ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3560 HRES HB 288 (FILE 1) - HB 288 (FILE 2)

436

WHEREAS, amending Section 3 (AS 16.05.940(23) to regulate "subsistence uses" to rural Alaska residents only and creating "personal use" fishery for urban residents is viewed as an attempt to divide Aalskans and to legalize something that has been illegal in the past;

NOW THEREFORE BE IT RESOLVED BY THE EXECUTIVE COMMITTEE/TRIBAL COUNCIL OF THE KENAITZE INDIAN TRIBE at a meeting held on March 18, 1985 that the Tribe goes on record as being opposed to House Bill 288 and Senate Bill 231 introduced at the request of the Governor;

BE IT FURTHER RESOLVED that the Tribe urges all Senators and Representatives to carefully review the legality of House Bill 288 and Senate Bill 231 before making this important decision;

BE IT FINALLY RESOLVED that the Tribe will request federal intervention if further attempts to circumvent Supreme Court rulings are taken.

CERTIFICATION

This Resolution 85-6 was duly adopted by the Executive Committee/Tribal Council of the Kenaitze Indian Tribe at a meeting held on March 18, 1985 by a vote of 6 for and 0 against with 1 absent and 0 abstaining.

Ms. Clara Swan
Chairperson, Kenaitze Indian Tribe

Secretary, Kenaitze Indian Tribe

OTHER LETTERS AND COMMENTS

other

3/23/85

Representative Shultz
Pouch V
Juneau Ak 99811

Dear Representative Shultz

I am in shock that the Subsistance law could be passed as is. Please remit the issue to more public hearings. The future of my children's Alaska is at stake. Thanks

Michael L Ross
292 Narrow View Lane
Fairbanks, Alaska 99701

P.S. Don't let it pass.

S.E. Reid
Myrt Manor
Koliganek, Alaska 99576

Representative Adelheid Herrmann
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

March 29, 1985

Dear Adelheid;

The recent Madison decision concerning [redacted] concerns me very much, as I am sure it does you and Fred Thorsoff. Governor Sheffield's initive to reinstate subsistence is very encouraging.

The purpose of this letter is to obtain information from you and your staff. Would you please supply me with a copy of the Madison decision, or direct me to a source for such a copy? Would you please identify just who are the individuals in the Senate Republican leadership, that are opposed to the Governor's initive to reinstate subsistence, as I wish to correspond with those who are opposed.

The basic argument in favor of subsistence rights that I expect to be hearing from proponents of subsistence, will be based on "traditional use". While that argument will be valid, and I do support the "tradition l use" concept, I feel that a more pragmatic argument to those who are moderate in their viewpoints or maybe even downright opposed to subsistence, will be based on my own particular economic situation, that I am sure is shared by other bush residents. My argument in favor of subsistence rights is based on the fact that we live in a semi-cash/subsistance economy. Further that th utilization of subsistance resources to offset the limited cash income is a major factor in keeping me off of many social programs such as, food stamps, free school lunch, energy assistance, and welfare. Why would any tax paying citizen want to support me with their tax dollars, when I can support myself between limited cash income and subsistence?

On the subject of the Alaska National Guard, everyone who supported the effort is to be commended. Members of the Guard have done a lot toward local establishment of a unit. At this site we have at least nineteen interested applicants, there are more at other Nushagak River sites. On February fourteenth, officials of the

Alaska National Guard arrived here in Noligonek and conducted an assessment meeting and presentation, with members of both the Village Council and Noligonek Natives Ltd. At that meeting the Guard officials instructed village officials in a few very basic and straightforward steps that are required for local establishment of an Alaska National Guard unit. Since that February fourteenth meeting the initive for the establishment of a local Guard unit, has been with the Village Council and Noligonek Natives, Ltd. Your support in the National Guard project, has been very appreciated, thank you.

Sincerely,

C.T. Seidl

C.T. Seidl

Alaska Sportfishing Association

3605 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

March 21, 1985

Representative Richard Shultz
Pouch V
Juneau, Ak 99811

Dear Dick,
The recent Alaska Supreme Court decision (Madison Case) has resulted in a potentially chaotic and explosive situation. It leaves nearly all of Alaska's people as "priority subsistence users" under the subsistence law and it precludes restricting these subsistence users until sport and commercial fishing is closed down. Although on the outside this may appear to be fair, it creates an unmanageable mess of the Dept of Fish and Game and renders the Board of Fisheries nearly useless. This could be disasterous to the sportfishing, commercial and hunting industries. Additionally, some rivers cannot stand an efficient harvesting method without a threat to the fish resource. The current legislation proposed by the Administration will not resolve these issues and, as a permanent bill, will harm sport and commercial fisheries.

The citizens of Alaska did not vote or participate in the designation of "rural" Alaska as the only ones qualified for priority subsistence, nor is the definition of "rural" or "subsistence priority" clearly understood. These are issues that need full public discussion prior to considering a permenent change to the subsistence law. Therefore, as an interim measure, the Alaska Sportfishing Association calls for immediate action to:

1. Enact legislation this session with a termination or sunset clause expiration date of December 31, 1985, that will enable the Dept of Fish and Game and particularly the Boards of Fish and Game to limit subsistence fishing in the same manner as they were before the Madison decision.

2, Immediately take action that will insure that prior to the 1986 legislative session the priority subsistence issue is fully aired at public hearings with this input assembled and given to the 1986 legislature.

3. During the 1986 legislative session, thoroughly debate the subsistence priority statute and bring about a long term, fair solution for resource users in all areas of the state.

One possible means of identifying the Boards authority in a temporary law for this year would be to include the eight points utilized by the Board.

We believe that a true subsistence priority need does exist for a very few long time residents in very remote areas. Putting any individual in a position where he has priority of a resource, if even legal, over all other people in Alaska, and the world for that matter, is a law and priority that must be severely restricted.

Bob Hunter
Robert L. Hunter
Alaska Sportfishing Association

SUBSISTENCE

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

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

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

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

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

Dale Bondurant

Dale Bondurant
SR 1 Box 2516
Chugiak, Alaska 99567

ALASKA OUTDOOR COUNCIL, INC.
3780 McGINNIS DR. JUNEAU, AK 99801
(907) 789-3450

March 5, 1985

Representative Richard Shultz
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: Possible Amendment to 1978 Subsistence Law

Dear Representative Shultz:

This letter is written because our Executive Director was recently advised that there may be an effort to amend the 1978 subsistence law and that effort may be tailored to accomplish those amendments with little or no public hearings.

We understand that if an effort to amend the law is offered this year, it will be to permit the Alaska Boards of Fish and Game to discriminate against individuals who reside in a community defined as "urban".

The purpose of this letter is to make it as clear as possible that we believe the 1978 subsistence law should not be amended in the absence of committee hearings which are open to the public, including hearings which involve teleconferences. In other words, public participation should be permitted.

Sincerely,

LYLE R. CARLSON
Vice-President Interior Region

ok

Kenai Peninsula Fishermen's Cooperative Assn.

Political and Legal Action Committee

Box 546, Soldotna, Alaska 99669

Phone: 262-2492

March 18, 1985

Representative Richard Shultz
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Shultz:

We are writing to you to ask your support on Senate Bill 37 and its corresponding House Bill 235. It is an act relating to management plans and regulations adopted by the Board of Fisheries. We have enclosed a Request for Support for this piece and legislation and hope that you will take time to read it.

We are especially concerned that we make it clear to you that we do not support United Fishermen Of Alaska in their position on the Governor's piece of subsistence legislation. In a March 8 letter to past UFA members, support was sought for the this legislation. It was stated that "efforts will require a rigorous and expensive lobbying effort, and even then the outcome will be uncertain because of the powerful seats held in the Legislature by the Fairbanks delegation." These are NOT our sentiments as commercial fishermen who fish the waters of Cook Inlet. In years past, we played a very active role as members of UFA with Cook Inlet commercial fishermen comprising a large number of their membership. When we called upon UFA to assist us with problems that we faced in Cook Inlet, they did not want to become involved. When we needed their help, they were not there to help. As a result of these types of things, we withdrew our support from the organization, but, unfortunately, UFA stills thinks that they have the authority to speak for every commercial fisherman in our state. There have been many issues that UFA has supported in recent years that we cannot support. Please do not think that they speak our minds when they speak on commercial fishing issues.

Our legislation is not a special interest bill. It is designed to benefit all user groups of our very valuable resource of fish. We believe that it would allow the Alaska Board of Fisheries to operate apart from the political pressures and whims of specie' interest groups that they are at present so susceptible to. It is designed to have our resource managed on a biological basis which will insure its future for generations to come. It is not an "exclusive right" bill and we are not endeavouring to remove anyone from their opportunity to have a part in the harvest of this resource.

We appreciate your time and consideration and hope that you will support us on our bill.

Sincerely,

Cheryl Sutton(Mrs.)
Committee Coordinator
Political and Legal Action Committee

CS:cp

Enclosures

Alaska Fish and Wildlife Federation and Outdoor Council

and

Alaska Fish and Wildlife Conservation Fund
3780 McGinnis Dr.
Juneau, Ak. 99801

SPECIAL NOTICE

Alaska Supreme Court Subsistence Ruling

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

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

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

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

The Court opinion emphasized the following points:

1. The State subsistence law does not allow the Boards of Fisheries and Game to distinguish between rural and urban subsistence fish and game users.

2. The State law does not allow the Boards to restrict initial subsistence users to a specific community.

3. The Court ruled that the ten point criteria used by the Board of Fisheries was too restrictive and was thrown out.

4. The State law requires the Boards to adopt regulations permitting "subsistence uses".

5. A major point of departure from the State's previous position was the ruling by the Court that <u>all</u> sport and

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

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

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

3-23-85

Dear Rep. Richard Shultz

Please hold public hearings in Fbks on the subsistance law before acting on it!

Thank you

Tobi Petersen

1153 Donna dr
Fbks, Ak 99701

THEODORE J. ALMASY
Pioneer "Alaskan Woodsman" Guide-Outfitter
McGrath, Alaska 99627
The Tikchik Lakes – The Kuskokwim – The Alaska Range
Trophy Fishing • Trophy Hunting • Recreation & Exploration
Dec. 15, 1984

State of Alaska
Boards of Fisheries & Game
Box 3-2000
Juneau, Alaska 99801

Subject: Regulation Proposal Item 4. (extra sheets as required)

DEFINITION: Subsistance in Alaska today is simply all or that portion of an individual or family unit's living or livelihood that is derived and obtained from land and sea by self-employment through use, utilization and development of available natural resources by Alaska's permanent inhabitants (without reguard to race or ancestrial heiredity); and, including, but not limited to: agriculture, mining and forest products along with personal harvest of fur, fish and game.

IN SHORT: Self-support by direct acquisition and personal processing and use of Alaska's land and sea natural resources to provide all or most of one's living or livelihood, and with cash flow not involving wages and salaries from this self-employment.

* * * * * * * * *

LEGAL BASIS: "GRANDFATHER RIGHTS" established by present day Alaskan inhabitants by and through historic personal use. These rights are not limited to any particular race, but rather belong to an ethnic group in a mixed and integrated society. The U.S. Government, after all, invited foreign immigration, permanent settlement, and encouraged and fostered economic development by these pioneers through use, utilization and development of Alaska's natural resources for more that 100 years; and, while she may have changed the rules and policies with reference to recent and current immigrants - she (and her Colonial Arm - the so-called State of Alaska) are legally duty and honor bound to keep promises and committments made in the past. Thus, after some 250 years (beginning with the Russian occupation) of foreign immigration, permanent settlement, and racial integration and assimilation both an ethnic group has developed and a way of life evolved in which individual rights cannot be decided nor judged based upon racial nor ancestrial heiredity; but must be treated on the basis of members of an ethnic society. We are now aware of many flaws in thw Alaska Native Claims Settlement Act, and a major flaw yet to be contested in the courts is based on the Civil Rights of those Alaska Nationals forcefully segregated and disenfranchised because of our race, and thus denied our "equal rights".

IN SHORT: "GRANDFATHER RIGHTS".

* * * * * * * * * *

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DETERMINATION of WHO and WHOM QUALIFIES

* * * * * * * * * * *

WHO IS QUALIFIED? : All Legal Residents of Alaska whose home and permanent residence is outside of the limits of first and second class cities tied into the integrated highway system and Marine Highway Systems, and who as individuals or family units qualify as subsistance users under the "DEFINITION" and "LEGAL BASIS" as stated.

WHO IS EXCLUDED ? : All persons whose home and permanent residence is located within the city limits of any First or Second Class City tied into the integrated highway or Marine Highway systems; residents of government (federal or state) owned housing located upon government owned or reserved lands; and, all U.S. Citizen immigrants who may hold Alaska Resident Status under Law, but whom are themselves in Alaska under "labor" or "tour of duty" contracts or agreements on full time wages and/or salaries; and, who are granted and accorded special benefits, privileges, and tax exemptions including "cost of living allowances" by their employer and governments "as an condition of employment" that are not equally granted nor accorded nor available to local permanent inhabitants of Alaska. Such "Residents" cannot claim Subsistance Rights in Alaska.

****

IMPLIMENTATION

****

1. (a) For the purpose of implimenting this Section: Each full Game Unit (as they currently exist including all divisions and sub-units) shall henceforth be declared to be also a Subsistance Unit and Unit of Permanent Residence for all legal (one year) Alaska Residents who maintain their home and permanent Post Office address within such Unit's boundaries.

(b) Both Subsistance Rights and Resident Hunting and Fishing Rights (without payment of trophy fees) for all Resident Alaskans shall be limited to (1) Unit only - the Unit of Permanent Residency; and, in order to maintain these rights a party must reside year around in Alaska and not less than six (6) months per year within the boundaries of the Unit for which he claims these rights.

2. All Subsistance Users and legal Residents hunting and fishing outside of their Unit of Permanent Residence shall be deemed to be Trophy Hunting and Sports Fishing and subject to the prevailing trophy fees, but exempt (as Residents) from the Registered Guide Requirement.

3. Trapping is hereby designated as a subsistance right, and trapping is closed except to Subsistance Users.

4. Any Alaskan holding a "Permanent Hunting, Fishing & Trapping License is automatically declared to be a subsistance user and hold Subsistance Rights.

5. That where the taking of certain game animals is restricted by permit that subsistance users within said Game Unit shall have first preference rights to these permits with the general public taking the excess.

Implimentation Continued:

6. Nothing in this or these regulations is intended nor shall prevent immigrant settlers from acquiring Subsistance Rights as an Earned Right so long as they meet the requirements.

* * * * * * * * * * * *

END

* * * * * * * * * * * * *

by Theodore J. Almasy

Theodore J. Almasy

ALASKAN ALPINE CLUB
3641 SANDVIK
FAIRBANKS
ALASKA
99701

LEADERS IN PROTECTING THE HERITAGE OF AMERICAN MOUNTAINEERING FREEDOM

23 March 1985

Representative Richard Shultz
Pouch V
Juneau, Alaska 99811

Subject: Subsistence

Dear Representative Shultz,

Reference subsistence: The Alaskan Alpine Club is appalled by the nature and degree of fallacious information presented to legislators by Governor Sheffield's appointees.

These are the same tactics used by the Native Corporations/ Sierra Club to gain the blackmail Federal subsistence law. It is important that Alaska legislators not tolerate such tactics.

Futhermore, the recommendation of Governor Sheffield's now fully politicized Boards of Game and Fisheries demonstrate a classic case of dishonest politics undermining the achievements of scientific wildlife management in this nation.

Every credible wildlife management agency and organization in the nation is on record as acknowledging that subsistence priorities greatly harm sound biological management of wildlife resources.

If the Alaska State Legislature holds any vestage of honesty, it is inconceivable that Legislators would acquiesce to the same entity which illegally managed the subsistence law amid years of public complaints against that abusive and illegal management.

The self-serving intents of Sheffield administrators are too obvious to later claim any position other than intentional dishonesty, and acquiescence to such.

The subsistence issue CANNOT avoid blowing up in the face of Alaska, not only for Alaskans, but for the witness of the nation.

Its ramifications involve all outdoor users.

Alaska's legislators may not then wish to be identified with the actions that caused such irreparable harm.

Now is the time to demonstrate the honesty and integrity so notably lacking in the imposition of the subsistence scam.

We urge you to address this profound issue with the care and full public participation that it demands.

I must ask: Where are the recommendations of Governor Sheffield's Subsistence Task Force?

Like many other Alaskans, who sincerely accepted the merits of that promised Task Force, the Alaskan Alpine Club was waiting to testify before that entity!!!!

Governor Sheffield catagorically lied to the public when he used the promise of that Task Force to get elected and gloss over this critical issue. That sham Task Force has branded Sheffield and Butrovitch as contemptable examples of Alaskan government officials.

Are the Interior Alaska State Legislators of the same nature, and too cowardous to demand credible results from that Task Force? Are they incapable or unwilling to study the results of this law and hear the people, as Alaskans were led to believe would be done?

I respectfully request answers to these questions from yourself and other interior legislators.

Thank you for considering these views.

And have a pleasant day.

Sincerely,

Doug Buchanan
Executive Director

cc: interior delegation
Governor Sheffield
Mr. Butrovitch
Board of Game and Fisheries
news media

GREGORY FRANK COOK

ATTORNEY AT LAW
P.O. Box 618, Douglas, Alaska 99824
Residence (907) 586-9719
Admitted to Practice in Alaska and Oregon

Representative Dick Shultz
Chairman, House Resources Committee
Pouch V
Juneau, Alaska 99811

March 26, 1985

Dear Representative Shultz,

This is in response to your request for a written memorandum of the oral testimony I presented before the House Resources Committee on March 25, 1985 regarding subsistence legislation.

In dealing with the subsistence issue, the Legislature should bear in mind two key provisions of the Alaska Constitution.

> "Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use." (Article VIII, Sec. 3.)
>
> "Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation." (Article VIII, Sec. 17.)

Recently introduced legislation (HB 288; SB 231) should be carefully assessed in the light of these Constitutional provisions.

Before adopting any subsistence legislation, the Legislature would be wise to carefully formulate the specific goals it seeks to achieve. Also, it would be prudent to specify the tasks to be delegated to the Board of Fisheries and Board of Game.

Once its goals are made clear, the Legislature's purposes should be put into draft legislation. A broad variety of public comment, together with a range of legal opinions, should be studied until a political resolution is reached that does not violate our state Constitution.

Thank you.

Sincerely,

Gregory F. Cook

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
1117 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
907-456-2899

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE (907) 465-3763
HESS COMMITTEE
(907) 465-3834
HOME 907-780-6027

Senate

March 26, 1985

Representative Richard Shultz
Chairman, House Resources Committee
Pouch V
Juneau, AK 99811

Dear Dick:

Because of the ramifications of the recent Supreme Court decision in Madison vs. the State of Alaska, the Governor has introduced legislation to establish a personal use fishery in law and further broaden the definition of "subsistence user" to mean customary and traditional uses by rural Alaska residents.

HB 288 currently before the House Resources Committee affects many of our constituents. Last year many of our Interior Delegation teleconferences were dominated by those interested in this issue. Now, once again our constituents are requesting hearings before the Legislature takes any final action on the Governor's proposal. We respectfully request that you hold hearings on this bill in those communities most affected, including Fairbanks.

Thanking you in advance for your consideration.

Senator Bettye Fahrenkamp

Representative John Ringstad

Senator Don Bennett

Representative Mike Davis

Senator Jack Coghill

Representative Mike Miller

Representative Hillo Koponen

Representative Steve Frank

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3700

To: Resources
Room 118 CAPITOL

Ms. Hermann, Mr. Shultz +
Committee members,

I am a Cordova, Alaska resident. At present, I have all my personal funds tied up and hanging in the Balance of further decisions, follow the initial decision on Subsistance which has brought such chaos to our community. The Last industry of Cordova being chocked off at the whim of one supreme court decision.

I am at the mercy, financially at a critical moment, having

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH P - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

invested properly & SAFELY in a viable Limited entry fishery, which Another ARM OF STATE Goverment — the Dept. OF Fish & Game has worked hard & well TO MANAGE AND the results are beginning TO Show Suddenly — this is all in Jeopardy AND the FUTURE OF AN ALASKAN Town with the Fishermen whove worked & Died on these COASTS For So MANY YEARS will suffer A dismal & degrading end.

I beg that your comittee will find SOLUTIONS ACCEPTABLE TO all ALASKANS IN this MATTER. Give the working person — the Fisherman — the respect he has earned over the Long history of fishing in ALASKA

DENNIS McGUIRE

KENAI RIVER SPORTFISHING ASSOCIATION

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

To: Alaska State Legislators

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

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

(1) Return of the regulatory jurisdiction of fish and game back to the boards of fish and game as it existed prior to the Madison decision of February 22, 1985 by the Alaska Supremen Court.

(2) That the legislature then cause to have public hearings held state wide prior to the 1986 legislative session that would frame legislation that would accomplish a permanent solution. to the relationship between subsistence, sport, commercial and personal use fisheries as well as all aspects of recreational and subsistence hunting."

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

TESTIMONY OF CHUCK ROBINSON
BEFORE THE HOUSE RESOURCES
COMMITTEE ON APRIL 2, 1985

SUBSISTENCE AFTER MADISON

In the recent case of Madison v. Alaska Dept. of Fish and Game, the Alaska Supreme Court ruled that a set of regulations adopted by the Alaska Board of Fisheries concerning eligibility into the Cook Inlet Subsistence Fishery were unlawful and inconsistent with the intent of the current subsistence law. The regulations invalidated by the court excluded the majority of subsistence users, mostly Kenai Peninsula residents from participation in the Cook Inlet Subsistence Fishery. This, the court declared, was contrary to the intent and spirit of the state's subsistence laws.

To fully understand the ruling of the court, it is necessary to review the language of the law, the circumstances which surrounded the passage of the law, and the facts and circumstances concerning the application and interpretation of the law by the Board of Fisheries which led to the court's ruling. Further, any enlightened discussion of subsistence fishing cannot occur without including the relationship of this fishery with other uses of fish, such as sports and commercial fishing. The Cook Inlet salmon fisheries provide the best example of salmon fishing user conflicts in terms of the means and ways that the Board has used to resolve or heighten and intensify those conflicts. Only by reviewing the law, the facts and the application and interpretation of the law by the Board can an accurate picture of the Madison decision be depicted.

The current subsistence law, adopted by the Alaska Legislature in 1978, is a fairly simple law. It was enacted by the Legislature in the spirit of cooperation with federal law and is founded upon sound social policy. The law was passed in light of a need on the part of Alaskan people to protect subsistence uses of fish resources in face of changing social and economic development bound to occur in the state with increase in growth and the need to conserve the fish stocks for sustained yield purposes.

The law provides that the Board of Fisheries must

permit subsistence use of fish unless a factual determination is made that such use is harmful to or jeopardises the fish stocks in question. If fish resources are in short supply, then subsistence use of the resources shall have a priority use over all other beneficial uses. If fish resources are in such short supply that only subsistence uses can be permitted on fish stocks then, those subsistence users who have a customary need and dependence on the stocks, live closest to the resource and have no other alternate available resources for use have a priority of use over all other subsistence users on these resources. Until such time that the fish resource is in such scarcity that only subsistence use is allowed and there is not enough fish to go around among subsistence users any Alaska resident is eligible to obtain a subsistence permit.

The law establishes a two tier or two class category of subsistence users. The first tier is the general class, to which any resident may belong and the second tier, which is the preferred class, which only certain residents may qualify for. Any Alaskan resident is eligible for a subsistence permit at such times when fish stocks are abundant and even when fish stocks may be low, but not necessarily depleted to the point of severe jeopardy. Only certain residents may qualify for preferred subsistence status, based on dependency, local residency, and alternate available resources, When fish resources are so low that only subsistence use is allowed on these resources, sports and commercial use have been prohibited and there are not enough fish stocks to adequately supply subsistence use. Further, if the Board determines that subsistence use may jeopardize the viability of available fish stocks this use may too be eliminated.

The subsistence law defines subsistence fishing as the taking of fish by longline, seine, fishwheel, gill net or other means defined by the Board for subsistence uses. Subsistences uses are defined as those customary and

traditional uses of fish in Alaska for direct personal and family consumption for food, shelter, clothing, fuel, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish resources taken for personal or family consumption, and for customary trade, barter, or sharing of these resources for personal or family consumption. Subsistence use covers a wide range of personal use of fish resources.

The law was adopted in response to a number of factors that had occurred and were occuring in the area of conservation, utilization and development of fish and game resources in Alaska during the 1970's. In 1972 Governor Bill Egan's administration established a state-wide policy within the Department of Fish and Game that made subsistence use by Alaska residents of fish and game resources the highest priority use during resource shortages. This policy was established one year after Congress enacted the Alaska Native Land Claim Settlement Act (ANSCA) and at the infancy of the Alaska oil pipeline boom. During the same year the constitutional amendment allowing limited entry into Alaska's commercial fisheries was ratified and the commercial fishery entry law was passed.

Between 1972 and 1981, Alaska experienced a dramatic increase in population. By 1980 there were approximately 400,000 people living in the state. Also many thousands of people visited the state each year. In 1976 Congress, after the election of President Carter, proposed the Alaska National Interest Land Conservation Act (ANILCA). The proposed legislation, enacted in 1980 was in part the result of the transfer of federal lands to the state and native Alaskans under Section D-2 of ANSCA. The ANILCA legislation creates a subsistence use priority on fish and game resources on federal lands and water within Alaska. In 1978 the Alaska legislature in an attempt to protect subsistence uses and to conserve on state fish and game resources enacted the subsistence law. In part the subsistence use priority was etablished to comply with federal law.

Despite the establishment of the 1972 subsistence policy and the passage of the 1978 subsistence law, the Board of Fisheries continued to regulate Alaska fisheries in such a way that completely ignored the mandate of the social policies on subsistence use of fish resources. Even during periods of shortages the Board failed to allow subsistence fishing to be the priority use. The Cook Inlet salmon fishery is a prime example of the Board's reluctance during the late 1970's and early 1980's to accommodate subsistence use of these resources.

In 1977 the Board of Fisheries established the Upper Cook Inlet management plan. This plan was used by the Board to allocate Cook Inlet salmon stocks between sports and commercial fishermen until it was invalidated by the Supreme Court in 1981. The plan essentially allocated Cook Inlet salmon stocks between sport and commercial use based upon seasonal fish movements. The plan did not include any specific allocations for subsistence use. The plan was adopted by the Board in response to political pressures placed upon it by the Anchorage chapter of the Isaac Walton League, an international organization comprised mostly of recreational fishermen and hunters and outdoor enthusiasts. The argument put forth in support of the plan was that Cook Inlet king and silver salmon resources should be allocated to sports use on a priority basis because sports users outnumber commercial users and the sport use demand is growing. Threats were made to the Board that if it did not adopt the plan sportfishermen would urge a referendum vote on the subject or getthe Legislature to adopt the policies outlined in the plan.

The plan allocated all salmon found in Upper Cook Inlet prior to June 30 to exclusive sport use and all salmon destined to spawn on the Kenai Peninsula after August 15 to priority sport use. All salmon moving in Upper Cook Inlet between July 1 and August 15 is primarily for commercial fishing use, except certain salmon stocks which must be

minimized in the commercial harvest. No specific priority allocations were made in the plan for subsistence use of Cook Inlet salmon stocks.

The stocks moving in Upper Cook Inlet prior to June 30 are the majority of Cook Inlet king salmon and other runs of red salmon. After August 15 the stocks moving in Upper Cook Inlet are mostly fall silver salmon. Between July 1 and August 15 the Upper Cook Inlet salmon stocks are comprised mostly of red, pink and chum salmon. However, there are stocks of silver and king salmon present. The Kenai River king salmon, for instance, is present during July, though it is a much smaller run of salmon than the early runs present prior to June 30.

The Cook Inlet salmon subsistence fishery until 1977 was opened by regulation to any Alaskan resident. It had been in existence since territorial days and was opened in practically all areas of the inlet. The seasons were from early May until December 31, until the early 1960's when the seasons were shortened along with commercial and sports fishing seasons to protect for conservation purposes the depleted early run of Cook Inlet king salmon. From the mid 1960's until 1978 the season opened in the Northern district of the Inlet from June 30 until September 21 and in the rest of the Inlet from August 15 until December 31. The open periods were the same as the open commercial fishing periods. The method of subsistence harvest was with set gill nets, one per permit holder, ranging in size from 20 to 75 fathoms. The bag limit or quota per permit holder was no more than 50 salmon. The subsistence fishery primarily throughout its history targeted on king and silver salmon, though other species in smaller quantities were also harvested.

The lead plaintiffs in the Madison case, Gene Madison and Louis GJosund are Alaska residents living in North Kenai and Homer respectively. Each has been a subsistence fisherman since the mid 1940's. They and others similar to them, have regularly subsistence fished for salmon for personal and family consumption as food ever since settling

in Alaska nearly 40 years ago. In addition to salmon, they have used other natural resources such as wood, coal, berries and wildlife for subsistence purposes for food and fuel.

In 1977 the Board by regulation eliminated the Homer subsistence fishery. The elimination of the fishery was done in response to sportfishing pressure, mainly from Anchorage sportsfishermen who wanted no competition from subsistence users on their take of fall silver salmon in the Homer area. Louis GJosund and other subsistence fishermen went to Superior Court and requested an injunction against the elimination of the Homer salmon subsistence fishery. The court after finding that the Board's action was unjust, enjoined the enforcement of the regulation closing the fishery.

In 1978, less than two months after the current subsistence law went into effect, the Board adopted regulations eliminating all of the subsistence fisheries along the Eastern shore of Cook Inlet and severely restricted the gear, area, and quota for the Homer subsistence fishery. This action was taken to accommodate and prioritize sport use of fall silver salmon. Again, Louis GJosund went to court to enjoin the regulations and again the Superior Court ruled in favor of GJosund and against the Board.

Pursuant to the 1977 salmon management plan the Board in 1978 adopted regulations permitting the sport use of early Susitna River drainage king salmon. It refused to allow any subsistence or commercial use of these resources. In 1979 a group of Tyonek residents requested of the Board to allow a subsistence fishery on these stocks. The Board denied the request in light of much objection by Anchorage sport fishing interest groups. In 1980 the Tyonek residents, mostly people from a small Indian village located on the northwest shore of Cook Inlet, brought suit against the Board claiming that their customary and traditional subsistence fishery for king salmon should be allowed if the Board was going to allow sport use of these stocks. The Superior Court ruled in favor

of the people of Tyonek and ordered the Board to open a king salmon subsistence fishery in the Tyonek area. As a result of the ruling in the Tyonek case, the Board was forced to address subsistence fishing in all other parts of the Cook Inlet and to provide for subsistence use. In 1980 the Board opened the Tyonek fishery and opened a subsistence fishery along the Eastern shore of Cook Inlet. However, the area opened along Eastern Cook Inlet was in a place that was rock strewn, extremely muddy and terribly inaccessible. Again, the Board was sued in Superior Court. This time the Board reached a compromise and out of court settlement with the litigants and opened the fishery in an area that was more suitable to subsistence fishing. The series of court cases against the Board exemplifies the Board resistance to protecting subsistence use of Cook Inlet salmon resources as mandated by the Egan policy and the subsistence law.

By 1981, the Board was convinced that subsistence use of salmon was to be permitted in Cook Inlet despite the opposition from sport interest groups. However, the Board was still looking for a way to allow the use in its most narrow form, so as not to upset the sports fishing priority set forth in the management plan. The means that it found to accomplish this objective was the interpretation of the words customary and traditional use as found in the current subsistence law. The Board interpreted those words to mean that only rural residents in the Cook Inlet region were eligible to participate in the subsistence fishery and only areas close to rural communities would be open to subsistence fishing. The only rural areas and residents that the Board found to exist in Cook Inlet were Tyonek, Port Graham, and English Bay. These communities are predominantly native in composition and are isolated. The only access to these areas is by water or air travel. The rest of the Kenai Peninsula areas were considered urban and their residents ineligible to participate in subsistence fishing. This included communities such as Clam Gulch, population 100, Ninilchik, population 200, and other Peninsula communities like Homer, Kenai,

Soldotna, Seward, and North Kenai. Also the whole of the Mat-Su valley which borders the Inlet was considered urban along with the Anchorage community. None of the residents of these areas could qualify for subsistence fishing permits and no areas near these communities were open to subsistence fishing. As a result of the Board's 1981 subsistence fishing regulations the majority of the Cook Inlet subsistence users were excluded from the subsistence salmon and other subsistence fisheries including halibut, herring, bottom fish and smelt fisheries.

Prior to 1978 subsistence fishing was defined by law as the taking of fish by longline, gill net, fishwheel, seine or other means as defined by the Board for personal use, not for barter or sale. The 1978 law changed the definition to the taking of fish by such means for subsistence uses, which includes barter trade and selling of nonedible parts of fish as handicrafts. At the insistence of the Attorney General's office, the Board made a distinction between subsistence use and personal use and adopted the narrowest interpretation of the subsistence law in order to exclude the majority of the subsistence users. It found that only the residents of the three villages of Tyonek, Port Graham, and English Bay had a history of subsistence use of Cook Inlet salmon.

In 1981 Madison, GJosund and other Cook Inlet subsistence fishermen brought suit in two Superior Courts to enjoin the enforcement of the Board of Fisheries subsistence regulations. Superior Court Judge Paul Jones presided over a case brought in Homer and Superior Court Judge Victor Carlson presided over another case brought in Kenai. Judge Jones ruled that the subsistence criteria were valid, however, the Board's application of these criteria violated equal protection of the laws and was not based on a factual finding that it was necessary to exclude Homer subsistence fishermen to protect subsistence fishing in Tyonek, Port Graham and English Bay. Judge Carlson ruled that even though the Board's criteria were valid, that the Board's exclusion of

Upper Cook Inlet subsistence fishermen was without due process of law and remanded the case to the Board with a request to provide a personal use fishery for these fishermen. In March of 1982, the Board pursuant to Judge Carlson's ruling, created a personal use fishery on Kasilof red salmon and Upper Cook Inlet fall coho salmon. The personal use fishery was created as an excess "charity" fishery to be accommodated only after subsistence, sports, and commercial fishermen had satisfied their needs. Also, the fishery would not permit trade and barter of the fishery resources. However, the former subsistence fishery remained open and has continued as a subsistence fishery since the Court's ruling.

In 1983 the Kenai River Sportsfishing Association, the sports interest group of which Board member Bix Bonney was an officer, brought suit in Kenai Superior Court to halt the all coho personal use fishery. The court issued a restraining order against the operation of the fishery in favor of Bonney's group.

Then, in 1985, the Supreme Court reversed the two Superior Court rulings in the Madison and G. Josund cases, declaring the Board's subsistence criteria and the regulations adopted pursuant to them invalid and inconsistent with the subsistence law.

It is from this Supreme Court ruling that much debate has followed concerning subsistence use of fish and game and has led the Governor to introduce House Bill 288. Though the Court's ruling is fairly clear and simple, some confusion has been created over the issue. The alleged purpose behind HB 288 is to clear up the confusion, bring state law into compliance with ANILCA, and prevent the elimination of sports and commercial fishing because of runaway subsistence use. None of the objectives of the Governor's bill are well founded. Indeed, the legislation is not essential nor reasonably needed to deal with subsistence fishing in Alaska.

Taking each alleged purpose for the passage of the legislation one at a time and discussing them openly and

rationally should convince members of the Legislature that such legislation is not needed and moreover may be unconstitutional under Alaska law.

It has been alleged by the Governor's administration that unless HB 288 is enacted the state's subsistence law will not be in compliance with ANILCA and this will lead to a takeover of management by the federal government of Alaska fish and game resources and a denial to the state of certain federal revenues intended for management of sea mammals and sports fishing. This allegation is not founded on the truth.

On April 6, 1982, Under Secretary of the Department of the Interior Bill Horn gave a presentation to the joint Boards of Fish and Game at a joint Board meeting in Anchorage Attached to this document are the transcribed comments of Mr. Horn made to the Boards concerning what actions the Board needed to take to be in compliance with ANILCA. In his presentation Mr. Horn made it perfectly clear that regulations adopted by the Boards which encompass either a one tier or two tier subsistence use approach to subsistence users would satisfy the federal requirements of ANILCA. The one tier approach would make only rural residents eligible to be subsistence users. The two tier approach would allow any Alaska resident to qualify until such time that fish resources are so low that only subsistence use can be permitted and the supply of fish stocks available is not enough to reasonably accommodate all subsistence users. Then a priority between subsistence users can be established for subsistence uses, based upon customary dependence on the resource, local residency, and alternative available resources.

The Board opted for the one tier approach to subsistence use. The court in Madison reviewed the one tier approach of the Board and rejected that approach as inconsistent with intent of the current law. The court declared that the current subsistence law intends a two tier approach on the issue of eligibility into the subsistence

fisheries. The two tier approach embodied in the law is consistent with and in compliance with ANILCA. In fact, the court stated that our law is not intended to limit subsistence users to rural residents only, but that all Alaska residents can qualify for a permit. The court also found that the subsistence fishery in which Madison ha' participated in for approximately 40 years was a customary and traditional use of salmon for personal and family consumption and other subsistence uses. The claim that the current law is not in compliance with ANILCA is patently false.

The next misrepresentation of the Madison decision concerns the Governor's administration's claim that subsistence use of fish cannot be limited until such time that sports and commercial fishing has been eliminated. This representation, like the noncompliance with ANILCA representation, is unfounded. The administration has either mistakenly or wilfully confused the issues of use and users. The two are distinctly different. Subsistence use is intended by the current law to be carefully monitored and regulated. This is clearly stated in the preamble to the subsistence law. In the preamble it states:

> It is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs and traditions of Alaskan residents. The legislature further finds that beneficial use of those resources by all state residents should be carefully monitored and regulated with as much input as possible from the affected users, so that the viability of fish and game resources is not threatened and so that resources are conserved in a manner consistent with the sustained yield principle.

The legislative intent to regulate subsistence use in order to avoid jeopardy to fish stocks is abundantly clear. Therefore subsistence use of fish resources can be limited by bag limits, quotas, time, area, and other means available to the Board of Fisheries without the elimination of sports or commercial fishing.

In Madison, the court merely stated that before the Board may limit priority use among subsistence users, it

must factually find two things: 1) that it is necessary to restrict the taking of fish for sustained yield purposes and 2) that eliminating sports and commercial users will not assure the maintenance of fish stocks for sustained yield purposes and establishing a priority among subsistence users is also necessary. It is this interpretation of the law by the court that the administration has confused and misrepresented. It is not necessary to eliminate sports and commercial use of fish in order to limit and regulate subsistence use. It is required to find that it is necessary to restrict the taking of fish to avoid damage and harm to the stocks and that eliminating sports and commercial uses will not assure the viability to the stocks before there is any occasion to limit subsistence fishing to second tier preferred or priority subsistence users as distinct from all subsistence users. The concept of use and users must be kept separate in discussing the intent of the law.

The Cook Inlet subsistence fishery has never posed a real and substantial threat to salmon resources or other beneficial uses of the resource. The Cook Inlet salmon subsistence fishery since the 1960's and until the 1980's has never harvested more the one half percent to one percent of the total salmon harvest by all user groups.

Between 1978 and 1980 the number of persons licensed by the state to participate in the Cook Inlet salmon subsistence fishery ranged from 323 to 1,331. This number is compared to 1300 commercial salmon entry permit holders and from 180,000 to 200,000 sportfishing license holders for the same period. In comparing the number of sport license holders with subsistence permit holders it is readily apparent that the Cook Inlet sport fishery rather than the subsistence fishery has experienced the more dramatic increase in the number of participants. The Cook Inlet sportfishery is comprised of approximately 47 percent non-resident participants. The subsistence fishery is a 100 percent resident fishery. The Cook Inlet salmon commercial fisheries are comprised of seine and gill net fisheries. The Cook Inlet salmon seine fishery

is a 100 percent resident fishery. The set gill net fishery is 90 percent resident and the salmon drift gill net fishery is 60 percent resident and 40 percent non-resident.

The intent of the current subsistence law is to establish subsistence use by Alaska residents of fish as the priority use during times of resources shortage. Most of the sport fisheries and many of the commercial fisheries are comprised of resident and non-resident participants. The social policy embodied in the subsistence law is to make available on a priority basis fish stocks for subsistence use by Alaska residents over non-residential use of these stocks for sports and commercial use in times of resource shortages. This is good sound policy designed to protect the needs, customs, and traditions of Alaskan residents.

The Governor's proposed legislation may also run afoul of the state's constitution. Article VIII, Section 15 of the constitution reads:

> Section 15. No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the state. This section does not restrict the power of the State to limit entry into any fishery for the purpose of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Article VIII, Section 17 of the constitution reads:

> Section 17. Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulations.

These two constitutional provisions create major stumbling blocks to the attempt by the Governor or the Legislature to limit entry into the subsistence fishery to rural residents only, and the establishment of a personal use fishery as an alternative for urban residents. Article VIII, Section 15 prevents exclusive and special rights or privileges of fisheries in the natural waters of the state except for commercial fishing and aquaculture. The recent Supreme Court case of Ostrosky v. State gives a clear

interpretation of what this constitutional provision means. If HB 288 was enacted limiting entry into subsistence fisheries to rural residents only, this law would create an exclusive or special right or privilege of fishery based solely on residency. This scheme would be contrary to this constitutional provision prohibiting such action. This is so because the law would create a closed class of persons, namely rural residents, which have an exclusive right or special privilege to subsistence fish.

Next, Article VIII, Section 17 would prevent the rural vs. urban classification of subsistence users. If the purpose behind the governor's bill is to protect subsistence use of fish then those uses demonstrated by Gene Madison and others to have customarily and traditionally existed as subsistence uses in Cook Inlet for many years would be entitled to uniform treatment by the law. Those individuals who have demonstrated use of the Cook Inlet salmon resources for personal and family consumption as food, etc., and for trade and barter are similarly situated with other Alaska residents in rural communities like Tyonek, Port Graham and English Bay with respect to the use and disposal of salmon resources. The constitution requires that these individuals be given equal treatment. Therefore, it would be unconstitutional to allow subsistence use by rural residents only and exclude urban residents from such use. Further the creation of a personal use category for urban users is not equal treatment. Under the personal use category trade, barter, and sale of non-edible by products of fish would not be permitted. The prohibition of these activities to urban residents and the permission to rural residents would not be uniform treatment. Both groups of people would be harvesting the resource for personal and family consumption but only rural residents would be able to extend this consumption to trade, barter and sale of non edible by products as handicrafts. This limitation on urban users would not withstand the mandate of Article VIII, Section 17 as it would result in unreasonable differential treatment among persons similarly situated with

respect to the use of fish resources.

In conclusion it must be said that HB 288 is not a well founded piece of proposed legislation. The bill would create more problems than it allegedly attempts to resolve. The current subsistence law achieves the twin objectives of conserving fish stocks and protecting subsistence uses of these resources. The current law when circumstances warrant would protect a rural priority for subsistence use, for instance, when the fish are in such short supply that priorities must be set among subsistence users.

It is urged that the legislature take no action on HB 288. The time has come to allow subsistence fishing to take its course. There are no present circumstances that have been clearly demonstrated which require subsistence use of fish resources to be limited solely to rural residents. Until such time that a clear and present need arises for such action the type of legislation proposed by the Governor should be shelved. The sky over subsistence use of fish and game is not falling.

If a problem does exist over subsistence use perhaps the solution is not in changing the law but rather in a close re-examination of the Board's process and its application of the law.

DATED this 1 day of April, 1985.

Arthur S. Robinson
ARTHUR S. ROBINSON

Martin Friedman
MARTIN FRIEDMAN

JOINT MEETING OF THE ALASKA BOARD OF FISHERIES
AND BOARD OF GAME, APRIL 6, 1982

Testimony of Deputy Undersecretary of the Department of Interior Bill Horne.
BM: stands for Board of Fish/Game member

Horne: Thank you, Mr. Chairman, I appreciate the opportunity to appear before the Joint Boards and discuss the State's compliance and implementation with the Alaska Lands Act, and hope that the cooperation that we've been engaged in with the State since last August can continue and we can bring this matter to a satisfactory conclusion. Let me say at the outset that reiterate the Dept. remains philosophically and policy-wise strongly committed to state management. We believe that the State possesses the requisite expertise to protect the fish and game resources of the State of Alaska. It is expertise that we cannot hope to match and as a consequence, we are most anxious to have this matter resolved in such a fashion that we can continue to defer to your judgement, expertise and not have to comply with any manadatory statutory requirements that would force us into the fray. Let me state that from where we're sitting, the federal law that is at issue imposes some fairly minimal requirements on the state, it is obvious that these minimal requirements can have some fairly major repercussions but in and of themselves, we see the requirements to be very bare bones and they are that the State establish some law of general applicability which includes regulations that would provide for a rural priority for subsitence, of course, rural is not the sole criteria, and it also includes the terms "customary and traditional" and there are continued references in the legislative history to nonwasteful taking. That's basic requirement number one. Requirement number two is that the state establish this regional advisory council system and that the recommendations that come up from the regional advisory councils be dealt with by these boards. That is all that the federal law requires and all that we've asked for in our review so far is demonstration from the state that you have laws or regulations that meet these minimal requirements. One of the courses of action suggested to us last year when this process began, was that the State has historically provided this type of preference to its rural residents and that Dept. of Interior should look to the factual track record of recent years, we can conclude on that basis that yes, indeed, the State was doing an adequate job in providing that rural priority and therefore, we could approve a state program without any form of specific laws or regulations. We choose to reject that approach for two basic reasons, one legal and one policy. From the legal perspective, the statute requires us to determine whether or not the state has loss of general applicability to implement Sections 803-805, and factual track record and policies and such as terms of _____ do not consititute laws of

general applicability, we could not satisfy a federal court of law that we had done an adequate and appropriate job of review if all we brought in was the factual track record. It's one of those crazy circumstances in which you need a regulation rather than the facts. The second reason, from a policy prespective, we found even more persuasive. We did not want to engage in a thorough review of the State's track record on fish and game management and try to determine by looking over your shoulder whether or not you had done a job on a resource by resource basis to satisfy rural priority. Frankly, we are not equipped to do that job, we did not possess the requisite expertise to go through the process and say, "well, in game area X you didn't give enough moose to this particular group or in fishing area Y you divied up the resource incorrectly and not in keeping with federal statute". We did not possess the expertise to engage in that type of review, we didn't think it was appropriate of the federal government to second-guess your track record. More important, when it came, if at some stage of the game, this whole process ends up in court, which we regard as a pretty good prospect, we did not want to be going to some federal judge and having that federal judge look over our shoulder at the nature of the factual review that we conducted the program. Consequently we have limited our review to a legal review, which is why since last August, you've been dealing with our friendly solicitors rather than our folks from the Wildlife Service or other resource experts that we possess. All we are looking for is does the state have laws or regulations that establish the regional council system and provide for a rural priority with customary and traditional criteria. That's all we've looked for, that's as far as our review is going to go. Regarding implementation, and obviously we've tried to keep our review to a bare statutory requirements, we've also received many questions about how if the state has this type of priority, codified in a regulation, what sort of guidelines regarding implementation, what sort of practical on the ground effects will that regulation have. Frankly, we don't know. That is something we have refrained from engaging in because it is pretty clear in our mind that the statutory scheme outlined in Title 8 defers those judgements to the State of Alaska, and the state of course, has chosen to defer those judgements to these boards. It is essentially the state's job and the state's responsibility to define rural. The only guidelines in the legislative history regarding what rural means is one phrase in the Senate committee report that says "Anchorage, Fairbanks, Ketchikan and Juneau aren't and Dillingham, Barrow, Bethel, Kotzbue, Nome are". Now that obviously is one criteria, there is nothing in the legislative history regarding what is customary and tradional is, that's clearly yours, and of course, the statute also refers to nonwasteful levels of taking. That again, is a determination for the state to make. Consequently, all that we need is the assurance in some law or regulation that you will provide the adequate rural priority and then in terms of how that is to

be specifically implemented, the statute clearly confers those decisions on you, and as a matter of policy we would like very much to have those decisions conferred on you because, frankly, we don't possess the requisite expertise.

Regarding the timing, the consequences of approval, disapproval. We made it very clear in all of the meetings that we've been conducting, starting last August, that all we need is these minimal requirements. And the stage where we are now is that either one of the approaches outlined by John Gisberg would satisfy ourselves. I will say that from sort of a selfish perspective, we would prefer what I call, for lack of better term, a "one tier" approach that would simply recognize and provide a priority to rural subsistence without trying to define and establish a second category of other subsistence. That is the cleanest way for us, it is abundently clear that would be in full compliance with Title 8. However, based on the process that we have gone through, we are fully prepared to accept what I call the "two tier" system, which is embodied in the proposed regulation that is in your book, which of course is the minor modifications made to your December policy statement and have that modified policy statement recast as a regulation. As the letter from the Secretary to the Governor on February 25, indicated, if that particular proposal is enacted as a regulation by the boards, upon our formal receipt of notification from either the commissioner, the boards, or the governor, that that is now a binding regulation on the State of Alaska. The Secretary will immediately issue the letter of approval and the resonsibilities for implementing this program will remain firmly in the State. I guess I can't emphasize enough how much we wish to do that, that's our primary desire. The reason the Secretary has asked me to come up for these meetings, to pass that on. Obviously if passage of that proposal or something similar that provides for the rural priority. If that goes, we obviously are in a position to approve. I guess the other side of the coin, what are the consequences of inaction or some action that does not establish a sufficiently clear, sufficiently firm rural priority. You know the Act basically says that the Secretary is supposed to grant the state one year to put a program in place, and if at the end of one year, a program is not in place, that the Dept. was mandated, and I guess I should emphasize that it was nondiscretionary, it was mandated to step in and begin to undertake a subsistence management program on federal lands. We received the state's submission on December 2, exactly one year after enactment of the Alaska Lands Bill. We have been engaged in the review process since and conseqently have held off and have conducted no planning and no activities in terms of preparing for any contingencies such as federal intervention and assumption of management. However, the clock is ticking on us and we feel that sometime very soon we are going to have to take some action and determine whether the state is in compliance or not in compliance. Consequently, if at the conclusion of the

meetings, we have not received from the state some form of regulation or law that establishes the priority in proper fashion that conforms with the federal statute. We will be shortly be forced to issue some kind of preliminary finding of noncompliance, schedule a hearing within a matter of days in which we will take testimony, I think we will probably have to have it here in the state, regarding whether or not the state program does comply with Title 8. Following that hearing, the Secretary will render his decision. Obviously if this decision is that the state is in noncompliance, we will have to being on a very fast basis the tooling up to assume the management authority on federal lands and of course, we will have to establish further provisions of 805, the regional council system that right now is set up under state law. We don't undertake that activity very lightly. We don't undertake it with much relish. It is something that we hope to avoid at all costs. But nonetheless it is very explicit, nondiscretionary requirement of the law and if we fail to act, any party can go to court and get a writ of mandamus forcing the Secretary to do it. Frankly, one of the concerns we have and there have been various points of view expressed that well, that the Dept. could take a rather minimal back of the hand approach. We wouldn't have to do much in terms of assuming this management authority on federal lands. That type of approach frightens us and it frightens, I could sum it up in two words "federal courts". We are concerned that if the necessity for federal assumption came to pass, and we engaged in what I call a "minimalist approach", it ever so barely satisfied the requirements in the Act, that we may well be hauled into federal court. I think the chances of that are fairly high. If we get before some federal judge, I have a sneaking suspicion we might end up before the judges in the District of Columbia, the prospects of a judge finding that the Dept. has failed to comply with its obligations under the provisions of Title 8 and then the judge take it upon himself to say "Dept. you've acted in bad faith, I'm assuming management of the program." We think the prospects and the chances by our inaction of our obligation under Title 8, that this would end up, there is a good prospect of having this whole thing end up under the jurisdiction of a federal judge in the District of Columbia. We would regard that as an unmitigated travesty and would do all in our power to see that that does not come to pass.

Let me just basically conclude and prepared to answer any questions you might have. We are fully committed to state management. You're the people with the expertise, not ourselves. We will have to engage in a real scramble to catch up effort if this responsibility is thrust on us. We think that the federal law establish some basic minimum requirements that we believe the state, from a policy prespective has been doing this for years, and that in essense, what this regulation does is merely codify the actual enacted policy of many years. Consequently, we would think that that would have rather minimal impacts within the

state. We would hope that the state would take appropriate action. That we would approve the program on a very fast track because we are committed to state management, as evidenced by the recent memorandum of understanding that we executed between our Fish & Wildlife Service and the Alaska Dept. of Fish & Game regarding state involvement in refuge management. We are currently negotiating a similar agreement with the Parks Service regarding fish and game management in the National Park areas. It's common knowledge that we are working very hard to attempt to return marine mammal management to the people of the state of Alaska. Again, you are the people who possess the expertise. We would like to assure that our Secretary's policy of trying to get these things back in the hands of the people with the expertise can be continued and the way to best continue that is for us to have the state enact the appropriate laws and regulations that would permit us to certify compliance with Title 8. Thank you much.

BM: Bill, from your reading of the law there, does the state only have one chance to actually comply, the language just says that within one year the state complies then (inaudible) assume this thing under the guidelines, you're saying that you know, that this is where (inaudible) is here now, bu either we have to take some action at this meeting to decide whether we choose to comply or not. But, for example, if we choose not to comply at this time, would there be an opportunity, say a year from now or five years from now for the state to say "OK, we've rethought this whole thing and maybe we will (inaudible).

Horne: The statute is not explicitly clear. It is very clear that it says one year. Our general belief is that there may well be an opportunity that if the state did not comply at this stage, for the state to come into compliance at a future stage and resubmit something to the Secretary. So that I think that there is a possibility of future compliance by the state. My major concern is that I don't think the statute is explicitly clear and someone may well argue that the door has been closed. Obviously from a practical standpoint, we don't engage frankly in the federal management efforts, we don't think that would be good for the resource, we'd much prefer for the state to take appropriate action now.

RECORDS CERTIFICATION

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

James O. Smith
Signature of Camera Operator

9/5/89
Date

02-519 (REV 8/78)

HB

2088

File #2

Dear Sir

3-21-85

I am writting to urge you to Pass House Bill # 288 and give to the Board of Fisheries the flexability to manage the resource for the user groups.

Thank You

John Johnson

Put in 288
file in Res.
Committee

Original sponsor: Rules/Governor

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 288 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. FINDINGS. The legislature finds that

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

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

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

(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, personal use 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;

(12) personal use fishing.

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

(23) "subsistence uses" means the customary and traditional noncommercial uses [IN ALASKA] of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or

(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, personal use 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;

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

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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; in [FOR THE PURPOSES OF] this paragraph [,]

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

(B) "rural area" means a community or area of the state in which the taking of fish or wildlife for personal and family consumption is a significant characteristic of the economy of the community or area;

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

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

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

APR 10 1985

ALASCOM

Telegram

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ANCHORAGE ALASKA 18 04-10 1105 AST

PMS

REPRESENTATIVE ADELHEID HERRMANN

0424

JUNEAU AK

THE BRISTOL BAY NATIVE CORPORATION SUPPORTS THE PASSAGE OF HB288 IN REGARD TO SUBSISTENCE HUNTING AND FISHING.

SINCERELY,

DONALD F. NIELSEN, SR. VICE-PRES.

L-0167-0 1601876

CITY OF VALDEZ, ALASKA

RESOLUTION NO. 8512

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

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

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

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

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

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

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

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

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

CITY OF VALDEZ, ALASKA

John Devens, Mayor

ATTEST:

Jim Watson
City Manager/City Clerk

TESTIMONY OF CHUCK ROBINSON
BEFORE THE HOUSE RESOURCES
COMMITTEE ON APRIL 2, 1985

SUBSISTENCE AFTER MADISON

In the recent case of Madison v. Alaska Dept. of Fish and Game, the Alaska Supreme Court ruled that a set of regulations adopted by the Alaska Board of Fisheries concerning eligibility into the Cook Inlet Subsistence Fishery were unlawful and inconsistent with the intent of the current subsistence law. The regulations invalidated by the court excluded the majority of subsistence users, mostly Kenai Peninsula residents from participation in the Cook Inlet Subsistence Fishery. This, the court declared, was contrary to the intent and spirit of the state's subsistence laws.

To fully understand the ruling of the court, it is necessary to review the language of the law, the circumstances which surrounded the passage of the law, and the facts and circumstances concerning the application and interpretation of the law by the Board of Fisheries which led to the court's ruling. Further, any enlightened discussion of subsistence fishing cannot occur without including the relationship of this fishery with other uses of fish, such as sports and commercial fishing. The Cook Inlet salmon fisheries provide the best example of salmon fishing user conflicts in terms of the means and ways that the Board has used to resolve or heighten and intensify those conflicts. Only by reviewing the law, the facts and the application and interpretation of the law by the Board can an accurate picture of the Madison decision be depicted.

The current subsistence law, adopted by the Alaska Legislature in 1978, is a fairly simple law. It was enacted by the Legislature in the spirit of cooperation with federal law and is founded upon sound social policy. The law was passed in light of a need on the part of Alaskan people to protect subsistence uses of fish resources in face of changing social and economic development bound to occur in the state with increase in growth and the need to conserve the fish stocks for sustained yield purposes.

The law provides that the Board of Fisheries must

permit subsistence use of fish unless a factual determination is made that such use is harmful to or jeopardises the fish stocks in question. If fish resources are in short supply, then subsistence use of the resources shall have a priority use over all other beneficial uses. If fish resources are in such short supply that only subsistence uses can be permitted on fish stocks then, those subsistence users who have a customary need and dependence on the stocks, live closest to the resource and have no other alternate available resources for use have a priority of use over all other subsistence users on these resources. Until such time that the fish resource is in such scarcity that only subsistence use is allowed and there is not enough fish to go around among subsistence users any Alaska resident is eligible to obtain a subsistence permit.

The law establishes a two tier or two class category of subsistence users. The first tier is the general class, to which any resident may belong and the second tier, which is the preferred class, which only certain residents may qualify for. Any Alaskan resident is eligible for a subsistence permit at such times when fish stocks are abundant and even when fish stocks may be low, but not necessarily depleted to the point of severe jeopardy. Only certain residents may qualify for preferred subsistence status, based on dependency, local residency, and alternate available resources, When fish resources are so low that only subsistence use is allowed on these resources, sports and commercial use have been prohibited and there are not enough fish stocks to adequately supply subsistence use. Further, if the Board determines that subsistence use may jeopardize the viability of available fish stocks this use may too be eliminated.

The subsistence law defines subsistence fishing as the taking of fish by longline, seine, fishwheel, gill net or other means defined by the Board for subsistence uses. Subsistences uses are defined as those customary and

traditional uses of fish in Alaska for direct personal and family consumption for food, shelter, clothing, fuel, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish resources taken for personal or family consumption, and for customary trade, barter, or sharing of these resources for personal or family consumption. Subsistence use covers a wide range of personal use of fish resources.

The law was adopted in response to a number of factors that had occurred and were occuring in the area of conservation, utilization and development of fish and game resources in Alaska during the 1970's. In 1972 Governor Bill Egan's administration established a state-wide policy within the Department of Fish and Game that made subsistence use by Alaska residents of fish and game resources the highest priority use during resource shortages. This policy was established one year after Congress enacted the Alaska Native Land Claim Settlement Act (ANSCA) and at the infancy of the Alaska oil pipeline boom. During the same year the constitutional amendment allowing limited entry into Alaska's commercial fisheries was ratified and the commercial fishery entry law was passed.

Between 1972 and 1981, Alaska experienced a dramatic increase in population. By 1980 there were approximately 400,000 people living in the state. Also many thousands of people visited the state each year. In 1976 Congress, after the election of President Carter, proposed the Alaska National Interest Land Conservation Act (ANILCA). The proposed legislation, enacted in 1980 was in part the result of the transfer of federal lands to the state and native Alaskans under Section D-2 of ANSCA. The ANILCA legislation creates a subsistence use priority on fish and game resources on federal lands and water within Alaska. In 1978 the Alaska legislature in an attempt to protect subsistence uses and to conserve on state fish and game resources enacted the subsistence law. In part the subsistence use priority was etablished to comply with federal law.

Despite the establishment of the 1972 subsistence policy and the passage of the 1978 subsistence law, the Board of Fisheries continued to regulate Alaska fisheries in such a way that completely ignored the mandate of the social policies on subsistence use of fish resources. Even during periods of shortages the Board failed to allow subsistence fishing to be the priority use. The Cook Inlet salmon fishery is a prime example of the Board's reluctance during the late 1970's and early 1980's to accommodate subsistence use of these resources.

In 1977 the Board of Fisheries established the Upper Cook Inlet management plan. This plan was used by the Board to allocate Cook Inlet salmon stocks between sports and commercial fishermen until it was invalidated by the Supreme Court in 1981. The plan essentially allocated Cook Inlet salmon stocks between sport and commercial use based upon seasonal fish movements. The plan did not include any specific allocations for subsistence use. The plan was adopted by the Board in response to political pressures placed upon it by the Anchorage chapter of the Isaac Walton League, an international organization comprised mostly of recreational fishermen and hunters and outdoor enthusiasts. The argument put forth in support of the plan was that Cook Inlet king and silver salmon resources should be allocated to sports use on a priority basis because sports users outnumber commercial users and the sport use demand is growing. Threats were made to the Board that if it did not adopt the plan sportfishermen would urge a referendum vote on the subject or get the Legislature to adopt the policies outlined in the plan.

The plan allocated all salmon found in Upper Cook Inlet prior to June 30 to exclusive sport use and all salmon destined to spawn on the Kenai Peninsula after August 15 to priority sport use. All salmon moving in Upper Cook Inlet between July 1 and August 15 is primarily for commercial fishing use, except certain salmon stocks which must be

minimized in the commercial harvest. No specific priority allocations were made in the plan for subsistence use of Cook Inlet salmon stocks.

The stocks moving in Upper Cook Inlet prior to June 30 are the majority of Cook Inlet king salmon and other runs of red salmon. After August 15 the stocks moving in Upper Cook Inlet are mostly fall silver salmon. Between July 1 and August 15 the Upper Cook Inlet salmon stocks are comprised mostly of red, pink and chum salmon. However, there are stocks of silver and king salmon present. The Kenai River king salmon, for instance, is present during July, though it is a much smaller run of salmon than the early runs present prior to June 30.

The Cook Inlet salmon subsistence fishery until 1977 was opened by regulation to any Alaskan resident. It had been in existence since territorial days and was opened in practically all areas of the inlet. The seasons were from early May until December 31, until the early 1960's when the seasons were shortened along with commercial and sports fishing seasons to protect for conservation purposes the depleted early run of Cook Inlet king salmon. From the mid 1960's until 1978 the season opened in the Northern district of the Inlet from June 30 until September 21 and in the rest of the Inlet from August 15 until December 31. The open periods were the same as the open commercial fishing periods. The method of subsistence harvest was with set gill nets, one per permit holder, ranging in size from 20 to 35 fathoms. The bag limit or quota per permit holder was no more than 50 salmon. The subsistence fishery primarily throughout its history targeted on king and silver salmon, though other species in smaller quantities were also harvested.

The lead plaintiffs in the Madison case, Gene Madison and Louis GJosund are Alaska residents living in North Kenai and Homer respectively. Each has been a subsistence fisherman since the mid 1940's. They and others similar to them, have regularly subsistence fished for salmon for personal and family consumption as food ever since settling

in Alaska nearly 40 years ago. In addition to salmon, they have used other natural resources such as wood, coal, berries and wildlife for subsistence purposes for food and fuel.

In 1977 the Board by regulation eliminated the Homer subsistence fishery. The elimination of the fishery was done in response to sportfishing pressure, mainly from Anchorage sportsfishermen who wanted no competition from subsistence users on their take of fall silver salmon in the Homer area. Louis GJosund and other subsistence fishermen went to Superior Court and requested an injunction against the elimination of the Homer salmon subsistence fishery. The court after finding that the Board's action was unjust, enjoined the enforcement of the regulation closing the fishery.

In 1978, less than two months after the current subsistence law went into effect, the Board adopted regulations eliminating all of the subsistence fisheries along the Eastern shore of Cook Inlet and severely restricted the gear, area, and quota for the Homer subsistence fishery. This action was taken to accommodate and prioritize sport use of fall silver salmon. Again, Louis GJosund went to court to enjoin the regulations and again the Superior Court ruled in favor of GJosund and against the Board.

Pursuant to the 1977 salmon management plan the Board in 1978 adopted regulations permitting the sport use of early Susitna River drainage king salmon. It refused to allow any subsistence or commercial use of these resources. In 1979 a group of Tyonek residents requested of the Board to allow a subsistence fishery on these stocks. The Board denied the request in light of much objection by Anchorage sport fishing interest groups. In 1980 the Tyonek residents, mostly people from a small Indian village located on the northwest shore of Cook Inlet, brought suit against the Board claiming that their customary and traditional subsistence fishery for king salmon should be allowed if the Board was going to allow sport use of these stocks. The Superior Court ruled in favor

of the people of Tyonek and ordered the Board to open a king salmon subsistence fishery in the Tyonek area. As a result of the ruling in the Tyonek case, the Board was forced to address subsistence fishing in all other parts of the Cook Inlet and to provide for subsistence use. In 1980 the Board opened the Tyonek fishery and opened a subsistence fishery along the Eastern shore of Cook Inlet. However, the area opened along Eastern Cook Inlet was in a place that was rock strewn, extremely muddy and terribly inaccessible. Again, the Board was sued in Superior Court. This time the Board reached a compromise and out of court settlement with the litigants and opened the fishery in an area that was more suitable to subsistence fishing. The series of court cases against the Board exemplifies the Board resistance to protecting subsistence use of Cook Inlet salmon resources as mandated by the Egan policy and the subsistence law.

By 1981, the Board was convinced that subsistence use of salmon was to be permitted in Cook Inlet despite the opposition from sport interest groups. However, the Board was still looking for a way to allow the use in its most narrow form, so as not to upset the sports fishing priority set forth in the management plan. The means that it found to accomplish this objective was the interpretation of the words customary and traditional use as found in the current subsistence law. The Board interpreted those words to mean that only rural residents in the Cook Inlet region were eligible to participate in the subsistence fishery and only areas close to rural communities would be open to subsistence fishing. The only rural areas and residents that the Board found to exist in Cook Inlet were Tyonek, Port Graham, and English Bay. These communities are predominantly native in composition and are isolated. The only access to these areas is by water or air travel. The rest of the Kenai Peninsula areas were considered urban and their residents ineligible to participate in subsistence fishing. This included communities such as Clam Gulch, population 100, Ninilchik, population 200, and other Peninsula communities like Homer, Kenai,

Soldotna, Seward, and North Kenai. Also the whole of the Mat-Su valley which borders the Inlet was considered urban along with the Anchorage community. None of the residents of these areas could qualify for subsistence fishing permits and no areas near these communities were open to subsistence fishing. As a result of the Board's 1981 subsistence fishing regulations the majority of the Cook Inlet subsistence users were excluded from the subsistence salmon and other subsistence fisheries including halibut, herring, bottom fish and smelt fisheries.

Prior to 1978 subsistence fishing was defined by law as the taking of fish by longline, gill net, fishwheel, seine or other means as defined by the Board for personal use, not for barter or sale. The 1978 law changed the definition to the taking of fish by such means for subsistence uses, which includes barter trade and selling of nonedible parts of fish as handicrafts. At the insistence of the Attorney General's office, the Board made a distinction between subsistence use and personal use and adopted the narrowest interpretation of the subsistence law in order to exclude the majority of the subsistence users. It found that only the residents of the three villages of Tyonek, Port Graham, and English Bay had a history of subsistence use of Cook Inlet salmon.

In 1981 Madison, GJosund and other Cook Inlet subsistence fishermen brought suit in two Superior Courts to enjoin the enforcement of the Board of Fisheries subsistence regulations. Superior Court Judge Paul Jones presided over a case brought in Homer and Superior Court Judge Victor Carlson presided over another case brought in Kenai. Judge Jones ruled that the subsistence criteria were valid, however, the Board's application of these criteria violated equal protection of the laws and was not based on a factual finding that it was necessary to exclude Homer subsistence fishermen to protect subsistence fishing in Tyonek, Port Graham and English Bay. Judge Carlson ruled that even though the Board's criteria were valid, that the Board's exclusion of

Upper Cook Inlet subsistence fishermen was without due process of law and remanded the case to the Board with a request to provide a personal use fishery for these fishermen. In March of 1982, the Board pursuant to Judge Carlson's ruling, created a personal use fishery on Kasilof red salmon and Upper Cook Inlet fall coho salmon. The personal use fishery was created as an excess "charity" fishery to be accommodated only after subsistence, sports, and commercial fishermen had satisfied their needs. Also, the fishery would not permit trade and barter of the fishery resources. However, the Homer subsistence fishery remained open and has continued as a subsistence fishery since the Court's ruling.

In 1983 the Kenai River Sportsfishing Association, the sports interest group of which Board member Bix Bonney was an officer, brought suit in Kenai Superior Court to halt the fall coho personal use fishery. The court issued a restraining order against the operation of the fishery in favor of Bonney's group.

Then, in 1985, the Supreme Court reversed the two Superior Court rulings in the Madison and G. Josund cases, declaring the Board's subsistence criteria and the regulations adopted pursuant to them invalid and inconsistent with the subsistence law.

It is from this Supreme Court ruling that much debate has followed concerning subsistence use of fish and game and has led the Governor to introduce House Bill 288. Though the Court's ruling is fairly clear and simple, some confusion has been created over the issue. The alleged purpose behind HB 288 is to clear up the confusion, bring state law into compliance with ANILCA, and prevent the elimination of sports and commercial fishing because of runaway subsistence use. None of the objectives of the Governor's bill are well founded. Indeed, the legislation is not essential nor reasonably needed to deal with subsistence fishing in Alaska.

Taking each alleged purpose for the passage of the legislation one at a time and discussing them openly and

rationally should convince members of the Legislature that such legislation is not needed and moreover may be unconstitutional under Alaska law.

It has been alleged by the Governor's administration that unless HB 288 is enacted the state's subsistence law will not be in compliance with ANILCA and this will lead to a takeover of management by the federal government of Alaska fish and game resources and a denial to the state of certain federal revenues intended for management of sea mammals and sports fishing. This allegation is not founded on the truth.

On April 6, 1982, Under Secretary of the Department of the Interior Bill Horn gave a presentation to the joint Boards of Fish and Game at a joint Board meeting in Anchorage Attached to this document are the transcribed comments of Mr. Horn made to the Boards concerning what actions the Board needed to take to be in compliance with ANILCA. In his presentation Mr. Horn made it perfectly clear that regulations adopted by the Boards which encompass either a one tier or two tier subsistence use approach to subsistence users would satisfy the federal requirements of ANILCA. The one tier approach would make only rural residents eligible to be subsistence users. The two tier approach would allow any Alaska resident to qualify until such time that fish resources are so low that only subsistence use can be permitted and the supply of fish stocks available is not enough to reasonably accommodate all subsistence users. Then a priority between subsistence users can be established for subsistence uses, based upon customary dependence on the resource, local residency, and alternative available resources.

The Board opted for the one tier approach to subsistence use. The court in Madison reviewed the one tier approach of the Board and rejected that approach as inconsistent with intent of the current law. The court declared that the current subsistence law intends a two tier approach on the issue of eligibility into the subsistence

fisheries. The two tier approach embodied in the law is consistent with and in compliance with ANILCA. In fact, the court stated that our law is not intended to limit subsistence users to rural residents only, but that all Alaska residents can qualify for a permit. The court also found that the subsistence fishery in which Madison had participated in for approximately 40 years was a customary and traditional use of salmon for personal and family consumption and other subsistence uses. The claim that the current law is not in compliance with ANILCA is patently false.

The next misrepresentation of the Madison decision concerns the Governor's administration's claim that subsistence use of fish cannot be limited until such time that sports and commercial fishing has been eliminated. This representation, like the noncompliance with ANILCA representation, is unfounded. The administration has either mistakenly or wilfully confused the issues of use and users. The two are distinctly different. Subsistence use is intended by the current law to be carefully monitored and regulated. This is clearly stated in the preamble to the subsistence law. In the preamble it states:

> It is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs and traditions of Alaskan residents. The legislature further finds that beneficial use of those resources by all state residents should be <u>carefully monitored and regulated</u> with as much input as possible from the affected users, so that the viability of fish and game resources is not threatened and so that resources are conserved in a manner consistent with the sustained yield principle.

The legislative intent to regulate subsistence use in order to avoid jeopardy to fish stocks is abundantly clear. Therefore subsistence use of fish resources can be limited by bag limits, quotas, time, area, and other means available to the Board of Fisheries without the elimination of sports or commercial fishing.

In Madison, the court merely stated that before the Board may limit priority use among subsistence users, it

must factually find two things: 1) that it is necessary to restrict the taking of fish for sustained yield purposes and 2) that eliminating sports and commercial users will not assure the maintenance of fish stocks for sustained yield purposes and establishing a priority among subsistence users is also necessary. It is this interpretation of the law by the court that the administration has confused and misrepresented. It is not necessary to eliminate sports and commercial use of fish in order to limit and regulate subsistence use. It is required to find that it is necessary to restrict the taking of fish to avoid damage and harm to the stocks and that eliminating sports and commercial uses will not assure the viability to the stocks before there is any occasion to limit subsistence fishing to second tier preferred or priority subsistence users as distinct from all subsistence users. The concept of use and users must be kept separate in discussing the intent of the law.

The Cook Inlet subsistence fishery has never posed a real and substantial threat to salmon resources or other beneficial uses of the resource. The Cook Inlet salmon subsistence fishery since the 1960's and until the 1980's has never harvested more the one half percent to one percent of the total salmon harvest by all user groups.

Between 1978 and 1980 the number of persons licensed by the state to participate in the Cook Inlet salmon subsistence fishery ranged from 323 to 1,331. This number is compared to 1300 commercial salmon entry permit holders and from 180,000 to 200,000 sportfishing license holders for the same period. In comparing the number of sport license holders with subsistence permit holders it is readily apparent that the Cook Inlet sport fishery rather than the subsistence fishery has experienced the more dramatic increase in the number of participants. The Cook Inlet sportfishery is comprised of approximately 47 percent non-resident participants. The subsistence fishery is a 100 percent resident fishery. The Cook Inlet salmon commercial fisheries are comprised of seine and gill net fisheries. The Cook Inlet salmon seine fishery

is a 100 percent resident fishery. The set gill net fishery is 90 percent resident and the salmon drift gill net fishery is 60 percent resident and 40 percent non-resident.

The intent of the current subsistence law is to establish subsistence use by Alaska residents of fish as the priority use during times of resources shortage. Most of the sport fisheries and many of the commercial fisheries are comprised of resident and non-resident participants. The social policy embodied in the subsistence law is to make available on a priority basis fish stocks for subsistence use by Alaska residents over non-residential use of these stocks for sports and commercial use in times of resource shortages. This is good sound policy designed to protect the needs, customs, and traditions of Alaskan residents.

The Governor's proposed legislation may also run afoul of the state's constitution. Article VIII, Section 15 of the constitution reads:

> Section 15. No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the state. This section does not restrict the power of the State to limit entry into any fishery for the purpose of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Article VIII, Section 17 of the constitution reads:

> Section 17. Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulations.

These two constitutional provisions create major stumbling blocks to the attempt by the Governor or the Legislature to limit entry into the subsistence fishery to rural residents only, and the establishment of a personal use fishery as an alternative for urban residents. Article VIII, Section 15 prevents exclusive and special rights or privileges of fisheries in the natural waters of the state except for commercial fishing and aquaculture. The recent Supreme Court case of Ostrosky v. State gives a clear

interpretation of what this constitutional provision means. If HB 288 was enacted limiting entry into subsistence fisheries to rural residents only, this law would create an exclusive or special right or privilege of fishery based solely on residency. This scheme would be contrary to this constitutional provision prohibiting such action. This is so because the law would create a closed class of persons, namely rural residents, which have an exclusive right or special privilege to subsistence fish.

Next, Article VIII, Section 17 would prevent the rural vs. urban classification of subsistence users. If the purpose behind the governor's bill is to protect subsistence use of fish then those uses demonstrated by Gene Madison and others to have customarily and traditionally existed as subsistence uses in Cook Inlet for many years would be entitled to uniform treatment by the law. Those individuals who have demonstrated use of the Cook Inlet salmon resources for personal and family consumption as food, etc., and for trade and barter are similarly situated with other Alaska residents in rural communities like Tyonek, Port Graham and English Bay with respect to the use and disposal of salmon resources. The constitution requires that these individuals be given equal treatment. Therefore, it would be unconstitutional to allow subsistence use by rural residents only and exclude urban residents from such use. Further the creation of a personal use category for urban users is not equal treatment. Under the personal use category trade, barter, and sale of non-edible by products of fish would not be permitted. The prohibition of these activities to urban residents and the permission to rural residents would not be uniform treatment. Both groups of people would be harvesting the resource for personal and family consumption but only rural residents would be able to extend this consumption to trade, barter and sale of non edible by products as handicrafts. This limitation on urban users would not withstand the mandate of Article VIII, Section 17 as it would result in unreasonable differential treatment among persons similarly situated with

respect to the use of fish resources.

In conclusion it must be said that HB 288 is not a well founded piece of proposed legislation. The bill would create more problems than it allegedly attempts to resolve. The current subsistence law achieves the twin objectives of conserving fish stocks and protecting subsistence uses of these resources. The current law when circumstances warrant would protect a rural priority for subsistence use, for instance, when the fish are in such short supply that priorities must be set among subsistence users.

It is urged that the legislature take no action on HB 288. The time has come to allow subsistence fishing to take its course. There are no present circumstances that have been clearly demonstrated which require subsistence use of fish resources to be limited solely to rural residents. Until such time that a clear and present need arises for such action the type of legislation proposed by the Governor should be shelved. The sky over subsistence use of fish and game is not falling.

If a problem does exist over subsistence use perhaps the solution is not in changing the law but rather in a close re-examination of the Board's process and its application of the law.

DATED this 1 day of April, 1985.

Arthur S. Robinson
ARTHUR S. ROBINSON

Martin Friedman
MARTIN FRIEDMAN

JOINT MEETING OF THE ALASKA BOARD OF FISHERIES
AND BOARD OF GAME, APRIL 6, 1982

Testimony of Deputy Undersecretary of the Department of Interior Bill Horne.
BM: Stands for Board of Fish/Game member

Horne: Thank you, Mr. Chairman, I appreciate the opportunity to appear before the Joint Boards and discuss the State's compliance and implementation with the Alaska Lands Act, and hope that the cooperation that we've been engaged in with the State since last August can continue and we can bring this matter to a satisfactory conclusion. Let me say at the outset that reiterate the Dept. remains philosophically and policy-wise strongly committed to state management. We believe that the State possesses the requisite expertise to protect the fish and game resources of the State of Alaska. It is expertise that we cannot hope to match and as a consequence, we are most anxious to have this matter resolved in such a fashion that we can continue to defer to your judgement, expertise and not have to comply with any manadatory statutory requirements that would force us into the fray. Let me state that from where we're sitting, the federal law that is at issue imposes some fairly minimal requirements on the state, it is obvious that these minimal requirements can have some fairly major repercussions but in and of themselves, we see the requirements to be very bare bones and they are that the State establish some law of general applicability which includes regulations that would provide for a rural priority for subsitence, of course, rural is not the sole criteria, and it also includes the terms "customary and traditional" and there are continued references in the legislative history to nonwasteful taking. That's basic requirement number one. Requirement number two is that the state establish this regional advisory council system and that the recommendations that come up from the regional advisory councils be dealt with by these boards. That is all that the federal law requires and all that we've asked for in our review so far is demonstration from the state that you have laws or regulations that meet these minimal requirements. One of the courses of action suggested to us last year when this process began, was that the State has historically provided this type of preference to its rural residents and that Dept. of Interior should look to the factual track record of recent years, we can conclude on that basis that yes, indeed, the State was doing an adequate job in providing that rural priority and therefore, we could approve a state program without any form of specific laws or regulations. We choose to reject that approach for two basic reasons, one legal and one policy. From the legal perspective, the statute requires us to determine whether or not the state has loss of general applicability to implement Sections 803-805, and factual track record and policies and such as terms of _____ do not consititute laws of

general applicability, we could not satisfy a federal court of law that we had done an adequate and appropriate job of review if all we brought in was the factual track record. It's one of those crazy circumstances in which you need a regulation rather than the facts. The second reason, from a policy prespective, we found even more persuasive. We did not want to engage in a thorough review of the State's track record on fish and game management and try to determine by looking over your shoulder whether or not you had done a job on a resource by resource basis to satisfy rural priority. Frankly, we are not equipped to do that job, we did not possess the requisite expertise to go through the process and say, "well, in game area X you didn't give enough moose to this particular group or in fishing area Y you divied up the resource incorrectly and not in keeping with federal statute". We did not possess the expertise to engage in that type of review, we didn't think it was appropriate of the federal government to second-guess your track record. More important, when it came, if at some stage of the game, this whole process ends up in court, which we regard as a pretty good prospect, we did not want to be going to some federal judge and having that federal judge look over our shoulder at the nature of the factual review that we conducted the program. Consequently we have limited our review to a legal review, which is why since last August, you've been dealing with our friendly solicitors rather than our folks from the Wildlife Service or other resource experts that we possess. All we are looking for is does the state have laws or regulations that establish the regional council system and provide for a rural priority with customary and traditional criteria. That's all we've looked for, that's as far as our review is going to go. Regarding implementation, and obviously we've tried to keep our review to a bare statutory requirements, we've also received many questions about how if the state has this type of priority, codified in a regulation, what sort of guidelines regarding implementation, what sort of practical on the ground effects will that regulation have. Frankly, we don't know. That is something we have refrained from engaging in because it is pretty clear in our mind that the statutory scheme outlined in Title 8 defers those judgements to the State of Alaska, and the state of course, has chosen to defer those judgements to these boards. It is essentially the state's job and the state's responsibility to define rural. The only guidelines in the legislative history regarding what rural means is one phrase in the Senate committee report that says "Anchorage, Fairbanks, Ketchikan and Juneau aren't and Dillingham, Barrow, Bethel, Kotzbue, Nome are". Now that obviously is one criteria, there is nothing in the legislative history regarding what is customary and tradional is, that's clearly yours, and of course, the statute also refers to nonwasteful levels of taking. That again, is a determination for the state to make. Consequently, all that we need is the assurance in some law or regulation that you will provide the adequate rural priority and then in terms of how that is to

be specifically implemented, the statute clearly confers those decisions on you, and as a matter of policy we would like very much to have those decisions conferred on you because, frankly, we don't possess the requisite expertise.

Regarding the timing, the consequences of approval, disapproval. We made it very clear in all of the meetings that we've been conducting, starting last August, that all we need is these minimal requirements. And the stage where we are now is that either one of the approaches outlined by John Gisberg would satisfy ourselves. I will say that from sort of a selfish perspective, we would prefer what I call, for lack of better term, a "one tier" approach that would simply recognize and provide a priority to rural subsistence without trying to define and establish a second category of other subsistence. That is the cleanest way for us, it is abundently clear that would be in full compliance with Title 8. However, based on the process that we have gone through, we are fully prepared to accept what I call the "two tier" system, which is embodied in the proposed regulation that is in your book, which of course is the minor modifications made to your December policy statement and have that modified policy statement recast as a regulation. As the letter from the Secretary to the Governor on February 25, indicated, if that particular proposal is enacted as a regulation by the boards, upon our formal receipt of notification from either the commissioner, the boards, or the governor, that that is now a binding regulation on the State of Alaska. The Secretary will immediately issue the letter of approval and the resonsibilities for implementing this program will remain firmly in the State. I guess I can't emphasize enough how much we wish to do that, that's our primary desire. The reason the Secretary has asked me to come up for these meetings, to pass that on. Obviously if passage of that proposal or something similar that provides for the rural priority. If that goes, we obviously are in a position to approve. I guess the other side of the coin, what are the consequences of inaction or some action that does not establish a sufficiently clear, sufficiently firm rural priority. You know the Act basically says that the Secretary is supposed to grant the state one year to put a program in place, and if at the end of one year, a program is not in place, that the Dept. was mandated, and I guess I should emphasize that it was nondiscretionary, it was mandated to step in and begin to undertake a subsistence management program on federal lands. We received the state's submission on December 2, exactly one year after enactment of the Alaska Lands Bill. We have been engaged in the review process since and consequently have held off and have conducted no planning and no activities in terms of preparing for any contingencies such as federal intervention and assumption of management. However, the clock is ticking on us and we feel that sometime very soon we are going to have to take some action and determine whether the state is in compliance or not in compliance. Consequently, if at the conclusion of the

meetings, we have not received from the state some form of regulation or law that establishes the priority in proper fashion that conforms with the federal statute. We will be shortly be forced to issue some kind of preliminary finding of noncompliance, schedule a hearing within a matter of days in which we will take testimony, I think we will probably have to have it here in the state, regarding whether or not the state program does comply with Title 8. Following that hearing, the Secretary will render his decision. Obviously if this decision is that the state is in noncompliance, we will have to being on a very fast basis the tooling up to assume the management authority on federal lands and of course, we will have to establish further provisions of 805, the regional council system that right now is set up under state law. We don't undertake that activity very lightly. We don't undertake it with much relish. It is something that we hope to avoid at all costs. But nonetheless it is very explicit, nondiscretionary requirement of the law and if we fail to act, any party can go to court and get a writ of mandamus forcing the Secretary to do it. Frankly, one of the concerns we have and there have been various points of view expressed that well, that the Dept. could take a rather minimal back of the hand approach. We wouldn't have to do much in terms of assuming this management authority on federal lands. That type of approach frightens us and it frightens, I could sum it up in two words "federal courts". We are concerned that if the necessity for federal assumption came to pass, and we engaged in what I call a "minimalist approach", it ever so barely satisfied the requirements in the Act, that we may well be hauled into federal court. I think the chances of that are fairly high. If we get before some federal judge, I have a sneaking suspicion we might end up before the judges in the District of Columbia, the prospects of a judge finding that the Dept. has failed to comply with its obligations under the provisions of Title 8 and then the judge take it upon himself to say "Dept. you've acted in bad faith, I'm assuming management of the program." We think the prospects and the chances by our inaction of our obligation under Title 8, that this would end up, there is a good prospect of having this whole thing end up under the jurisdiction of a federal judge in the District of Columbia. We would regard that as an unmitigated travesty and would do all in our power to see that that does not come to pass.

Let me just basically conclude and prepared to answer any questions you might have. We are fully committed to state management. You're the people with the expertise, not ourselves. We will have to engage in a real scramble to catch up effort if this responsibility is thrust on us. We think that the federal law establish some basic minimum requirements that we believe the state, from a policy prespective has been doing this for years, and that in essense, what this regulation does is merely codify the actual enacted policy of many years. Consequently, we would think that that would have rather minimal impacts within the

state. We would hope that the state would take appropriate action. That we would approve the program on a very fast track because we are committed to state management, as evidenced by the recent memorandum of understanding that we executed between our Fish & Wildlife Service and the Alaska Dept. of Fish & Game regarding state involvement in refuge management. We are currently negotiating a similar agreement with the Parks Service regarding fish and game management in the National Park areas. It's common knowledge that we are working very hard to attempt to return marine mammal management to the people of the state of Alaska. Again, you are the people who possess the expertise. We would like to assure that our Secretary's policy of trying to get these things back in the hands of the people with the expertise can be continued and the way to best continue that is for us to have the state enact the appropriate laws and regulations that would permit us to certify compliance with Title 8. Thank you much.

BM: Bill, from your reading of the law there, does the state only have one chance to actually comply, the language just says that within one year the state complies then (inaudible) assume this thing under the guidelines, you're saying that you know, that this is where (inaudible) is here now, but either we have to take some action at this meeting to decide whether we choose to comply or not. But, for example, if we choose not to comply at this time, would there be an opportunity, say a year from now or five years from now for the state to say "OK, we've rethought this whole thing and maybe we will (inaudible).

Horne: The statute is not explicitly clear. It is very clear that it says one year. Our general belief is that there may well be an opportunity that if the state did not comply at this stage, for the state to come into compliance at a future stage and resubmit something to the Secretary. So that I think that there is a possibility of future compliance by the state. My major concern is that I don't think the statute is explicitly clear and someone may well argue that the door has been closed. Obviously from a practical standpoint, we don't engage frankly in the federal management efforts, we don't think that would be good for the resource, we'd much prefer for the state to take appropriate action now.

APR 0 2 1985

attention Adelheid Herrmann

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.

Robi Schmalz

Box 1251
Cordova 99571

APR 0 2 1985

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

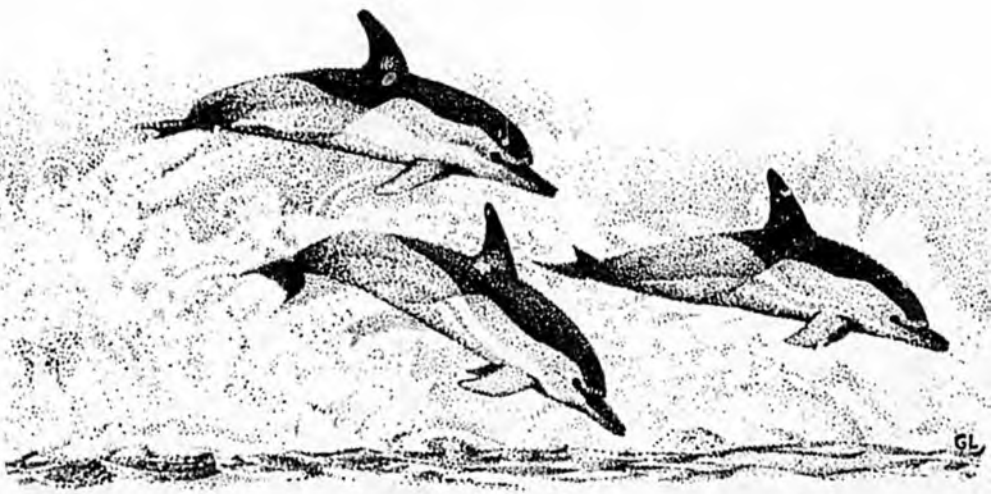
APR 04

Dear Representative Herrmann,

I urge you to support HB. 288 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. Chesher
Box 116
Cordova, Alaska
99574



4-1-85

APR 0 4 1985

Dear Representative Hermann.

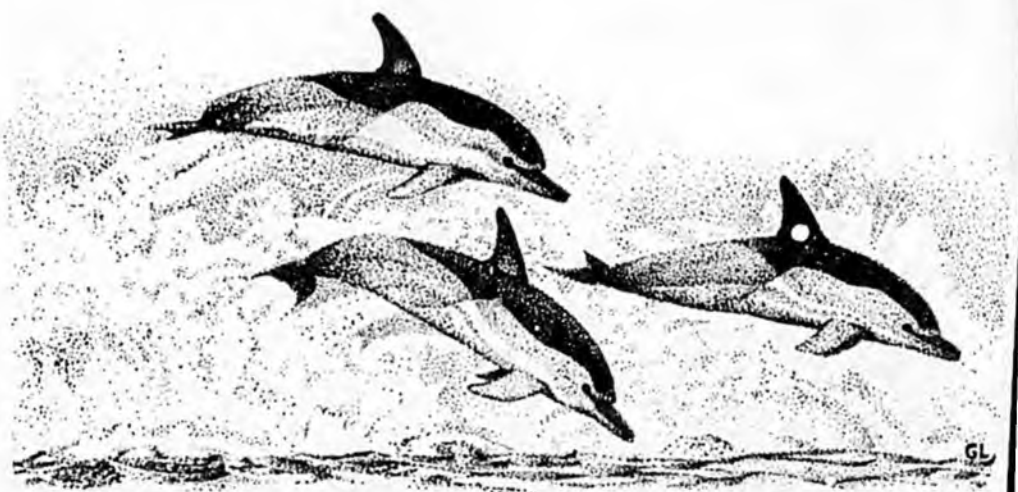
I urge you to support HB.288 and Senate Bill 231. We are Cordova fishermen and our livelihood depends on our ability to commercially fish the Copper River Flats.

Sincerely,

Mike + Clare Phillips

Box 396

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 #231 & House Bill #283.

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

E. M. DeVille
Box 652 - 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. Anchoragite . . . "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-jowled 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 Angoon, was sure nice and white in the head and tail feathers in November, when this was being written. Probably fresh winter feathers, and he wasn't getting them so stained with spawning salmon. Incidentally, with the herring into winter holes, salmon runs over, and bottom fish moved out to deeper water, Kreaky was

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

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

Robert A. Heinl

Publisher

Dear Legislator 3-31-85

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

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

In 1972 my wife and I moved to the Aleutian 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 supliment their lifestyle.

The subsistence lifestyle is a part of Alaskas past and present which should be protected. I would <u>not</u> 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

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

The recent ruling by the Alaska Supreme Court creates a situation, which cheats the true subsistence user. The subsistence lifestyle needs to be protected by prisrity. To allow everyone to become a subsistence user cheats the true subsistence user of his protection by priority. I further feel it is a joke to allow Anchorage and Fairibanks residents equality under subsistence as subsistence is a <u>lifestyle</u> that cannot coexist in a city enviroment. We must address this problem immediately to restore balance to our subsistence program. If we delay, we will create a new user group, the city subsistence user. I feel this would impact true subsistence, commercial fishing, sport fishing and sport hunting. It will be harder to solve in the future than now as undoubtably some will not want to loose this new found subsistence rights. The Copper River stands as an excellent example of a new user group being created under the pretext of subsistence. You can argue that the Copper River dipnet fishing is done more for a weekend outing, rather than based on a need to put food on the table. Often more is spent on this recreational outing to catch these fish than if these subsistence users had bought these fish from the market at home.

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

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

What is the future of the Copper River commercial fisherman and true subsistence 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 famious Kenai sport fishery?

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

Fred Dison
STAR RT. BOX 6700-E
WASILLA, ALASKA
99687