

ALASKA LEGISLATURE COMMITTEE FILES 1980 - 1980 80/2

4222.51 SRES SUBSISTENCE: MISCELLANEOUS (file 4)

232

MARCH 21, 1985
HOUSE FISHERIES

(6)

would not be able to say w/ subsistence, can only take X,000.

KEN FLORIE NAKNEK : pot. prob. w/ King Salmon in Naknek Rvr → if had big influx (sport fish growing) 10-15000 Kings in stock

ANGOON : Current Bob Klaska : 2 subsist coros (in SE (Ang. + Klut)). Angoon only to Angoon. 1-2000 harvest level. Salt Lake + Mitchell Lake. Popular sport fishing area. If harvest level increases wd. need to reduce troll + that wd. strongly affect Angoon because trolling is major cash income to this community.

Most of road systems in SE closed to subsistence. If petitioned might need to open these.

John Brds. feel need the flexibility they had prior to Madison decision.

Rep Fuller : On 25+26th Resource Committee will be having an ^{informal} hearing on HB 288.

Jim Akers : Restore sufficient reg. authority to boards so that can provide access to resources by all Akers.

MARCH 21, 1985

(7)

HOUSE FISHERIES COMMITTEE

PETER GILL SEND LETTER OF UNANIMOUS CONSENT
TO HOUSE RESOURCES COMMITTEE.

ALASKA OUTDOOR COUNCIL, INC.

3780 McGINNIS DR. JUNEAU, AK 99801
(907) 789-3450

SUBSISTENCE MORATORIUM

March 19, 1985

The Alaska Outdoor Council acknowledges that there is a potential for creating severe hardships if the Madison subsistence ruling is implemented immediately and to the letter of the law. To-date, however, only partial solutions have been offered -- especially by the Governor's office. The Supreme Court ruling clearly enunciated several problems with the existing State law. In order to properly address these problems, provide adequate public input, and establish a permanent solution to the growing social conflicts created by the law, reasonable time and public exposure must be devoted by the legislature to restructuring the law.

If it is determined by the legislature that a temporary solution is needed to keep established industries and citizens of Alaska from being completely and unnecessarily disenfranchised during the legislative review process, we would support a temporary moratorium designed to freeze subsistence regulations that existed prior to the Madison case.

We propose that the following points must be addressed in any statute enacted to place a moratorium in effect:

1. The freeze must last only one year with a self destruct clause.
2. Declare subsistence regulations in existence prior to Madison case as only existing valid subsistence uses in Alaska.
3. Declare personal use fisheries established by the Fisheries Board prior to Madison Case as legal for one year.
4. Declare that during one year freeze, only subsistence uses identified prior to Madison case have any legal standing. In other words, there is a freeze on the creation of any additional subsistence uses during interim. This will guarantee that no established sport hunting or fishing uses nor commercial uses will be eliminated until the subsistence law is adequately reviewed and restructured.

The Outdoor Council is willing to help sponsor a special meeting to seek concurrence from the commercial and sport interests for a moratorium statute.

PRESIDENT
Rupert Andrews
9416 Long Run Drive
Juneau, AK 99801
(907) 789-7422

REGIONAL VICE-PRESIDENT
Lyle Carlson
Box 2741
Fairbanks, AK 99707
(907) 452-3498

REGIONAL VICE-PRESIDENT
Robert Rausch
P.O. Box 2662
Juneau, AK 99803
(907) 789-3764

REGIONAL VICE-PRESIDENT
Ron Swanson
3417 Katllan
Eagle River, AK 99577
(907) 694-9564

TREASURER
Ed Grasser
Box 1350
Palmer, AK 99645
(907) 745-3772

SECRETARY
Sam Harbo
P.O. Box 80522
Fairbanks, AK 99708
(907) 452-7815

DIRECTOR-AT-LARGE
Warren Hofflich
6901 Tall Spruce Dr.
Anchorage, AK 99502
(907) 243-4790

IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR.

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. FINDINGS. The legislature finds that

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

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

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

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

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

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

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

size limitations on the taking of fish;

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

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

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

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

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

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

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

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

(12) personal use fishing.

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

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

clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible 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;

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

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

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

Sigurd RUTTER, Appellant,

v.

STATE of Alaska, Alaska Commercial Fisheries Entry Commission, John Williams, Burke Riley, and Robert Simon, Commissioners of the Alaska Commercial Fisheries Entry Commission, Appellees.

No. 6146.

Supreme Court of Alaska.

Aug. 26, 1983.

The Superior Court, First Judicial District, Juneau, Thos B. Stewart, J., dismissed challenge to regulations which were promulgated by Commercial Fisheries Entry Commission to limit entry into salmon hand troll fishery, and plaintiff appealed. The Supreme Court, Burke, C.J., held that Commission was not free to disregard four indicia of economic dependence set forth in statute.

Reversed.

1. Fish \approx 10(1)

In promulgating regulations limiting entry into salmon hand troll fishery, Commercial Fisheries Entry Commission exceeded scope of its authority in omitting three of four statutorily mandated criteria of economic dependence. AS 16.43.250(a)(1).

2. Appeal and Error \approx 150(1)

Applicant for salmon hand troll permit had standing to prosecute appeal from summary dismissal of his suit challenging regulations promulgated by Commercial Fisheries Entry Commission to limit entry into salmon hand troll fishery, as person "interested" in number of permits issued, regardless of whether he would likely obtain entry permit. AS 44.62.300.

3. Appeal and Error \approx 781(1)

Even if action challenging regulations promulgated by Commercial Fisheries Entry Commission to limit entry into salmon hand troll fishery were technically moot,

case would fall within public interest exception to mootness doctrine, since determination would aid Commission in formulating new regulations and applying old.

4. Appeal and Error \approx 781(1)

Supreme Court will hear moot case if it presents issue of public importance.

5. Appeal and Error \approx 781(1)

Mootness doctrine is matter of judicial discretion, not constitutional law.

6. Fish \approx 10(1)

In challenge to regulations promulgated by Commercial Fisheries Entry Commission to limit entry into salmon hand troll fishery, plaintiff was required to establish that maximum number of entry permits permitted was expression of whim rather than product of reason. AS 16.43.240(b).

7. Fish \approx 10(1)

Limited Entry Act was designed to protect reliance interests of all individuals using fishery, as well as aiding dependent fishermen. AS 16.43.010 et seq.

8. Fish \approx 10(1)

In promulgating regulations to limit entry into salmon hand troll fishery, setting by Commercial Fisheries Entry Commission of maximum number of permits issued so as to reflect present use was reasonable and in accord with letter and spirit of Limited Entry Act. AS 16.43.010 et seq.

9. Fish \approx 10(1)

In promulgating regulations to limit entry into salmon hand troll fishery, it is consonant with purposes of Limited Entry Act to give preference to those individuals that have fished the most. AS 16.43.010 et seq.

10. Administrative Law and Procedure \approx 305

Administrative agencies are creatures of statute, deriving from legislature authority for exercise of any power they claim.

Pamela Finley, Robertson, Monagle, Eastaugh & Bradley, Juneau, for appellant.

John B. Gaguine and Deborah Vogt, Asst. Attys. Gen., Juneau, and Wilson L. Condon, Atty. Gen., Juneau, for appellees.

Before BURKE, C.J., and RABINOWITZ, MATTHEWS and COMPTON, JJ.

OPINION

BURKE, Chief Justice.

This case involves a pure question of law. Plaintiff/Appellant Sigurd Rutter, a professional salmon hand troller, is challenging a series of regulations promulgated by the Commercial Fisheries Entry Commission limiting entry into the salmon hand troll fishery.¹ Rutter raises three distinct issues on appeal. (1) whether the Commission violated the provisions of the Limited Entry Act in issuing too many entry permits; (2) whether the priority classification system devised to allocate entry permits violates various Alaska statutes and the state and federal constitutions; and (3) whether the classification scheme must include the four indicia of economic dependence enumerated in AS 16.43.250(a)(1).

The superior court thought the regulations valid and dismissed Rutter's action on the Commission's motion for summary dismissal. We reverse, holding that the Commission was not free to disregard the four indicia of economic dependence set forth in AS 16.43.250(a)(1).

I

The Salmon Hand Troll Fishery

There are two different salmon troll fisheries. The power troll fishery consists of larger boats equipped with cold storage fa-

cilities and mechanically operated gurdies. In contrast, the hand troll fishery consists of smaller boats which usually make day trips, and are equipped with hand operated gurdies or rod and reel gear. The two compete for king and coho salmon.

Unlike the power troll fishery, which was limited in 1975,² the hand troll fishery remained open to entry until the Commission promulgated the regulations at issue here. As one of the few remaining open fisheries, and one requiring little in the way of initial investment, the number of commercial license holders using the hand troll fishery expanded greatly: from 1094 in 1975, to 1239 in 1976, 1849 in 1977, and 2604 in 1978. *CFEC Briefing Paper No. 4*, at 3, December 20, 1978.

Much of this growth is attributable to the emergence of a pleasure boat fleet. Manned by city dwellers engaged in non-fishing related occupations, these boats are primarily used for recreational and sport fishing, landing only a few salmon to defray expenses.³ By 1978, three competing groups used the hand troll fishery: (1) the avocational sport fishermen; (2) fishermen supplementing other fishing income with income from salmon trolling; and (3) those fishermen deriving their principal livelihood from the fishery, the economically dependent trollers.⁴

As the number of fishermen increased, the area fished expanded greatly. Traditionally, hand trollers restricted activities to small areas localized around their communities. Recently, however, the highly mobile sport fishing boats have moved farther afield and are competing directly with the power trollers. Changes in the distribution

tax. The Commission notes further that some recreational fishermen were motivated by tax considerations, fishing commercially on a small scale to generate tax deductions.

1. Our decision in this case was deferred pending our determination of the constitutional issues raised in *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983).
2. Over 30 salmon fisheries were limited almost immediately after passage of the Limited Entry Act. See 20 AAC 03.300-.320 (Eff. 12/18/74).
3. In addition, holding a commercial license enables sport fishermen to continue fishing after sport fishing bag limits are reached and lets them avoid paying a portion of the motor fuel

4. The Commission estimates that pleasure boats used by avocational fishermen presently constitute the largest segment of the hand troll fleet. It appears that no more than ten percent of the licensed trollers can be considered economically dependent. *CFEC Briefing Paper No. 4*, at 1-3, December 20, 1978.

of the catch by trollers caught total troll catch nine percent in 1978.⁵

Increased management. These restrictions economically an adequate entry proposals contemplated the fact that number to be encountered figure as decided to is

Having seen Commission cating these 4,000 potential statute, the focuses on t cant would fishery, had two hardships and pa

Applicant one points f ery. 20 AAC additional t ed on the b tion, allocat weeks fished between 19 677(b)(1).

A total come depen from the fi ic dependent below:

5. *Id.* at 4 even more in 1975, 7 power tre hand troll ing 65 percent went

of the catch reflect this development: hand trollers caught seventeen percent of the total troll catch in 1975 and 1976, twenty-nine percent in 1977 and thirty-four percent in 1978.⁵

Year	Income From Fishery	Points
1975	\$ 200.00	6
1976	500.00	6
1977	700.00	7
1978	750.00	7
1979	1,200.00	7

Increased use led to gear restrictions and management closures in both troll fisheries. These restrictions impeded the ability of the economically dependent fishermen to earn an adequate income, prompting a limited entry proposal. Originally, the Commission contemplated issuing 1,100 permits, despite the fact that they knew the optimum number to be nearer 500-600 permits. After encountering public opposition to the 1,100 figure as being too low, the Commission decided to issue 2,150 permits.

20 AAC 05.677(c)(1).

Having set the maximum number, the Commission promulgated regulations allocating these entry permits among the over 4,000 potential applicants.⁶ As required by statute, the classification system selected focuses on the degree of hardship an applicant would experience if excluded from the fishery, hardship being assessed through two hardship standards: economic dependence and past participation.

Finally, fifteen points are allocated according to the availability of alternative occupations in the place of the applicant's domicile. 20 AAC 05.677(c)(2). Applicants residing in rural areas receive the maximum number of points. *Id.*

Applicants can be awarded up to thirty-one points for past participation in the fishery. 20 AAC 05.677(a)(1) (Eff. 3/6/81). An additional twenty-five points can be awarded on the basis of consistent past participation, allocated according to the number of weeks fished in any three of the five years between 1975 and 1979. 20 AAC 05.677(b)(1).

An applicant amassing eighty or more points is considered significantly dependent and automatically qualifies for an entry permit. 20 AAC 05.678(a) (Eff. 3/6/81). Those applicants earning less than seventy points are considered less dependent and receive permits only as they become available. 20 AAC 05.678(b). Permits issued to significantly dependent applicants are freely transferrable; those issued to less dependent applicants are subject to restrictions on transfer and the buy-back provisions of the Limited Entry Act. 20 AAC 05.678(a) & (b). The Commission has yet to establish a buy-back program for the salmon hand troll fishery.

A total of nineteen points hinges on income dependence on the fishery. Earnings from the fishery are used to assess economic dependence, as demonstrated by the table below:

Under these provisions, Rutter could amass a total of thirty-four points.⁷ He began fishing in 1979, invested in a vessel and gear, and derives approximately sixty to seventy percent of his income from hand trolling.

5. *Id.* at 4. The shift in catch distribution is even more pronounced in the Icy Straits area: in 1975, 75 percent of the troll catch went to power trollers, while only 25 percent went to hand trollers. By 1978, hand trollers were taking 65 percent of the catch while only 35 percent went to power trollers.

Under the impression that he would be denied a permit, Rutter filed suit to declare the regulations invalid. The lower court upheld the regulations, and dismissed Rutter's case on the Commission's motion for a summary dismissal. Rutter thereupon appealed to this court.

6. A total of 4,476 different individuals participated in the fishery from 1975 through 1979. These individuals constitute the pool of potential applicants.

7. Rutter qualifies for 11 points for past participation, nine for consistent past participation, seven for economic dependence, and seven for living in Sitka for a total of 34 points.

[1] On appeal, Rutter alleges various grounds for reversal. We hold that the Commission exceeded the scope of its authority in promulgating regulations which omit three of the four statutorily mandated criteria of economic dependence.

[2] As a threshold matter, we must determine if Rutter has standing to prosecute this appeal. The application period for obtaining a salmon hand troll permit closed on August 31, 1981. As of that date, the Commission had received 2,274 timely applications. According to the Commission, it therefore appears "nearly certain" that Rutter will obtain an entry permit. The Commission concludes that the entire case is necessarily moot.

We disagree. AS 44.62.300 provides that an "interested person" has standing to obtain judicial review of an administrative regulation. In this case, Rutter is "interested" in the number of permits issued, for his ability to fish commercially is directly affected by the number of trollers using the fishery. The parties agree that issuing 2,150 permits will necessarily result in gear restrictions and management closures, rendering Rutter's trade less profitable. That Rutter will obtain a permit does not alleviate his concern, for he is concerned that too many *other* applicants will also obtain permits.

[3-5] We note further that, even if this case were technically moot, it would fall within the public interest exception to the mootness doctrine. This court will hear a moot case if it presents an issue of public importance. *Alaska Transportation Commission v. Gandia*, 602 P.2d 402, 403 (Alaska 1979); *Doe v. State*, 487 P.2d 47, 53 (Alaska 1971). In this instance, a determination here would aid the Commission in formulating new regulations and applying the old. See *Northwest Trollers Association v. Moos*, 89 Wash.2d 1, 568 P.2d 793 (1977). Moreover, a fair number of nonparties are interested in the outcome of this suit, specifically, those applicants who will not receive permits. Since the mootness doctrine is a matter of judicial discretion, and not constitutional law, we are free to elect to address

the case on the merits. See *Alaska Transportation Commission v. Gandia*, 602 P.2d 402 (Alaska 1979); *R.L.R. v. State*, 487 P.2d 27 (Alaska 1971). This we proceed to do.

II

The Maximum Number of Permits

[6] AS 16.43.240 sets forth the standards for determining the maximum number of entry permits the Commission can issue for a given fishery. In a distressed fishery, that is, a fishery in which the number of users exceeded the optimum number as of January 1, 1973, the maximum number "shall be the highest units of gear fished in that fishery during any one of the four years preceding January 1, 1973." AS 16.43.240(a). The act provides no guidelines for determining the appropriate number of permits for a non-distressed fishery, other than noting that the number selected should further the legislative purpose. AS 16.43.240(b).

As the salmon hand troll fishery was not overgeared as of January 1, 1973, AS 16.43.240(b) applies and the Commission is given broad discretion in setting the maximum number. The Commission contends that the number selected is reasonable and non-arbitrary, one well within its discretion to select. Under the applicable standard of review, Rutter must establish that the number was the expression of a whim, rather than the product of reason. *Kelly v. Zamarallo*, 486 P.2d 906, 910 (Alaska 1971). We conclude that Rutter has not so established.

[7] Rutter's argument reduces to the simple proposition that the Limited Entry Act calls for the immediate exclusion of a large number of avocational fishermen so that a smaller number of economically dependent trollers can fish without any gear restrictions whatsoever. Underlying this argument is the premise that the salmon hand troll fishery is a commercial fishery, and that the interests of commercial trollers take precedence over the interests of all other users. This position, however, characterizes the purposes of the Limited Entry

Act too narrowly and ignores pertinent legislative history accompanying that act.

As initially proposed, the Limited Entry Act called for an immediate reduction in the number of fishermen to the optimum level in all distressed fisheries. Not surprisingly, this aspect of the act generated substantial public opposition. As a result, the act as passed requires that the Commission fix the maximum number of permits at a level approximating past participation, contemplating a gradual decrease in use through operation of a buy-back program. See 1973 House Journal 503 ("instead of making an initial reduction to the optimum number of units of gear, the commission would issue entry permits at the present level of fishing effort and reduce the amount of gear to optimum levels through a voluntary buy-back program.")

That the legislature intended the number of permits initially issued to reflect actual use is further evidenced by the very structure of the buy-back program. That program operates to purchase entry permits initially issued to less dependent trollers, individuals who would, by definition, suffer only minor economic discomfort if excluded from the fishery. See AS 16.43.170(c). The Act thus contemplates the issuance of permits to less dependent trollers, even though excluding these individuals would benefit the dependent trollers. Hence, the Act's purposes are not merely economic. The Act was designed to protect the reliance interests of all individuals using the fishery, as well as aiding the dependent fishermen.⁸

[8] In this instance, the number of permits issued reflects present use. We therefore have little difficulty concluding that setting the maximum number at 2,150 was reasonable and in accord with the letter and spirit of the Limited Entry Act.

III

The Priority Classification System

AS 16.43.250 requires that the Commission allocate entry permits on the basis of

8. Indeed, in *Commercial Fisheries Entry Comm'n v. Apokedak*, 606 P.2d 1255, 1265 (Alaska 1980), we noted that the act had the following four broad purposes: (1) enhancing

the hardship an applicant would suffer if excluded from the fishery. Hardship is assessed through a reasonable balance of two hardship standards: economic dependence and past participation. Rutter maintains that the regulations fail to assess adequately economic dependence and past participation, and that the balance between the two is unreasonable.

A. *Past Participation Points*

Under the present system, thirty-one points can be obtained by landing at least one fish a year for any three of the five years between 1975 and 1979. 20 AAC 05-677(a)(1) & (2) (Eff. 3/6/81). An additional twenty-five points will be awarded on the basis of consistent past participation, assessed by looking at the number of weeks in which landings were made for any three years between 1975 and 1979. 20 AAC 05-677(b)(1).

Rutter contends that these provisions reward the enthusiastic avocational fishermen by failing to distinguish between the economically dependent and sport-commercial trollers. The Commission responds by noting that the computer print-out on run 27(b), the system eventually adopted, shows that only twenty-eight percent of the 4476 potential applicants, or 1274 individuals, would be able to show participation in three years. Forty-seven percent participated only one year. From these figures, the Commission argues that very few "recreational dabblers" will score highly, while virtually every professional who has been active for the last several years will receive the maximum number of points.

Similarly, the Commission contends that the three to five weeks fished per year figure used to assess consistent past participation will include most professional trollers. A computer run reveals that if the number of weeks fished per year requirement were increased to seven weeks, a fig-

the economic benefit to professional fishermen; (2) conserving the fishery; (3) avoiding unjust discrimination in the allocation of entry permits; and (4) administrative convenience.

ure lower than that urged by plaintiff, fully seventy-three percent of the potential applicants would receive no points. In contrast, under the present system forty-two percent participated only one year, while fourteen percent qualified for three.

[9] We find these arguments persuasive. When considered in conjunction with the points awarded for economic dependence, most professional trollers will receive permits. Only in the rare instance, (e.g., a professional who recently started fishing) will a "dabbler" be preferred over an economically dependent troller.⁹ The act calls for no more.

When properly analyzed, Rutter's objection to the treatment of participation points is in reality an objection to the maximum number of permits issued. Rutter argues that the present system fails to distinguish between the avocational and professional troller. This is quite true, but what Rutter fails to realize is that there is *no need* to distinguish between the two groups. Given the number of permits issued, and the relatively small number of professional trollers, almost all professionals will receive permits; the exclusionary line will be drawn between serious avocational trollers and less serious avocational trollers. Rutter's objection is not that professionals will be excluded, but that too many avocational fishermen will be included. He objects to the maximum number, an objection which lacks merit.

B. Economic Dependence

Earnings from the salmon hand troll fishery are used to assess income dependence. The maximum of nineteen points can be obtained by anyone deriving a relatively low gross income from the fishery: \$200 in 1975, \$500 in 1976, \$700 in 1977, \$750 in 1978, and \$1,200 in 1979. 20 AAC 05.-677(c)(1) (Eff. 3/6/81). Rutter argues that "because these points do not distinguish between the economically dependent hand

troller and the weekend avocational fishermen, they are essentially meaningless."

An additional fifteen points are allocated on the availability of alternative occupations, based on the population of the place of the applicant's domicile. 20 AAC 05.-677(c)(2). Applicants living in rural areas receive the maximum number, the theory being that most avocational fishermen reside in urban areas while dependent trollers are country dwellers. Rutter, who lives in Sitka, does not address this aspect of the allocation scheme.

The crux of Rutter's argument is that the point system is over-inclusive:

If one is attempting to identify the economically dependent hand troller, and believes that only a small portion of participants generate a major portion of their income from hand trolling, one would not establish a system which gives all possible points in this category to approximately fifty percent of the people fishing in relevant years . . . [I]t is obvious that a small group of dependent hand trollers will not be identified by a system giving all points to those making less than the average income in the fishery.

This argument misses the point. All that the act requires is that the Commission rank applicants by the hardship they would suffer if excluded from the fishery. Rutter, however, presumes that the Commission must precisely identify dependent trollers. Given the number of permits available, this degree of exactitude is uncalled for. Once again, plaintiff complains of the maximum number.

C. Reasonable Balance

Under the present system, individuals who participate but are not economically dependent will receive a maximum of fifty-six points. An economically dependent troller who has been active for at least three

system, but it is important to remember that courts do not expect perfection of such a system. Were it otherwise, very few statutory classification schemes would survive judicial scrutiny. See *Commercial Fisheries Entry Comm'n v. Apokedak*, 606 P.2d 1255, 1267 n. 50 (Alaska 1980).

9. It is entirely consonant with the purposes of the act to give preference to those individuals that have fished the most. *Isakson v. Rickey*, 550 P.2d 359, 364 (Alaska 1976). That Rutter, as a new but dependent troller, may be passed over in favor of an established avocational fisherman is perhaps a defect in the classification

years will receive both dependence and participation points, there being no such thing as a dependent troller who did not participate. The two criteria complement each other well, and the balance is not so clearly unreasonable as to require invalidation of the regulations on this point.

IV

The Requirements of AS 16.43.250(a)(1)

AS 16.43.250(a)(1) requires that the Commission include certain factors in its assessment of economic dependence. Specifically, it requires that the regulations assess "percentage of income derived from the fishery, reliance on alternative occupations, availability of alternative occupations, [and] investment in vessels and gear" The regulations at issue here, however, incorporate only one of these factors, availability of alternate occupations. Rutter argues that the Commission exceeded the scope of its authority in omitting these criteria, and that the regulations are consequently invalid.

The Commission found that special circumstances exist for the salmon hand troll fishery:

[T]he standards set out in AS 16.43.250(a)(1) for vessel ownership, percentage of income and reliance on alternative occupations do not adequately reflect the degree of economic dependence on the fishery, and are unsatisfactory for determination of the degree of hardship an applicant would suffer by exclusion from the fishery.

The Commission deemed investment in the fishery inappropriate as an indicator of economic dependence because of the "unique nature of the hand troll fishery and the management philosophy applied to it." *Findings of the Commercial Fisheries Entry Commission Regarding the Priority Classification System for the Statewide Salmon Hand Troll Fishery*, at 2, January 9, 1981. The Commission apparently reasoned that investment is unrelated to dependence, for

numerous avocational trollers have invested in expensive recreational trolling boats. And reliance on alternative occupations as a ranking factor was disregarded because of the nature of that fishery as a "source of supplemental income to that derived through other means, including other fisheries." *Id.* Similarly, the "characteristically low income earned from hand trolling" persuaded the Commission to ignore the percentage of income derived by troller from other sources. *Id.* at 3.

The Commission was not free to disregard these statutory indicia of economic dependence. It is not at all clear that the Commission could not fashion a system incorporating all four factors in a logical, reasonable manner. That the Commission feels it could design a better classification scheme using only one of the factors is beside the point; it is not free to substitute its judgment for that of the legislature. Once the legislature determined that percentage of income derived from the fishery, reliance on alternative occupations and investment were relevant to economic dependence, the Commission was deprived of the power to decide otherwise.

[10] Administrative agencies are creatures of statute, deriving from the legislature the authority for the exercise of any power they claim. *McDaniel v. Cory*, 631 P.2d 82, 83 (Alaska 1981). In this instance, the statute requires that the Commission assess economic dependence according to specifically enumerated factors. This the Commission failed to do. We therefore hold the regulations invalid as they relate to the assessment of economic dependence and reverse the lower court.

REVERSED.



Major debate on Subsistence

need base

determination of subsistence
attempt to get fed to
change

Item I

Item II - can do more

of need under current

law

national use - ^{sublⁿ} come & govt
balanced

MEMORANDUM

State of Alaska

TO: Ron Jolin, Chairman
Joint Boards of Fisheries and Game

DATE: March 11, 1985

FILE NO: 366-375-85

Norman C. Gorsuch
FROM: Norman C. Gorsuch
Attorney General

TELEPHONE NO: 465-3600

SUBJECT: Subsistence

The State subsistence law must be implemented by the Boards of Fisheries and Game in a new and problematic way under Madison v. Alaska Department of Fish and Game, No. 7410, a decision issued by the Alaska Supreme Court on February 22, 1985. The precise holdings of the court could be interpreted by extrapolation to affect the entire state and regulation of game as well as fish.

The state statutes require:

- That subsistence hunting and fishing be allowed, unless the resource would be harmed.
- That subsistence be given a priority, if restrictions are necessary.

not changed by case

Before Madison:

- These special protections applied to fishing and hunting by rural Alaskans.

last cut back

customary & traditional use & conditions

Because subsistence consisted only of those rural harvests, the boards were able to accomodate non-state resident and guided hunting, personal use net fishing by non-rural Alaskans, sport fishing, and commercial fishing.

com. sport personal use

The state was in compliance with ANILCA.

After Madison:

- All Alaskans may engage in subsistence fishing or hunting.

Subsistence fishing or hunting on a resource by all Alaskans cannot be restricted unless all non-subsistence uses are first eliminated.

as though fish & by net as same has regulation for other fisheries

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

add system sub. priority sub. uses definition the cutting as rural use

prev. use anyone fish wheels dip nets sub to damage area

- Example: The Kenai River and Susitna drainage sport fisheries may need to be restricted or even closed if "subsistence fishing" by gill net must be allowed in large areas of Cook Inlet closed in recent years.
- Example: All Alaskans could subsistence fish near Tyonek for kings, near Angoon for cohos, in the Naknek River for kings, sockeye, and coho, and in the Iliamna-Lake Clark drainage for sockeye, unless any associated sport or commercial fishery were closed.
- Example: For any permit hunt, non-state resident and guided hunting may need to be eliminated.

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

- It is unclear precisely what federal management would entail, but it has been argued that besides all federal land, all navigable waters would be affected, and that possibly some state lands would be affected if migratory species were involved.

NCG/LIS:rn

Discussion -

IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. FINDINGS. The legislature finds that

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

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

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

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

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

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

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

size limitations on the taking of fish;

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

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

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

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

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

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

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

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

(12) personal use fishing.

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

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

Might be a good question if discussion goes in this direction:

In areas where hunts are already restricted by issuance of a limited number of permits - would the Madison decision force a further restriction to local residents?

Backup into it if you decide to use questions, there are currently 5 ~~units~~ ^{hunts} with hunts with some form of local resident restriction

Unit 13 Caribou > Nelchuna
Unit 13 Moose > Nelchuna
Unit 16B Moose - Tyonik
Unit 12 Caribou - Northway - Telfair
Unit 25 Moose - in area of Minto Flats

Point that perhaps needs to be clarified

Priorities and eliminations would take place on an area by area, species by species basis

I think Vic is making potent political point.

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

No time for hasty action

The state should not be hasty in acting upon the state Supreme Court's recent ruling on the subsistence priority.

Far from rushing in to amend state law so that it complies with a badly conceived federal law, the state should take advantage of the court's ruling to revise and improve state law at the same time we seek changes in the federal law.

The court ruled recently that the Board of Fisheries could not base a subsistence priority on rural residency, finding that inconsistent with the intent of the state's subsistence law.

Since the problem stems from the federal law which requires Alaska to accord a subsistence priority on federal lands to rural residents if it wants state management of fish and game to continue on those lands, there's already a move afoot in some circles to just do a hasty job of amending the state law to make it comply with federal law.

That's not the direction Alaska should go, though.

First, we need to recognize that the court's ruling does not mean every Alaskan will qualify as a subsistence user. We'll be hearing scare talk in the next few weeks, aimed at convincing us the ruling will result in the elimination of out-of-state hunting or commercial fishing or sport fishing. None is likely to be the case, and certainly needn't be if legislators take appropriate action in reviewing the existing state subsistence law.

In fact, the ruling sets up two tiers of subsistence users. In the first tier is any Alaskan with a history of "customary and traditional use" of a resource for subsistence purposes. Obviously, not every Alaskan will qualify. The second tier of subsistence users may be granted a priority only when restrictions on sport and commercial users will not be adequate to protect the resource. In that case, the court found, local residency could be used as a factor in according a subsistence priority.

The first step for the state Legislature then, is to define "customary and traditional use." No definition of that phrase is found in current state law and it's badly needed. The goal should be to set criteria based upon need rather than upon residency, for it's clear to most Alaskans that in granting hunting and fishing priorities based upon need, we can best protect the subsistence way of life.

The court ruling gives Alaskans a good opportunity to straighten out a thorny problem. Though an effort to repeal the state's subsistence law failed in 1982, we shouldn't ignore the fact that 80,000 Alaskans wanted to repeal it. That's a significant number of disgruntled voters who would like to see an end to discrimination based upon residency.

The federal government has indicated a willingness to work with Alaska as we seek to resolve the problem. Two points should be made about that: First, Alaska should structure its own state laws to be in accord with our state Constitution, a Constitution approved by the federal government at the time of statehood. And, we should take advantage of this opportunity to let Congress and federal agencies know what sort of problems they're causing us with a law that requires us to discriminate against people based upon where they live.

We should set to work to write the best state subsistence law we can, including the criteria we know makes the most sense for Alaska. A hasty amendment aimed at incorporating federal language into state law is not the best course. We've got a chance to write a good law based on rational criteria. Let's not waste it.

Governor ponders subsistence change

By DAN JOLING
News-Miner Bureau

JUNEAC—The Sheffield Administration may be working on a bill to narrow the definition of subsistence user, limiting it to rural residents and matching an interpretation set by the Board of Fisheries in recent years.

That interpretation by the Fish Board was struck down Feb. 22 by the Alaska Supreme Court, which ruled that the board strayed from the Legislature's intent of the 1978 subsistence law when it decided that subsistence users must be rural residents.

Since the court ruling involved interpretation of a law, not the Constitution, it could be changed with passage of a new law this session. The issue is expected to be highly controversial.

The Supreme Court ruling concerned the board's decision to limit subsistence salmon fishing in the Upper Cook Inlet to residents of nearby communities Tyonek, English Bay and Port Graham, communities which have no road access and are not tied to urban economies. Tyonek is on the northwest shore of Cook Inlet, 43 miles southwest of Anchorage. English Bay

and Port Graham are on the other side of inlet, 10 miles southwest of Seldovia.

The court ruled that all subsistence users—rural and urban—must have their fish or game needs taken care of before the needs of sport and commercial fishermen. It said the Legislature did not limit the definition of subsistence user to rural residents when granting them preference over sport and commercial fishermen.

The court ruled that use among subsistence fishermen may be limited by their proximity to the resource, but only if there's not enough to go around after sport and commercial fishing is eliminated.

"That's one of the real problems that we face in the thing," said Steve Behnke, director of the Subsistence Division of the state Department of Fish and Game.

He said he suspected that some sort of narrowing of the definition of subsistence user will be considered by the department and the governor.

A second concern is that the interpretation leaves the state in conflict with the federal Alaska National Interest Lands Conserva-

(See GOVERNOR, page 3)

GOVERNOR . . .

(Continued from page 1)

tion Act of 1980, which allows the state to manage fish and game on federal land if rural Alaskans have a subsistence priority.

In the Interior, the ruling upsets the regulation established by the board for regulating Copper River fisheries, which includes dipnetting for salmon at Chitina, a favorite pastime for Fairbanks and Delta residents.

The Fish Board last year, using the same criteria applied to Upper Cook Inlet, said only residents in the Copper River Valley, Northway, Tanacross, Dot Lake, Tetlin and Tok would be classified as subsistence users.

They relegated dipnetters in Delta, Fairbanks and Anchorage to status as "personal use fishermen" and approved lower limits and reduced fishing times.

The court ruling may prompt the governor to introduce a law to narrow the definition of subsistence user.

"That's certainly one of the options that the governor is going to have to look at," Behnke said. "I think there's a lot of people who feel that system was working reasonably well."

Robert Falcon Scott reached the South Pole in 1912.

Introduced: 1/18/83
Referred: Resources and
Judiciary

1 IN THE SENATE

BY V. FISCHER

2

SENATE BILL NO. 5

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act establishing a residents' priority for the
taking of big game animals."

7

8

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

9

* Section 1. FINDINGS. The legislature finds that

10

(1) in recent years the number of nonresidents ~~and nonresident~~

11

~~aliens~~ hunting big game in the state has significantly increased, and this
trend is expected to continue;

12

13

(2) nonresidents ~~and nonresident aliens~~ hunt big game in the

14

state primarily for sport and recreation, and for trophy value, while

15

residents hunt big game in the state primarily to obtain meat for personal

16

and family use; and

17

(3) the conservation, use, and development of the state's big

18

game populations in the best interests of the state and the nation require

19

the establishment of a limit on the taking of big game by nonresidents ~~and~~

20

~~nonresident aliens~~ so that state residents have an opportunity to obtain

21

big game meat for personal and family use.

22

* Sec. 2. AS 16.05.256 is amended to read:

23

Sec. 16.05.256. NONRESIDENT ~~AND NONRESIDENT ALIEN~~ PERMITS.

24

Whenever it is necessary to restrict the taking of big game so that

25

the opportunity for Alaska residents to take big game can be reason-

26

ably satisfied in accordance with sustained yield principles, the

27

Board of Game shall [MAY], through a permit system, limit the taking

28

of big game by nonresidents ~~and nonresident aliens~~ to accomplish that

29

purpose.

Introduced: 1/18/83
Referred: Resources and
Judiciary

1 IN THE SENATE

BY V.FISCHER

2

SENATE BILL NO. 39

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act authorizing the Board of Fisheries to estab-
7 lish a personal use fishery."

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

9 * Section 1. AS 16.05.251 is amended by adding a new subsection to
10 read:

11 (c) The Board of Fisheries shall adopt regulations in accordance
12 with the Administrative Procedure Act (AS 44.62) permitting personal
13 use fishing unless the board determines, in accordance with the Admin-
14 istrative Procedure Act, that adoption of such regulations will jeop-
15 ardize or interfere with the maintenance of fish stocks on a sus-
16 tained-yield basis. Whenever it is necessary to restrict the taking
17 of fish to assure the maintenance of fish stocks on a sustained-yield
18 basis, or to assure the continuation of the personal use fishing of
19 such resources, personal use fishing shall be the second priority use
20 after subsistence use.

21 * Sec. 2. AS 16.05.940 is amended by adding a new paragraph to read:

22 (30) "personal use fishing" means the taking, fishing for,
23 or possession of fish, shellfish, or other fishery resources for
24 personal use and not for sale, barter, or trade, with gill net, seine,
25 fish wheel, long line, or other means defined by the Board of Fisher-
26 ies.

Subsistence

General

It means everything
to everyone
(needs, rights, desires)

Impacts established uses

Finite resources

Expanding human pop

Has not been quantified
(what is subsistence need
as a specific level of take?)

State Law

1. Specific subsistence use
of F & W as a priority use
(over sport, commercial etc).
2. Requires Boards to adopt
regulations providing for the
priority.
3. All state residents have equal
access to subsistence use.

Fed Law (ANILCA)

Sec 804 Specific subsistence priority
on fed lands

Sec 803 defines subsistence as a
"rural" activity utilizing "wild
renewable resources".

Sec 806 Requires feds to monitor
state accommodation of subsist preferences

Sec 805 Requires feds to establish
Regional Councils & Advisory Committee
with staff in order to assure local
recommendations to state ~~Boards~~

805(d) permits fed not to implement
805 if the state has a system
in place to accommodate 803, 804, & 806.

"COMPLIANCE"

The "state compliance w ANILCA 805"
issue is an option & not an
obligation.

State non-compliance w 805 is
irrelevant since 805 is a fed
obligation in first place.

Fiscal - The 1 million/yr fed funds to the State
under ANILCA also require matching state funds.
There is the option of simply letting the fed
implement 805 & absorb the entire cost.



ALASKA OUTDOOR COUNCIL, INC.

3780 MCGINNIS DR. JUNEAU, AK 99801
(907) 789-3450

SUBSISTENCE MORATORIUM

March 19, 1985

The Alaska Outdoor Council acknowledges that there is a potential for creating severe hardships if the Madison subsistence ruling is implemented immediately and to the letter of the law. To-date, however, only partial solutions have been offered -- especially by the Governor's office. The Supreme Court ruling clearly enunciated several problems with the existing State law. In order to properly address these problems, provide adequate public input, and establish a permanent solution to the growing social conflicts created by the law, reasonable time and public exposure must be devoted by the legislature to restructuring the law.

If it is determined by the legislature that a temporary solution is needed to keep established industries and citizens of Alaska from being completely and unnecessarily disenfranchised during the legislative review process, we would support a temporary moratorium designed to freeze subsistence regulations that existed prior to the Madison case.

We propose that the following points must be addressed in any statute enacted to place a moratorium in effect:

1. The freeze must last only one year with a self destruct clause.
2. Declare subsistence regulations in existence prior to Madison case as only existing valid subsistence uses in Alaska.
3. Declare personal use fisheries established by the Fisheries Board prior to Madison Case as legal for one year.
4. Declare that during one year freeze, only subsistence uses identified prior to Madison case have any legal standing. In other words, there is a freeze on the creation of any additional subsistence uses during interim. This will guarantee that no established sport hunting or fishing uses nor commercial uses will be eliminated until the subsistence law is adequately reviewed and restructured.

The Outdoor Council is willing to help sponsor a special meeting to seek concurrence from the commercial and sport interests for a moratorium statute.

PRESIDENT
Rupert Andrews
9416 Long Run Drive
Juneau, AK 99801
(907) 789-7422

REGIONAL VICE-PRESIDENT
Lyle Carlson
Box 2741
Fairbanks, AK 99707
(907) 452-3498

REGIONAL VICE-PRESIDENT
Robert Rausch
P.O. Box 2662
Juneau, AK 99803
(907) 789-3764

REGIONAL VICE-PRESIDENT
Ron Swanson
3417 Katlian
Eagle River, AK 99577
(907) 694-9564

TREASURER
Ed Grasser
Box 1350
Palmer, AK 99645
(907) 745-3772

SECRETARY
Sam Harbo
P.O. Box 80522
Fairbanks, AK 99708
(907) 452-7815

DIRECTOR-AT-LARGE
Warren Hoflich
6901 Tall Spruce Dr.
Anchorage, AK 99502
(907) 243-4790

Subsistence

*
* DELIVER TO: JPOM *
*
* ORIGINAL *
* SENT: 03/12/85 TIME: 16:49 *
* FROM: LIOA *
* SUBJECT: POM *
* PRINT DATE: 03/12/85 TIME: 16:50 *
*

TO: ALL LEGISLATORS T

FROM: SAM E. MCDOWELL
CONCERNED ALASKAN
336 E. 23RD AVE
ANCHORAGE, AK. 99503

I'M CONVINCED ALASKA STATE COURTS AND U.S. SUPREME COURT WILL RULE (RE: OUR PENDING CASE #3AN 83-1593 CIV. MCDOWELL AND BONDURANT VS STATE OF ALASKA) THAT IS CLEARLY UNCONSTITUTIONAL TO GIVE A PRIORITY ALLOCATION OF COMMON PROPERTY FISH AND WILDLIFE RESOURCES BASED ON GEOGRAPHIC LOCATION OF RESIDENCE.

Subsistence measure unveiled

By KIRK McALLISTER
The Juneau Empire

In the wake of a recent state supreme court ruling that expanded subsistence use to all state residents, Gov. Bill Sheffield today unveiled legislation that attempts to balance the needs of subsistence, commercial and sport fishermen around the state.

Basically, the bill would put into statute the regulations the Alaska Board of Fisheries has been using to allocate fish between user groups. The bill limits subsistence use to rural residents only but establishes a "personal use" category for other residents who aren't commercial or sport fishermen.

"For Alaskans who live in both rural and urban areas, the Supreme Court decision holds the potential of creating havoc," Sheffield said. "We can restore balance to our vital fish and game laws by conforming our statutes to the practice we've followed for at least the last three years."

In a Feb. 22 decision in the *Madison v. Alaska Department of Fish and Game* case, the Alaska Supreme Court

ruled the board had interpreted Fish and Game regulations too broadly by limiting subsistence to rural users.

This meant that subsistence rights were expanded to all Alaska residents. Under the Alaska National Interest Lands Conservation Act, subsistence use must be satisfied before the needs of commercial or sport interests.

With the increased numbers of fish that could now be caught by the expanded class of subsistence users, commercial and sport fishing interests are threatened.

In one of the most widely-discussed examples — the Copper River salmon fishery in Prince William Sound — subsistence users were allowed 200-500 fish depending on the size of the household while personal use fishermen were allowed 30 fish per household.

Under the new ruling, however, the number of subsistence fishermen would be increased nearly 10 times. Since subsistence users get first priority on the fish, there would be very few left over for commercial and sport fishermen in the area, which would have a drastic effect on the local eco-

nomy.

Sheffield said it was important that the Legislature act promptly on the bill since possible management conflicts could arise as soon as May. Despite the fact that this legislative session is nearly half over, the governor said he was optimistic about chances of the bill's passage.

Empire 3/12/85

*
* DELIVER TO: JFOM *
* *
* *
* ORIGINAL *
* SENT: 03/08/85 TIME: 14:13 *
* FROM: LIOA *
* SUBJECT: FOM *
* PRINT DATE: 03/08/85 TIME: 14:13 *
*

TO: ALL LEGISLATORS

FROM: JAMES CREWDSOON
7727 LUMBIS
ANCHORAGE, AK. 99502
PHONE 344-2071 HM

RE: SUBSISTENCE ISSUE

AS A COMMERCIAL FISHERMAN ON THE COPPER RIVER FLATS, I AM CONCERNED THAT THOSE OF US WHO EARN OUR LIVING BY FISHING ARE TREATED FAIRLY IN THE SUBSISTENCE ISSUE NOW BEFORE THE STATE. WE COUNT ON THIS FISHERY FOR OUR ECONOMIC SUBSISTENCE AND DON'T WANT TO SEE THIS JEOPARDIZED.

Sport Fish & Game Division License Revenue
1984

	1	2	3	4	5	6
	License #	Revenue	License %	Revenue %		
<u>SPORT FISH</u>						
RESIDENT	156,877	\$1,543.8	40	45		
NON-RESIDENT	96,599	\$1,786.9				
ABD-RESIDENT						
MILITARY	7115	71.2				
TOTAL A.R.	104,014	\$1,558.1	40	5		
TOTAL	260,891	\$3,401.9	100	100		
<u>GAME</u>						
RESIDENT LIC.	93690	\$6,104.3				
" TAGS		171.5				
" PERMITS		330.6				
TOTAL	93690	1,545.4	92	43		
NON-RESIDENT LIC	5570	329.6				
" TAGS		1,680.7				
" PERMITS		20.9				
TOTAL	5570	2,041.2	4	56		
M.R. MILITARY LIC	1985	22.9				
" TAGS		13.0				
" PERMITS		.40				
TOTAL	1985	39.9	2	1		
TOTAL A.R.	7555	2,081.1				
TOTAL	91,245	\$3,626.5	100	100		

(A) LICENSES MISC. REVENUE FROM
 RESIDENT RSP LICENSES, KAN. SALMON STEELHEAD SPORT & BAIT LICENSE LICENSES, 31.0.

(B) LICENSES MISC. REVENUE FROM DUCKS, 25.0
 + RDPONG & GAIDE FEES, 13.7

NOTE: GAME PERMIT FEES SPREAD ON LICENSE SALES KEYS W/P SMALL HUNTING LIC.
 DT 3-13-84

Sam Mc Dowell

3/11/85

vt. case pending

Sam Mc Dowell
Dale Boudurant.

~~38~~ 3A7 83-1592 CDV
Alaska case
will take to Supreme Ct.

Judge Sordahl -

Feels held up due to Madison
Case.

Feels there is a problem. Think
there is a "need" but problem.

Feels shouldn't be a band aid.

Goes to constitutionality issue.

Q - Give priority based on geographical
location x

Right to Give to no State Brought &
deny other person is destitute

Mitchell involved w/ Dynet case.
Has debated Mitchell. Want
public hearing

Don Mitchell - Larry Spangler
ask why not in need -

*
* DELIVER TO: JPOM *
*
* ORIGINAL *
* SENT: 03/13/85 TIME: 16:21 *
* FROM: ANNIE NEUBAUER *
* SUBJECT: POM/FAIRBANKS *
* PRINT DATE: 03/13/85 TIME: 16:21 *
* 22 *

TO: SENATORS: BENNETT, COGHILL, FAHRENKAMP, STURGULEWSKI,
ELIASON, ZHAROFF, HALFORD, V. FISCHER

REPRESENTATIVES: DAVIS, FRANK, M. W. MILLER, KOPONEN,
RINGSTAD, HERRMANN, SHULTZ, WALLIS, SUND, THOMPSON, CATO,
PEARCE, JENKINS

FROM: SAMMIE L. LACHAPELLE, P.O. BOX 75272, FAIRBANKS 99707

PHONE: HOME 488-1598/ WORK 353-6515

RE: SB231/DB288 GOVERNOR SHEFFIELD'S SUBSISTENCE BILLS

MEDIA COVERAGE INDICATES BILL WOULD ALLOW BOARD OF FISHERIES TO
PRIORITIZE PERSONAL USE AND SPORTS FISHING LOWER THAN COMMERCIAL.
THIS IS A VIOLATION OF STATE CONSTITUTION AS THE FISH AND GAME
BELONG TO THE PEOPLE, NOT CAMPAIGN CONTRIBUTORS. THE PRIORITY
SHOULD BE SUBSISTENCE, PERSONAL USE AND SPORTS AND COMMERCIAL
USE.

*
* DELIVER TO: JFOM *
*
* ORIGINAL *
* SENT: 03/18/85 TIME: 10:49 *
* FROM: LIDA *
* SUBJECT: POM *
* PRINT DATE: 03/18/85 TIME: 10:49 *
*

TO: ALL LEGISLATORS

FROM: WILLIAM L. LE
P.O. BOX 589
WASILLA, AK. 99687
PHONE 376-6514 HM 279-6661 EXT 512 WK

RE: SUBSISTENCE FISHING

I FEEL THAT THE LEGISLATURE WOULD BE DOING A DISSERVICE TO ALL ALASKANS IF YOU DO NOT GET INVOLVED WITH THE SUBSISTENCE ISSUE. I FEEL THE LAW SHOULD READ "RURAL SUBSISTENCE USE WITH ALASKA STATE BOARD OF FISHERIES INDICATING WHAT RURAL IS." PLEASE SEND RESPONSE BY A LETTER SOON. HURRY!

* DELIVER TO: JFOM *
* ORIGINAL *
* SENT: 03/18/85 TIME: 11:12 *
* FROM: LIOA *
* SUBJECT: POM *
* PRINT DATE: 03/18/85 TIME: 11:13 *

TO: ALL LEGISLATORS

FROM: SAM E. MCDOWELL
CONCERNED ALASKAN
336 E. 23RD AVENUE
ANCHORAGE, AK. 99503

I'M OF THE OPINION GOVERNOR SHEFFIELD AND LARGEST PERCENTAGE OF ALASKA LEGISLATORS ARE UNAWARE OF THE PAST DEVIOUS MANIPULATION OF ALASKA'S SUBSISTENCE LAWS BY SPECIAL INTEREST ATTORNEYS AND ATTORNEY GENERAL TURNED LOBBIST.
I WILL BE IN JUNEAU MARCH 25 AND 26 AND WILL WELCOME THE OPPORTUNITY TO PROVE ABOVE STATEMENTS.

*
* DELIVER TO: JFOM *
*
* ORIGINAL *
* SENT: 03/12/85 TIME: 16:54 *
* FROM: LIOA *
* SUBJECT: POM *
* PRINT DATE: 03/12/85 TIME: 16:54 *
*

TO: ALL LEGISLATORS

FROM: SAM E. MCDOWELL
336 E. 23RD AVE
ANCHORAGE, AK. 99503

PLEASE BE ADVISED AND CONVEY MESSAGE TO GOVERNOR SHEFFIELD THAT WE ARE SICK AND TIRED OF HIS ANTI-URBAN, PRO-BUSH MANIPULATIONS OF URBAN ALASKANS CONSTITUTIONAL HUNTING AND FISHING RIGHTS. UNTIL GOVERNOR SHEFFIELD AND LEGISLATURE STARTS SUPPORTING CONSTITUTIONAL RIGHTS FOR ALL ALASKANS WE SHALL OPPOSE ALL AMENDMENTS TO ANCSA. HAVE A GOOD DAY.