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The Board terminated Plaintiffs access to equally participate in the harvest of Cook Inlet salmon with the other user groups i.e. sports and commercial users. The history of Plaintiffs' use is set out earlier in this brief by reference to the record and affidavits. We assert that the deprivation of access to harvest and supply food for oneself and one's family is of comparable importance to warrant protection under the due process clauses the interests in Herscher v State , 568 P2d 996 (Alaska 1977) and Chin Hilbers v Municipality of Anchorage , 611 P2d 31 (Alaska 1980) Actions of an agency or government, although discretionary must still conform to principles of fundamental due process. See Vick v Board of Electrical Examiners , 626 P2d 90 (Alaska 1981). Due process requires notice, which is "reasonably calculatedto....afford an opportunity...to be heard at a meaningful time and a meaningful manner' Aguchak v Montgomery Ward Co. Inc , 520 P2d 1352, 1357 (Alaska 1974) Plaintiffs submit that a due process hearing in a 'meaningful manner' includes an impartial hearing i.e. impartial jury or Board. Green v State, 462 P2d 994, 997, (Alaska 1969).

The exclusion of Plaintiffs was devoid of considerations of resource shortages or biological need to limit the harvest or protect the sustained yield of salmon moving in and through Cook Inlet. The record also fails to establish that the Subsistence Section was requested to, and did, provide the Board with comprehensive research data on the Plaintiffs or

persons in their area regarding subsistence use qualification under AS 16.05.094.

Contrarily the Braund Report , ('G' Appendix R, pages 26-35, supra) concludes that there are numbers of subsistence users participating in subsistence uses on the east shore of Cook Inlet. The record of this Board's action imp ; concluding that the Board can not, where these Plaintiffs particularly and subsistence use in Cook Inlet generally is concerned, conduct fair and impartial hearings. (Plaintiff directs the Court to the facts set out in this brief at the Statement of Facts and in the Equal Protection argument including references to quotations from the record.) The record also confirms that Plaintiffs' exclusion was a capricious act by a biased hearing board without any substantial base. The result deprived Plaintiffs of the right to fish as they have historically and traditionally done and to feed themselves and their families. As such the Plaintiffs have been denied due process of law.

(B) Due Process - Closed Hearings

Madison also alleges that the closed meeting violations by the Board (argued and discussed in argument II i.e. Public meetings issue) which resulted in the formulation, synthesis and ultimately the adoption of the 10 criteria violates the principles of procedural and substantive due process. There is a substantive aspect of the Administrative Procedures Act which

appears in AS 44.62.310, 312. The public meetings policy act does not involve procedural matter such as contained in AS 44.62.040-290. Therefore Plaintiffs submit that the Board's failure to comply with AS 44.62.310, 312 is both procedural due process violation under Aguchak v Montgomery Ward Co., Inc , 520 P2d 1352 (Alaska 1974), and a substantive due process under an analysis of the Administrative Procedures Act.

C. Due Process - Administrative Actions by The Board Are Improper

Madison alleges that the Board is administrating their own regulations. (See 5 AAC .01.597(b). Also 80-79 FB, Amended 80-79 FB; 81-92 FB and Knik hearings, pages 126, 127; 'G', Appendix A-1, A and B respectively and 'M' Exhibit EE supra)

The application of the subsistence regulations is an administrative act which the Board is statutorily precluded from doing. There are no formal procedural administrative rules within which the Board can competently and fairly administer the regulations. AS 16.05.241 states:

"Powers excluded. The boards have regulation making powers as set out in this chapter, but do not have administrative, budgeting, or fiscal powers."

Alaska Statute 16.05.050 (9) reads:

"Powers and duties of the commissioner: The Commissioner has, but not by way of limitation, the following powers and duties:

(9) Administrative, budgeting, and fiscal powers; Also see Kenai Peninsula Fisherman's Cooperative Association, Inc. v State of Alaska, 628 P2d 397,

(Alaska 1981)

The Board has assumed the powers of applying the policy and regulation adopted by it. Black's Law Dictionary, 4th edition, defines administrative acts as:

"those acts which are necessary to be done to carry out legislative policies and purposes already declared by legislative body..."

Ballentine's Law Dictionary, 3rd edition, defines administer as:

"...to apply or enforce the law..."

and defines administrative power as:

"...the power of carrying laws into effect, giving them practical application to carry on affairs by way of management, oversight, investigation, regulation, and control, in accordance with and in execution with the principles prescribed by the law maker..."

The necessity for separating administrative powers from regulatory powers is reflected by the actions of this Board in the present controversy. They tend to blend the regulation making with the application of those regulations and the result is a general and vague process pretending precision. Their actions in process fail to objectively and fairly represent to the public a system of recognizable standards and mechanisms for applying those standards so that the public can be treated with and reasonably expect some degree of predictability. (Knik Transcripts, 126, 127, 'M' Appendix EE supra).

The basic point is that the Board may adopt criteria, policy, and regulations but the mechanical process of uniform application can and should only be done by technical and

managerial staff in the affected areas and under the Commissioner of Department of Fish and Game. The mechanics of applying for subsistence status to the Board invites irregular and haphazard results when, especially in this case, the policy making body attempts to weigh individual applications while at the still formulating and defining the regulation and policy which they have created. (Knik Transcripts, supra).

D. Due Process - Generally

In combination or alone,¹ the Board's personal predilections; ² the absence of any biological need to restrict use of Cook Inlet salmon; ³ violations of the Administrative Procedures Act; ⁴ absolute exclusion of Plaintiffs as equal participants with other user groups; and the ⁵ illegal administration of the regulations, exemplify violations of Plaintiffs' due process rights.

This Supreme Court has described due process in Bachner v Pierson , 479 F2d 319 (Alaska 1970) and Green v State , 462 F2d 994, (Alaska 1969). Both cases dealt with allegations of improper jury selection, and defined due process as:

"The term due process of law is not susceptible to a precise definition or reduction to a mathematical formula" But, in the course of judicial decision has come to express a basic concept of justice under the law, such as "our traditional conception of fair play and substantial justice", of "protection of the individual from arbitrary actions"; "fundamental principles of liberty and justice", whether there have been a denial of fundamental fairness, shocking to the universal sense of justice, "that whole community sense of decency and fairness that has been woven by common experience into the fabric of acceptable conduct." and

" respect for those personal immunities which...are so rooted in the traditions and conscienceness of our people as to be ranked as fundamental...or implicit in the concept of liberty." Green v State , at 996, 997, Citations omitted).

Due process violations can ensue from cumulative patterns of behavior resulting in basic and intuitivly recognizable unfair actions. Madison alleges at the least that this is what has happened.

V

IS THE CREATION OF A NEW FISHERY, NAMELY A PERSONAL USE FISHERY, BEYOND THE AUTHORITY DELEGATED TO THE BOARD OF FISHERIES?

The Board of Fisheries, in 1981, birthed a new fishery, originally labeled a family use fishery. However the abbreviated form of family use (using the first letter of 'family' and the first letter of 'use,' i.e. FU) caused the Board to doubt the wisdom of that selection. Finally they selected 'personal use' as the label for the new fishery, (The abbreviated form of which was not considerably better than their prior selection). This personal use fishery was assumedly conceived as a token for the former subsistence users now disenfranchised by the Board. Both occurred at the Spring 1981 Board meetings.

Personal use is an excess stock fishery and, as a food source, is dependent on whether or not the other users' catch i.e. sports, commercial, and subsistence, is assured.

The rationale for creating the personal use fishery and

its limitations are set out in 5 AAC 77.001 entitled Intent and Application of this Chapter .

(a) The Board of Fisheries finds that

(1) before the enactment of the state's subsistence priority law in ch. 151, SLA 1978, an individual could fulfill his personal use needs for fish under subsistence fishing regulations;

(2) the state's subsistence priority law changed the definition of subsistence in a manner that now precludes some individuals from participating in customary and traditional subsistence fisheries and efficiently harvesting fish for their personal use;

(3) there presently are areas of the state with harvestable surpluses of fish in excess of both spawning escapement needs and present levels of subsistence, commercial and sport uses ; and

(4) it is necessary to establish a new fishery classified as "personal use" because

(A) since the sale of fish is not appropriate or permissible, this fishery cannot be classified as commercial;

(B) since the use is not a rural customary and traditional use this fishery cannot be classified as subsistence; and

(C) since the gear for this fishery is often different from that historically associated with sport fishing, this fishery should not be classified as a sport fishery, to prevent confusion among the public.

(b) It is the intent of the board that the taking of fish under a 5 AAC 77 will be allowed when that taking does not jeopardize the sustained yield of a resource and either does not negatively impact an existing resource use or is in the broad public interest.
(emphasis added)

As authority for adopting and creating this fishery, Defendants relied on Alaska Statute 16.05.251(a)(6), which

states:

"(a)The Board of Fisheries may make regulations it considers advisable in accordance with the Administrative Procedures Act for

(6) classifying fish as commercial fish, sports fish or predators or other categories essential for regulatory purposes". (emphasis added)

Significantly this section only refers to classifying 'fish' not creating new fishery categories and this classification must be essential for regulatory purposes i.e. conservation and development, AS 16.05.221(a).

Plaintiffs propose that the language of 16.05.251(a)(6) contains two limitations. First the 'fish' to be classified must be within statutorily designated categories. The legislature particularly set out some of these categories in the statute, i.e. predatory fish, commercial fish, and sports fish. Any other category must be authorized by the legislature such as subsistence, AS 16.05.940(17)(26); endangered AS 16.20.010, 020; experimental, educational, and scientific, AS 16.15.020; or any other categories set out in Title 16. The legislature did not authorize the Board to create a new category of fish, i.e. the personal use fish.

Secondly, the category must be essential for regulatory purposes. Essential for the conservation, development and utilization of fishing resources, (Kenai Peninsula Fisherman's Association v State , 628 p2d 897 (Alaska 1981).

Essential is defined as 'extremely important; 'of the

greatest importance; indispensable'. American Heritage Dictionary , (1973) Funk and Wagnalls, Standard College Dictionary , (1963). Black's Law Dictionary Revised Fourth Edition. Essential is not the equivalent of 'want' or 'convenience'.

The intent outlined in 5 AAC 77.001 does not satisfy 'essential'. Therefore for both of the above reasons, Plaintiffs believe the Board has exceeded its legislative authority by creating a new category of fish, i.e. personal use. Additionally, even if the Board could create the new category, they would have to show that it was 'indispensable' to the conservation, development and utilization of the fisheries.

Plaintiff's position on the personal use fishery independent of the above arguments is that this fishery is closer to a charity fishery than a parity fishery. Plaintiffs feel that they are minimally entitled to equality of use even independent of the subsistence bill. This right was recognized by the Superior Court in Gjosund 77-22104, Homer and 3HO-80-92 Civil, and to a degree by Judge Carlson in Madison . (See Findings of Fact and Conclusions of Law on Counts II and III, January 26, 1983, Conclusions of Law, 9, 10)

The personal use fishery is an excess stock fishery and it does not provide certain essential attributes, i.e. it does not provide a predictable and reliable means in terms of time, gear, location and species, of providing food for Plaintiffs and their families as they have in the past.

The true character of this fishery is set out in 5 AAC

77.001(a) (4) and (b). The Board's attempt to use this as a solution to the problems they have created, has merely created additional problems. For example see Kenai River Sports Fisherman v State , _____ (September, 1983).

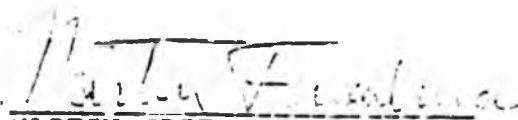
CONCLUSION

The Plaintiffs ask the Supreme Court to recognize that they have a right to participate in the harvest of Cook Inlet Salmon at least on a parity with other users. Their political and financial influence with the Board is considerably less than that of the sports and commercial users, however, their traditional, historical and customary life pattern including fishing with set gill nets to feed themselves and their families is of considerable importance. The documents, exhibits, papers, time and energy spent on these cases demonstrates conflicting interests, but certainly the legislature did not mean to align the interests of Mr. Madison, Lucy Casey and their neighbors, relatives and friends against the Board of Fisheries' interests. Certainly their uses are subsistence uses under any reasonable definition or conceptualization of subsistence uses. The arguments and law here are meant to demonstrate and persuade this Court to recognize the Plaintiffs' right to continue to set their nets, gather their fish, and feed themselves and their families consistent

with Plaintiffs' life patterns and with the legislature's directive to the Board of Fisheries to "permit the taking of fish for subsistence uses".

DATED at Homer, Alaska this 1 day of Oct, 1983.

Respectfully submitted,


MARTIN FRIEDMAN


ARTHUR ROBINSON

IN THE SUPREME COURT FOR THE STATE OF ALASKA

GENE MADISON, et al.)

Appellant,)

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

Appellees,)

vs)

THE ALASKA FEDERATION OF)
NATIVES,)

Intervenor.)

Supreme Court Nos.
6824/7781
Superior Court No.
3KN-81-542 Civil

ALASKA DEPARTMENT OF FISH AND)
GAME, et al.,)

Appellants,)

vs)

LOUIS GJOSUND, et al.,)

Cross-Appellees.)

Supreme Court No.
7410
Superior Court Nos.
HO-80-92 Civil
3HO-77-11014 Homer

MERIT APPEAL FROM THE SUPERIOR COURT, STATE OF ALASKA
THIRD JUDICIAL DISTRICT
JUDGE VICTOR CARLSON

REPLY BRIEF OF APPELLANT/CROSS-APPELLEES

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Filed in the Supreme Court
in Anchorage of the State
of Alaska this 30 day of
November 1984.

Robert S. Bresh
ROBERT S. BRESH
Clerk of Court *David A. Lampson*

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STATUTES RELIED ON

AS 01.10.040

Words and phrases. Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Technical words and phrases and those which have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise, shall be construed according to the peculiar and appropriate meaning.

AS 16.05.094:

Duties of section of subsistence hunting and fishing. The section of subsistence hunting and fishing shall :

(1) compile existing data and conduct studies to gather information including data from subsistence users, on all aspects of the role of subsistence hunting and fishing in the lives of the residents of the state;

(2) quantify the amount, nutritional value, and extent of dependence on food acquired through subsistence hunting and fishing;

(3) make information gathered available to the public, appropriate agencies, and other organized bodies;

(4) assist the department, the Board of Fisheries, and the Board of Game in determining what uses of fish and game, as well as which users and what methods, should be termed subsistence uses, users, and methods;

(5) evaluate the impact of state and federal laws and regulations on subsistence hunting and fishing and, when corrective action is indicated, make recommendations to the department;

(6) make recommendations to the Board of Game and the Board of Fisheries regarding adoption, amendment and repeal of regulations affecting subsistence hunting and fishing;

(7) participate with other divisions in the preparation of statewide and regional management plans so that these plans reorganize and incorporate the needs of subsistence users of fish and game.

AS 16.05.251

Regulations of the Board of Fisheries.

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

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

AS 16.05.940

Definitions. In this chapter

(17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence use with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(26) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as resources for direct personal or family

consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption: for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis.

AS 16.05.947 - pre-1978

"Subsistence fishing": the taking, fishing for or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means as defined by the Board.

AS 44.62.310

Agency Meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivision, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the

motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void.

AS 44.62.312:

State policy regarding meetings. (a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the

people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) AS 44.62.330(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions.

AS 44.62.330:

(a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under AS 44.62.330 - AS 44.62.630. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under AS 44.62.330 - 44.62.630 is limited to named functions of the agency

(40) Board of Fisheries

AS 44.62.630:

Impartiality. The functions of hearing officers and those officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. These officers, except to the extent required for the disposition of ex parte matters authorized by law, shall not engage in interviews with, or receive evidence or argument from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communications with these officers shall be served upon all parties.

REGULATIONS RELIED ON

5 AAC 01.597

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

- (1) a long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g., regulatory action or fluctuations in resource abundance;
- (2) a use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use;
- (3) a use pattern associated with specific stocks and seasons;
- (4) a use pattern based on the most efficient and productive gear and economical use of time, energy and money;
- (5) a use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual;

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

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

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

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

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

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

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

5 AAC 99.020 Definitions.

In this chapter, "rural" means outside the road connected area of a borough, municipality, or other community with a population of 7,000 or more, as determined by the Alaska Department of Community and Regional Affairs. (Eff. 5/30/82, Reg 82)

STATEMENT OF ISSUES

The issues under consideration have been set out in the Opening and Responsive Briefs of the parties. This Reply will deal with the points raised in the State and Intervenor's briefs. The argument heading in this Reply refers to the issue discussed under that heading. All arguments in this reply have been dealt with and described in the Statement of Issues in the Opening and Responsive Briefs.

ARGUMENT

"A word is not a crystal, transparent or unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and time in which it is used."
Mr. Justice Holmes in Towne v Eisner, 245 US 418, 425 (1918)

I. LEGISLATIVE INTENT

Gjosund and Madison (hereinafter Plaintiffs) will try to clarify the primary issues in this case and deal with the legal arguments countering and supporting these issues in subsequent parts of this reply.

With time for reflection and a renewed and hopefully clearer examination of the heart of this controversy, it appears that much has been done about nothing. If this Court, independent of the Board's interpretation, examines AS 16.05.251(b) and AS 16.05.940 (17) and (26), this conclusion will result. It will not be because of any reference to newly discovered insights into applicable legal standards, but by macroscopic view of the acknowledged history and bias of the Board of Fisheries in dealing with subsistence fishery issues. (Intervenor's brief, page 3, 18 and 37 through 46 and Plaintiff's opening brief.)

Plaintiffs will attempt to minimize repetition by referencing to earlier briefs.

Plaintiff's position regarding the subsistence legislation is that the intentions of the state legislature were permissive, protective and inclusive. The legislature wanted to maintain and protect the status quo regarding subsistence uses in the state of Alaska. The subsistence bill also reflects a delineation and expansion of uses by including some uses, such as barter and trade, which were not included in the pre-1978 subsistence use definition. To argue that inclusion of the words 'customary and traditional use' instead of 'personal use' was intended to be restrictive, narrowing and exclusive ignores the plain and simple meaning of the words used as well as every legislative and legislator's statement of intent.

An objective view of legislative intention shows an intention to maintain and protect the usual uses by 'all Alaska residents,' 'native and non-native' by setting out in particular what those usual uses are. Subsistence use now means and includes, in particular, uses for food, shelter, clothing, tools or transportation and what had been excluded before, customary trade and barter. (Compare AS 16.05.940(17)(26) with the pre-1978 AS 16.05.940(17)).

The new legislative statement is more inclusive than the

former, which contained means and uses in one statute, and excluded sale and barter from personal use. The subsistence law was passed to force the Board, by statutory enactment, to protect subsistence use. The legislature felt that the 1973 policy statement of the Commissioner of Fish and Game was neither adequate nor sufficient legal justification for protecting subsistence uses because the Board had failed to protect subsistence users where competition existed in the fishery with other user groups.

" There are other individual examples of the failure of the Board to protect subsistence use in light of competing uses. In summary, however, the subsistence law was passed to enable the Board to provide for subsistence use during times of resource shortage and intense competition and to make certain that the Board took care of subsistence use prior to allowing other uses of these important economic resourcesIn the same way reliance upon the 1973 policy statement of the Commissioner and Board was not deemed adequate. First, this policy did not provide the legal justification for protecting subsistence uses and, in the generally held view in rural Alaska, was only a policy statement which the Board could point to without implementing it with any substantive measures. Be that as it may, all the subsistence law did was to codify this policy in order that its intent be enforceable rather than subject to the whims of the resource managersWhile this is only one example of the Board of Fisheries proclivities when 'left with its own devices' it is a clear indication of what fate is in store for subsistence users in highly intensive competitive fisheries and hunting situations, where there is no protection guaranteed by statute". (page 44, 45 - Draft Report of Special Committee on Subsistence. G file #2, page 13-221, Appendix BB) (emphasis

added)

The cases involving the Board of Fisheries (except the first Gjosund case (1977)) arose subsequent to the passage of the subsistence bill in 1978. These cases evidence the Board's approach to the Cook Inlet subsistence fishery.

The legislature must have been aware of the Cook Inlet Management Plan adopted by the Board in 1977, which omitted any consideration of subsistence. That plan was the subject of KPFCA v State, 628 P2d 897 (Alaska 1981) and was another impetus to upgrading the 1973 policy into legislation.

Tyonek v Alaska Board of Fisheries, 3An 80-3073, occurred after 1978 when the Board was fully aware of the particular wording and direction of the subsistence bill. However, they completely ignored the village of Tyonek which, for the past 15 years, had not been able to fish legally for King Salmon. After the stock recovered, the sports and commercial users were allowed to fish. Obviously Tyonek would be considered a subsistence user without any discussion. However, court action was still necessary. Through a Superior Court Order the Board enfranchised the village of Tyonek, its residents, and all timber and logging workers and state and school district employees working in the area. In other words anyone who moved to or near Tyonek was now, at least after the Court order, a subsistence user.

The record before the Board and before this court shows a long time continual, usual, common, historical use by plaintiffs of the salmon in Cook Inlet.

The entire foundation for the Board's actions, and the position of Intervenor's and the State, is that the division of subsistence uses from subsistence methods into two separate statutes, together with the language 'customary and traditional uses', justifies every action the Board has taken in excluding the plaintiffs in these cases. That change supposedly authorized the Board to adopt 5 ACC 01.597 i.e.

Characteristics for Subsistence Fisheries. These criteria confuse what is a very simple legislative statement.

Customary and traditional should be interpreted according to their common and approved usage. They have not acquired any peculiar meaning and no further statutory definition, judicial interpretation, or construction of these words has been set out. Taken in their very simple form or dictionary definition, they are adjectives meaning 'usual' and/or 'conventional'.

Alaska Statute 01.10.040 states as follows:

"Words and phrases: Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Technical words and phrases and those which have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise shall be construed according to the peculiar and appropriate meaning." (For interpretation see Lynch v McCann, 478 P2d 835, (1970))

Customary and traditional should be accorded their common and approved usage. i.e. dictionary definition and general understanding of those words. These words are not terms of art from which the legislature intended 5 AAC 01.597(a) (1-10) (b) (c) to emerge.

Intervenor's brief (page 24) and the State's brief (page 21), both refer to a quote of Representative Anderson discussing the subsistence bill in the Alaska State Legislature as support for their understanding of the legislative intent. The language is much more consistent with plaintiffs' position. Since it has already been quoted twice, one additional time can't be too harmful.

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

traditional' rather than leaving the section wide open. The design is not to be restrictive but to provide guidelines and that is basically what I feel and many...many members felt it was necessary in retaining those two words 'customary and traditional'." (emphasis added).

Representative Anderson's points indicate that the statute wanted to 'put some guidelines around the use of Alaska's freedom of resources' and that the 'design was not to be restrictive.' 'Customary and traditional use' is recognition of historical use 'of those (Alaskan residents) that come in later'...'the non-native people.' 'Customary and traditional' are used to give the Board more clarification. The State and Intervenor are now arguing that plaintiffs pre-1978 use of salmon is no longer subsistence use because the Board has developed 10-criteria (plus two community criteria) which do not include the plaintiffs. In fact they were adopted to exclude them. (See discussion of Knik hearings in plaintiff's brief at page 21-23).

5 AAC 01.597(b) & (c) are examples of over-extension of the Board's authority and are exactly why the legislature felt a need to adopt a subsistence bill. Subsistence users had to be protected from the Board. However, the Board has again pursued its own course and found a means to subvert the intentions of the subsistence bill. 5 AAC 01.597(b) states.

"The Board will identify established geographic communities which may be participating in a subsistence system. The Board will then apply

all the characteristics in (a) of this section to the communities and to subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority."

The Board has developed an exclusion mechanism for any individuals, families, or groups of families from consideration as subsistence users unless they live in an 'identified established geographic community which may be participating in a subsistence system.' Where does the subsistence bill authorize or offer a hint as to what this regulation means? The Board then goes on in subparagraph (c) to state:

"for purposes of this section, a "community" is generally considered to be several households of full time residents who all reside in a specific geographic area because of common interest."

The intention of this regulation is clear. It is to exclude anyone in Cook Inlet who does not live in a model native rural village and completely controvenes the legislative intent.

Intervenor (page 26 and 27) and the State (page 20) use two quotes attributed to Representatives Miller and Huntington describing hunters flying in to rural areas to hunt and take meat from the subsistence users. These quotes emphasize, (and its a point we do not disagree with), that the people in the place of the subsistence resources should have a say about the use of resources in the area they live in. Assumedly

Intervenor and State accept these quotes as supporting their case. It is our position, illustrated by the record, that plaintiffs in Madison and Gjosund live where the fish are, and the Board has in fact excluded them from subsistence fishing, instead of protecting and permitting their subsistence fishery, because of threats to the resource by people from other areas. I assume Representatives Miller and Huntington wanted the area users protected from, and not excluded by, the fly-in hunters or fishermen.

II ADMINISTRATIVE REVIEW

One point connected to the discussion and argument above relates to the continual flux of positions, arguments and rationales that this case seems to birth. As an example, the Intervenor and State briefs are apparently now disagreeing with both Judge Carlson's and Judge Jones' standard of review of administrative action. The Superior Courts, in both cases, deferred to the Board's interpretations and resultant promulgations of subsistence criteria and refused to substitute their judgment for that of the Board. Intervenor and the State argued 'judicial deference' at the Superior Court level. It appears that they are now arguing that the Superior Court and this Court should substitute their judgment in the first stage of analysis for the Board's interpretation of the intentions of the subsistence bill (Intervenors brief, page 21; State's

brief, page 19) and defer to the Board regarding the enactment of the criteria regulations.

Plaintiff's position is that Judge Jones in Gjosund would have found that the criteria were not an accurate reflection of the intention of the statute and voided those criteria if he had substituted his judgment for that of the Board. The same could be argued for Judge Carlson. If the State and Intervenor are stipulating that the Superior Court erred in arriving at their conclusion regarding the administrative review issue all parties are now in agreement.

Plaintiffs have consistently argued that the courts should substitute their judgment for the Board's. The Board has predictably misinterpreted the intention of the subsistence statute and has over-extended and distorted the words 'customary and traditional' to the point where the criteria are incomprehensible to the public and tailored to fulfill the Board's pre-set intentions to close Cook Inlet to subsistence.

This Supreme Court must view the events and arguments in this case in a continuum. Individual elements of the issues may hold a certain attractiveness or reasonableness, however, when viewed in process from 1973 through 1983, the picture becomes much clearer.

The fact that subsistence use and gear prior to 1978 was set out in one statute and subsistence use and gear subsequent

to 1978 is set out in two statutes is nothing more than an intention to keep the same gear criteria to identify methods of harvest, and to amplify and exemplify subsistence uses separately. The uses set out in AS 16.05.940(26) are the particular and usual subsistence uses. The statute both expands on, and particularizes personal use to the existing users by including barter and specifying other uses that had heretofore been general. Substituting the words 'usual' in paragraph (26) for the words customary and traditional would make much more sense than substituting all of the characteristics contained in 5 AAC 01.597(a)(b) & (c) for customary and traditional.

In Gjosund, Judge Jones deferred to the Board of Fisheries' adoption of the criteria, however, he found that the criteria were only effective when determining priorities between and amongst subsistence users under subparagraphs (1), (2), & (3) of 16.25.251(b). Judge Jones determined that the Board's interpretation, insofar as excluding the plaintiffs in Gjosund, was unsound at the pre-priority level. He found that the plaintiffs in Gjosund were subsistence users of Cook Inlet Salmon stocks in accordance with AS 16.05.251(b) & AS 16.05.940(17)(26) and that they could not be restricted unless there was a factual showing that the salmon stocks were jeopardized.

"RURALNESS" ISSUE

Although this issue was not brought up in plaintiffs' opening brief, it has been assumedly and subtly included in Intervenor's and State's briefs. It appears as a new criteria, undefined and absolute, called 'ruralness'. How and under what conditions it has been injected into the Cook Inlet drama is unclear. However, it seems that both Intervenor and State have accepted, and are now arguing, that the subsistence legislation includes the term 'rural' as a prerequisite to subsistence use. They also must then argue that the legislative intent was to define rural so the public and the Board could identify and know that it was a pre-condition to subsistence use. The State and Intervenor argue that rural is as integral to the subsistence legislation as customary and traditional. However, if that is so, why did not the legislature set out rural, as it did customary and traditional.

Plaintiffs were never presented with the question of whether they were rural or not. In fact rural is now a conclusion without a defined origin. If the legislature was going to use a rural versus non-rural subsistence use discrimination, then one must assume that because of the history and source from which the subsistence bill arguably originated, (i.e. ANILCA, according to the Intervenor and the State; page 32, & 30 of their briefs respectively), then the

state legislature would have said what they were in fact doing. They would have defined rural and described its application to the issue. However, the state subsistence legislation does not include a rural versus non-rural standard.

One federal standard for rural in Alaska designates Fairbanks, Ketchikan, Anchorage, and Juneau as urban and all else rural. (see Federal Register January, 1981, Statement of Secretary of Interior) The State Board of Fish and Game became aware of the problem and tried to resolve it by adopting a definition of rural in 1982. (5 AAC 99.020, Attachment E) stated:

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

The Board apparently realized that defining 'rural' exposed their errors more than it hid them and repealed this regulation in 1983.

No opportunity to respond to the rural criteria in proceedings before the Board was ever noticed nor was this standard anticipated in the state subsistence bill or the Board's action. A rural standard without notice and definition poses serious constitutional questions. What and where are the rural/non-rural borderlines and what is the delineation of, and factors identifying 'ruralness'? Are these Borough or City

boundaries, population or census district boundaries, or life style characteristic delineations? (See Ketchikan Gateway Borough, Alaska v Breed, 639 P2d 995 (Alaska 1981)), (persons similarly situated must be treated alike.) Obviously persons residing on opposite sides of a border boundary must be distinguished by something other than an arbitrary line. Questions arise of vagueness and due process, in light of the fact that no regulatory definition of rural existed at the time the Board excluded plaintiffs, (See Woodards v State, 604 P2d 250, (Alaska 1979), and Marks v City of Anchorage, 500 P2d 644 (Alaska 1972)).

Also raised are procedural and substantive due process questions regarding notice and hearing in conjunction with plaintiffs' due process argument in their brief.

Rural or area categorizations are not unconditionally repugnant. Plaintiffs feel that their situation is the same as that referred to by Representatives Miller and Huntington. They live where the subsistence resources and uses are located and they live where the customary and traditional i.e. historical, conventional, usual, uses have and do exist. Plaintiffs have never had an opportunity to respond or relate to the rural criteria since it appears to have developed in the conclusions of the Board and briefs of Intervenor and State and not in the subsistence legislation or regulations.

THE PUBLIC MEETINGS ISSUE

Intervenor takes no position on the question of violations of the public meetings provisions except to imply that this issue only relates to actions prior to the adoption of 5 AAC 01.597.

The State responds by saying that the issue is moot. However, plaintiffs refer this Court to our brief (page 26 through 30) and point out that the policies and regulations adopted in the December 1980, Board meeting were in violation of AS 44.62.310 & 312. That illegality, by acknowledgment of the State, has not been, nor could it be, remedied by the subsequent public notices and meetings on subsistence issues, especially when the policy was formulated at an illegal closed meeting and all subsequent policies, with certain minor deviations, mirror the policy originating from the closed meeting. Until such time as there is a replay and representation of what in fact took place at those closed meetings, so the public will have an opportunity to confront and participate in the presentations and deliberations, claims of mootness and renotices do not vitiate the original and acknowledged stains.

Without relinquishing our claim that the issue is not moot, plaintiffs offer that an exception to the mootness doctrine exists in public interest situations. The Board's

violation of the public meetings laws can be reviewed by this court, especially if it is a matter of public concern and capable of evading review. (See Doe v State, 487 P2d 47 (Alaska 1971); Alaska Transportation Commission v Grandia, 602 P2d 402 (Alaska 1979))

It is rare that issues of violations of notice or public meetings can be pursued both through trial and appellate stages within the period of time between public meetings. In this case the record of the Board's proceedings mandates an independent review by this court of the actions of the Board at the illegal public meeting to determine how much of the Board's subsequent policy and regulations on Cook Inlet subsistence uses were tainted.

EQUAL PROTECTION

The State's description of Gjosund's equal protection questions lumps equal protection with due process by confusing the constitutional distinctions between the two. They also, (State's brief page 40), refer consistently to the fact that the Board has identified subsistence fishing only in 'rural' communities. As earlier indicated, 'rural' has never been clearly identified, defined, or applied.

The Board has apparently used some notion of 'ruralness' to set up a class of residents of the idealized rural native village community model as subsistence users as opposed to the

class of people which plaintiffs belong (who cannot tell whether they live in a rural or non-rural area because no definition exists), and who have otherwise historically fished by subsistence means and used salmon for their family and personal consumption and nevertheless have been excluded from subsistence fishing.

The Intervenor misstates our case. It matters little whether state or agency legislation sets up classifications. If the classifications are arbitrary and unrelated to the object of the legislation and do not treat all persons similarly circumstanced alike it is an equal protection issue.

Plaintiffs' claim is that the regulatory scheme, i.e. the ten plus criteria, has set up two classifications of Alaskan residents and that these classifications are not substantially related to the purposes of the statute and discriminate against plaintiffs without any reason.

There is no legitimate purpose or distinction to setting up a class of subsistence users in Port Graham, English Bay and Tyonek, which class includes all residents of that area whether they be natives, non-natives, school district employees, transient cannery workers, or timber employees, and setting up an excluded class of all other persons residing on Kachemak Bay in or near Homer or Kenai or any place on the entire shoreline of Kachemak Bay or Cook Inlet i.e. Halibut Cove, Bear Cove,

Fritz Creek, Clam Gulch, Aurora Lagoon, Ninilchik, etc.

The class exclusion does not suit the purposes of the legislation nor does it further the purposes of permitting the taking of fish for subsistence uses and "of recognizing the needs, customs, traditions, of all Alaskans" and "maintaining fish stock on a sustained yield basis."

As indicated earlier, the plaintiffs have all been fishing for lengths of time up to 50 years by the use of set gill nets. They are residents of the general Kenai Peninsula Borough area, have fished in the localities closest to where they live, have used the fish for family and personal consumption and have participated in other subsistence activities (i.e. coaling, gardening, gathering, clamming, etc.) To argue that this is not an equal protection issue overlooks the obvious.

DUE PROCESS ISSUES

The plaintiffs' due process claims are on pages 41-47 of their brief and will only be discussed here to counter specific arguments raised by Intervenor and State. Intervenor claims that Judge Carlson's remand of plaintiffs' Count IV, (Intervenor's brief, pages 35-37), somehow postpones what Intervenor acknowledges is a close substantive due process question. i.e. whether plaintiffs' right to due process of law was violated by exclusion of their use as a subsistence user.

This issue will be addressed in the reply brief to amplify

our claim that the Board acted arbitrarily in an aspect other than those set out in plaintiffs' opening brief. The inclusion of rural as a prerequisite to subsistence use inclusion is one more cumulative step in our claim. As indicated earlier in the reply brief, no definition, discussion, or elements of 'ruralness' were set out by the Board for plaintiffs' to confront or respond to. This is a cumulative element in the Board's behavior patterns which plaintiffs' claim have resulted in violations of fundamental principals of liberty and justice and is another arbitrary administrative action 'shocking to the universal sense of justice.' See Green v State, 462 P2d 994, (Alaska 1969).

The remand order on Count IV is lacking integrity when compared with the simultaneous order of Judge Carlson denying plaintiffs' Motion for Summary Judgment on Counts III and IV on 30 August 1982. By denying plaintiffs' motions, he was finding that no violations of due process or equal protection existed, therefore a remand is inappropriate.

Judge Carlson's remand suggested that proposals be resubmitted to the Board. Plaintiffs did in fact submit another round of proposals. The result and record before the Board were the same.

The Board had the same record before it as this Court does, i.e. testimony on behalf of Kenai area plaintiffs and the

Kenai Kenaitze reports, testimony and reports of Kachemak Bay subsistence group and Larry Smith; affidavits presented to the court in Madison and Gjosund; and proposals requesting establishment of subsistence use fisheries. The Board responded as it had done in the past.

At the time those proceedings took place this appeal was moving through the court system and to date nothing has in fact changed. The remand to the Board was an empty remand. No standards were set nor were instructions or directions given to the Board. The Superior Court merely said "proceed as you had in the past" and the Board followed that instruction and did not acknowledge any subsistence uses in Cook Inlet or Kachemak Bay other than Port Graham, English Bay, and Tyonek.

The obligation to research and provide information on plaintiffs subsistence use (in addition to plaintiffs' contributions to the record) is with the Division of Subsistence (see AS 16.05.094) and this data should be before the Board prior to any action. The Braund report (G File #2 Appendix M, revised November 1982) concludes that there are numbers of subsistence users both on the east shore of Cook Inlet and along the borders of Kachemak Bay. Assumedly the Board had, or should have had, this information and the Board still retained its stubborn stance.

Plaintiffs claim that the record in this case demonstrates

that confronting the Board again would be a futile gesture and that judicial action is plaintiffs' only hope for a remedy (see Aleknaqik Native's Limited v Andrus, 648 F2d 496).

IMPARTIALITY

Plaintiffs aver, contrary to Intervenor's position, that ample record exists to determine that the Board has acted arbitrarily, discriminatorily, and with prejudice. Alaska Statute 44.62.630 states as follows:

Impartiality: The functions of hearing officers and those officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. These officers, except to the extent required for the disposition of ex parte matters authorized by law, shall not engage in interviews with, or receive evidence or arguments from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communications with these officers shall be served upon all parties."

This section applies to the Board of Fishery. (See AS 44.62.330(a)(4)). It further supports plaintiffs' claim that the public meeting law deviation is a serious breach which cannot be rectified without a full and complete statement and avowal of the events that occurred during that closed meeting.

This section also relates to plaintiff's due process claims. Remand to the Superior Court and/or the Board for

trial/hearing would be superfluous. Very little could be added to the record that is not there already. Additionally the tenuous state of the Board's composition and existence, in light of the conflict between the governor and the legislature regarding confirmation of appointments of Board members, together with recently proposed legislation aimed at reorganizing Board member representation, changes the complexion of plaintiffs' position again.

PERSONAL USE FISHERY

Questions of the personal use fishery must be decided on the basis of statutory interpretation and due process standards. Judge Carlson's decision specifically did not consider any record of the Board's personal use hearings and those records were not a part of the record on appeal. It is deceitful to suggest or imply that the personal use fishery involved only a name change and minor shift in location on the 'use scale.' The personal use fishery moved the pre 1980 subsistence users from first consideration to last consideration.

THE GJOSUND DECISION

In reviewing and trying to discredit the Gjosund decision, Intervenor raises the spectre of catastrophe 'to tens of thousands of Alaskans who live in the bush.' This is not the case and Intervenor misinterprets what Judge Jones did.

Judge Jones deferred to the Board's adoption of the criteria but determined that the criteria 'kick in' when a priority selection was necessary. The court firstly found that the plaintiffs were subsistence users of the Southern District salmon based upon the legislative definition and history of use of the Gjosund plaintiffs. He further found that the criteria would come into effect when and to the extent that jeopardy to the sustained yield of fish stocks took place and that the criteria were applicable to the need for further restrictions, based upon AS 16.05.251(b)(1), (2), & (3), to distinguish between different types of subsistence users.

It is offered that if Judge Jones had determined that he could substitute the court's judgment for that of the Board in interpreting the statutes, (as the Intervenor and State now concede is the law) then Judge Jones would most likely have voided the criteria if they were to be used to exclude plaintiffs as subsistence users. Judge Jones found that the statute was clear and no further criteria was needed to find that plaintiffs were subsistence users.

CONCLUSION

Plaintiff again asks this Supreme Court to review the subsistence statutory scheme and the state legislative record and independently determine if, in fact, that scheme was meant to be restrictive, narrowing and as complex as the Board,

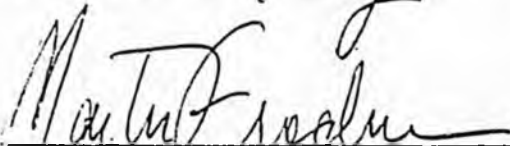
Intervenor, and State suggest. We also ask this court to examine how, when and where 'ruralness' enters into any of the legislative enactments or Board deliberations to the point where plaintiffs were put on notice of a rural prerequisite for subsistence inclusion.

Plaintiffs offer that they, in their community and together with their families, reside near, and have been subsistence fishing in and around Cook Inlet for periods of time up to 50 years. They live in the area and are the persons intended to be included under subsistence use by the legislature. We also claim that the convolutions undertaken to exclude plaintiffs fatally taints the Board's actions regarding the Cook Inlet subsistence fishery.

Plaintiffs submit that the Board has violated the equal protection and due process rights of the plaintiffs.

We request this court to make such findings and to order that the plaintiffs' use of the salmon moving in and through Kachemak Bay and Cook Inlet is a subsistence use as intended by the State legislature.

SIGNED AND DATED this 29 day of May, 1984.



Martin Friedman



Arthur Robinson

STATUTES AND REGULATIONS

PERTAINING TO

SUBSISTENCE

Sec. 16.05.251. Regulations of the Board of Fisheries.

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

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

Sec. 16.05.255. Regulations of the Board of Game.

(b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.550) permitting the taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of game resources on a sustained-yield basis. Whenever it is necessary to restrict the taking of game to assure the maintenance of game resources on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board

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

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

Sec. 16.05.940. Definitions. In AS 16.05.010 — 16.05.950 /

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

ATTACHMENT B

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rnnt. Each neace officer warrant or other process ent jurisdiction for the AS 16.52, and may, with me. The judge of a court affirmation showing prob- ar ch 94 SLA 1959; am

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by a judicially approved ed upon probable cause and

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

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

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

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

Article 2. Boards of Fisheries and Game.

Section

251. Regulations of the Board of Fisheries

255. Regulations of the Board of Game

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

- (1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;
- (2) establishing open and closed seasons and areas for the taking of fish;
- (3) setting quotas, bag limits, harvest levels, and sex and size limitations on the taking of fish;
- (4) establishing the means and methods employed in the pursuit, capture and transport of fish;
- (5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;
- (6) classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes;
- (7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation and stocking of fish;
- (8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;
- (9) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;
- (10) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

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

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

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

(2) local residency; and

(3) availability of alternative resources.

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

same as register 89, April 1984

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

Chapter
99. Subsistence Uses

**CHAPTER 99.
SUBSISTENCE USES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) live closest to the resource;

(2) have the fewest available alternative resources; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Authority: AS 16.05.060

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

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

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

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

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

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

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

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

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

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

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

(10) a use pattern which includes reliance on

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

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

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

Authority: AS 16.05.251(b)

ARTICLE 12. PRINCE WILLIAM SOUND AREA

Section

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

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

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

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

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

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

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

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

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

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

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

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

(c) Repealed 6/30/83.

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

Authority: AS 16.05.060
AS 16.05.251

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

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

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

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

Authority: AS 16.05.060

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

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

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

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

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

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

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

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

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

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

(b) The department shall

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

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

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

(4) insure that subsistence use priorities are met.

(c) In this section "upper Cook Inlet salmon

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

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

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

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

ARTICLE 4.
BOTTOMFISH FISHERY

Section

410. Fishing season

430. Gear

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

Authority: AS 16.05.250(2)

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

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

Authority: AS 16.05.251(a)(4)

ARTICLE 5.
SMELT FISHERY

Section

510. Fishing seasons

531. Gill net specifications and operation

534. Identification of gear

535. Minimum distance between units of gear

550. Closed waters

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

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

(c) Smelt may not be taken in freshwater.

Authority: AS 16.05.251(2) and (10)

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

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

PERTINENT SECTIONS OF
ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

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

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

TITLE VIII—SUBSISTENCE MANAGEMENT AND USE

FINDINGS

16 USC 3111.

SEC. 801. The Congress finds and declares that—

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

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

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

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

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

POLICY

16 USC 3112.

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

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

scientific principles and the purposes of this Act, the purpose of this title is to protect rural residents engaged in a

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

(3) except as otherwise provided by law, Federal land management activities on the public lands shall not restrict the viability of all wild renewable resources on adjacent landowners, including Native Corporations, appropriate and other nations.

DEFINITIONS

SEC. 803. As used in this Act, the following definitions apply: (1) the customary and traditional uses of renewable resources for direct personal use, food, shelter, fuel, clothing, tools, and the barter and selling of handicraft articles of and wildlife resources taken for personal use, barter, or sharing for personal or customary trade. For the purposes of this section—

(1) "family" means all persons living together, by adoption, or any person living with the family on a permanent basis; and

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

(A) for other fish or game;

(B) for other food or for nonwasteful subsistence uses if the exchange is of a limited nature.

PREFERENCE FOR SUBSISTENCE USES

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

(1) customary and direct dependence on the resource as the mainstay of livelihood;

(2) local residence; and

(3) the availability of alternative resources.

43 USC 1601 note.

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

MANAGEMENT AND USE

FINDINGS

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

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

POLICY

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

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

Ante, p. 2377.

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

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

DEFINITIONS

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

16 USC 3113.

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

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

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

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

PREFERENCE FOR SUBSISTENCE USES

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

16 USC 3114.

Priority criteria.

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

(2) local residency; and

(3) the availability of alternative resources.

LOCAL AND REGIONAL PARTICIPATION

16 USC 3115.

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

(1) at least six Alaska subsistence resource regions which, taken together, include all public lands. The number and boundaries of the regions shall be sufficient to assure that regional differences in subsistence uses are adequately accommodated;

(2) such local advisory committees within each region as he finds necessary at such time as he may determine, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of the local committee system set forth in paragraph (3)(D)(iv) of this subsection; and

(3) a regional advisory council in each subsistence resource region.

Regional advisory council, authority.

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

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

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

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

Annual report to Secretary.

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

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

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

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

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

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

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

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

(d) The Secretary shall not implement this section if within one year from the date the State enacts and implements laws which are consistent with, and which provide for, local participation specified in sections 804 and 805, unless and until repealed, shall supersede such sections govern State responsibility for the taking of fish and wildlife on the public lands. Laws establishing a system of local advisory councils consistent with section 804 and State rulemaking authority shall constitute a condition of the regional councils concerning wildlife populations on public lands within the region for subsistence uses. The regional councils shall advise the State rulemaking authority during the course of its administrative proceedings of such authority and the evidence upon which such authority may choose not to follow administrative principles of fish and wildlife conservation. The Secretary shall determine if the satisfaction of rural subsistence needs is not supported by substantial evidence, and the reasons for such determination. The Secretary shall determine if the course of its administrative proceedings of such authority may choose not to follow administrative principles of fish and wildlife conservation. The Secretary shall determine if the satisfaction of rural subsistence needs is not supported by substantial evidence, and the reasons for such determination.

(e)(1) The Secretary shall reimburse the State for the actual costs relating to the establishment and operation of the regional advisory councils established by the State pursuant to paragraph (2) of this subsection so long as such committee reimbursement may not exceed 50 per centum of the total costs for such year. Such costs shall be verified in a statement by the Secretary and determined to be adequate and accurate. The Secretary shall determine if the satisfaction of rural subsistence needs is not supported by substantial evidence, and the reasons for such determination. The Secretary shall determine if the course of its administrative proceedings of such authority may choose not to follow administrative principles of fish and wildlife conservation. The Secretary shall determine if the satisfaction of rural subsistence needs is not supported by substantial evidence, and the reasons for such determination.

(2) Total payments to the State under this subsection shall not exceed the sum of \$5,000,000 in any one year. The Secretary shall advise the Congress at least once a year whether or not the maximum payment is exceeded and the reasons therefor. The Secretary shall determine if the satisfaction of rural subsistence needs is not supported by substantial evidence, and the reasons for such determination. The Secretary shall determine if the course of its administrative proceedings of such authority may choose not to follow administrative principles of fish and wildlife conservation. The Secretary shall determine if the satisfaction of rural subsistence needs is not supported by substantial evidence, and the reasons for such determination.

FEDERAL MONITORING

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

D REGIONAL PARTICIPATION

otherwise provided in subsection (d) of this title, the date of enactment of this Act, the Secretary, in consultation with the State shall establish--

(1) a subsistence resource region which includes all public lands. The number and boundaries shall be sufficient to assure that regional subsistence uses are adequately accommodated; or

(2) committees within each region as he may determine, after notice to the existing State fish and game advisory council, to adequately perform the functions of the local advisory council in each subsistence resource region.

(3) The committee or committees shall be composed of residents of the region and shall have the following authority:

(A) to evaluate proposals for regulations, orders, and other matters relating to subsistence uses of fish and wildlife within the region;

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

(C) to provide input to the Secretary in the development of local and regional participation provisions of this title in the decisionmaking process concerning the taking of fish and wildlife on the public lands for subsistence uses;

(4) to submit an annual report to the Secretary which includes information on the current and anticipated subsistence uses of fish and wildlife populations within the region; the current and anticipated subsistence uses of fish and wildlife populations within the region; the current strategy for the management of fish and wildlife populations within the region to accommodate subsistence uses and needs; and

(5) to make recommendations concerning policies, standards, and regulations to implement the strategy. The Secretary may establish regional advisory committees or such local advisory committees as the Secretary may establish pursuant to paragraph (2) of this subsection may provide advice to the regional advisory councils in carrying out the provisions of this paragraph.

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

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

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

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

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

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

FEDERAL MONITORING

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

Implementation.

Reimbursement to States.

Report to Congress.

Report to congressional committees. 16 USC 3116.

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

JUDICIAL ENFORCEMENT

Civil actions.
16 USC 3117.

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

Hearing.

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

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

PARK AND PARK MONUMENT SUBSISTENCE RESOURCE COMMISSIONS

16 USC 3118.

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

Subsistence
hunting pro-
gram.

investigations conducted jointly or separately by the administrative personnel of the State or the Department of the Interior, information submitted by, or information received from, appropriate local advisory committees, and any testimony received in a proceeding by the commission prior to preparation of the report. Each year thereafter, the commission shall submit to the Secretary and the Governor for their review and approval recommendations submitted to him by the commission. If the Secretary finds that such program is contrary to the purposes of the Act, or if the Secretary determines that the proposed changes in the program or the commission which the Governor proposes are not in the best interests of the State, the Secretary shall take no action on such changes for sixty days during which the commission shall submit to the Secretary and the Governor proposed changes in the program or the commission which the Governor proposes.

(b) The Secretary shall promptly submit to the Governor recommendations submitted to him by the commission. If the Secretary finds that such program is contrary to the purposes of the Act, or if the Secretary determines that the proposed changes in the program or the commission which the Governor proposes are not in the best interests of the State, the Secretary shall take no action on such changes for sixty days during which the commission shall submit to the Secretary and the Governor proposed changes in the program or the commission which the Governor proposes.

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

COOPERATIVE AGREEMENTS

SEC. 809. The Secretary may enter into cooperative agreements with other Federal agencies, States, local governments, corporations, other appropriate persons, or organizations acting through the Secretary of State, for the purposes and policies of this title.

SUBSISTENCE AND LAND

SEC. 810. (a) In determining whether to otherwise permit the use, occupancy, or development of land under any provision of law authorizing the Secretary to acquire land, a Federal agency having primary jurisdiction shall evaluate the effect of such action on subsistence uses and needs, the purposes sought to be achieved, and whether such action would reduce or eliminate the use, occupancy, or development of lands needed for subsistence purposes. Such action shall not include the sale, lease, permit, or other use, occupancy, or development of lands which would significantly restrict subsistence uses effected until the head of such Federal agency:

- (1) gives notice to the appropriate local committees and the Secretary pursuant to section 805;
- (2) gives notice of, and holds, a hearing on the area involved; and

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

CIVIL ENFORCEMENT

ents and other persons and organizations the State or the Federal Government to sut. ence uses set forth in section 804 (or as set forth in a State law of general has fulfilled the requirements of section on of any State or Federal (as appropriate) which may be available, file a civil action in Court for the District of Alaska to require s are necessary to provide for the priority. st the State, the Secretary may be joined as e court may grant preliminary injunctive the granting of such relief is appropriate h the action is based. No order granting issued until after an opportunity for filed against the State, the court shall reliminary relief, by directing the State to satisfy the requirements of section 804; rt, such regulations shall be incorporated l order, and such order shall be valid only s normally provided by State law for the residents and other persons and organiza- parties in an action filed pursuant to this eir' 's and attorney's fees.

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

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

NT SUBSISTENCE RESOURCE COMMISSIONS

ear from the date of enactment of this Act, rnor shall each appoint three members to nmission for each national park or park bsistence uses are permitted by this Act. ncil established pursuant to section 805 ain the area in which the park or park ppoint three members to the commission f either the regional advisory council or a within the region and also engages in park or park monument. Within eighteen ctment of this Act, each commission shall Secretary and the Governor a program n the park or park monument. Such using technical information and other r produced by necessary field studies or

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

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

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

Program and recommendation implementation.

COOPERATIVE AGREEMENTS

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

16 USC 3119.

SUBSISTENCE AND LAND USE DECISIONS

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

15 USC 3120.

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

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

Hearing.

A) such a significant restriction of subsistence uses consistent with sound management principles of the public lands, (2) the proposed minimal amount of public lands necessary for such use, occupancy, or other purposes, and (3) such other steps as will be taken to minimize subsistence uses and resources resulting

required to prepare an environmental impact statement under section 2(2)(C) of the National Environmental Policy Act, and include the notice and hearing and include the action (a) as part of such environmental

shall be construed to prohibit or impair the ability of a Native Corporation to make land selections pursuant to the Alaska Statehood Act and the Alaska Native Claims Settlement Act.

With the procedural requirements of this Act, the head of the appropriate Federal agency shall, in the exercise of his primary responsibility for the disposal of public lands under his primary authority, prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title.

ACCESS

The Secretary shall ensure that rural residents shall have reasonable access to subsistence uses on the public lands.

Nothing in this Act or other law shall be construed to prohibit or impair the use of public lands appropriate use for vehicles, motorboats, and other means of transportation employed for such purposes by any individual, except as provided in this regulation.

RESEARCH

The Secretary, in cooperation with the State and other agencies, shall undertake research on fish and wildlife on the public lands; seek data from, and make use of, the special knowledge of local residents; and make the results of such research available to the local and regional councils established by section 805, and other appropriate

ANNUAL REPORTS

Not later than the date of enactment of this Act, and at the end of each period thereafter, the Secretary, in cooperation with the State and other agencies, shall prepare and submit to the Senate and the Speaker of the House of Representatives a report on the implementation of this title. The report shall include the following information:

- (1) the results of the monitoring undertaken under section 806;
- (2) the status of fish and wildlife populations on public lands and the results of such monitoring;
- (3) the nature and extent of subsistence uses on public lands;
- (4) the nature and extent of subsistence uses on wildlife on the public lands;

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

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

(6) a description of those actions taken, or which may need to be taken in the future, to permit the opportunity for continuation of activities relating to subsistence uses on the public lands; and

(7) such other recommendations the Secretary deems appropriate.

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

Publication in Federal Register.

REGULATIONS

SEC. 814. The Secretary shall prescribe such regulations as are necessary and appropriate to carry out his responsibilities under this title.

16 USC 3124.

LIMITATIONS, SAVINGS CLAUSES

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

16 USC 3125.

(1) granting any property right in any fish or wildlife or other resource of the public lands or as permitting the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife. No privilege which may be granted by the State to any individual with respect to subsistence uses may be assigned to any other individual;

(2) permitting any subsistence use of fish and wildlife on any portion of the public lands (whether or not within any conservation system unit) which was permanently closed to such uses on January 1, 1978, or enlarging or diminishing the Secretary's authority to manipulate habitat on any portion of the public lands;

(3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and park monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in section 816, to continue subsistence uses of such populations, or pursuant to other applicable law; or

(4) modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927; 16 U.S.C. 668dd-jj), the National Park Service Organic Act (39 Stat. 535, 16 U.S.C. 1, 2, 3, 4), the Fur Seal Act of 1966 (80 Stat. 1091; 16 U.S.C. 1157), the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531-1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361-1407), the Act entitled "An Act for the Protection of the Bald Eagle", approved June 8, 1940 (54 Stat. 250; 16 U.S.C. 742a-754), the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-711), the Federal Aid in Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669-669i), the Fishery Conservation and Management Act of 1976 (90 Stat. 331; 16 U.S.C. 1801-1882), the Federal

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

CLOSURE TO SUBSISTENCE USES

16 USC 3126.

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

(b) Except as specifically provided otherwise by this section, nothing in this title is intended to enlarge or diminish the authority of the Secretary to designate areas where, and establish periods when, the taking of fish and wildlife shall be permitted on the public lands for reasons of public safety, administration, or to assure the continued viability of a particular fish or wildlife population. Notwithstanding any other provision of this Act or other law, the Secretary, after consultation with the State and adequate notice and public hearing, may temporarily close any public lands (including those within any conservation system unit), or any portion thereof, to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. If the Secretary determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Secretary may immediately close the public lands, or any portion thereof, to the subsistence uses of such population and shall publish the reasons justifying the closure in the Federal Register. Such emergency closure shall be effective when made, shall not extend for a period exceeding sixty days, and may not subsequently be extended unless the Secretary affirmatively establishes, after notice and public hearing, that such closure should be extended.

Publication in Federal Register.

TITLE IX-IMPLEMENTATION OF ALASKA NATIVE CLAIMS SETTLEMENT ACT AND ALASKA STATEHOOD ACT

SUBMERGED LANDS STATUTE OF LIMITATION

43 USC 1631.

43 USC 1601 note.

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

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

(b) No agency or board of the Department of the Interior, the Bureau of Land Management, shall have authority to determine the navigability of water covering a parcel of land owned by a Native Corporation or Native Group pursuant to the Alaska Native Claims Settlement Act unless a decision of the Bureau of Land Management that the water covering the land is not navigable was validly appealed prior to the date of enactment of this Act. If a conveyance or patent (whichever is executed) by the Bureau of Land Management conveying a parcel of land to a Native Corporation or Native Group shall be the subject of a decision by the Secretary of the Interior that the water covering such parcel is not navigable, the conveyance shall be validly appealed prior to the date of enactment of this Act by the agency or board of the Department of the Interior or the Bureau of Land Management.

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

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

(1) the statutes of limitation set forth in this section have expired with respect to every parcel of land conveyed to such Corporation or Group; and

(2) a final judgment or order not subsequently set aside has been obtained in every civil action filed pursuant to subsection (c).

(e)(1) Whenever a parcel of submerged land owned by a Native Corporation or Native Group is located within a parcel of a conservation system unit such as a National Monument, State of Alaska may mutually agree that such parcel shall be owned by and conveyed to the State under the provisions of the Alaska Statehood Act.

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

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

LETTERS IN SUPPORT OF

HOUSE BILL 288

HB #288

attention Arthur Hermann

I am writing to urge you to pass ~~House Bill 288~~ and give the Board of Fisheries the flexibility to manage the resource for the user groups. Thank You.

Robt. L. White

Box 1251
Cordova 99571

HB #288

I am writing to urge you to pass ~~House Bill 288~~ and give the Board of Fisheries the flexibility to manage the resource for the user groups. Thank You.

Jack + Heidi Babic

Box 1208 Cordova 99571

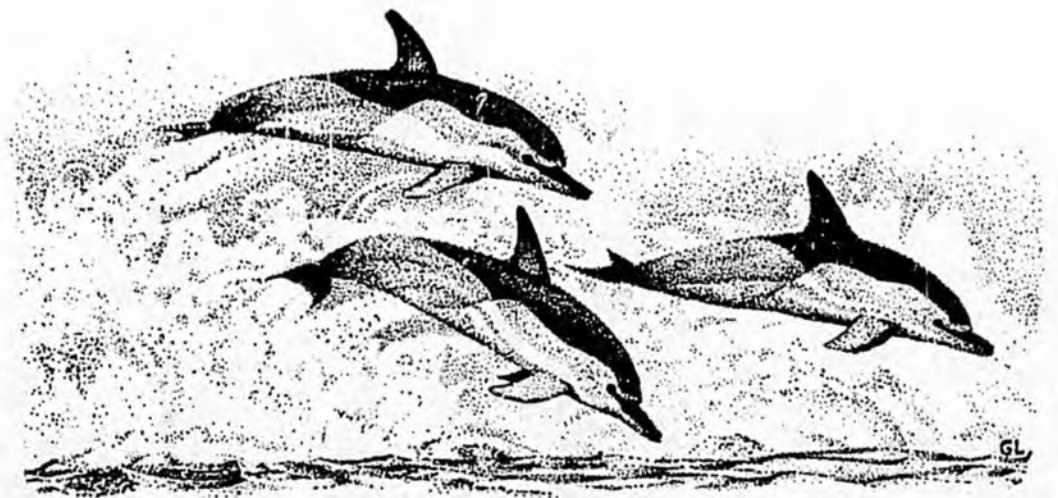
4-1-85

Dear Representative Herrmann,

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

Sincerely,

Mr. + Mrs. E. L. Chesler
Box 116
Cordova, Alaska
99574



4-1-85

Dear Representative Heumann,

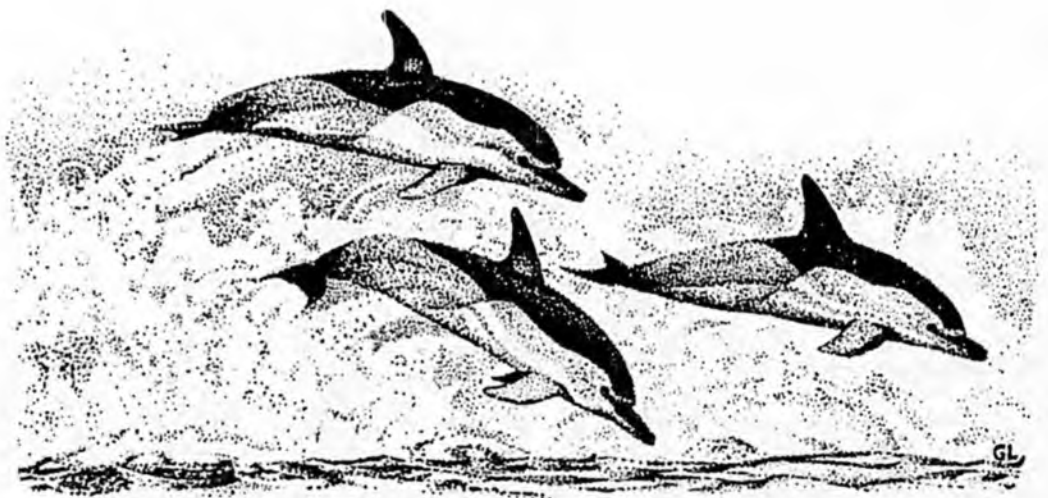
I urge you to ~~Support~~
and Senate Bill 231. We are
Cordova fishermen and our livelihood
depends on our ability to commercially
fish the Copper River Flats.

Sincerely,

Mike + Clara Phillips

Box 391

Cordova AK 99574



4/1/85

Rep. Herrmann,

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

I also urge you to support Senate Bill #931 ~~1/1/85~~

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

C. M. DeVille
Box 632 - Cordova

Main Trails & Bypaths.

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

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

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

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



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

Our Anchorage complainer accused us of leaning to the Native subsistence fishermen and "against" non-Native fishermen . . .

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

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

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

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

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

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

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

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

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



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

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

Robert G. Heming
Publisher

Dear Legislator

3-31-85

I am ~~the~~ ~~representative~~ of Governor Sheffield's
~~subcommittee~~

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

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

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

The subsistence lifestyle is a part of Alaska's past and present which should be protected. I would not favor a system of subsistence which "doles" out fish and game like welfare on a needs basis. The subsistence lifestyle deserves to be encouraged and lived with pride. Under Governor Sheffield's bill, subsistence would be regulated as in the past based on rural residency. I feel this is a good solution as it is less need orientated. One of our subsistence groups our Alaska natives have traditionally shared

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

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

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

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

Will recreational gillnetting close the world famous Kenai sport fishery?

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

Fred Dusen

STAR RT. BOX 6700-E
WASILLA, ALASKA
99687

GILBERT L. URATA, D.M.D.

GENERAL DENTISTRY

BOX 518

CORDOVA, ALASKA 99574

March 26, 1985

Alaska State Legislature
Pouch 5
Juneau, Ak. 99811

Dear Legislator:

Am asking for your immediate support of Senate Bill 231 and House Bill 288 for the following reasons.

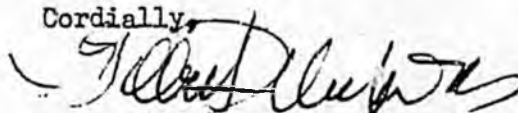
1) Subsistence merely means existence or an aid to existence. Not all people of Alaska need to catch fish in order to exist. Those that do, ought to have the opportunity to do so, those that don't should be restricted. The ADFG and Board of Fisheries have, and need to be allowed to continue to regulate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

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

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

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

Cordially,



Gilbert L. Urata DMD

Tanana Chiefs Conference, Inc.

Doyon Building
201 First Avenue
Fairbanks, Alaska 99701
Phone (907) 452-8251

March 27, 1985

Hon. Richard Schultz
Co Chair, House Committee on
Natural Resources
Alaska State Legislature
Pouch V MS 3100
Juneau, Alaska 99811

RE: ~~HB 288~~

Dear Rep. Schultz:

Enclosed please find a copy of Resolution No. 85-77, "Support for SB 231 and HB 288, Governor's Subsistence Bill". This resolution was passed by the full Board of Directors of the Tanana Chiefs Conference, Inc. gathered at their annual convention mid March, and is being forwarded at their request to the House Committee on Natural Resources to please be made an official part of the record of hearings which your committee is currently holding on this proposed legislation.

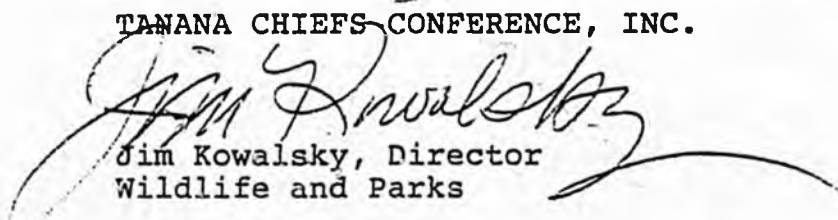
The resolution emphasizes the need to treat subsistence priority as a rural occurrence on a community basis, that is that communities subsist as communities not as individuals.

We also urge action to be taken in this bill this session.

Thank you in advance for any consideration you and the committee hopefully will make of the information set forth in the resolution.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.


Jim Kowalsky, Director
Wildlife and Parks

cc: Rep. Adilheid Herrmann
Rep. Kay Wallis
Rep. John Sund
Rep. David Thompson
Rep. Mike Miller, North Pole
Rep. Bette Cato
Rep. Drew Pearce
Rep. Roger Jenkins
Ted Charles, Director, TCC Tok Subregion

enclosure

JK/kk

TANANA CHIEFS CONFERENCE, INC.

Support for SB 231 and HB 288,
Governor's Subsistence Bill

Resolution No. 85-77

- WHEREAS: the Alaska Supreme Court has recently ruled, in Madison v. Alaska Department of Fish and Game, that the State Board of Fisheries could not distinguish between rural and urban subsistence users until all other uses such as commercial and sport fishing have been eliminated first; and
- WHEREAS: this ruling means that potentially large numbers of urban fishers and hunters will share scarce subsistence resources equally with rural fishers and hunters up to the time that those resources reach a critical level; and
- WHEREAS: this ruling also means that only when such local resources reach a critically low level, and only when all sport and commercial uses thusly are eliminated, can local rural communities be given priority subsistence use of that resource over all other including urban uses; and
- WHEREAS: this ruling fails to fully recognize that Alaska's urban and rural economics, lifestyles, institutions, opportunities for employment, culture, customs and traditions of communitywide sharing greatly differ; and
- WHEREAS: characteristically, rural communities acting together as whole communities have few or no alternatives to the subsistence harvest of locally available resources; and
- WHEREAS: urban communities, as whole communities, have diversified economic opportunities and support systems as alternatives to the subsistence harvest; and