

ALASKA BOARD OF FISHERIES  
(Previously 94-03-FB)  
Delegation of Authority

Under AS 16.05.270, the Alaska Board of Fisheries delegates to the Commissioner of the Department of Fish and Game authority to adopt and make regulatory changes to 5 AAC to comply with the superior court's judgement in Kenaitze v. State, case no. 3AN-91-4569 Civil (Alaska Super. November 26, 1993), consistent with AS 16.05.251 and the subsistence law at AS 16.05.258(a) and (b), including the following:

(1) make findings under the subsistence law at AS 16.05.258(a) and (b), and adopt, amend, and repeal regulations as necessary and appropriate to comply with the superior court's order to provide for subsistence fisheries within the nonsubsistence areas described at 5 AAC 99.015;

(2) adopt, amend and repeal personal use fishing regulations as necessary for conservation of the resource due to regulations adopted under (1) of this delegation. Where possible, changes to personal use fisheries should result in the same level of opportunity and the same management measures provided by regulation during the 1991--1992 fishing season.

This delegation authorizes the commissioner to adopt and make permanent emergency regulations providing for fishing seasons, periods, areas, gear, and necessary adjustments to management plans, as necessary to provide a reasonable opportunity for identified subsistence uses.

DATE/TIME: April 28, 1994 @ 3:41pm

LOCATION: TELECONFERENCE

VOTE: [Yes/No/Absent] (6/0/1: Edfelt absent)

  
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Kay Andrew, Chair  
Alaska Board of Fisheries

**List of Department Reports  
and Board of Fisheries and Game Records  
For Use in Development of Subsistence Findings  
In Former Nonsubsistence Areas**

Alaska Department of Fish and Game  
April 1994

**Anchorage-Matsu-Kenai Nonsubsistence Area Fisheries**

Alaska Board of Fisheries, Subsistence Regulation Review Sheet, November 1992, Chinook, Coho, Sockeye, Pink, and Chum Salmon, Lower Cook Inlet, 14 p.

Alaska Board of Fisheries, Subsistence Regulation Review Sheet, November 1992, Chinook, Sockeye, Coho, Pink, and Chum Salmon, Upper Cook Inlet, 22 p.

Alaska Board of Fisheries, Subsistence Regulation Review Sheet, November 1992, Finfish Other Than Salmon, Cook Inlet, 13 p.

Alaska Board of Fisheries, Subsistence Regulation Review Sheet, February 1993, Shellfish, Cook Inlet, 10 p.

Alaska Department of Fish and Game, Division of Commercial Fisheries Management and Development. Lower Cook Inlet Salmon Annual Management Report, 1992.

Alaska Department of Fish and Game, Division of Commercial Fisheries Management and Development. Upper Cook Inlet Salmon Annual Management Report, 1992.

Alaska Department of Fish and Game, Division of Commercial Fisheries Management and Development. Cook Inlet Shellfish Annual Management Report, 1992.

Customary and Traditional Use Worksheets, Cook Inlet Area: Salmon, Tyonek Subdistrict: Salmon, Upper Cook Inlet, Remainder: Salmon, Port Graham and Koyuktolik Subdistricts: Salmon, Lower Cook Inlet, Remainder: Dolly Varden, Cook Inlet; Smelt, Cook Inlet; Other Saltwater Fishfish, Cook Inlet. Prepared by Ronald T. Stanek, James A. Fall, and Rita Miraglia. Division of Subsistence, Alaska Department of Fish and Game, November 1992, 64 p.

Hoffman, Andrew, Kelly Hepler, and Paul Cyr. Area Management Report for the Recreational Fisheries of the Anchorage Area. Division of Sport Fish, Alaska Department of Fish and Game, 1993.

Mills, Michael J. Harvest, Catch, and Participation in Alaska Sport Fisheries During 1992. Fisheries Data Series No. 93-42, Division of Sport Fish, Alaska Department of Fish and Game, October 1993.

Nelson, Dave et al. Area Management Report for the Recreational Fisheries of the Kenai Peninsula. Division of Sport Fish, Alaska Department of Fish and Game, May 1993.

Stanek, Ronald T. Subsistence Finfish in the Port Graham and Koyuktolik Subdistricts, Cook Inlet Area. Division of Subsistence, Alaska Department of Fish and Game, November 1992.

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Attachment to 94-03-FB

Summary of Actions, Board of Fisheries, Subsistence Consistency Review Findings, February 23-27, 1993. Division of Boards, Alaska Department of Fish and Game, p. 36-37.

Whitmore, Craig, Dana Sweet, and Larry Bartlett. Area Management Report for the Recreational Fisheries of Northern Cook Inlet, Division of Sport Fish, Alaska Department of Fish and Game, 1993.

Proceedings of the Board of Fisheries, November-December 1990, Soldotna and Anchorage, and associated materials:

Athons, David. Lower Cook Inlet Management Report to the Alaska Board of Fisheries, Division of Sport Fish, November 1990.

Braund, Steven R. Cook Inlet Subsistence Salmon Fishery, Technical Paper No. 54, Division of Subsistence, ADF&G, December 1980 ((Revised November 1982)

Bucher, Wesley A. and Rance Morrison. Review of the 1990 Lower Cook Inlet Salmon Fishery, Report to the Board of Fisheries, Division of Commercial Fisheries, Regional Information Report No. 2H90-10, October 1990.

Delaney, Kevin. An Overview of Upper Cook Inlet Fisheries: A Statewide Perspective, Regulatory Management Plans, and Allocative Issues. Report to the Alaska Board of Fisheries, Division of Sport Fish, November 1990.

Engel, Larry J. Northern Cook Inlet Fisheries. A Report to the Alaska Board of Fisheries. Division of Sport Fish, November 1990.

Fall, James A. and Ronald T. Stanek. An Overview of Subsistence and Personal Use Salmon Fisheries in the Cook Inlet Area. A report to the Alaska Board of Fisheries. Division of Subsistence, ADF&G, November 1990.

McBride, Doug and Steve Hammarstrom. Implementation and Performance of Management Plans for the Early and Late Returns of Chinook Salmon to the Kenai River. Report to the Alaska Board of Fisheries. Division of Sport Fish, November 1990.

Nelson, Dave. The Upper Kenai Peninsula Sport and Personal Use Fisheries. A Report to the Alaska Board of Fisheries. Division of Sport Fish, Nov. 1990.

Reports to the Board of Fisheries, Cook Inlet Area, 1990, Division of Commercial Fisheries.

Ruesch, Paul H. 1990 Upper Cook Inlet Commercial Salmon Fishery Management Report to the Alaska Board of Fisheries, Division of Commercial Fisheries, Regional Information Report 2S90-7, November 1990.

Seven Criteria Worksheet for Findings on Customary and Traditional Uses of Salmon in the Southern District of the Cook Inlet Area, Alaska Board of Fisheries, May 1991. Division of Subsistence, Alaska Department of Fish and Game.

Seven Criteria Worksheet for Findings on Customary and Traditional Uses of Upper Cook Inlet Salmon. Alaska Board of Fisheries, November 1990. Division of Subsistence, Alaska Department of Fish and Game.

Seven Criteria Worksheet for Findings on Customary and Traditional Uses of Smelt in Cook Inlet, Alaska Board of Fisheries, November 1990. Division of Subsistence, Alaska Department of Fish and Game.

Transcript of Proceedings Concerning Finfish in Lower Cook Inlet, November 6-14, 1990. Board Members in Attendance: Bud Hodson (Chairman), Mike Chihuly (Vice-Chairman), John Hanson, Bernard "Bud" Ivey, Deborah Lyons, Michael Martin, and H. "Robin" Samuelson.

Transcript of Alaska Board of Fisheries Hearing, November 27, 28, 29, 30, 1990. Board Members in Attendance: Bud Hodson (Chairman), Mike Chihuly (Vice-Chairman), John Hanson, Bernard "Bud" Ivey, Deborah Lyons, Michael Martin, and H. "Robin" Samuelson.

Regulation Changes to the Personal Use and Subsistence Fisheries. Upper Cook Inlet. Alaska Department of Fish and Game, November 1990.

Regulation Changes to the Personal Use Fishery by the Alaska Board of Fisheries. Lower Cook Inlet. Alaska Department of Fish and Game, November 1990.

#### **Anchorage-Matsu-Kenai Nonsubsistence Area, Mountain Goats in Portions of Units 7 and 15(C)**

Abbott, Susan (Editor). Mountain Goat. Federal Aid in Wildlife Restoration, Annual Performance Reports of Survey-Inventory Activities, Division of Wildlife Conservation, Alaska Department of Fish and Game, 1 July 1990-30 June 1991 (1991), 1 July 1991-30 June 1992 (1992), 1 July 1992-30 June 1993 (1993).

Alaska Board of Game, Subsistence Regulation Review Sheet, Customary and Traditional Use Regulations, Seasons and Bag Limits, November 1992, and Proceedings of the Alaska Board of Game, 1-20-93, Worksheet Number 40.

Customary and Traditional Use Worksheet. Goat -- GMU 15C; Seldovia, Port Graham, and Nanwalek (English Bay). Division of Subsistence, Alaska Department of Fish and Game, November 1992.

Customary and Traditional Use Worksheet. Mountain Goat -- GMUs 7 and 15 (Except in the Areas of Port Graham, English Bay, and Seldovia). Division of Subsistence, Alaska Department of Fish and Game, March 1991.

#### **Ketchikan and Juneau Nonsubsistence Area Fisheries**

Alaska Board of Fisheries, Subsistence Regulation Review Sheet, February 1993, Salmon, Districts 1-15 (Southeast Not Including Yakutat), 12 p.

Alaska Board of Fisheries, Subsistence Regulation Review Sheet, February 1993, Non Salmon Finfish, Southeast and Yakutat, 20 p.

Alaska Board of Fisheries, Subsistence Regulation Review Sheet, February 1993, Shellfish Other Than King and Tanner Crab, Districts 1-15 (Southeast), 12 p.

Alaska Department of Fish and Game, Division of Commercial Fisheries Management and Development. Region I Finfish Fisheries. Report to the Alaska Board of Fisheries, 1993.

Alaska Department of Fish and Game, Division of Commercial Fisheries Management and Development. Region I Shellfish Fisheries. Report to the Alaska Board of Fisheries, 1992/93.

Alaska Department of Fish and Game, Division of Commercial Fisheries Management and Development. Southeast Alaska Finfish Board Report, 1992.

Alaska Department of Fish and Game, Division of Commercial Fisheries Management and Development. Southeast Alaska Groundfish Oral Report to the Alaska Board of Fisheries, 1993.

Customary and Traditional Uses of Fish and Shellfish, Eight Criteria Worksheets, Kuskokwim, Yukon, Kotzebue-Norton Sound, Southcentral/Southwest, Southeast. Prepared for the Alaska Board of Fisheries, February-March 1993, by the Division of Subsistence, Alaska Department of Fish and Game, February 1993.

Eight Criteria Worksheet, Board of Fisheries, 1989, Shellfish, Saxman. Division of Subsistence, Alaska Department of Fish and Game, 1989.

Eight Criteria Worksheet, Board of Fisheries, 1989, Herring, Saxman. Division of Subsistence, Alaska Department of Fish and Game, 1989.

Eight Criteria Worksheet, Board of Fisheries, 1989, Bottomfish, Saxman. Division of Subsistence, Alaska Department of Fish and Game, 1989.

Eight Criteria Worksheet, Board of Fisheries, 1989, Fishing District 1F, Salmon, Saxman. Division of Subsistence, Alaska Department of Fish and Game, 1989.

Summary of Board of Fisheries Customary and Traditional Use Determinations -- Petersburg, January 23-29, 1989, 4p.

Summary of Actions, Board of Fisheries, Subsistence Consistency Review Findings, February 23-27, 1993. Division of Boards, Alaska Department of Fish and Game, p. 41-50.

### **Fairbanks Nonsubsistence Area, Subdistrict 6C Salmon and Delta River Salmon**

Alaska Board of Fisheries, Subsistence Regulation Review Sheet, February 1993, Salmon, Yukon Area and Proceedings of the Alaska Board of Fisheries, 2-24-93 to 2-25-93.

Alaska Department of Fish and Game, Division of Commercial Fisheries Management and Development. Yukon River Salmon Annual Management Report, 1993.

Arvey, William D. Annual Management Report for Sport Fisheries in the Arctic-Yukon-Kuskokwim Region, 1991. Division of Sport Fish, Alaska Department of Fish

and Game, November 1993.

Customary and Traditional Use Eight Criteria Worksheet No. 6. Yukon Salmon. Division of Subsistence, Alaska Department of Fish and Game, February-March 1993.

Summary of Actions, Board of Fisheries, Subsistence Consistency Review Findings, February 23-27, 1993. Division of Boards, Alaska Department of Fish and Game, p. 14-18.

### **Valdez Nonsubsistence Area Fisheries**

Alaska Board of Fisheries, Subsistence Regulation Review Sheet, February 1993, Salmon and Other Finfish, Prince William Sound, 24 p.

Alaska Board of Fisheries, Subsistence Regulation Review Sheet, February 1993, Marine Invertebrates, Prince William Sound.

Alaska Department of Fish and Game, Division of Commercial Fisheries Management and Development. Prince William Sound Salmon Annual Management Report, 1992.

Alaska Department of Fish and Game, Division of Commercial Fisheries Management and Development. Prince William Sound Shellfish Annual Management Report, 1993.

Customary and Traditional Use Worksheet II-12. Salmon: Prince William Sound Management Area (Including Copper River Basin). Division of Subsistence, Alaska Department of Fish and Game, January 1993.

Customary and Traditional Use Worksheet II-13. Finfish Other Than Salmon and Herring: Prince William Sound Management Area (Including the Copper River Basin). Division of Subsistence, Alaska Department of Fish and Game, January 1993.

Customary and Traditional Use Worksheet II-14. Herring and Herring Spawn-On-Kelp: Prince William Sound Management Area. Division of Subsistence, Alaska Department of Fish and Game, January 1993.

Customary and Traditional Use Worksheet II-15. Marine Invertebrates: Prince William Sound Management Area. Division of Subsistence, Alaska Department of Fish and Game, January 1993.

Lang, Doug Vincent. Area Management Report for the Recreational Fisheries of the Central Gulf Coast. Division of Sport Fish, Alaska Department of Fish and Game, 1993.

Summary of Actions, Board of Fisheries, Subsistence Consistency Review Findings, February 23-27, 1993. Division of Boards, Alaska Department of Fish and Game, p. 37-40.

Findings of the Commissioner of the Alaska Department of Fish and Game Establishing Subsistence Fisheries in the Former Nonsubsistence Areas Described in 5 AAC 99.015

Under a delegation of authority from the Board of Fisheries on April 28, 1994, which is attached to this affidavit, I have made findings under the subsistence law, AS 16.05.258, to provide for the subsistence uses of salmon and other fish in the former nonsubsistence areas described in 5 AAC 99.015.

These findings are based on a review of previous Board of Fisheries findings of customary and traditional uses of salmon in these areas, reports prepared by the Department of Fish and Game, including materials prepared by the Division of Subsistence that relate to the uses of the affected fish stocks, previous regulations of the Board of Fisheries providing for subsistence needs, and public comment. The reports and other materials I relied upon are listed on an attached document.

I find as follows:

Anchorage -- Matsu Valley -- Kenai Area

1. There are customary and traditional uses of salmon stocks and of smelt in the former Anchorage-Matsu-Kenai nonsubsistence area. These stocks are described by the department as:

early run king salmon (Upper and Lower District)  
late run king salmon (Upper and Lower District)  
early run red salmon (Upper and Lower District)  
late run red salmon (Upper and Lower District)  
pink salmon (Upper and Lower District)  
chum salmon (Upper and Lower District)  
early run coho salmon (Upper and Lower District)  
late run coho salmon (Upper and Lower District)  
native coho salmon of the Fox River in Kachemak Bay (Lower District)  
smelt in the Cook Inlet (Upper and Lower District)

2. There is a harvestable surplus of these fish stocks in the former Anchorage-Matsu-Kenai nonsubsistence area. This finding is based on run forecasts published annually by the Division of Commercial Fisheries (Geiger and Simpson 1994).

3. The amount of the salmon stocks reasonably necessary to provide for subsistence uses (in numbers of fish), based on the method developed by the Board of Fisheries in 1993 and the best available data showing historical harvest, is:

(Re: 94-03-FB)

(Upper District) king salmon: 797 - 1,737  
(Upper District) red salmon: 9,617 - 47,269  
(Upper District) pink salmon: 878  
(Upper District) chum salmon: 206  
(Upper District) coho salmon: 113 - 4,552  
(Lower District) all salmon: 4,663 - 8,247  
Smelt in Cook Inlet (Upper and Lower District): 153,000

4. The attached regulations provide a reasonable opportunity for the identified customary and traditional uses in the former Anchorage-Matsu-Kenai nonsubsistence area

### Valdez Area

1. The Board of Fisheries has made no previous findings regarding customary and traditional uses of fish stocks, nor have subsistence fishing regulations previously been adopted, for the former Valdez nonsubsistence area. Because the question of whether there are customary and traditional uses has not been before the Board of Fisheries, I do not find that it is appropriate or necessary to make such a finding at this time. The Board will take up the question of customary and traditional uses in this area as part of its normal schedule.

### Ketchikan Area

1. There are customary and traditional uses of salmon stocks in the former Ketchikan nonsubsistence area and of smelt, Dolly Varden, herring and herring spawn on kelp, bottomfish, and halibut. These stocks are described by the department as:

Salmon and Dolly Varden in waters of:

Section 1-C in Checats Cove east of the longitude of Edith Point

Section 1-D in Yes Bay north of a line from Syble Point to Bluff Point

Section 1-E in waters of Helm Bay north of the latitude of Helm Point and in waters of the Naha River and Roosevelt Lagoon

Section 1-F in waters of George Inlet north of 55 degrees 25 minutes N. Lat. and in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek

Herring and herring spawn on kelp in waters of Section 1-F between Point Sykes and Foggy Point to a distance of 2 nautical miles offshore.

Bottomfish and halibut in waters of Section 1-F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra, and in waters of Section 1-E south of the latitude of the Grant Island light.

2. There is a harvestable surplus of these fish stocks in the former Ketchikan nonsubsistence area. This finding is based on run forecasts published annually by the Division of Commercial Fisheries (Geiger and Simpson 1994).

3. The amount of salmon necessary to provide for subsistence uses (in numbers of fish), based on the method developed by the Board of Fisheries in 1993 and the best available data showing historical harvest, is:

Sockeye:	3,541 - 6,155
Pink:	27 - 343
Chum:	19 - 159
Chinook:	7 - 37
Coho:	13 - 17

I have not made specific findings for fish species other than salmon because there is not an adequate historic harvest record, specific to this area, upon which to base a finding.

4. The attached regulations provide a reasonable opportunity for the identified customary and traditional uses in the former Ketchikan nonsubsistence area

### Juneau

1. The Board of Fisheries has made no previous findings regarding customary and traditional uses of fish stocks, nor have subsistence fishing regulations previously been adopted, for the former Juneau nonsubsistence area. Because the question of whether there are customary and traditional uses has not been before the Board of Fisheries, I do not find that it is appropriate or necessary to make such a finding at this time. The Board will take up the question of customary and traditional uses in this area as part of its normal schedule.

### Fairbanks

1. In the former Fairbanks nonsubsistence area there are customary and traditional uses of Tanana River Subdistrict 6-C salmon, and Delta River salmon. There are also customary and traditional uses of freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish in the Yukon drainage area, which includes the Fairbanks area.

2. There is a harvestable surplus of these fish stocks in the area. This finding is based on run forecasts published annually by the Division of Commercial Fisheries (Geiger and Simpson 1994).

3. The amount necessary to provide for subsistence uses (in numbers of fish), based on the method developed by the Board of Fisheries in 1993 and the best available data showing historical harvest, is:

Chinook:	1,337 - 2,193
Chum:	6,541 - 7,341
Coho:	1,328 - 3,840

I have not made specific findings for fish species other than salmon because there is not an adequate historic harvest record, specific to this area, upon which to base a finding.

4. The attached regulations provide a reasonable opportunity for the identified customary and traditional uses in the former Fairbanks nonsubsistence area

Signed: Carl L. Rosier  
Carl L. Rosier, Commissioner

Date: 7/13/94