

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672
4222.50 RES SUBSISTENCE: MISCELLANEOUS (file 4)

231

1) Should any Alaskans have a priority of in use of Alaska's fish and wildlife

ANILCA says yes

2) If so, who should have this priority

ANILCA says rural residents
NATIVE + Non Natives

3) Should subsistence uses be unregulated or should they be subject to reasonable regulations, i.e. seasons, bag limits, methods and means.

yes

4) If resources will not support subsistence uses at level ~~for~~ set by reasonable Regs for continuation of species what happens

3 Anilca criteria

- 1- cust. + direct dependence
- 2- local residence
- 3- availability of alternative resources

5) Would these criteria be applied on a community or individual basis?

Individual.

6) Is sport, commercial fishing stopped ~~then~~ when these restrictions go into effect?

?

CORRECTION

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

State Rights

The threat of federal management under ANILCA is alluded to frequently but the feds themselves are notably silent. Regardless of the substantive question, or perhaps because of it, I would like the state to assert itself in a positive, constructive manner in fish & game management.

We ~~do~~ have not explored all options for satisfying ANILCA & still retaining comprehensive state management. Some lawyers, successful ones I might add, believe the state is in compliance with the federal law. We do know that the feds are not "managing" either marine mammals or waterfowl, two of their primary responsibilities in Alaska.

Litigation on these issues is [a way of life] ~~at~~ the price of doing business & we have to move forward on ~~an~~ ~~an~~ ~~an~~ factual basis & see what emerges. We are acting irresponsibly if we do not act to end this ^{perpetual} debate.

SB 170 - Kille Range

SB 35 Melchior Public Use Area

SB 105 Palawan Hay Flats Crane Refuge

SB 19 Arch Coastal Wildlife Refuge

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6) Is sport commercial fishing stopped ~~when~~ when these restrictions go into effect?

?

Should personal use, sport or commercial
have any priority over ~~the~~.

Should there be a hierarchy &
preference between commercial, personal
use or sport fisheries

Fischer & Halford
say yes

/

Commercial &
such sport fish
groups say NO

In light of that / from correspondence
it may be timely for them to call
for in depth look at these since so
many conflicting views point.

Questions raised:

1. Constitutional issue - ~~Prog Book~~ ~~more~~
Part A 5 opinion on state accommodation
2. Part A 5 indicates it can be notified
with a less rapid response than
reflected in the Shepherd bill.
3. What is "compliance" in ANILCA?
4. An arbitrator intended to be the priority
for increasing number of rural residents
for all time or ~~is~~ in it paid to
historic levels?
5. What arbitrator rural resident or
arbitrator mean?
6. What arbitrator a resource shortage
where arbitrator will pre-empt
common or personal use?

Talking Points re Horn ltr of 4-18-85 to Hall

In first TP Horn mentions that the state program certified in 1982 "was not the only approach that would comply" w ANILCA.

In this regard, statements of two former AG's are relevant:

1. ^{out} AG Tom Meacham ltr to Tony Vaska on 6/19/81 ~~5~~ stated that Boards could provide for subsistence statewide without specific statutory mandate & that a pattern of state accommodation of subsistence probably would enable the state to maintain comprehensive management on federal lands.

2. AG Will Condon testimony to Joint Boards on 12/1/81, advised that even if the subsistence law were repealed, the two boards "could adopt management policies which fit with lin. A & we wouldn't have any problems".

3. AG discussion paper to Hammond 12/2/81 points out that subsistence ~~use~~ & personal use are interchangeable in historical context of language before & after 1978 Law. (pg 17)

Horn ltr 2nd pp states that subsistence preference extended to urban residents is barred by ANILCA. This seems to ~~be~~ me to be very suspect generalization. It would be more accurate to say that subsistence could apply across the board until shortage develops. Then priority would/could apply on fed land.

Will need AG's reply to Horn.

Sec 1 para 3

delete as is - insert our language

Sec 2 only deals with .251(b)

ought to include .251(a) and insert
"resident net fish" in ~~para 6~~ (6) and should
add (12) listing "resident net, sport, ^{and} commercial
fishing"

~~since~~ "resident net fish" is defined in Sec. 6.

Sec 2(b) ~~fish "population" should be "fish stock"~~

This section ~~seems~~ appears to confuse the concept of
mandatory authorization ^{of a use} with that of providing a priority for
a use.

We recommend ~~that~~ the following:

"Whenever it is necessary to restrict the taking of ~~the~~ fish
stocks to ensure the maintenance of such stocks on a
sustained yield basis, the taking of such stocks ~~by~~ by
Alaska residents for personal and family consumption
shall be a priority use of the harvestable surplus
of such ~~pop~~ stocks and the Board of Fisheries shall
adopt regulations providing a reasonable opportunity for
such taking in accordance with the Administrative Procedure
act."

Sec 2 c

If the intent of this section is to allow the Board of Fisheries to ~~continue~~ ^{continue} to balance sport, ~~and~~ personal use, and not to give an absolute priority to any of them, as indicated in the letter of intent, and commercial uses, then ~~guidelines for the Board listing~~ ~~the appropriate factors would be very helpful.~~ ^{2(c)} this section should list the factors the Board must consider in ~~making~~ ~~and~~ allocating between these uses.

Sec 3(c) fish "population" should be fish "stock"

~~Sub 2~~ on 7th line

"subsistence uses a priority" - should read "subsistence uses the priority."

delete "consumptive"

8
Sec 2(b) or ~~2~~ 3(c)
2

The bill ~~is~~ ^{omits} ~~providing~~ a mandatory authorization for subsistence ^{harvests} ~~uses~~ (as in current ~~statute~~ ^{statute} ~~201(5) first sentence~~) except ~~when~~ when it is necessary to restrict the taking of a fish stock. This means ^{the} Board has discretion in whether to authorize ~~fishery~~ ~~and~~ subsistence fishing. We recommend ~~to~~ adding the first sentence of

language

the current ~~law~~ in 16.05.251(b). Without this, ~~the~~
the bill ~~would clearly be inconsistent with ANILCA, and~~
would not ~~protect~~ protect customary and traditional uses and
would clearly be inconsistent with ANILCA.

3 (c) This section ^{requires that} ~~shall be~~ a subsistence priority
~~must~~ be ~~provided~~ triggered, ^{only} when there is ~~a~~ no
longer a reasonable opportunity for ~~the~~ taking by all
Alaska residents. This differs from ^{the} existing statute,
~~in its own right~~ which provides for the priority ~~to~~
~~for~~ if restrictions are necessary to protect the
fish stocks or subsistence uses. This ~~language~~ ^{seems to} provide
considerably less protection for subsistence uses, ^{than the existing statute,} and may be inconsistent
with ANILCA.

Recommendation: is

~~to~~ replace with 2nd and 3rd sentences of the
current AS 16.05.251(b)

3 (e) is not a new subsection

4(b) or 4(c) all comments about

~~see comments above~~ 2(b), 3 and 3(c) apply to these sections,

~~4~~

the term "reasonable economic means" is ~~very~~ unclear and

4(23) ~~We recommend that~~ ~~should be~~

~~clarified in the letter of intent, as requested by~~

~~the~~ ~~cost-effective~~ ~~is~~ ~~as~~ ~~the~~ ~~should be~~ ~~to~~ ~~omitted~~
We recommend ^{inserting} "cost-effective" ~~insertion~~

after customary and traditional. In either case elaboration in the letter of intent would ~~be~~ helpful, give guidance to the Boards.

4(23)(a) "~~rural area~~" this def. of "rural area" was developed to identify who could ~~be~~ participate in subsistence uses, rather than where those harvests ~~are~~ could occur.

In order to ~~update~~ make this definition fit this bill we suggest that the language from the letter of intent be added into the definition, to read:

"rural area ... a ^{historic} ~~traditional~~ hunting or fishing area associated with a community or area ...

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

GENE MADISON, LUCY CASEY, KEN MCGAHAN,
SR., ANDY JOHNSON, MARGIE KIVI, J. W.
WARE, DICK FRANCIS, DON GROLESKE, KEN
JORDON and SHIRLEY DEVAULT,

File Nos. 6824/
7181

Appellants,

v.

O P I N I O N

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

Appellees,

and

THE ALASKA FEDERATION OF NATIVES,

Intervenor.

ALASKA DEPARTMENT OF FISH AND GAME,
RONALD SKOOG, ALASKA BOARD OF FISHERIES,

File No. 7410

Appellants,

v.

LOUIS GJOSUND, DORA MULCH, and KACHEMAK
BAY SUBSISTENCY GROUP, INC.,

[No. 2911 - February 22, 19

Cross-Appellees.

Re: Pages 4, 8, 12, 16, 19, 20, (22), (23), 24, 25, (27)

ALASKA COURT SYSTEM NEWS RELEASE

For release Friday, February 22, 1985, 12:30 p.m.

Court Strikes Down Fisheries Regulation

Madison v. Alaska Department of Fish and Game

Supreme Court Opinion No. 2911, File Nos. 6824/7181/7410

Contact: David A. Lampen
Clerk of the Appellate Courts
Anchorage (907) 264-0607

[The following was prepared by the office of the Clerk of the Appellate Courts and is not an official statement of the Alaska Supreme Court.]

The Alaska Supreme Court Friday 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 regulation had been declared valid by Superior Court Judges Victor D. Carlson and Paul B. Jones.

The supreme court, in an opinion by Justice Daniel A. Moore, Jr., 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."

END

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Victor D. Carlson, Judge, and Third Judicial District, Homer, Paul B. Jones, Judge.

Appearances: Martin Friedman, Homer, Arthur Robinson, Soldotna, for Appellants/Cross-Appellees. Larri Irene Spengler, Assistant Attorney General, Norman C. Gorsuch, Attorney General, Juneau, for Appellees/Appellants. Donald C. Mitchell, Anchorage, for Intervenor/Amicus Curiae.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton and Moore, Justices.

MOORE, Justice.

This case arises as a consolidated appeal of two cases. It concerns the validity of a Board of Fisheries' (hereafter board) regulation designed to identify eligibility for subsistence fishing in the Cook Inlet region.

Appellants (hereafter Madison and Gjosund) are two groups of Alaskan residents who live along the Kenai coastline and near Homer. For many years, they have fished with set nets for salmon for their personal and family use. Nonetheless, the board denied subsistence permits to Madison and Gjosund because their use of salmon did not meet the board's regulatory definition of subsistence. Both Madison and Gjosund challenged the regulation as exceeding the scope of the state's subsistence law. In both cases, the trial courts upheld the regulation as consistent with the

statutory grant of authority. We hold the regulation invalid since it is inconsistent with AS 16.05.251(b), AS 16.05.940(22) and AS 16.05.940(23) and contrary to the legislature's intent in enacting the 1978 subsistence law.

I. SUMMARY OF FACTS

Records indicate that subsistence fishing in Cook Inlet was minimal through the mid-1970s.¹ However, a core group of residents of each Cook Inlet community has traditionally fished for Cook Inlet salmon for subsistence. Participation in the subsistence salmon fishery is most visible in the smaller, more isolated villages, where the subsistence group represents a larger percentage of the population.

In 1977 the board established a comprehensive management policy for Cook Inlet, 5 AAC 21.363, which essentially allocated specific salmon stocks to sports fishermen and commercial fishermen on the basis of seasonal fish movements. See Kenai Peninsula Fisherman's Cooperative

1. From 1971 to 1977, the average number of subsistence permits issued annually for the Upper Cook Inlet was 87 and the average catch was 405 salmon. Commercial harvest averaged about two million fish per year. However, this statistical data does not necessarily reveal the total subsistence use since many people did not obtain permits and some commercially caught salmon were used for subsistence.

Ass'n v. State, 628 P.2d 897 (Alaska 1981). Although the policy did not specifically refer to subsistence uses of salmon in Cook Inlet, it had a substantial impact on subsistence fishing. Commercial fishermen, accustomed to taking subsistence salmon from their commercial catch, instead obtained subsistence salmon fishing permits in order to fish for their personal and family use after the commercial season was over.

Before 1978, subsistence fishing was defined in AS 16.05.940(17) as fishing for "personal use and not for sale or barter."² In 1978, the Alaska State Legislature enacted ch. 151 SLA 1978 (hereafter the 1978 subsistence law). Subsistence fishing was redefined as fishing for "subsistence uses."³ Subsistence uses were defined as "customary and

2. Section 4, ch. 131 SLA 1960:

"subsistence fishing": the taking, fishing for or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means as defined by the Board. (*Hand-held pole & line*)???

3. AS 16.05.940(22), (formerly AS 16.05.940(17)), states:

"subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by

(Footnote Continued)

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

(Footnote Continued)

the Board of Fisheries.

4. AS 16.05.940(23), (formerly AS 16.05.940(26)), states:

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

5. AS 16.05.251(b) states:

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

(Footnote Continued)

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

(Footnote Continued)

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

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

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

6. AS 16.05.251(a) states:

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

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

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

(3) setting quotas and bag limits on the taking of fish;

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

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

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

(7) engaging in biological research, watershed and habitat improvement, fish management, protection, propagation and stocking;

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

(Footnote Continued)

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

(Footnote Continued)

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

(2) local residency; and

(3) availability of alternative resources.

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

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

(Footnote Continued)

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

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

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

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

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

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

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

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

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

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

CHARACTERISTICS OF SUBSISTENCE FISHERIES.

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

(Footnote Continued)

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

(Footnote Continued)

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

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

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

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

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

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

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

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

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

(Footnote Continued)

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

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

(Footnote Continued)

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

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

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

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

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

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

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

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

On appeal, Madison and Gjosund seek reversal of the two trial court decisions. They claim that the board did not act within the legislative authority granted by AS 16.05.251(b) and AS 16.05.940(2?) and (23) when it adopted the ten characteristics ultimately codified as 5 AAC 01.597.¹⁰

II. STANDARD OF REVIEW

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

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

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

In Kelly v. Zamarello, 486 P.2d 906, 917 (Alaska 1971), we stated that the "reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations." However, the issues in this case concern statutory interpretation of the words "customary and traditional" and the question whether the board has acted within the scope of its statutory authority. Such issues "fall into the realm of special competency of the courts." Alaska Public Utility Commission v. Municipality of Anchorage, 555 P.2d 262, 266 (Alaska 1976). See also State, Commercial Fisheries Entry Commission v. Templeton, 598 P.2d 77, 80 (Alaska 1979).

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

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

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

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

III. LEGISLATIVE HISTORY OF THE 1978 SUBSISTENCE LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

(Emphasis added).

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

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

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

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

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

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

(Emphasis added).

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

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

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

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

(Emphasis added).

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

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

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

(Emphasis added).

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

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

(Footnote Continued)

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

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

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

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

(Footnote Continued)

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

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

15. The board stipulated in 1982 that it violated

(Footnote Continued)

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

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

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

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

(Footnote Continued)

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

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

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

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

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

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

(Footnote Continued)

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

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

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

(Footnote Continued)

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

G. Cook

AKS

RECEIVED
MAY 23 1980
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

NATIVE VILLAGE OF TYONEK, et al.,)
Plaintiffs,)
vs.)
ALASKA BOARD OF FISHERIES, et al.,)
Defendants.)

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT
MAY 23 1980
Clerk of the Trial Courts
By Deputy

CIVIL ACTION NO. 3AM-80-3673

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs' motion for a preliminary injunction in the above-entitled action having come on for hearing on the 22d day of May 1980, all parties having been heard and plaintiffs' motion having been granted, the Court hereby enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The village of Tyonek is an Athabascan Indian village of approximately 300 people and 80 households located on the west side of Cook Inlet. Tyonek has been inhabited for generations by the Tanaina group of Athabascans who succeeded the Eskimo population which originally settled in the area in prehistoric times.

XX
not to be used

Today, the village still retains its ethnic identity and has the same characteristics of a rural Alaska Native community as those of Native villages in other areas of the state.

2. The Susitna River king salmon stock enters upper Cook Inlet and is the only stock of king salmon to pass by the village of Tyonek. The Susitna River stock enters Cook Inlet the beginning of May, and begins to pass by the village of Tyonek in mid-May.

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ATTORNEY AT LAW

See pages A (1) (4)

The Susitna River stock run peaks at the village at the end of May or the beginning of June and is usually completely past the village by the ^{week} ~~part~~ of June.

3. The mid-May to mid-June king salmon fishery is a customary and traditional subsistence use by residents of the village of Tyonek of the Susitna River king salmon stock in that this fishery has been in existence for generations, that the harvest of the king salmon at this time is an essential component of the cultural life of the village, that the art of cutting ^{king} salmon has been handed down through generations, that the early king salmon is the first fresh food of the spring, that king salmon are oiler than other species of salmon and therefore better suited for drying and preserving for winter use, that unlike other species of salmon king salmon are not susceptible to damage while drying from insects and seabirds, and that drying is usually completed prior to the start of summer rains.

4. The residents of the village of Tyonek fish for king salmon with set nets from the beach in front of their fish camps immediately south of the village.

5. Since 1964, the residents of the village of Tyonek have been prevented from participating in their customary and traditional mid-May to mid-June king salmon subsistence fishery by regulations adopted by defendants and their predecessors. These regulations were initially adopted due to poor escapement of the Susitna River king salmon stock.

6. In 1977, the defendant Alaska BOARD OF FISHERIES adopted a Comprehensive Management Policy for The Upper Cook Inlet Salmon Stocks which stated that stocks which move in Cook Inlet to spawning areas prior to June 10th would be managed ~~exclusively~~ for recreational uses. No mention was made in the management policy for management of such stocks for subsistence uses.

NORMAN A. COHEN
ATTORNEY AT LAW

for management of such stocks for subsistence uses for the Board of Fisheries, and the Board of Fisheries for subsistence uses.

7. In 1978, the Alaska State Legislature enacted ch 151 SLA 1978 (A.S. 16.05.251(b)) which requires that whenever it is necessary to restrict the taking of the Susitna River ^{fish} king salmon stock to assure the maintenance of such stock on a sustained-yield basis or to assure the continuation of subsistence uses of such king salmon stock, subsistence use of such stock shall be the priority use over sport and commercial uses.

cc
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Bill
see

Stock
fish
subsistence

8. A.S. 16.05.251(b) ^{also} requires defendant ALASKA BOARD OF FISHERIES to adopt subsistence fishing regulations for Susitna River king salmon stocks, which implement the priority for subsistence uses referred to in paragraph 7, unless it determines that adoption of such regulations will jeopardize or interfere with the maintenance of Susitna River king salmon stocks on a sustained-yield basis.

9. Prior to the ^{December 1979} March 1980 meetings of defendant ALASKA BOARD OF FISHERIES, said defendant, on behalf of plaintiff NATIVE VILLAGE OF TYONEK, published ^{summary of the} proposed regulations pursuant to the Administrative Procedures Act to open a subsistence king salmon fishery for the residents of the village of Tyonek, between May 15 and June 15.

10. On March 26, 1980, defendant ALASKA BOARD OF FISHERIES held a public hearing and received testimony on the proposed regulations from the Alaska Department of Fish and Game, residents of the village of Tyonek and other members of the public.

11. Testimony presented at the public hearing indicated that the residents of the village of Tyonek ^{and} customarily and traditionally harvested king salmon for subsistence uses between May 15 and June 15 ^{per the}.

12. Though evidence was presented that restrictions on taking by all user groups of the Susitna River king salmon stock were necessary, no evidence was presented at the hearing by the Alaska Department of Fish and Game that adoption of the proposed

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Attorney at Law

regulations would jeopardize or interfere with the maintenance of the Susitna River king salmon stock on a sustained-yield basis and the defendant ALASKA BOARD OF FISHERIES made no finding to that effect. 11. Board continued to express concern over the impact of the fisheries on the traditional subsistence activities of the village of Tyonek.

13. The defendant ALASKA BOARD OF FISHERIES rejected the plaintiffs' proposal but adopted proposals authorizing the harvest of 13,100 Susitna River king salmon by sports fishermen. ^{for subsistence fishing in Cook Inlet}

14. As a result of the failure of the defendant ALASKA BOARD OF FISHERIES to adopt proposed regulations opening a king salmon season for the residents of the village of Tyonek, the plaintiffs are threatened with irreparable harm in that plaintiffs' customary and traditional use of the Susitna River king salmon stock will be denied to them. Consequently, residents of the village of Tyonek will lose access to a valuable subsistence resource and the customary and traditional way of life of the village will be disrupted.

* 15. No other species of salmon available to the residents of the village of Tyonek can replace the Susitna River king salmon stock ^{harvested between May 15 and June 15, 1980} as a subsistence resource or substitute for the role of the Susitna River king salmon stock in the customary and traditional way of life of the village.

16. Defendants will be adequately protected if the residents of the village of Tyonek are permitted to harvest 3,000 king salmon from the Susitna River king salmon stock between May 23 and June 15, 1980.

17. Plaintiffs have raised serious and substantial questions. The failure of defendant ALASKA BOARD OF FISHERIES to adopt the proposals submitted on behalf of plaintiff NATIVE VILLAGE OF TYONEK and the adoption of proposals authorizing the harvest of 13,100 Susitna River king salmon by sports fishermen is a violation of A.S. 16.05.251(b) in that whenever it is necessary to restrict

NOBMAN A. COHEN
ATTORNEY AT LAW

the taking of Susitna River king salmon to assure the maintenance of that fish stock on a sustained-yield basis, or to assure the continuation of subsistence uses of such resource, subsistence use shall be the priority use.

CONCLUSIONS OF LAW

1. Unless the preliminary relief requested by plaintiffs is granted plaintiffs will suffer irreparable harm in that plaintiffs customary and traditional use of the Susitna River king salmon stock will be denied to them. Consequently, residents of the village of Tyonek will lose access to a valuable subsistence resource and the customary and traditional way of life of the village will be disrupted.

2. Defendants and the resource will be adequately protected if the residents of the village are permitted to harvest 3,000 king salmon from the Susitna River king salmon stock between May 23 and June 15, 1980.

3. Plaintiffs have raised serious and substantial questions in that:

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

b. The residents of the village of Tyonek have a customary and traditional use of the Susitna River king salmon stock between May 15 and June 15.

c. Adoption by defendant ALASKA BOARD OF FISHERIES of regulations which allow for the sport fishing of Susitna River king salmon without first adopting regulations which provide for the customary and traditional use of such stock by the residents of the village of Tyonek is a violation of the subsistence priority set forth in A.S. 16.05.251(b).

HENRY A. COHEN
ATTORNEY AT LAW

4. No bond is required of the plaintiffs prior to the issuance of the preliminary injunction.

DATED this 23rd day of May, 1990.

Neil Carlson
JUDGE OF THE SUPERIOR COURT

I certify that on 5-30-90
a copy of this document was sent to:
 Attorney(s) of Record, or

Other: _____
at address of record.

D. O. E. _____
Deputy Clerk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

NATIVE VILLAGE OF TYONEK, ^{et al.})
Plaintiffs,)
vs.)
ALASKA BOARD OF FISHERIES, ^{et al.})
Defendants.)

CIVIL ACTION NO. 3AN-30-3073

AGREEMENT OF SETTLEMENT

WHEREAS, a civil action has been brought by the Native village of Tyonek and several residents of the village of Tyonek, in which plaintiffs allege inter alia that the decision of the Alaska Board of Fisheries rejecting proposed regulations for king salmon fishing for subsistence uses in the upper Cook Inlet between May 15 and June 15 by residents of the village of Tyonek was a violation of A.S. 16.05.251(b) and request declaratory and injunctive relief; and

WHEREAS, on May 22, 1980, this Court granted plaintiffs' motion for a preliminary injunction and on May 23, 1980, entered findings of fact and conclusions of law restraining defendants from enforcing regulations which prohibit residents of the village of Tyonek from subsistence fishing for king salmon in the ^{vicinity of} ~~Cook Inlet~~ ^{Tyonek} between May 23, and June 15, 1980, and requiring defendants to adopt emergency order regulations to authorize the residents of the village of Tyonek to harvest king salmon ~~in the~~ ~~vicinity of~~ in the vicinity of Tyonek for subsistence uses between May 23, 1980 and June 15, 1980, with a limit of 50 king salmon per household not to exceed a total of 3,000 king salmon

and regulated to minimize the impact on any one stream.

WHEREAS, the parties in order to avoid the uncertainty of further litigation, wish to resolve this matter by means of settlement;

NOW, THEREFORE, the parties, through their attorneys and subject to the approval and order of this Court, hereby agree as follows:

STATEMENT OF FACTS

1. Plaintiff NATIVE VILLAGE OF TYONEK is a nonprofit corporation organized under the Indian Reorganization Act of 1934, 25 U.S.C. 461 et seq., to provide for the general health, safety, and well-being of the Athabascan Indian residents of the village of Tyonek, a substantial number of whom customarily and traditionally harvested king salmon in the vicinity of Tyonek during May and June for subsistence uses prior to the closure of the Tyonek king salmon subsistence fishery by Alaska Board of Fish and Game in 1964, and would harvest king salmon in the vicinity of Tyonek for subsistence uses in 1980 but for the fact that defendant ALASKA BOARD OF FISHERIES did not adopt proposed regulations for subsistence king salmon fishing in the vicinity of Tyonek by residents of the village of Tyonek between May 15 and June 15.

2. Plaintiffs NELLIE CHICKALUSION, FEDORA CONSTANTINE, PETER CONSTANTINE, and SAVA STEPHAN are Athabascan Indian residents of the village of Tyonek who customarily and traditionally fished at Tyonek for king salmon for subsistence uses in May and June prior to the closure of the Tyonek king salmon subsistence fishery by the Alaska Board of Fish and Game in 1964, and who (with the exception of plaintiff PETER CONSTANTINE) would harvest king salmon in the vicinity of Tyonek in May and June for

subsistence uses in 1930 if defendant ALASKA BOARD OF FISHERIES had adopted proposed regulations for subsistence king salmon fishing in the vicinity of Tyonek by residents of the village of Tyonek. Health problems would prevent plaintiff PETER CONSTANTINE from harvesting king salmon in the vicinity of Tyonek for subsistence uses in 1930, but residents of the village of Tyonek would share their king salmon subsistence harvest with plaintiff PETER CONSTANTINE as is the customary and traditional practice of the residents of the village of Tyonek with respect to the distribution of subsistence resources to the elders of the village.

3. Defendant ALASKA BOARD OF FISHERIES is established by A.S. 16.05.221 for the purposes of the conservation and development of the fishery resources of the state. The board is required by A.S. 16.05.251(b) to adopt regulations permitting the taking of king salmon in the vicinity of Tyonek for subsistence uses.

4. Defendant RONALD O. SKOOG is the Commissioner of the Alaska Department of Fish and Game and is required by A.S. 16.05.020 to manage the fish resources of the state in the interest of the economy and general well-being of the state. These fish resources include king salmon in the vicinity of Tyonek. Defendant RONALD O. SKOOG is the ex officio secretary of defendant ALASKA BOARD OF FISHERIES and has authority pursuant to A.S. 16.05.060 to open and close seasons and periods on fish.

5. Defendant WILLIAM R. NIX is the Commissioner and principal executive officer of the Alaska Department of Public Safety. Pursuant to A.S. 44.41.020 the Alaska Department of Public Safety is charged with responsibility for the administrative functions relative to the protection of life and property including enforcement of fishing regulations adopted by defendant ALASKA BOARD OF FISHERIES.

6. Tyonek, a community on the west side of Cook Inlet, is an Athabascan Indian village of approximately 350 people, over 95% of whom are Athabascan Indians. Tyonek has been inhabited for generations by the Tanaina group of Athabascans who succeeded the Eskimo population which originally settled the area in pre-historic times. The present residents of the village are the descendants of the Tanaina group. Today, the village still retains its ethnic Athabascan identity, is a rural Alaska Native village and has not abandoned its customary and traditional use of king salmon.

7. For the purposes of this Agreement of Settlement, "fish" means the Susitna River king salmon which enter Cook Inlet waters the beginning of May and begin to pass by the village of Tyonek in mid-May and spawn primarily in streams located in the Susitna River drainage.

8. Susitna River king salmon peak at the village at the end of May or in early June and are usually completely past the village by the end of June.

9. The mid-May to mid-June king salmon fishery is a customary and traditional subsistence use by residents domiciled in the village of Tyonek of the Susitna River king salmon in that this fishery has been in existence for generations, that the harvest of the king salmon at this time is a customary and traditional component of the cultural life of the village, that the art of cutting large king salmon has been handed down through generations, that the early king salmon are the first significant subsistence fresh salmon of the spring, that Susitna River king salmon are oilier than other species of salmon found in Cook Inlet in the vicinity of Tyonek and therefore better suited for drying and preserving for winter use and less susceptible to damage while

drying from insects and seabirds, and that drying takes approximately three weeks and is usually completed by the end of June.

10. The residents of the village of Tyonek harvest king salmon with set nets from the beach in front of their fish camps immediately south of the village.

11. Since 1964, the residents of the village of Tyonek have been prevented from participating in their customary and traditional mid-May to mid-June king salmon subsistence fishery by regulations adopted by defendants and their predecessors. These regulations were initially adopted due to poor escapement of the Susitna River king salmon.

12. Prior to the December 1979 and March 1980 meetings of defendant ALASKA BOARD OF FISHERIES, said defendant, on request of plaintiff NATIVE VILLAGE OF TYONEK, published summaries of regulations proposed by said plaintiffs pursuant to the Administrative Procedure Act to open a subsistence king salmon fishery for the residents of the village of Tyonek, between May 15 and June 15.

13. On March 26, 1980, defendant ALASKA BOARD OF FISHERIES held a public hearing and received testimony on the proposed regulations from the Alaska Department of Fish and Game, residents of the village of Tyonek and other members of the public. Public testimony was also received at the December 19, 1979 meeting of defendant ALASKA BOARD OF FISHERIES.

14. Testimony presented at the public hearings indicated that the residents of the village of Tyonek customarily and traditionally harvested king salmon for subsistence uses between May 15 and June 15 prior to the closure in 1964.

15. Though evidence was presented to defendant ALASKA BOARD OF FISHERIES that restrictions on taking by all user groups of Susitna River king salmon in Cook Inlet were necessary, no

evidence was presented stating that adoption of the proposed subsistence regulations would jeopardize or interfere with the maintenance of Susitna River king salmon on a sustained-yield basis and the defendant ALASKA BOARD OF FISHERIES made no finding at the March meeting to that effect.

16. The defendant ALASKA BOARD OF FISHERIES rejected the plaintiffs' proposals for subsistence fishing in Cook Inlet but adopted proposals which resulted in authorizing the sport harvest of up to 13,100 Susitna River king salmon pursuant to 5 AAC 60.030(a).

17. A failure of the defendant ALASKA BOARD OF FISHERIES to adopt regulations opening a king salmon season for the residents of the village of Tyonek, between May 15 and June 15 of each year, threaten plaintiffs with irreparable harm in that plaintiffs' customary and traditional use of Susitna River king salmon from May 15 to June 15 will be unnecessarily denied to them. Access to a significant customary and traditional subsistence resource in accordance with A.S. 16.05.251(b) will be lost and the customary and traditional cultural life of the village will be disrupted.

18. No other species of salmon available to the residents of the village of Tyonek can fully replace Susitna River king salmon harvested between May 15 and June 15 as a subsistence resource or substitute for the role of Susitna River king salmon in the customary and traditional cultural life of the village.

CONSENT DECREE

1. Under A.S. 16.05.940(6) and (26), subsistence uses of fish are the customary and traditional uses in Alaska of such fish for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of such fish

evidence was presented stating that adoption of the proposed subsistence regulations would jeopardize or interfere with the maintenance of Susitna River king salmon on a sustained-yield basis and the defendant ALASKA BOARD OF FISHERIES made no finding at the March meeting to that effect.

16. The defendant ALASKA BOARD OF FISHERIES rejected the plaintiffs' proposals for subsistence fishing in Cook Inlet but adopted proposals which resulted in authorizing the sport harvest of up to 13,100 Susitna River king salmon pursuant to 5 AAC 60.030(a).

17. A failure of the defendant ALASKA BOARD OF FISHERIES to adopt regulations opening a king salmon season for the residents of the village of Tyonek, between May 15 and June 15 of each year, threaten plaintiffs with irreparable harm in that plaintiffs' customary and traditional use of Susitna River king salmon from May 15 to June 15 will be unnecessarily denied to them. Access to a significant customary and traditional subsistence resource in accordance with A.S. 16.05.251(b) will be lost and the customary and traditional cultural life of the village will be disrupted.

18. No other species of salmon available to the residents of the village of Tyonek can fully replace Susitna River king salmon harvested between May 15 and June 15 as a subsistence resource or substitute for the role of Susitna River king salmon in the customary and traditional cultural life of the village.

CONSIST DECREE

1. Under A.S. 16.05.240(a) and (b), subsistence uses include the customary and traditional uses in Alaska of such fish for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of such fish.

taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption.

2. The residents of the village of Tyonek have a customary and traditional subsistence use of Susitna River king salmon between May 15 and June 15 for all of the reasons set forth in paragraph 9 of the Statement of Agreed Facts. The role of the harvest of Susitna River king salmon in the cultural life of Tyonek and the handing down of information about the harvest, preparation, and use of such fish from generation to generation are significant factors in determining whether use of such fish for personal or family consumption is a "customary and traditional subsistence use of such fish.

3. Defendant ALASKA BOARD OF FISHERIES is required to adopt regulations which authorize the subsistence fishing of Susitna River king salmon by residents of the village of Tyonek in the upper Cook Inlet in the vicinity of the village of Tyonek between May 15 and June 15 each year, unless such defendant determines, in accordance with the Administrative Procedure Act, that any subsistence fishing for Susitna River king salmon by the residents of the village of Tyonek will jeopardize or interfere with the maintenance of such fish on a sustained-yield basis.

4. The parties agree and the Court approves, for the purposes of achieving an agreement to this litigation, that whenever defendant ALASKA BOARD OF FISHERIES makes a finding that any subsistence fishing for Susitna River king salmon by residents of the village of Tyonek will jeopardize or interfere with the maintenance of such fish on a sustained-yield basis, such finding shall be made on the record and shall detail the biological information which forms the basis of such finding. The finding (including the biological information) shall be reduced to writing.

5. Regulations setting bag limits, gear types, and open

fishing periods for the subsistence fishing of Susitna River king salmon by residents of the village of Tyonek shall cause the least adverse impact upon such residents, and shall be consistent, insofar as practicable, with sound fishery conservation practices, such as minimizing the impact on the return of such fish to any one stream.

6. Whenever it is necessary to restrict the taking of Susitna River king salmon to assure the maintenance of such fish on a sustained-yield basis, or to assure the continuation of subsistence uses of such fish, customary and traditional subsistence use by the residents of the village of Tyonek shall be the priority use under A.S. 16.05.251(b). The defendant ALASKA BOARD OF FISHERIES shall not adopt regulations which allow for the commercial (between May 15 and June 15) and sport fishing of Susitna River king salmon, without first adopting regulations which provide for this subsistence priority over such commercial and sport use unless the Board has made a finding, as required by A.S. 16.05.251(b), that any subsistence fishing for Susitna River king salmon by the residents of the village of Tyonek will jeopardize or interfere with the maintenance of such fish on a sustained-yield basis.

7. Defendants ALASKA BOARD OF FISHERIES, RONALD O. SKOOG, and WILLIAM R. NIX and their successors in office are hereby permanently restrained from enforcing regulations which prohibit residents of the village of Tyonek from subsistence fishing for Susitna River king salmon in the upper Cook Inlet in the vicinity of the village of Tyonek between May 15 and June 15 of each year without defendant ALASKA BOARD OF FISHERIES first finding, in accordance with the Administrative Procedure Act, that such subsistence fishing will jeopardize or interfere with the maintenance of such fish on a sustained-yield basis.

8. Counts I, II and IV of plaintiffs' complaint are dismissed with prejudice.

9. This Court shall retain jurisdiction over this civil action until July 1, 1931.

DATED: _____

DATED: _____

Larri Spengler

Norman A. Cohen

DATED: _____

DATED: _____

John Gissberg
Attorneys for Defendants

Donald C. Mitchell
Attorneys for Plaintiffs

ORDER

The above Agreement of Settlement and Consent Decree are approved.

DATED: _____

Victor Carlson
Superior Court Judge

MARCH 26, 1985 HOUSE COMMITTEE ON SUBSISTENCE

Billy Barrier - legislative legal staff

Teleconference

ANG

DALE BONDARENT: Gov. + AG giving misinformation. Believe those who catch fish for our special use, given priority -

Ftg reserved for public use. Subject to preferences among beneficial uses. Cannot give preference to users, by rural etc.

Request AG to rule on:

Kensi: 1) request for gillnet

2) fish w/ dipnet

3) take by hook + line

Oppose Gov. bill to circumvent courts decision. Only solution is complete repeal of subsistence law.

~~Sub~~ Continued denial of sports equal rights

CORDOVA: Comm. gillnetter 35 years - request to pass bill + give flexibility back to boards. Cordova completely dependent on commercial fishing

BKS

BYRON THREE: Chitna dipnetters: Ftg + AG's office painting bleak picture they can't move Gov's bill through. Will be in compliance with ANILCA.

JNU Bob Blake: Pres. UFA, Pres. Cordova Fish. United: testimony on

2)

Behalf of self. Comm. fishermen. Board been implemented satisfied ~ 99% of state. Now leaves majority of state to be disenfranchised. Potential demand is probably realistic, not imagined. After state passed a law ~~on~~ subsistence, there was an increase in subsistence fishing.

Need subsistence law. People where there's nothing else for their economy. Requested disallow subsistence use by people of commercial catch. If Cordova fishermen disenfranchised wd. subsistence fish.

Legislature's original lack of intention reflected in interpretation of this ~~bill~~ statute.

If affect Copper River fishery, wd. be a loss of probably 150 jobs. 4 land based canneries in Cordova, 3 in Valdez, some floating, one out of Whittier.

MATSU: Kurt Johnson, Eagle River; feel totally unconstitutional. If everyone in state allowed, would destroy resource; should be more by need than by location. Anchorage people who need it, more than someone in areas which are rural, who are making lots of money. Should be along person's need.

Sund: would advocate a needs approach to other state programs.

HAINES: Leo Kambas - Commercial fished for over 30 years. Didn't say much.

3)

ANG. Sam McDowell: Pg. 35, customary + traditional
not intended to be restrictive.

What. Feds place in Tyonek cannot give priority
based on geography. Repeal law. \$70,000 salary w/ someone
who has a subsistence permit.

CODDORF Margie Johnson: Comm. fishing back here, speedy
resolution necessary supports HB + SB - Commercial crab
fishing eliminated. If Gilnet closed, wd. be devastating.

UNALASKA Brian McLean: Still trying to get copy of
Nelson decision + AG's comment, Majority of commercial fishing
done by local people to supplement subsistence economy.

DELTA Michael Chambers: Can't base subsistence on income
because unconstitutional. Anyone w/ class 5A (25¢
license), would eliminate problem abt. unconstitutional to
base use on geography. grandfather users based on history
of using permits.

HB 288 - ask not to support, discriminate.

Seward: some based on non - need: student loans,
education, limited entry.

based on need: Public health.

Urban - rural: Non conforming housing, capital projects

Michael Chambers - should be based on income.

4)

Bethel HAROLD SPARK (Nunam Kitutsisti)

- * In '76 relationships worked up through Bods.
- * 28 LAW
- * BOARDS worked up system - appeared to be working.
- * Personal use can be handled.
- * Satisfies all constituency.
- + Put back into hands of resource allocations.
Have good board system. Every village has a representative.

No longer have pristine environment (mining, gas etc.)
Will need to live w/ shortages. In rural areas, bulked people
depend on resources - separate based on resource.
Personal use addresses Kenai fishermen.

FBKS Bill Hays: Recent crt. decision reinstates
equality. Request take time to reinstate equality to
all, rid selves of forced discrimination. Oppose ¹⁸⁸ 288.

MAT SU Nowell Woods Mat Valley Sportsman: Totally
out off fishing in upper end. Historically many users that
are being denied access. Have hard time when have no
definition of rural. Worried that people who move in will
be hard to move in.

UNALAKLEET Charlie Blatchford: Economy villages very
depressed. Winter, unemployment ~ 80%. Outside people

5)

moved in further depleting economy. In Unalakleet have almost no representation. We have to eat these fish.

CORDOVA: Own & operate byakpat Smoking + Cannery:
Post Midnoon: F19 faces tough if not impossible allocation + output.

FBKS Doug Buchanan: Subsequent task force has not done anything. Native Corporations will flood legislature w/ propaganda. TASK FORCE was supposed to be investigatory. Task force has done nothing. Dishonestly kept issue from being honestly investigated. Supreme Ct. does not put in mind. Quite fix worse than being under law.

Herman: What do you mean by Native Corporation propaganda?

Teleconference

April 8 5:30 - 8:30 pm
April 13 1-4:30

CORDOVA: Council have full season. Critical bird? Fisheries can manage for all people of state. Need to receive immediate endorsement of bill.

JUNEAU Phylus Day (Cordova) - passed resolution in support of HB 288. Gillnet starts May 15. Next opening starts in June.

6)

Only have 4 local canneries. Used to have 7.

KATO: How many people employed by canneries?

DAY: up to 850 people in canneries.

JNO Pon Williams: Pres of AK Native Brotherhood, 68,000 num
in contact w/ AFN, (Tlingit-Haida) in position so
not in compliance w/ ANILCA, cannot allocate. T-H. lived
through Fed grant. before. Bill wd. restore to Brds.
Allocation. Personal use ~~of~~ shd. not conflict w/ subsistence
use areas, as has been applic. to lay Brds until MADISON.
Official correspondence, Sept 6, 1984 - letter from Commission
to ANB, interpreting def. of personal use. ~~Brds~~ Thanks Brds.
Stand w/ Brd of Fisheries + Governor.

Sheffield to push for fishing law

by Dean Fosdick
Associated Press

Juneau — Gov. Bill Sheffield said Tuesday he plans to begin applying pressure on the legislature within the next several days in efforts to get the subsistence issue settled this year.

But Senate President Don Bennett, R-Fairbanks, said lawmakers "won't be stamped half way through the session to do something we regret . . . that could be a mistake."

During an interview in his capital office Tuesday, Sheffield said he would be "irresponsible" if he didn't try to get his subsistence legislation passed this session.

But the governor said it was too early to decide about declaring a special session if lawmakers call it quits without solving the issue.

"It might be a little too early to predict what I'd do in that case," Sheffield said. "I don't think we've had a chance to answer the interests or concerns of people."

"The rural communities have one group of concerns, the urban communities — Anchorage — another. Fairbanks is separate from that . . . Copper River dip netters," he said. "What I've done is put the regulations into the law."

"That would bring us back to the status quo way we've been going the last three years," he said. "Except for a few isolated cases, it seems to be working fine."

The governor said he's been relatively quiet about the subsistence issue since introducing the legislation last week.

"I'm letting it ferment a bit," Sheffield said. "But I see us stepping it (pressure) up now. We'll get somebody in the legislature to help. And we'll see how the (fish and game) boards assess the situation."

The administration bill would restore — by making them laws instead of regulations — the same subsistence hunting and fishing rules struck down Feb. 22 by the Alaska Supreme Court.

State officials are warning sport fishing in southcentral Alaska could be severely restricted this summer or completely shut down because of the court's ruling, which gives subsistence users first right to fish and game stocks.

Commercial fishing also is in danger of being interrupted by the ruling, officials said.

Don Collinsworth, commissioner of the state Department of Fish and Game, said Tuesday it's difficult to predict what might happen this summer because no one knows how many people will take up subsistence fishing.

"We have the necessary authority to assure there won't be any danger to biological resources — even if we have to close all fisheries," Collinsworth said. "But it's hard to say right now what the impacts are going to be."

House Speaker Ben Grussendorf, D-Sitka, said hearings are scheduled on the issue next week in the House.

"We have to look and see how the big groups out there feel about it before we decide if it's a priority," Grussendorf said. "I don't want to move too quickly . . . get everyone riled up until we get the facts."

McKai from Zahn 3-21-85

re: Allocation among residents & non-residents

The New Mexico case (Terk vs Gordon) involved two questions:

1. The state allocation of a fixed percent of sheep hunting permits for non-residents on fed land was arbitrary, and
2. non-res fees were discriminatory.

X U.S. District court ruled that the fixed percent allocation of permits to non-res was unconstitutional.

The state did not appeal this but did change its permitting procedures.

Supreme court did not address this point since state had not challenged it.

(Discriminatory fees were found reasonable, however).

The above plaintiff, Terk, filed a similar complaint in Colorado in 1984. That litigation is in limbo, however, since the 1984 regs expired before the issue was clearly addressed.

Colorado plans no action unless they hear more from Terk.

1. Issue

There is an initiative on the 1982 General Election ballot which would, if passed, repeal the current state statute which provides for a priority allocation, in times of shortage, to "subsistence" users of the state's fish and game resources.

In addition to repealing current law, the initiative contains new language which creates a new user category - "personal consumptive use". It further says that no allocations within this category can be made on the basis of race, sex, local residency, geographic location, etc. (see attached wording).

2. Background.

Before 1978, subsistence allocation was done by regulation. In 1978 the current subsistence statute was enacted partially in response to a supreme court decision which upheld the contention of the Tanana Valley Sportsmen's Association in a suit against the Board of Game that the Board of Game had no specific statutory authority to limit access to game to any specific group of users (in this case, villagers north of Fairbanks). There was in addition, federal pressure to create statutory authority for subsistence use. The federal "d-2" legislation was passed later with subsistence provisions similar to state law and a provision which required the state to maintain its subsistence priority law or lose sole management of fish and game on federal lands.

3. Facts & Figures.

The federal law and the state law both give priority to "customary and traditional uses" as opposed to users. This distinction made it necessary for the Boards of Fish and Game to make regulations which deal with eligibility on an area basis instead of an individual basis. By definition, areas of subsistence use are those areas outside a city or borough or a community of less than 7000 which is not connected to the rest of the state by road. In addition, only residents of those areas may be considered eligible for subsistence priority allocation. Those residents make up only about 15% of the population of the state.

It is this restriction to residents of a particular area which is at the center of the current controversy.

Note: Before the Boards were required to make up these definitions, as a practical matter, almost anyone could get a subsistence permit if the harvest was perceived as being generous enough (especially with fish).

It is estimated that the value of the subsistence harvest is over \$100 million annually.

Melissa Fouse
28 Oct 82

4. Key Players/Impacts of Repeal

a. Private citizens supporting the initiative are mostly urban dwellers who hunt, fish and trap for "personal consumption". About 22,000 signatures were collected for the initiative petition. This group feels threatened by the possibility of losing access to the resource. Their argument centers around "putting food on their tables" as opposed to just recreation or sport. They say that if the initiative passes they will go to Washington, D.C. to work for repeal of federal law, both the subsistence preference law and the Marine Mammal Act.

Another premise with which the pro-repeal group backs up their argument is that to create a geographically oriented special user group is in conflict with the state constitution which says that resources are reserved to the people for common use. However, the constitution goes on to say that resource management is subject to preferences among beneficial uses. We have an opinion from Jack Chenoweth saying that the law is not unconstitutional, but no court has yet to render an opinion.

b. Governor Hammond publicly and actively opposes the initiative. He appears to favor change in the statute to eliminate the "customary and traditional uses" definition, but it is not clear what he would use as criteria instead.

Of the two frontrunning gubernatorial candidates, Tom Fink and Bill Sheffield, only Tom Fink supports repeal of the current law. There will have to be some adjustments to the law in any case and the next administration will probably set the tone for how it is changed, and certainly how any change would be administered. The make-up of the Boards of Fish and Game could influence strongly how easy any access for any user group could be.

c. The Department of Fish & Game has been factionalized by the initiative. Ron Sommerville, director of the division of game management has taken a leave of absence to work for passage of the initiative. His official motivation is that the current law is a bad one and should be changed. The view "on the street" is that he is looking to get a place in the potential Fink administration, and also that there is a lot of jealousy between the older, established divisions of management in the Department and the newly created subsistence division.

d. James Watt and the Department of the Interior: Federal law requires Interior to enforce subsistence preferences on federal lands if the state subsistence priority law is repealed. The Secretary of the Interior doesn't want to do that, both in terms of philosophy and economics. The Department has said of course, they will obey the law and take over, but Watt has said that something can be worked out. It has been said that the pressure of trying to manage those lands without sufficient manpower, etc., would result in the closure of federal lands to all but subsistence users. Enforcement of course is another matter - with no philosophical impetus under this administration or manpower in the field, there probably wouldn't be much enforcement.

Businesses: Guides stand to lose a great deal if the initiative passes and federal management on federal land becomes a reality - the assumption being that access for other than subsistence users would be restricted or denied.

Native Corporations, as a matter of face, may feel compelled to post "no trespassing" signs on their 44 million acres. That would have the potential for creating a tremendous amount of racial divisiveness in Alaska. Also, if the "customary and traditional" users have less access to the resource, and thus less food, barter material, etc., there will be more pressure on their social service arms and hence the State for cash.

Small business in the bush could suffer if the initiative passes too. There are no doubt many "trading posts" in the bush providing goods in trade for subsistence use-obtained materials (hides, furs, crafts, etc.). Even if the assumption were to be made that the state would make up the difference in cash (or cash equivalents such as food stamps, etc.) there would be a lag time in getting those replacements to the areas affected.

A small group who would be affected more by the enactment of the new law than by repeal of the old will be foreign hunters. If the "local residency" language in the new law is construed to mean those persons living outside the state also, anyone can be a personal consumptive user. It would mean a loss of revenue to the state, since big game tags are more expensive for outside hunters.

Subsistence Hunters: It is difficult to assess the immediate impact on subsistence users. Current management of the resource skews more of the resource in the subsistence areas to locals, and subsistence users have different bag limits, seasons, etc. How the Boards of Fish and Game can equalize the access to the resource without lessening the harvest of the subsistence user is difficult to tell. Certainly there would be strong feeling among persons who would begin to receive less than they are accustomed to and probably there would be an upsurge in poaching. Again, enforcement would be based upon the administration's viewpoint.

5. After the Election

As of this writing, the polls show that the initiative will not pass. The issue will not go away, however. There has been a lot of pressure to change the law in any case and that pressure will remain. In addition, many of the candidates (particularly Republicans) have agreed that the law is unfair and needs to be changed, even if only to provide access to poor "customary and traditional users" in the urban areas. The pro-repeal group may challenge the law in court, or at any rate, threaten to if the Legislature does not act.

Melissa Fouse
25 Oct 82

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The Legislature could probably expand current law to allow for need since the federal requirement/language will remain.

The Legislature could create an additional class for "personal consumptive users" and direct the Boards of Fish and Game to establish criteria for qualification and a level of access between sports and subsistence. That would not remove the subsistence priority, but might assuage the people who feel that they are not getting their fair share for their table.

Melissa Fouse
25 Oct 82

21 Dec

*Subsistence
File
Melissa*

Subsistence.

The current state subsistence statute is derived from and is a requirement of ANILCA. It calls for priority allocation of fish and game resources to "customary and traditional uses." This means that when and or if the resource is in short supply, the first allocation of the resource will go to those entities who are the most dependent upon it.

If the state statute is repealed, the Department of the Interior can take over the fish and game management on federal lands under the agreement with the state under ANILCA. The anti-subsistence people say that it won't happen, the pro-subsistence and some others (i.e. John Katz) say that it will. The anti-subsistence people don't try to deny that that is a real possibility, they say that the state was blackmailed by that provision into enacting the state statute, and that it will never be carried out anyway.

Alaska

Attached are both the initiative and the AFN resolution passed at this convention last week.

There is no room for compromise in the initiative at all - that is, it would not be able to be worked out on the basis of need under any criteria. What they are aiming for is for everyone to have X number of fish allocated to them, or X number of caribou. Unfortunately, when the resource is in danger, it would mean that those who are most dependent upon fish or game for food wouldn't be able to take more than anyone else.

The AFN resolution wants the status quo. There was some talk earlier about setting the ten criteria for "customary and traditional use" regulations into statute, but there is no reference to that in the resolution.

The Anchorage area is primarily concerned about Cook Inlet. Last year, Tyonek, English Bay, and Port Graham were determined to be the only places where "customary and traditional uses" met all ten criteria as determined by the board of fish. What this boiled down to was that people on the east side of the peninsula who had been set netting on the beach were no longer allowed to do it (they had been fishing with subsistence permits). Also the allocation of king salmon to Tyonek was considered too large by sport fishermen who were apparently afraid they wouldn't be able to catch their share with just hooks and lines.

The amazing thing is that no one has been deprived of any fish - except for those set-netters on the east side of the peninsula. The percentage of king salmon taken in the subsistence fishery was about 3%.

AT Tyonek, etc.: Cook Inlet

AN INITIATIVE

For an Act entitled: "An Act relating to individual equality for personal consumptive users of fish and game, and to repeal existing laws relating to subsistence use of fish and game.

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

*Section 1. AS 16.05 is amended by adding a new section to read:

Section 16.05.907. HUNTING, FISHING AND TRAPPING.

- (a) This section may be cited as the Alaska Anti-Discrimination Hunting, Fishing and Trapping Rights Act.
- (b) There shall be no discrimination in the allocation of fish or game based on race or sex.
- (c) Fish and wildlife are reserved to all the people of the state for common use. These resources should be equally available to personal consumptive users of all fish or game, and no distinctions shall be made for the reason of economic status, land ownership, local residency,² past use or past dependence on the resource, or lack of alternative resources.
- (d) The Board of Fisheries and the Board of Game may adopt regulations providing for and distinguishing between commercial fishing, sport fishing, hunting and trapping.

*Section 2. As 16.05.090 (c), AS 16.05.094, AS 16.05.251 (b), AS 16.05.255 (b), AS 16.05.257, AS 16.05.930 (e), AS 16.05.940 (17), AS 16.05.940 (26), and AS 16.05.940 (27) are repealed.

*Section 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications thereof.

*1. This would mean there would be no way to determine allocation on the basis of need based on income.
(a compromise position that would probably be favorable considered by both sides)

2. Since there is no real official definition of local residency this could mean that outsiders would have the same access to the resources that residents do.
They intend it to mean village residency.

AFN CONVENTION RESOLUTION

81-01

ENTITLED: "In Support of Sensible Fish and Game Management for Alaska"

- WHEREAS, Alaska Native People, since time immemorial, have harvested fish and game resources and other renewable resources to meet their cultural, spiritual, nutritional, social, and economic needs; and,
- WHEREAS, in recent years, many non-Natives have adopted the subsistence lifestyle and have grown dependent on the land and its resources for their well-being; and,
- WHEREAS, in recognition of the importance of subsistence uses to all Alaskans, the Alaska Legislature enacted a State Subsistence Management Statute in 1978; and,
- WHEREAS, in recognition of the importance of subsistence uses on Federal lands, and in fulfillment of its Trust Relationship with Alaska Natives, the U. S. Congress enacted a Federal Subsistence Management Statute in 1980; and,
- WHEREAS, these enactments, taken together with other State and Federal laws, provide for sound and prudent management of Alaska's renewable resources on a sustained-yield basis; and,
- WHEREAS, these statutes also provide for a fair and equitable allocation of fish and game resources when a fish stock or a game population is insufficient to sustain simultaneous harvesting for sport, commercial, and subsistence uses, and assure that the management of the stock or population on a sustained-yield basis is not jeopardized; and,
- WHEREAS, a group organized under the banner of "Alaskans for Equal Hunting and Fishing Rights" is conducting a publicity campaign to discredit Alaska's Subsistence Statutes and the benefits they provide to Alaska's people; and,
- WHEREAS, this same group is supporting an initiative entitled "Personal Consumption of Fish and Game" for submission to the voters during the 1982 election; and,
- WHEREAS, if approved by Alaskan voters, the initiative would remove all authority for the Boards of Fish and Game to sensibly manage Alaska's fish and game resources for the benefit of all Alaskans; and,
- WHEREAS, passage of the initiative would also rend asunder the social fabric of Alaska, pitting urban residents against rural residents and non-Natives against Natives; and,
- WHEREAS, the Alaska Federation of Natives, through its Board of Directors, has recognized the calamity that would befall all Alaskans were the initiative to succeed, and has urged all Alaskans, urban and rural, Native and non-Native to unite to defeat it.

NOW THEREFORE BE IT RESOLVED:

that the Alaska Federation of Natives, in convention assembled, does hereby oppose the initiative supported by "Alaskans for Equal Hunting and Fishing Rights"; and,

BE IT FURTHER RESOLVED:

that the AFN asks all Alaskans to unite in support of sensible fish and game management.

DATED THIS _____ day of December, 1981.

SOME THOUGHTS ON SUBSISTENCE:

Most, if not all Alaskans have a unique view of subsistence, based on their own personal prejudices, upbringing, cultural background, geographic affiliation and experiences. These views tend to reflect in a large way their own peculiar ethnocentricity, which is a view of the world which basically stems from feelings of group superiority.

Contrary to frequently voiced fears that usually emanate from Alaskan urban centers, the subsistence law contained in Title 16 of the Alaska Statutes is not racially oriented and hence does not fly in the face of the Alaska Constitution's prohibition against allocation of resources on a racial basis. The law is clearly based on valid criteria including long standing subsistence traditions, concepts of occupancy and resource utilization over time, and economic realities which are either unique or nearly so in that they retain substantial elements of their previous historic nature. Subsistence is a system which, when laid bare, is economic in function, integral within it's setting, difficult of replacement, culturally linked in almost all instances (with some exceptions in urban or severely impacted areas), associated with concepts of self-sufficiency, conservative in most settings, characterized by efficiency and investment of labor, and a new reinforcer of the family, extended family, community, and region. In most rural areas, it is an economic system which includes all comers who desire to stake their future to a significant degree on its potential rewards. Necessarily, a subsistence lifestyle involves certain losses of alternatives and sacrifice including loss of alternative employment opportunities, less comfort, and loss of leisure and other benefits usually inherent in the urban lifestyle. The accrued benefits of the subsistence life must be balanced against potential sacrifices. However, the traditional subsistence economy provides a counter to economic systems based on monetary standards which are uncertain and subject to extra-regional forces.

Many critics of subsistence would erroneously maintain that subsistence is not economic in a real sense. That view is patently untenable. ~~Subs. is not~~ ^{PERFORMS THE FUNCTION OF} ~~performing some characteristics of micro-economic systems, etc.~~ It has been estimated that to replace subsistence in Alaska would require in excess of \$100 million, and that estimate is rather stale. Some other elements of economic models are clearly lacking including profit maximization, capital formation and depreciation, but these elements, do not, in my opinion invalidate subsistence as an economic system. In its rural setting subsistence ~~is~~ ^{PERFORMS THE FUNCTION OF} the normal market place in providing essential needs ~~in a real sense.~~ ~~Arguments~~ Arguments can and are made that attempt to invalidate the cultural and psychological importance of subsistence but they won't stand on their own merits.

Another aspect of subsistence which must be discussed (it has been many times, but most people tend to dismiss it) is the question of urban versus rural user groups. Viable alternatives for rural Alaskans simply do not come up to the level available to urban dwellers and subsistence is a major mitigating factor in rural unemployment. The same situation, while a potential alternative for an extremely small percentage of urban dwellers, is not now, nor ever likely to be significant in those areas. This is true because there are simply too many consumers chasing available subsistence resources and the situation is likely to become even more acute over time. The Cook Inlet example illustrates this situation graphically. The urban allocation problems we have faced in recent times are the crucial issue, not the rural counterpart. All the major crises in subsistence allocation are essentially urban in setting or user group residence (Nelchina, Caribou Herd, Copper River Salmon Fishery, Cook Inlet Salmon Fishery, the Tyonek problem, and recently the Tanana River issue). What is clear at this point is that no significant allocation problems have surfaced among rural beneficial user groups regardless of race, locale, particular resource or group philosophy.

Another emotional issue stems from the perception on the part of the legitimate vested interests that the Alaska Native population has been granted exclusive rights and privileges with respect to subsistence resources all out of proportion to their need or constitutional right. These "vested interests" include commercial users of all descriptions; guides, hunters, sports fisherman and sportsman. The premise that native subsistors have been granted advantages unduly is basically untrue. Although ANSCA and the subsistence laws did reaffirm native rights in land and subsistence resources they have not in demonstrable fashion curtailed other legitimate competing user groups in a real sense. The objective of subsistence has always been to preserve all resources for the use of all interests and preservation of the same in concert with the "sustained yield principle".

The ranking of competing interests is mandated in state and federal law. Attacks on this ranking of user groups and harvesters conveniently ignore numerous precedents for this type of discrimination. Among examples one can cite are, limited entry, old age bonuses, alcohol sales permitting structures, guide licensing area ceilings, and numerous others. Courts have traditionally felt compelled to allow such practices to preserve viable opportunities, prevent abuses, or install control mechanisms to preserve a valid minority interest. The rationale for such realities may be moot but such legal sanctions abound in all aspects of our society.

As I stated previously - rural subsistors differ from urban subsistors in several fundamental ways. The most basic difference is the economic stake in the resources integral with the rural way of life. Urban residents simply do not operate under

the same economic set and certainly do not as a group depend to the same degree on the fish/game resource. The potential institutionalized discrimination which does exist in subsistence provisions, is widely used to rationalize other industries and wide precedent for such action exists. Again, I must reiterate, to date no problems with aspect to prioritization of subsistence resources has surfaced outside of urban areas or where urban user groups tend to congregate in a narrow area. Reactions by native/rural interests to perceived threats have been largely gut reactions to publicity and actions by non-native vested interests. Rural subsistors through their quasi-governmental organizations and the courts have admittedly pushed for protectionist legislation and regulatory safeguards in response to anticipated threats from competing interests.

Finally, a brief discussion of Title VIII of the D-2 Bill is in order. Briefly state the language of the Title VIII is fraught with areas of potential conflict with Alaska's subsistence law. Conflicts range from uncertainty with respect to the State's management approach to simple definitional problems (refer to memo from William Demmert, Deputy Commissioner of Alaska Department of Fish and Game, dated October 29, 1980, on implementation issues posed by Title VIII). *MAKES FIVE IMPORTANT* potential conflicts are taken directly from the Demmert memorandum cited above.

- (1) Emphasis on protection of subsistence opportunities for rural residents. *801 (1), 801 (5), 802 (1);
- (2) Suggestion that dependency is a threshold characteristic for subsistence, *801 (2), 802 (1);
- (3) Suggestion that subsistence uses have priority only over other consumptive uses, *802 (2);
- (4) Introduction of different standards for management of fish and game populations: "continued viability," e.g. **803 (1), 802 (2)-(3), 816 (b), "healthy populations, e.g., **802 (1), 815 (1), 815 (3), "natural and healthy populations," e.g., *815 815 (1); (it is not clear if "continued viability" used as a standard is as rigorous as "sustained yield")
- (5) Indication that "meaningful" participation by certain rural residents in management--both of fish and wildlife and of subsistence uses-- requires a new "administrative structure," *801 (5).

Also section 803 of the D-2 legislation contains a critical limitation not contained in the state subsistence law. The following excerpt is also from the Demmert memo.

The definition of "subsistence uses" in Title VIII differs from the Alaska statutory language in major respects. (The relevant language appears in Appendix I.) First, Title VIII limits subsistence to customary and traditional uses of wild renewable resources by rural Alaskan residents. This limitation to rural residents does not appear in the Alaska definition. See AS 16.05.940 (26).

Significant discontinuities with respect to the term "barter" exist in Title VIII and Alaska Statute. Another excerpt paragraph from the Demmert memo outlines the potential problem.

This discontinuity between Title VIII and the Alaska statute also is shown by a shift in the definition of "barter." In part, AS 16.05.940 (27) defines "barter" as "the exchange or trade of fish or game, or their parts, taken for subsistence uses." Section 803 omits the words "or trade." Thus, the language of Title VIII suggests that (1) "customary trade" differs in kind from "barter" and (2) neither barter nor customary trade expressly is required to be "for personal or family consumption." In the absence of a judicial decision, the proper construction of the Alaska definition remains open to argument because the applicability of modifying language can be interpreted in more than one way. Title VIII avoids these subtle ambiguities but may diverge from the meanings of these terms in Alaska Law.

Serious questions are raised in the Demmert memo about whose statutes will prevail as well as several fundamental constitutional questions. It would appear that federal law will prevail at this point. The problems in this area are complex and the courts will no doubt be obliged to settle some of the potential conflicts; especially if the Alaska Legislature repeals ~~the~~ current Alaska Statutes with respect to subsistence.

SOME FINAL COMMENTS:

- 1.) Boards cannot be expected to make reasoned judgements without sufficient information and valid multi-disciplinary research.
- 2.) Subsistence is a social as well as biological concept and the two aspects are inseparable.
- 3.) Subsistence uses over the entire state vary widely. Hence, a regional approach to subsistence is necessary.
- 4.) It is clear from state and federal law that when restrictions are proven necessary (to facilitate sustained yield) for subsistence/conservation, current law requires that subsistence users be given priority.
- 5.) For the foreseeable future in most rural areas throughout Alaska, resources may be adequate or sufficiently abundant to allow boards to allocate specifically without reducing and/or eliminating other allocations to beneficial users.
- 6.) Subsistence has always fluctuated and will no doubt continue to do so. Expansion and contraction of subsistence is to be expected over time in response to changes in human and animal demographics, climatic conditions, economic activities etc. However open ended growth of subsistence users is not customary traditional and in fact unfair to other beneficial user groups.
- 7.) Where possible, strict denial of access to particular resources by certain classes of consumers is undesirable.
- 8.) The State may repeal subsistence law as it now stands, but, within a year or two native groups will challenge the move in court if the Department of Justice does not bring suit against the State.
- 9.) The State's ability to manage resources will certainly be placed in jeopardy by repealing the subsistence law. If the State repeals it's subsistence law the federal government will sooner or later be obliged to reassert itself in management of the resources in question. (depending in some respects on position of the current administration.)
- 10.) It is not in the State's best interest to risk the loss of management authority of federal lands which is the situation that might result should the Alaska Legislature proceed to repeal the subsistence provisions under Title 16.
- 11.) In instances where subsistence activity alone is determined to be the direct cause of resource decline, the government has the tools to protect the resource.
- 12.) With respect to actions already taken by the courts on subsistence questions, the record is far from clear. No doubt further court cases will clarify the salient points and provide somewhat clearer precedent in the future.

Done
1/2/78

Serious questions are raised in the Demmert memo about whose statutes will prevail as well as several fundamental constitutional questions. It would appear that federal law will prevail at this point. The problems in this area are complex and the courts will no doubt be obliged to settle some of the potential conflicts. *ESPECIALLY IF THE ALASKA LEGISLATURE REPEALS THE CURRENT ALASKA STATUTES WITH RESPECT TO SUBSISTENCE*

KEY ELEMENTS IN SUBSISTENCE

(DROP OFF FOR NOW)

- 1). A pattern of use that has not changed substantially for many years
- 2). Direct dependency of a community of resource(s) constitutes a central or crucial economic reality.
- 3). Customary and traditional use of the resource(s)
- 4). In communities which are situated on the ^orad network that have undergone substantial change in recent years individual tests must be applied to ascertain which subset of the community may continue to participate in the subsistence economy, rather than treating the whole community as qualified.

AS 16.05.251 Criteria *BOARD CRITERIA FOR USE IN ESTABLISHING RESTRICTIONS & LIMITATIONS ON A PRIORITIES FOR CONSUMPTIVE USES.*

- 1.) Customary & direct dependance upon the resource as the mainstay of one's livelihood.
- 2.) Local residency
- 3.) Availability of alternative resources.

Tests Used to Identify Customary and Traditional Use (community)

- 1.) Historical documentation
- 2.) Scientific Data
- 3.) Public Testimony

Board Indications to be Applied to Individuals

- 1.) Habitual personal and/or family use
- 2.) Proximity to the resource
- 3.) Efficient and productive gear

SHOULD NOT INTRODUCE W/O LEADERSHIP
BACKING

If you sponsor this bill and it
passes: ~~what~~

will persons unhappy with
~~the result of~~ the eventual solution,
blame that unhappiness on you?

if nothing happens, will governor
be able to put you in box on
it?

Findings

Subsistence is complex and
potentially divisive issue.

~~Legislation~~ As a result of the
Mt. Rushmore decision the state is
suddenly faced with an unknown
situation.

Legal is not defined
does not adopt 8 criteria
open to petition = based on historical use of resource
on stock. - 3 would have to grant?

current restrictions on subsistence?

get endorsements - Butovich
UFA
Outdoor Council
AFN?

TRUCK TO ^{Appendant} ~~Scultz-Hanman~~
~~Re Abue Witt~~

PLAYERS

Good - oppose
Bds - ?

Spant { Sportfish - s.f.
Hunters s.f.
B.G. guides s.f. ?
Comm. Fish s.g. - s.f. ch w/ Bob Behe / Miss Person
NATIVE GROUPS s.g. ch w/ Don Mitchell

Sting - Bennett, Hubbard, Elason, Chewitt, Fary, Seehart, Rody J
Alford, U. Fisher, Fanching, !

Roy, Zig, Joesp., Cashill, P. Fish, Fuchs, Kelly, Wentzler,
De Vries ~~and~~ Rody

20

Findings

?
vulnerability
challenges

ongoing
to konst.

Complex & divisive issue
suddenly confronted by county decision
need for careful consideration,
balancing of needs & compliance
w/ fed law
intent of Leg to freeze the
pre Madison status quo in reg

MARCH 21, 1985
HOUSE FISHERIES, SPECIAL COMMITTEE

(1)

BRIEFING ON HB 288 BY ADFG + DEPT. OF LAW

JIM AYERS: GOAL OF MEETING PROVIDE FRAMEWORK FOR DISCUSSION OF
MADISON DECISION. Removed Board's ability to allocate
fisheries in state +

PETER GOLL Requests that send comments in writing.

Board's obligations under Title 16 →
RON JOLIN: Preservation + enhancement + allocation

- Have probs trying to accommodate comm - sport users,
Have to allocate fish in preference for one user group

- Takes flexibility out of Boards to regulate & manage
fisheries resources. HB 288 WD. Return this allocation
authority

LARRY STENGLER: will give legal overview.

MADISON Filed by people living in Kenai + Homer.

Prior to 1978: authorized by discretion; subsistence, comm.,
sport;
↓
for personal use by net

1978 took away discretion of Board relative to subsistence
if Abounce

1980 3 law suits by people around Cook Inlet. State
lost all 3 cases. They developed criteria against which
they would evaluate whether customary & traditional.

MARCH 21, 1985
HOUSE FISHERIES COMMITTEE

(2)

Had been ^{sub.} fisheries elsewhere in the inlet, but determined
not sub. because didn't meet 8 criteria. ~~was~~ had
historically fished by ~~set~~ net in those areas.

Could not eliminate historical use. After 1981-
established personal use fishing → fishing by net for
personal use.

Subsist. post-1978 is subset of Prior to 1978 subsist.
definition.

Court said: 8 criteria are right approach for defining
Customary + traditional.

1985: Court ruled not in compliance of statutes.

Not authorized individuals

Not authorized community determination

If there has been sub. fish on a stock, must
allow subs. fish on that stock. All people of AK
can fish on that stock unless canon + spirit first
eliminated on that stock. Cannot restrict who unless other
fisheries are cut ~~down~~ out.

ANILCA:

- Subsist. priority
- Def. of subsistence uses found in ANILCA
- Must have advisory system

MARCH 21, 1985
HOUSE FISHERIES

(3)

Argument that land + water included in federal land.

3rd party could sue Fed govt. to step in if rural not protected.

ANILCA funds to help protect subsistence economies,
1 million dollars.

Dingell-Johnson; Walling-Bureau

Pettibon Robertson funds

These could be called into question. No direction from Fed. govt. on what might happen to those.

Resolution of ^{Joint} Boards:

Many issues not now before Boards which will come up because of Madison case. There will need to be Emergency regulations by Commissioner. Anyone could petition Boards for changes in regulations.

BET. STEWART: Bd will provide opportunity in March 25th for people to come in + comment on implications of Madison Decision.

LAPP: Need to open subsistence to all residents of state.
Tyonek, English Bay + Port Graham closed only to residents.

MARCH 21, 1985

HOUSE FISHERIES

(4)

MANY AREAS FORMERLY OPEN TO SUBSISTENCE might need to be opened; some haven't been open in 25 yrs.

AK Sport ^{Fishing} Assoc. } Bix Bandy representing:
Kenai Sportsmen Assoc. }

Pushing to return authority back to Boards. Want to have sunset clause so at end of 1985 - Asked for public hearings throughout this time. They're worried abt. chaos + confusion if no regulations. Worried abt. King salmon being cut off from sport fishermen. ~2000 sport fishermen.

John Garner - Bnd. Member:

What Madison says about regulations:

people must be given a reasonable opportunity to participate in that. Madison doesn't mean unregulated: regulations must reflect customary + traditional uses. (Tyonek 70 fish/household) must retain 70/household

KH Would (if leave it as is) set a date for when subsistence fishing existed. (Then what about communities reestablishing.)

Lance What effects might be if required to open up eastern Cook Inlet. July 1 - Aug 15 - mostly commercial. Secondary use by sport. Probably wouldn't have many probs.

MARCH 21, 1985
HOUSE FISHERIES

(5)

Probs wd. be social with competition between commercial + subsistence. After Aug 15th - Sockeye moving into Kenai: Net fishery cd. mean having to close Russian Riv. to sport. Kasloff River: large net fish, cd. have impact on King returning to hatchery. Late catch return: last year 70,000 by sport fishermen; if had large net might have to curtail or close sport fish.

Early King runs on ^{Kenai +} Nendichek - (June) might have sport fishing out off further up the river. CAN'T live with potential.

KH Also could be severe competition between subsistence users.

LPRR Subsistence could occur essentially anywhere.

COPPER RIVER

Ken Florie: Extensive gill net at mouth of River
2 wks later: dip net at Chitina (personal use)
: fish wheels at Chitina

John Garnier: No other opportunity to harvest those stocks - come in w/ mixed fisheries.

LPRR → Subsist.: several hundred fish/household expected ~ 20,000 lbs.
5 Villages residents.
personal use fish wheel + dip net; 30 fish/household
6000 fish limit.
Madison wd. open up ^{subsist.} to all people