

SUPREME COURT OF ALASKA

State of Alaska and Frank Rue, as Commissioner of Fish and Game v.
Kenaitze Indian Tribe, Ninilchik Traditional Council, Knik Tribal
Council, and Native Village of Eklutna; Kenaitze Indian Tribe, Cross-
Appellant v. State of Alaska and Frank Rue, as Commissioner of Fish
and Game, Cross-Appellees

State v. Kenaitze Indian Tribe, 83 P.3d 1060 (Alaska 2004) · No. S-10358 · Decided January 16, 2004

SUMMARY

The Supreme Court of Alaska reviewed challenges to a regulation designating portions of the Kenai Peninsula, Anchorage, and Matanuska-Susitna Borough as a nonsubsistence area. The court held that the Joint Boards of Fisheries and Game acted within their statutory discretion and did not act arbitrarily or capriciously in adopting the regulation or considering the available evidence. The court reversed the superior court's invalidation of the regulation and rejected the Kenaitze Indian Tribe's cross-appeal.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Eastaugh, Justice; Matthews, Justice; Bryner, Justice; Carpeneti, Justice
JURISDICTION	Alaska
DECIDED	January 16, 2004
DOCKET	S-10358
DISPOSITION	other
PROCEDURAL POSTURE	The State appealed a superior court summary judgment declaring invalid the inclusion of Knik, Eklutna, and Ninilchik in the Anchorage-MatSu-Kenai Nonsubsistence Area. The Kenaitze Indian Tribe cross-appealed the superior court's determination that inclusion of the remainder of the Kenai Peninsula was valid.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. A regulation adopted under the Administrative Procedure Act is reviewed for consistency with its authorizing statute and for reasonableness and absence of arbitrariness. The court examines whether the agency took a hard look at salient

	problems, engaged in reasoned decision making, and failed to consider an important factor.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Alaska, Frank Rue, as Commissioner of Fish and Game v. Kenaitze Indian Tribe, Ninilchik Traditional Council, Knik Tribal Council, Native Village of Eklutna

TOPICS

judicial review of agency action

administrative law

statutory interpretation

indian affairs

legislative intent

PRACTICE AREAS

administrative law

fish and wildlife regulation

Native American law

QUESTIONS PRESENTED

1. Whether 5 AAC 99.015 was consistent with AS 16.05.258(c) despite the joint boards' use of proposed boundaries before applying the statutory criteria and their combination of geographic areas.
2. Whether the joint boards acted reasonably and without arbitrariness by relying on the information available to them and by including Knik, Eklutna, and Ninilchik in the nonsubsistence area.
3. Whether the inclusion of the remainder of the Kenai Peninsula in the Anchorage-MatSu-Kenai Nonsubsistence Area was invalid.

HOLDINGS

1. The joint boards did not exceed their delegated authority by drawing initial nonsubsistence boundaries before applying the statutory socioeconomic criteria, by determining the order in which to apply those criteria, or by combining proposed areas for analysis.
2. The joint boards acted reasonably and not arbitrarily in including Knik, Eklutna, and Ninilchik in the Anchorage-MatSu-Kenai Nonsubsistence Area.
3. The regulation was not invalid for including the remainder of the Kenai Peninsula in the Anchorage-MatSu-Kenai Nonsubsistence Area.

KEY QUOTATIONS

“Review “consists primarily of ensuring that the agency has taken a hard look at the salient problems and has genuinely engaged in reasoned decision making”” (83 P.3d at 1068)

“An administrative agency may make a reasonable decision even though the information available to it is limited; complete certainty is not required.” (83 P.3d at 1068)

FACTUAL BACKGROUND

The Alaska Joint Boards of Fisheries and Game adopted 5 AAC 99.015, classifying the Anchorage-MatSu-Kenai region, including Knik, Eklutna, Ninilchik, and most of the Kenai Peninsula, as a nonsubsistence area. The boards considered statutory socioeconomic criteria, Alaska Department of Fish and Game reports, tribal submissions, surveys, and public testimony. The tribes argued that the boards used overly broad geographic boundaries, applied the criteria in an improper sequence, and failed to obtain or adequately consider community-specific information.

PROCEDURAL HISTORY

The tribes challenged Alaska's nonsubsistence-area regulation and asserted statutory and constitutional claims. In earlier proceedings, the Alaska Supreme Court upheld the statutory requirement that the joint boards identify nonsubsistence areas but invalidated a separate domicile-proximity criterion and remanded. On remand, the superior court granted the tribes summary judgment in part, invalidating the regulation as to Knik, Eklutna, and Ninilchik while upholding it as to the remainder of the Kenai Peninsula. The Supreme Court reversed the former ruling and affirmed the latter.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. The court reversed the summary judgment invalidating inclusion of Knik, Eklutna, and Ninilchik and affirmed the summary judgment upholding inclusion of the remainder of the Kenai Peninsula.

CASES CITED

- State v. Kenaitze Indian Tribe, 894 P.2d 632, 635, 638-39, 642 (Alaska 1995)
- Interior Alaska Airboat Ass'n v. State, Bd. of Game, 18 P.3d 686, 689-90, 693 (Alaska 2001)
- Stepovak-Shumagin Set Net Ass'n v. State, Bd. of Fisheries, 886 P.2d 632, 636-37, 641-42 (Alaska 1994)
- Kelly v. Zamarello, 486 P.2d 906, 911 (Alaska 1971)
- Native Vill. of Elim v. State, 990 P.2d 1, 9-11 (Alaska 1999)
- Grimes v. Kinney Shoe Corp., 938 P.2d 997, 1000 n. 7 (Alaska 1997)
- Carney v. State, Bd. of Fisheries, 785 P.2d 544, 548 (Alaska 1990)
- McDowell v. State, 785 P.2d 1, 9 (Alaska 1989)
- Hammond v. N. Slope Borough, 645 P.2d 750, 759-60 (Alaska 1982)
- Alaska Survival v. State, Dep't of Natural Res., 723 P.2d 1281, 1287 (Alaska 1986)
- State v. Hebert, 743 P.2d 392, 397 (Alaska App. 1987), aff'd, 803 P.2d 863 (Alaska 1990)