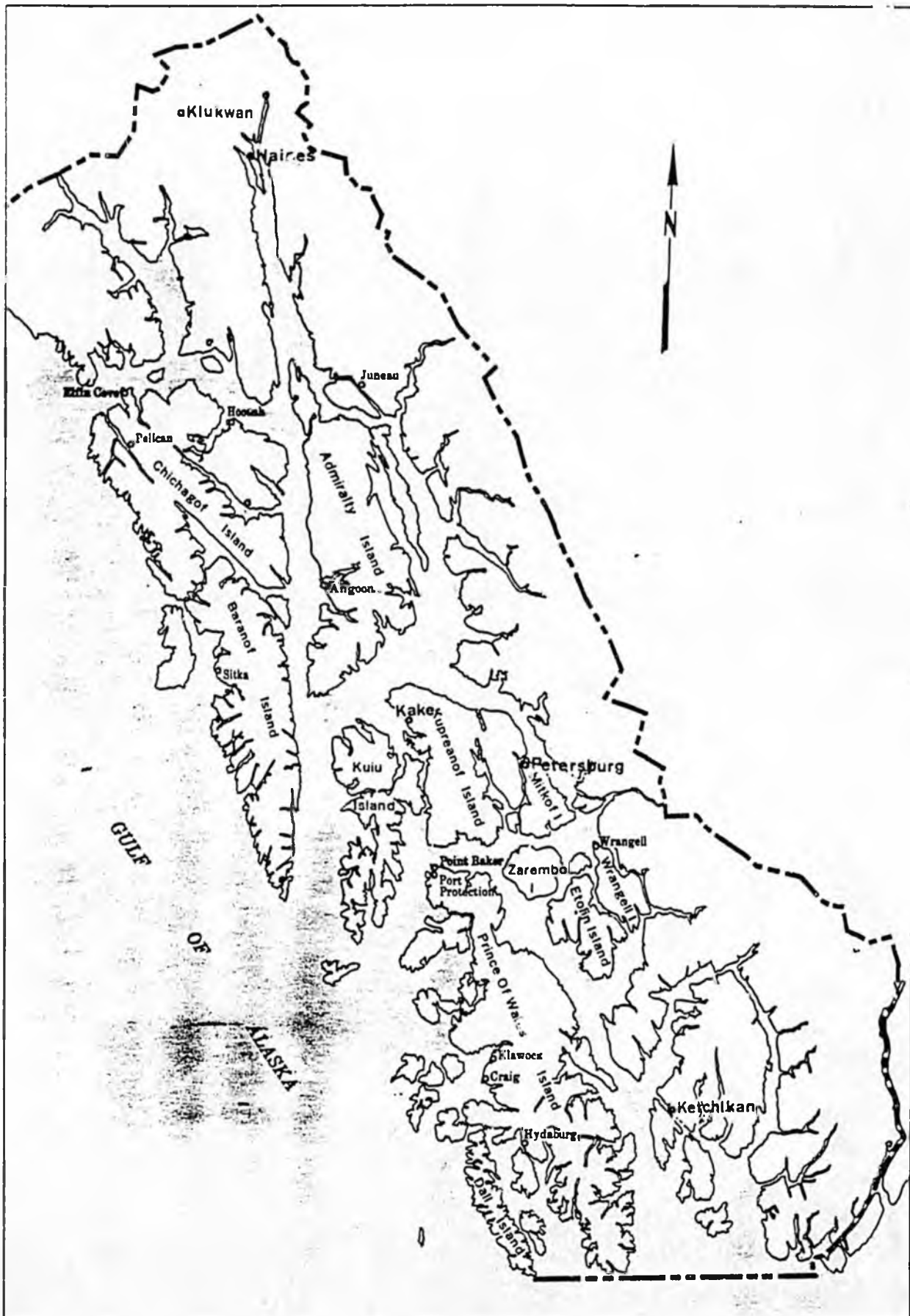
Naknek River Area.



THE LAKE ILIAMNA REGION

Lake Iliamna Region.

Bristol Bay/Iliamna - Map 9



Southeast Region.

Don W. Collinsworth, Commissioner

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



Alaska Department of Fish & Game

NEWS

FOR IMMEDIATE RELEASE

MARCH 21, 1985

Boards of Fisheries and Game to Discuss Madison

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

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

-MORE-

March 25, 1985

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

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

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

-MORE-

-3-3-3-3-3

March 21, 1985

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

#####

MEMORANDUM

State of Alaska

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

DATE: March 15, 1985

FILE NO:

TELEPHONE NO: 465-4100

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

SUBJECT: Management Issues
Arising From the
Madison Decision

INITIAL ASSESSMENT

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

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

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

COOK INLET/KENAI RIVER/SUSITNA RIVER SALMON

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

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

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

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

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

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

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

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

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

NAKNEK RIVER SALMON

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

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

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

COPPER RIVER/PRINCE WILLIAM SOUND SALMON

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

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

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

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

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

PO BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4120

September 6, 1984

Mr. Robert Willard, Chairman
Legislative Affairs Committee
Alaska Native Brotherhood
320 West Willoughby Avenue
Juneau, Alaska 99801

Dear Mr. Willard:

Thank you for your August 15, 1984, letter regarding the personal use fishing category. I am pleased to have this opportunity to help clarify this topic for your shareholders. Since you plan to run my responses in your newsletter, perhaps it would be best to answer the questions in the order you presented.

1. Before 1978, "subsistence fishing" was defined as fishing with a net for personal use, and "sport fishing" was defined as fishing with rod and reel for personal use. Thus, the difference between "subsistence" and "sport" fishing was based on the type of gear used.

After the state subsistence law was passed in 1978, subsistence fishing was defined differently. It was no longer defined in terms of "personal use," but rather, in terms of "subsistence uses." In 1978, the legislature also enacted a definition of subsistence uses which hinged upon "customary and traditional uses."

The other important change brought about by the state subsistence law was that before 1978, the Board of Fisheries could authorize subsistence fisheries at its discretion. Since 1978, the board has been required to authorize subsistence fishing if subsistence uses have been associated with a particular fish stock, unless the sustained yield of that stock would be jeopardized by fishing. Additionally, if fishing must be restricted to protect a certain fish stock, sport, commercial, and personal use fisheries must be curtailed before the subsistence harvest could be cut back.

As the Boards of Fisheries and Game began to implement the subsistence law, they developed 5 AAC 99.010 -- a regulation which interprets the statute. This regulation

contains eight criteria by which subsistence uses can be identified.

When the board examines salmon uses in a particular area, it looks at these eight criteria to determine whether communities or areas demonstrate subsistence uses. If subsistence uses are found, then the board authorizes subsistence fishing. In some cases, communities or areas which had fished a particular stock of salmon did not qualify under the eight criteria, generally because their use of the salmon could not be called "customary and traditional." Neither could these uses be classified as sport fisheries since the primary gear type was nets rather than rods and reels.

Thus the board had to find a "new" category of fishing for those who had previously fished under the subsistence category but could not continue to do so. The "personal use" category was established to remedy this problem. All personal use fishing regulations may be found in 5 AAC 77. This category simply provides continued access to fishery resources for those whose uses do not meet the eight criteria and cannot be classified as commercial or sport.

Perhaps the Copper River salmon fisheries can provide a useful example. In February 1984, the Board of Fisheries examined the uses of salmon in the Copper River. The board determined that under the eight criteria subsistence uses could be found in the communities of the Copper River Basin and five other nearby communities. The board then authorized a subsistence fishery for the individuals living in these areas. However, this finding meant that a large number of people, primarily from Fairbanks and Anchorage, who had been able to dip net or use fishwheels for Copper River salmon, no longer qualified for subsistence fishing permits. In order to treat those people fairly and not exclude them entirely from a fishery resource which they had harvested for many years, but not by definition customarily or traditionally, the board authorized a personal use fishery for those people who do not live in the Copper Basin or the five nearby communities.

2. Subsistence fishermen need not be concerned that the personal use fishery category will jeopardize subsistence fishing by establishing a new user group. As you can see from the answer above, personal use fisheries are not really new. They are essentially fisheries that used to be called subsistence before the 1978 law.
3. Only subsistence fisheries have a statutory priority. Personal use, sport, and commercial fisheries have no

statutory priority. It is up to the board to allocate reasonably between these three categories.

4. So far the Fisheries Board has established personal use salmon fisheries for the Copper River, Cook Inlet, and Bristol Bay. As the board applies the subsistence criteria to more and more fisheries, they will probably continue to create personal use fisheries. The Game Board has not established a personal use hunting category.
5. Unlike subsistence fisheries, where eligibility hinges on the board's eight criteria, there are no special eligibility requirements for personal use fisheries other than general requirements -- for finfish, a resident Alaska sport fishing license and for aquatic plants or shellfish, a resident or non-resident Alaska sport fishing license.
6. Reporting requirements for personal use fisheries are set by the board when each fishery is established and are generally similar to subsistence fishing reporting requirements.
7. No one may legally fish unless the board has authorized the fishery by regulation.
8. In southeastern Alaska, the board has not yet established personal use fisheries. As mentioned above, so far personal use fisheries have only been authorized for salmon in Bristol Bay, Cook Inlet, and the Copper River. As noted above, the Game Board has never established a "personal use" hunting category.
9. The subsistence law clearly mandates that where harvestable surpluses occur, the board must provide for subsistence uses first. Likewise, when the harvestable surplus is not great enough to satisfy all uses, subsistence uses are the last to be cut back. Therefore, under the law, subsistence allocations could not be reduced to protect personal use allocations.
10. There are areas open for personal use fisheries that are not open for subsistence fishing. For example, in Cook Inlet, the board found that only the communities of Tyonek, English Bay, and Port Graham met the criteria set out for subsistence fisheries. Since no other communities qualified for subsistence fisheries, the board used the personal use category to allow historical non-commercial net fisheries to continue in areas where subsistence fisheries are no longer authorized. Anyone with an Alaska resident sport fish license may participate, including residents of Tyonek, English Bay, and Port Graham.

11. Advisory committees and regional councils always play an important role in the regulatory process and we certainly hope that they will continue to do so. The information they provide the board is critical to the board's ability to analyze regulatory proposals relating to all fishing--subsistence, commercial, sport, and personal use.
12. The primary difference between subsistence and personal use is that subsistence uses are defined as customary and traditional uses and must be authorized, with a priority as necessary. Authorizing personal use and sport fishing is left to the board's reasonable discretion and no statutory priority applies. Sport fishing is restricted to hook and line gear attached to a pole, whereas personal use fishing primarily includes nets.
13. The annual southeast salmon catch for 1982 and 1983 is as follows (there are no personal use salmon fisheries in Southeast):

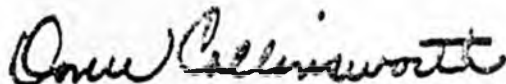
	<u>COMMERCIAL</u>	<u>SPORT</u>	<u>SUBSISTENCE</u>
1982	29,536,800	138,486	40,180
1983	42,202,700	138,510	not available

14. The board sets bag and possession limits for personal use fisheries as they are established or modified just as it does for sport and subsistence fisheries. The Game Board has not established a personal use hunting category.

I hope that these responses will help your readers understand the personal use category. While it is a new term, it simply describes fisheries that have long been conducted, but which no longer fit under the 1978 definition of subsistence.

Please let me know if my staff and I can be of any further assistance. We greatly appreciate your efforts to help people better understand fish and game regulations.

Sincerely,



Don W. Collinsworth
Commissioner



Grand Camp
Alaska Native Brotherhood

320 West Willoughby Avenue
Juneau, Alaska 99801
(907) 586-2049

1984 Officers
Grand President ANB
Ronald D. Williams
1st Vice President
William Thomas
2nd Vice President
James Martinez
Secretary
Albert Koonash
Treasurer
Paul Young
Sergeant-At-Arms
Lawrence Sweet
Grand President ANS
Ethel Lund

August 16, 1984

Honorable Donald W. Collinsworth
Commissioner
Alaska Department of Fish & Game
Post Office Box 3-2000
Juneau, Alaska 99802

Dear Commissioner Collinsworth:

There is some confusion among the people of Southeast Alaska regarding the Personal Use fishing category, and its interaction with subsistence law. It would be much appreciated if you could clarify the situation by providing answers to a series of questions.

In an effort to avoid a major confrontation these questions and your responses will be printed in the SEALASKA Shareholder, a monthly publication which goes out to the 16,000 + shareholders. We feel that if our constituents are informed they are less likely to react to some of the letters to the editor(s) appearing frequently in Alaska Newspapers.

Please provide answers to the following questions:

1st ANB Grand Presidents
Dr. Alfred Widmark
Patrick J. Paul
Thomas Jackson

John Hoga
Frank See
Dr. Walter Soboleff

Richard Still
Steven V. Holch
Nelson D. Frank

Frank O. Williams
Herbert Hoga
Robert A. Martin

Roy Peratrovich, Grand President Emeritus
Dr. Cyrus Peck, Sr., Grand Secretary Emeritus
Dr. Mildred Sparks, ANS Grand President Emeritus

- 1 ° "Personal use fishing" is not a category of fishing mentioned in the Alaska Statutes. Could you please explain the origin of this category of fishing?
- 2 ° Is there any foundation to concerns that personal use fishing could jeopardize subsistence fishing by establishing a new and competing use group?
- 3 ° What is the relative priority that personal use fishing has with relation to subsistence fishing, commercial fishing, and sport fishing?
- 4 ° Are there any Personal Use regulations that cover: waterfowl, shellfish, aquatic plants, fur bearing animals, deer, moose, wild roots, berries and vegetables, bottom fish and trout species?
- 5 ° Can any person participate in personal use fishing? In other words, are there any eligibility requirements?
- 6 ° What are the reporting requirements for Personal Use fishing? for Game?
- 7 ° Can people engage in personal use fishing if the Board of Fisheries has not authorized personal use fishing by regulation?
- 8 ° What seasons have been instituted by regulation on salmon, halibut and other bottom fish, wild game, waterfowl?

- 9 ° Will Personal Use cause a reduction of allocation for Subsistence?
- ° Are there areas that are open to Personal Use, but closed to Subsistence?
- 11 ° Will the advisory councils/committees have a role in Personal Use in their areas, and of the region?
- 2 ° What is the difference between Personal Use and Subsistence? Sports?
- 13 ° Since 1982, what has been the annual take of salmon in the Southeast in the following categories? Commercial, Sports, Subsistence, Personal Use.
- ° Is there a limit for fish taken for Personal Use? Game? Waterfowl?

Commissioner, so often correct information can eliminate misunderstandings and problems before they begin. We will appreciate your help by responding to the above questions, and done so timely for this being published.

Thank you in advance for your cooperation.

Sincerely,

ALASKA NATIVE BROTHERHOOD
RONALL D. WILLIAMS
GRAND PRESIDENT

By: *Ronald Williams*

Chairman ANB
Legislative Affairs Committee

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME
OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 / 465-4100

March 22, 1985

The Honorable Peter Goll
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Goll:

We appreciated the opportunity to have our department, the Department of Law, and the Boards representatives meet with your committee and believe it went well. In response to the inquiry of Representatives Furnace and Phillips concerning Federal Funding available under ANILCA, Dingell/Johnson (D-J), and Pittman/Robertson (P-R), following is an outline of the Federal Funding that was available for the past three years:


	<u>ANILCA</u>	<u>D-J</u>	<u>P-R</u>
FY 85	\$1,000.0	\$1,639.0	\$4,600.2
FY 84	\$1,000.0	\$1,569.0	\$3,804.5
FY 82/83	\$ 960.0	\$1,753.0	\$3,387.4

The ANILCA funding, which is available specifically for the implementation of subsistence provisions, required 100 percent matching funds from the State of Alaska, and the D-J and P-R funds require a 25 percent match.

It is our understanding that the solicitor of the Department of Interior is reviewing possible compliance questions, including funding ramifications, related to the Madison decision. The ANILCA funds are directly related to subsistence provisions as mentioned. However, the D-J and P-R funds are only indirectly potentially affected.

I hope this provides the information requested. If you have additional questions, please call me.

Sincerely,


Don W. Collinsworth
Commissioner

MEMORANDA FROM THE

ATTORNEY GENERAL

MEMORANDUM


State of Alaska

TO: Honorable Bill Sheffield
Governor

DATE: March 6, 1985

Thru: John Shively
Chief of Staff

FILE NO: 366-375-85

FROM: 
Norman C. Gorsuch
Attorney General

TELEPHONE NO: 465-3600

SUBJECT: Briefing memorandum:
subsistence

I. Suggested Attendees

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

II. Issue Summary

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

Honorable Bill Sheffield
Governor
Thru: John Shively, Chief of Staff
366-375-35

March 6, 1985
Page 2

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

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

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

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

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