

HB

544

CSHB5 HB 544 Categories H. Resumes
Fishing ~~Effective Date~~

7/80

AGO 125370

Hearings held — Jan. 22 — held over for legal opinion
" " Jan. 24 — Reported out as CSHB544



Alaska State Legislature
House

HOUSE RESOURCES COMMITTEE

FISH & GAME ISSUES
Alvin Osterback, Chairman

Pouch V, State Capitol
Juneau, Alaska 99811
(907) 465-3715

HEARING NOTIFICATIONS

BILL	DATE INFORMED	LETTER/PHONE	INFORMED	HEARING DATE
HB544	1/18/80	4100	Dept. of Fish & Game To testify: Greg Cook, Exec. Dir. of Boards of Fisheries & Game	1/22/80
	1/18/80	3718	Rep. Parr, Sponsor	1/22/80

// Resources

Greg Cook said
he'd comment on the
supposed membership
matter. Since he
hasn't done it on
paper, I assume
he'll be willing to
comment on your show
this afternoon. 5

MEMORANDUM

TO: House Judiciary Committee

DATE January 21, 1980

FILE NO.

FROM: Gregory F. Cook *G. Cook*
Executive Director
Boards of Fisheries and Game

TELEPHONE NO 465-4108

SUBJECT Personal Consumption Fishery;
House Bill 544

In response to the January 21, 1980 telephone request from Sandra Stringer of your office, enclosed is a copy of Proposal #428, Personal Consumption Fishery, which was before the Board of Fisheries during its Fall 1979/1980 regulatory meeting. The proposal was rejected and the Board instead adopted a management plan for the Copper River salmon fisheries (#80-66-FB) which is also enclosed.

BACKGROUND INFORMATION

The Copper River subsistence fishery has existed for many years. Prior to construction of the Richardson Highway, participants in this fishery were mainly local residents. As road conditions improved and more leisure time became available, the number of non-local fishermen increased. These new participants in the fishery have come primarily from the Fairbanks and Anchorage areas.

Increased fishing pressure and poor returns of fish to the Copper River system in recent years has required the Board of Fisheries to take action to restrict commercial, sport and subsistence fisheries in the Copper River area. Restricting these fisheries has been a complex and difficult task. Consequently, the Board has considered a variety of alternatives before taking action. One alternative approach, suggested by the Board itself, was to create a category to be known as "personal consumption" fisheries. Such a classification would remove the fishery from the legislatively-mandated priority of subsistence.

This option was rejected by the Board of Fisheries at their public meeting in December 1979. The Board also rejected a second alternative proposed which called for differentiation among subsistence users by gear type only. The Board elected instead to develop a management plan: The plan's goal is to insure that subsistence needs are met first for those most dependent on the resource. Other subsistence users whose level of dependence is generally lower receive a lower priority as specified in AS 16.05.251(b).

PERSONAL CONSUMPTION FISHERY

428. 5 AAC 41.001-900. PERSONAL CONSUMPTION FISHERY. Establish a personal use category of fishermen that allows the taking of fish by gear not allowed under current sport fishing regulations. Fish taken under the regulations of this chapter could only be used for personal consumption, not for barter, trade, or sale.

The proposed regulation reads as follows:

ARTICLE 1.
STATEWIDE PROVISIONS.

5 AAC 41.001. APPLICATION OF THIS CHAPTER. (a) Regulations in this chapter apply to personal consumption fishing for finfish, shellfish, and aquatic plants.

(b) The regulations of this chapter do not prohibit the personal consumption of finfish, shellfish, or aquatic plants legally taken under the subsistence, commercial, and sport fishing regulations of this title.

(c) The unlawful possession of fish (5 AAC 39.197), the definitions (5 AAC 39.975) and the abbreviations and symbols (5 AAC 39.997) set forth and defined in ch. 39 of this title are applicable to the regulations in this chapter.

5 AAC 41.005. PERSONAL CONSUMPTION FISHING PERMITTED. Finfish, shellfish, and aquatic plants may be taken for personal consumption only as provided in this chapter.

5 AAC 41.010. METHODS, MEANS, AND GENERAL RESTRICTIONS. (a) Fish may be taken for personal consumption only by dip net.

(b) Fish may be taken for personal consumption only by residents.

(c) It is unlawful to buy, sell, trade, or barter personal consumption caught fish or their parts.

5 AAC 41.015. PERSONAL CONSUMPTION FISHING PERMITS AND REPORTS. (a) Finfish, shellfish, and aquatic plants may be taken only under the authority of a personal consumption fishing permit issued by the commissioner or a local representative of the department.

(b) The following permit conditions apply unless otherwise specified by the personal consumption fishing regulations in this chapter:

(1) the numbers of fish taken for personal consumption may not exceed the limits set out in the permit;

(2) permits must be obtained from a local representative of the department prior to personal consumption fishing;

(3) permits must be retained in the possession of the permittee and be readily available for inspection while taking or transporting the species for which the permit is issued;

(4) the permit may designate the species and numbers of fish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) if specified on the permit, each personal consumption fisherman shall keep accurate daily records of the catch involved, showing the number of fish taken by species, location and date of the catch and such other information as the department may require for management or conservation purposes;

(6) personal consumption fishing reports must be completed on forms provided by the department and submitted to the department office from which the permit was issued at a time specified by the department for each particular area and fishery;

(7) if applicable, the total annual possession limit for the permittee must be entered on each permit by the department representative issuing the permit; if applicable the department representative issuing the permit shall require from an applicant documented proof of residency, income, or other criteria required by regulation, or in the absence of such documentation, a signed affidavit setting forth duration of residency, income, or other criteria required by regulation, to determine the applicable annual possession limit and residency of the applicant;

(c) If the return of catch information necessary for management and conservation purposes is required by a personal consumption fishing permit, a permittee who fails to comply with such reporting requirements is ineligible to receive a personal consumption permit for that activity during the following calendar year, unless the permit applicant demonstrates to the department that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

5 AAC 41.020. DEFINITIONS. In this chapter

(1) "personal consumption fishing" means the taking, attempting to take or possession of finfish, shellfish, or aquatic plants by an individual for consumption as food by that individual or his immediate family;

(2) "dip net" means a bag-shaped net suspended from a frame, which may not exceed five feet in any outside dimension, is attached to a single handle and is operated by hand.

ARTICLE 12.
PRINCE WILLIAM SOUND AREA.

5 AAC 41.600. DESCRIPTION OF THE PRINCE WILLIAM SOUND AREA. The Prince William Sound area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

5 AAC 41.605. DESCRIPTION OF DISTRICTS AND SUBDISTRICTS. (a) The Upper Copper River district consists of all waters of the main Copper River from the confluence of the Slana River downstream to an east-west line crossing the Copper River at the confluence of the unnamed stream located approximately 1/4 mile below the U.S.G.S. gauging cable across the Copper River, as designated by Alaska Department of Fish and Game regulatory markers;

(b) the Chitina subdistrict consists of all waters of the main Copper River from the downstream edge of the Chitina-McCarthy Road Bridge downstream to an east-west line crossing the Copper River at the confluence of the unnamed stream located approximately 1-1/4 mile below the U.S.G.S. gauging cable across the Copper River, as designated by the Alaska Department of Fish and Game regulatory markers.

5 AAC 41.610. FISHING SEASONS. In the Chitina subdistrict of the Upper Copper River district, salmon may only be taken from June 1 through September 30.

5 AAC 41.620. LAWFUL GEAR AND GEAR SPECIFICATIONS. Salmon may be taken only by dip net.

5 AAC 41.625. WATERS CLOSED TO PERSONAL CONSUMPTION FISHING. All waters of the Prince William Sound area, except for those in the Chitina subdistrict are closed to personal consumption fishing.

5 AAC 41.630. PERSONAL CONSUMPTION FISHING PERMITS. Salmon may only be taken under the authority of a personal consumption fishing permit. Only one permit per year will be issued to an individual or household.

5 AAC 41.640. PERSONAL CONSUMPTION BAG AND POSSESSION LIMITS. The total annual possession limit for each permit is as follows:

(1) 15 salmon for a permit issued to an individual not a member of a household under (2) of this section;

(2) 30 salmon for a permit issued to the head of a household.

Justification: This is an alternative to existing regulations in response to a request by the Board of Fisheries at the March 1979 meeting.

Proposed by: Staff on request of the Board of Fisheries.

Favor: Jerome M. Messeth (70-71)
CR-FWS Adv.Cmte. (204)
Gastineau Cn.Adv.Cmte. (211)
Kodiak Adv.Cmte. (234)

Oppose: Naknek-Kvichak Adv. Cmte. (116)
Fairbanks Adv.Cmte. (183)
Commercial Fishermen of Cook's Inlet (216)

Action Taken:

ALASKA BOARD OF FISHERIES

COPPER RIVER SALMON MANAGEMENT PLAN

I. INTRODUCTION: The purpose of this plan is to insure an adequate escapement of salmon into the Copper River system and to provide management guidelines for equitable allocation of the harvestable resource.

II. COPPER RIVER SALMON RUN

- A. This policy governs only those salmon which pass the department sonar counters located at the Million Dollar Bridge.
- B. The Commercial Fisheries Division shall manage the Copper River commercial fishery to attain a total escapement into the Copper River of 350,000 salmon to insure that adequate escapement reach the spawning grounds and provide for a sport and subsistence harvest. The desired weekly escapements are shown in Table 1.
- C. The Commercial Fisheries Division shall manage the subsistence fishery on the Copper River consistent with AS 16.05.251(b) and to insure adequate escapement by restricting the subsistence harvest to the following levels (Table 2) based on escapement as determined by sonar evaluations and any other appropriate means.
- D. The department shall prepare application forms to obtain information necessary to determine what persons are qualified to receive subsistence permits described in Section III.

III. PERMITTING

A. Subsistence Permits: Permits may be issued to persons who show the greatest level of need for subsistence salmon on the basis of:

- Customary and direct dependence upon the resource as the mainstay of one's livelihood,
- local residency, and
- Availability of alternative resources.

1. Class A Permit: A Class A Permit may be issued to any person who satisfies all of the following criteria:

a. Dependency

- i. 55 years of age or older
- ii. Annual income of no more than the amount identified in 5 AAC 01.630(b) (2) (B) and as

the income criteria regulation may be from time to time amended.

iii. Use of a fishwheel to catch fish in the Copper River in ten of the last twelve years.

o. Residency

i. Proximity to the resource as determined by Copper River residency as follows:

A Copper River Basin resident is an Alaska resident (as defined in Title 16) who for the preceding twelve consecutive months has maintained his place of residence and voting residence (if applicable) in the area described below and who does not maintain a permanent residence or voting residence elsewhere. The area includes Game Management Units 11, 13-A, 13-B, 13-C, 13-D as described in 5 AAC 90.010 and the Jacksina River drainage to its confluence with the Nabesna River.

2. Class B Permit: A Class B Permit may be issued to any person who is a Copper River Basin resident as defined above.
3. Class C Permit: A Class C Permit may be issued to any state resident who applies to and is determined by the Commissioner of Fish and Game or his delegate as a person who satisfies all of the following criteria:
 - a. Household size of three persons or more,
 - b. Household having one or more persons over 55 years old,
 - c. No more than one full-time employed person in the household,
 - d. Participation in the fishery for eight of the last ten years, and
 - e. Annual household income not to exceed \$10,000.
4. Class D Permit: A Class D Permit may be issued to any resident of the State of Alaska as defined in Title 16.

B. Permitting

1. When escapements of less than 300,000 are projected, the face value (number of fish allowed per permit) of permits as described in 5 AAC 01.630 may be reduced to insure that all permittees would be allowed to fish.
2. When escapement projections improve significantly during the season, face values of permits may be increased up to

full value as described in 5 AAC 01.630.

3. Permits must be returned no later than October 31 or a permit for the following year may be denied as provided in 5 AAC 01.015(c).
4. During closed fishing periods, the Chitina permit issuing station may be closed or operated at reduced hours to reduce manpower costs.

C. Delayed Season Opening

When sonar counts prior to June 1 indicate less than 250,000 projected escapement, the subsistence season opening may be delayed up to ten days to allow more accurate assessment of run strength and confirm appropriate allowable harvest allocations.

IV. COPPER RIVER SUBSISTENCE CHINOOK SALMON FISHERY:

When the Copper River dip net subsistence fishery is closed to the taking of sockeye salmon, it may be open to the taking of chinook salmon between June 1 through July 10, up to seven days per week.

V. COPPER RIVER SUBSISTENCE COHO SALMON FISHERY:

If the Copper River subsistence fishery is closed or restricted because of an inadequate escapement of sockeye and chinook salmon, the fishery may be reopened September 1 for the taking of coho salmon, which constitute the majority of the salmon at that time. By September 1, the escapement of sockeye and chinook salmon has essentially passed through the area. Also by this time, the subsistence fishery effort has decreased and constitutes less than five percent of the total effort on the fishery.

VI. UPPER COPPER RIVER SOCKEYE SALMON SPORT FISHERY:

When projected sockeye salmon escapements to the upper Copper River fall below 250,000, sport fishing for sockeye salmon shall be closed.

VII. COPPER RIVER CHINOOK SALMON COMMERCIAL FISHERY:

During years when commercial sockeye salmon fishery closures are in effect, limited chinook salmon harvests may be allowed under the following conditions:

- A. The incidental catch of sockeye salmon may not exceed ten percent of chinook salmon weekly harvest quotas when less than 250,000 sockeye salmon escapement is projected. When 250-350,000 sockeye salmon escapement is projected, the incidental catch may not exceed twenty percent.
- B. Maximum drift gill net per vessel shall be 150 fathoms of 8 1/4-inch or larger mesh.
- C. Fishing periods may not exceed six hours in length and fishing time will be set to avoid periods of maximized catch potential.

There will be two fishing periods per week unless more than 80 percent of the week's quota is taken during the first period.

- D. When weekly quotas are not obtained, no more than ten percent of that quota may be taken in the following week.
- E. 1. Weekly quotas for 1980 are as follows:

<u>Week*</u>	<u>Harvest Allocation</u>
21	2,000
22	4,000
23	3,000
24	1,000

- 2. Adjustments of up to one week may be made in the overall harvest allocation timing to compensate for seasonal variations due to early or late spring breakup or other environmental conditions.

* Statistical weeks are in numerical sequence beginning with week number one (1), which is the week ending with the first Saturday of the calendar year.

ADOPTED: January 11, 1980
Anchorage, Alaska

NOTE: 6/0

Table 1. Expected upriver escapement by week based upon percent of average weekly sockeye salmon catch from the Copper River District to produce 350,000 desired escapement and 250,000 minimum escapement.**

Date	Week	Average Catch	Years	Percent	Cumulative Percent	Minimum Escapement	Cumulative Escapement	Expected Average Escapement	Cumulative Expected Average Escapement	Minimum Expected Sonar Escapement (Cumulative)	Average Expected Sonar Escapement (Cumulative)	
May	14-20	20	32,602	(9)	4.7	4.7	11,750	11,750	16,440	16,440	*	*
	21-27	21	102,868	(15)	14.8	19.5	37,000	48,750	51,790	68,230	11,750	16,440
	28- 3	22	144,653	(16)	20.9	40.4	52,250	101,000	73,140	141,370	48,750	68,230
June	4-10	23	132,503	(18)	19.1	59.5	47,650	148,650	66,840	208,210	101,000	141,370
	11-17	24	76,753	(18)	11.1	70.6	27,750	176,400	38,840	247,050	148,650	208,210
	18-24	25	61,650	(18)	8.9	79.5	22,250	198,650	31,140	278,190	176,400	247,050
	25- 1	26	48,838	(17)	7.0	86.5	17,500	216,150	24,490	302,680	198,650	278,190
July	2-	27	33,387	(18)	4.8	91.3	12,000	228,150	16,790	319,470	216,150	302,680
	9-15	28	27,032	(18)	3.9	95.2	9,750	237,900	13,640	333,110	228,150	319,470
	16-22	29	16,415	(18)	2.4	97.6	6,000	243,900	8,390	341,500	237,900	333,110
	23-29	30	10,429	(18)	1.5	99.1	3,750	247,650	5,240	346,740	243,900	341,500
	30- 5	31	4,660	(17)	0.7	99.8	1,750	249,400	2,440	349,180	247,650	346,740
Aug.	6-12	32	1,476	(17)	0.2	100.0	500	249,900	690	349,870	249,400	349,180
	13-19	33	298	(13)	0.04		100	250,000	130	350,000	249,900	349,870
										250,000		
AVERAGE		693,564					250,000	350,000 ^A	350,000 ^{AAA}	350,000 ^{AAA}		

^A Escapement upriver.

^{AA} 80,000 - 90,000 additional spawners required for Copper River Delta spawning areas.

^{AAA} Actual escapement requires subtraction of subsistence and sport fishery take.

TABLE 2: COPPER RIVER SUBSISTENCE FISHERY ALLOCATION PLAN

PROJECTED ESCAPEMENT	ALLOWABLE HARVEST	PERMITTEES ^{1/}	LEVEL OF PARTICIPATION
Less than 150,000	3-5,000	Class A ^{2/}	7 days/week
150-200,000	8-10,000	Class A Class B and C	7 days/week 2 days/week (Saturday-Sunday)
200-250,000	13-15,000	Class A Class D	7 days/week 2 days/week (Saturday-Sunday)
250-300,000	18-20,000	Class A Class D	7 days/week 3 days/week (Friday-Sunday)
300-350,000	23-25,000	Class A Class D	7 days/week 5 days/week (Thursday-Monday)
More than 350,000		Unrestricted	

^{1/} No distinction is drawn to gear type.

^{2/} Special permits are estimated to be 25-30 permits

SUMMARY OUTLINE OF TESTIMONY ON HB 544

Prepared by
Gregory F. Cook, Executive Director
Boards of Fisheries and Game
Alaska Department of Fish and Game

Presented to the House Resources Committee
January 22, 1980

HB 544 SEEKS TO PREVENT THE DEPARTMENT AND THE BOARD OF FISHERIES FROM MAKING NEW CATEGORIES OF FISHERIES, SUCH AS "PERSONAL CONSUMPTION" FISHERIES. IN CONTRAST TO THE BOARD OF FISHERIES, NO SUCH AUTHORITY IS CURRENTLY PROVIDED THE DEPARTMENT UNDER TITLE 16. THE ISSUE MAY NOW ACTUALLY BE MOOT SINCE THE BOARD OF FISHERIES REJECTED A PROPOSED REGULATION TO CREATE SUCH A PERSONAL CONSUMPTION CATEGORY AT THEIR DECEMBER, 1979, PUBLIC MEETING. NONETHELESS, YOU MAY FEEL THAT SOME ACTION IS STILL APPROPRIATE. TO ASSIST YOU, I HAVE SOME BRIEF BACKGROUND INFORMATION TO PRESENT.

FIRST, THE COPPER RIVER SUBSISTENCE FISHERY--BOTH FISHWHEEL AND DIPNET--WILL BE MANAGED IN 1980 ACCORDING TO THE COPPER RIVER MANAGEMENT PLAN. (COPIES OF THAT PLAN ARE AVAILABLE.) THE PLAN PROVIDES FOR ALLOCATION OF SOCKEYE SALMON AMONG DIFFERENT ALASKANS BASED ON A VARIETY OF CRITERIA. THOSE CRITERIA WERE SELECTED BASED ON THE MANDATES OF THE "SUBSISTENCE LAW" (CHAPTER 151, SLA 1978), AND EMPHASIZE:

1. CUSTOMARY AND TRADITIONAL DEPENDENCE
2. AVAILABILITY OF ALTERNATIVE RESOURCES
3. LOCAL RESIDENCY

NEXT IT SHOULD BE EMPHASIZED THAT THE LAW MANDATES A PRIORITY FOR ALL SUBSISTENCE USES. THOSE USES TAKE PRIORITY OVER ALL COMMERCIAL AND ALL SPORT USES.

FINALLY, THE BOARD OF FISHERIES IS CONCERNED THAT THE LEVEL OF SUBSISTENCE USE SHOULD, IN MOST INSTANCES, BE KEPT WITHIN CUSTOMARY AND TRADITIONAL LEVELS OF USE. FOR EXAMPLE, IT HAS COME TO THE BOARD'S ATTENTION THAT AN INCREASING NUMBER OF FISHERMEN ARE NOW DRIVING TO RAMPART TO FISH THE YUKON WITH GILLNETS AND PARTAKE OF THE SUBSISTENCE PRIORITY. AN UNLIMITED EXPANSION OF SUBSISTENCE USE IN THIS AREA, AS WELL AS OTHERS, COULD, IN SOME INSTANCES, CAUSE A CLOSURE OF COMMERCIAL AND/OR SPORT FISHERIES. THIS MAY OR MAY NOT BE IN THE PUBLIC'S BEST INTERESTS.

A FUNDAMENTAL QUESTION WHICH YOU MAY WISH TO CONSIDER IN EVALUATING HB 544 IS HOW BROAD DO YOU WISH THE SUBSISTENCE PRIORITY TO BE? AT THE PRESENT TIME, THE BOARD OF FISHERIES MAY CLASSIFY NEW, NON-CUSTOMARY, NON-TRADITIONAL USES AS SOMETHING DIFFERENT FROM SUBSISTENCE. THIS REMOVES THOSE NON-TRADITIONAL ACTIVITIES FROM THE SUBSISTENCE PRIORITY. I SUGGEST THAT YOU LEAVE THIS AUTHORITY TO CLASSIFY WITH THE BOARD OF FISHERIES.

TO EXPRESS YOUR CONCERN FOR THIS ISSUE OF CLASSIFICATION, YOU MAY WISH TO CHANGE THE FORM ONLY OF THIS BILL. THE NEW FORM COULD BE A HOUSE JOINT RESOLUTION. THE RESOLUTION COULD REQUEST PRIOR CONSULTATION WITH THE LEGISLATURE BEFORE THE BOARD MAKES A DECISION TO RECLASSIFY A FISHERY FROM SUBSISTENCE TO ANOTHER CATEGORY. IN THIS MANNER, YOU WOULD LEAVE THE BOARD OF FISHERIES FREEDOM TO CONTINUE TO MANAGE THE RESOURCE, YET STILL MAKE VERY CLEAR YOUR CONCERNS.

THE BOARD OPPOSES PASSAGE OF HB 544. THE BOARD FEELS IT IS IMPORTANT TO PREVENT NEW, NON-TRADITIONAL USES OF FISHERY RESOURCES FROM RESTING UNDER THE BROAD UMBRELLA OF SUBSISTENCE. THE ABILITY TO CREATE NEW CATEGORIES OF FISHERIES IS AN IMPORTANT TOOL IN PREVENTING THE UNLIMITED EXPANSION OF NEW, NON-TRADITIONAL "SUBSISTENCE" FISHERIES.

THANK YOU.