

ALASKA BOARD OF FISHERIES  
RESOLUTION #81-94-FB

Conclusions Regarding the Kachemak  
Bay Subsistence Group Proposal

The Board of Fisheries has reviewed the findings of fact and conclusions of law contained in the August 4, 1981 preliminary injunction in Gjosund v ADF&G, 3HO-80-92 Civ. and 77-22014 Homer. The court there uses the term "subsistence" without distinguishing between the difference in that term's statutory definition before and after 1978. Since 1978, when the State subsistence law was enacted, the Board has realized that all fishing that had been called subsistence fishing was no longer accurately so described, because after 1978, the term was tied to customary and traditional uses.

In light of that, the Board in the December 1980 and March 1981 meeting determined the criteria to be used in identifying customary and traditional uses, which process is contained in the 29 volumes of transcripts before the court in Gjosund.

The preliminary injunction in Gjosund also makes some reference to customary and traditional uses, together with the word "subsistence" but the court at that preliminary stage did not do so with reference to the criteria developed for identifying such uses.

In reviewing its past actions, the Board is still not persuaded that the Kachemak Bay subsistence group qualifies for the subsistence priority under the criteria developed and recently upheld in Madison v ADF&G, 3KN-81-542. The reasons, discussed in detail in the December 1980 and March 1981 meetings, can be summarized as follows:

1. During the last 25-30 years, the group as a whole has not exhibited a long-term stable, reliable pattern of coho salmon use.
2. Although the group has a preponderant concentration of persons showing recent use, that use does not have a long history.
3. Although some members of the group have shown an intergenerational transmission of subsistence activities and skills, that transmission has only occurred through one or two generations and is not demonstrated by the majority of the group.
4. Although the group does take a wide range of wild resources for various uses, the group has not shown a reliance on taking of those resources.

Therefore, the Board finds that the Kachemak Bay subsistence group's resource harvesting activities do not qualify as subsistence users and the proposal to establish a subsistence fishery is denied.

However, the Board had determined that harvestable surpluses of coho salmon may exist in the Kachemak Bay area and has requested the staff to investigate the possibility of establishing a personal use gill net fishery for coho salmon in the area.

The staff is to report to the Board on the results of their investigations at the March 1982 meeting of the Board.

ADOPTED: Anchorage, Alaska  
December 19, 1981

VOTE: 6-1

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Nick Szabo  
Chairman