Scudero v. State, 496 P.3d 381 (Alaska 2021)

- **Holding:** State statute regulating commercial fishing was necessary to conserve the involved resource and was therefore enforceable in a non-discriminatory manner against a Metlakatla Indian Community member who claimed off-reservation aboriginal fishing rights.
- **Summary:** Defendant is a member of the Metlakatla Indian Community, a federally recognized tribe with a reservation set aside in 1891. A quarter century later, President Wilson issued a proclamation allowing waters within 3000 feet of the reservation "'to be used by the Indians as a source of supply for [an] intended cannery, "under the general fisheries laws and regulations of the United States as administered by the Secretary of Commerce."'" Defendant, however, was convicted of commercial fishing in waters outside the 3000-foot area in violation of Limited Entry Act, Alaska Stat. § 16.42.010, and implementing regulations. He appealed, arguing in part that his conduct constituted an exercise of the aboriginal right to engage in subsistence fishing that has never been terminated. The Community appeared as amicus curiae and similarly argued "that its members have a 'reserved right to fish, on a non-exclusive basis, in the off-reservation waters surrounding the Reserve.'" The supreme court affirmed in all substantive respects.

  The court acknowledged that "Scudero raises several important and unresolved questions about the status of aboriginal and reserved fishing rights for citizens of the Metlakatla Indian Community" but found no need to resolve them. Instead, it deemed the conservation-necessity doctrine, derived from Pacific Northwest fishing cases such as *Department of Game v. Puyallup Tribe*, 414 U.S. 44 (1973), controlled. Under that doctrine, "[i]t is ... well settled that the State can regulate commercial fishing in its waters for conservation purposes, even by persons whose fishing rights are aboriginal and reserved by treaty." With this basic principle in mind, the court turned to the Limited Entry Act whose stated legislative purposes is "'to promote the conservation and the sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry of participants into the commercial fisheries in the public interest and without unjust discrimination.'" It explained that "[w]e have repeatedly recognized the Act's intertwined purposes of conserving fisheries resources and maintaining a healthy fishing industry. These purposes easily fall within the ambit of the "conservation necessity" principle." Consequently, "[w]hatever the status of Scudero's aboriginal and reserved rights, they do not shield him from the non-discriminatory operation of State fishing laws that are necessary for the conservation of the resource." The court concluded by rejecting other non-Indian law issues presented in the appeal but remanded for modification of Defendant's sentence on a conceded error.
- **Relevant (2021) Deskbook Section:** 9:15 nn.1, 9-11
- **Comment:** The supreme court arguably conflated the Limited Entry Act's conservation purpose with whether regulation of Defendant's conduct itself was compelled by conservation necessity. In practical effect, the court discounted the effect that the claimed aboriginal rights may have had on the extent to which the Act could lawfully restrict his fishing activity by treating him no differently than a non-Metlakatla member.