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Final Decision Issued in STA Herring Litigation

Supreme Court Upholds Superior Court Decision

On December 29, 2023, the Alaska Supreme Court issued a final decision in the Sitka Tribe of Alaska's long-running litigation against the State of Alaska over its management of the Sitka Sound commercial sac roe herring fishery. The justices upheld a lower court decision to deny the Tribe's constitutional claim and award of attorney fees for having prevailed in its statutory and regulatory claims. The decision concludes legal action that the Tribe initiated against the state more than four years ago.

The Sitka Tribe of Alaska has expressed concern about the impact of the commercial sac roe herring fishery on the health of the herring population in Sitka Sound and the availability of subsistence herring eggs for decades. Between 2001 and 2009, the Tribe worked to address these concerns with the Alaska Department of Fish and Game. In 2012, the Board of Fish responded to the Tribe's concerns by closing a portion of Sitka Sound to commercial fishing. The Board expanded the closed area in 2018.

After a record-low harvest of subsistence herring eggs in 2018 and decisions by the Board of Fish and ADF & G that were unresponsive to the Tribe's concerns, STA took legal action against the State in December 2018. The Tribe alleged that the state's management of the commercial Sitka Sound sac roe herring fishery violated the subsistence priority in state statute and the common use and sustained yield clauses in the Alaska Constitution. In a series of four decisions, the Superior Court found in favor of the Tribe's argument that the State is required to "manage the commercial fishery through distribution of commercial harvest by time and area in order to ensure that subsistence users have a reasonable opportunity to harvest the amount of herring spawn necessary for subsistence uses, and that this determination must be based on the Department's assessment of the quality and quantity of spawn on branches that is available for subsistence harvest." The Superior Court denied the Tribe's claim that the sustained yield clause



of the Alaska Constitution requires the state to use the “best available information” to regulate the fishery, as well as its request for attorney fees for having substantially prevailed on the statutory and regulatory claims. In 2023, STA appealed to the Supreme Court on these issues.

In its consideration of the Tribe’s appeal, the Supreme Court concluded that ADF&G had appropriately exercised its judgment in providing technical information to the Board of Fish. It found that the Superior Court had not abused its discretion in deciding not to award attorney fees to STA for having substantially prevailed on statutory and regulatory claims.

“While we are disappointed that the Supreme Court did not agree that the Alaska Constitution requires the state to use the best available information in fisheries management, the Tribe’s litigation still resulted in substantial improvements in management of the commercial sac roe herring fishery in Sitka Sound,” said Tribal Chairman Lawrence “Woody” Widmark. “And while we will not receive attorney fees, we do not regret using our resources to defend the Tribe’s sovereignty over natural resources in our traditional territory,” he continued. “Our people have stewarded and protected the yaaw (herring) since time immemorial, and we will continue to do so.”

Chairman Widmark also expressed his thanks to other Tribes, Native corporations, and partners for their support of the Sitka Tribe of Alaska’s defense of the yaaw and the rights of subsistence harvesters.

The Alaska Supreme Court decision in *Sitka Tribe of Alaska v. State of Alaska, Alaska Department of Fish & Game, and Southeast Herring Conservation Alliance* is available on the [Alaska Court System website, case S-18114](#).

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Sitka Tribe of Alaska (STA) is a federally recognized tribal government under the 1934 Indian Reorganization Act that serves more than 4,500 citizens of Tlingit, Haida, Aleut, Tsimshian, and other Tribal heritage.