

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4148 SJUD HB 288 1098

March 25, 1986

Alaskans equal Rights! Not you Sir, you have always been extremely fair in your dealings.

Now for Suggestions!

Incorporate in the Rod, hook & line for Personal use provisions!

Set the sport fishing and Personal use regulations the same, with same Bag Limits!

What this will do is send a clear message to Board of Fisheries that if they regulate the Personal use net fishery to allocate 30 fish per person than they must allow enough fish into River System to make sure the Hook & line Personal use fishery has adequate escapement to satisfy these fishermen!

Your assistance will truly be appreciated.

Have a good day

Sam McDowell  
Concerned Alaskan  
336 E. 23rd ave  
Anchorage Alaska  
99503

COOK INLET MANAGEMENT AREA SUBSISTENCE

FISHERY REPORT 1972

A. General Information

1. Description of Area: The Cook Inlet area includes all waters of Alaska in Cook Inlet and Resurrection Bay north of Cape Douglas and west of Cape Fairfield, including the Barren Islands. (Figure 1)
2. Species Utilized: All five species of pacific salmon are utilized in the Cook Inlet area. Since 1962 cohos have made up 66 percent of the subsistence catch, reds 20 percent, pinks 8%, chums 5%, and kings 0.2 percent. (Table 1) King crab, tanner crab, dungeness crab, shrimp, smelt, herring, bottom fish, and clams are also utilized for subsistence purposes. However, few records are available on degree of utilization. In actuality it is hard to define what constitutes "sport fishing" and what constitutes "subsistence fishing" for the above listed species.
3. Economic Conditions: No figures are available on the average income of those applying for subsistence permits in the Cook Inlet area. It is the personal opinion of the area management biologist that less than five

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10

FIGURE I

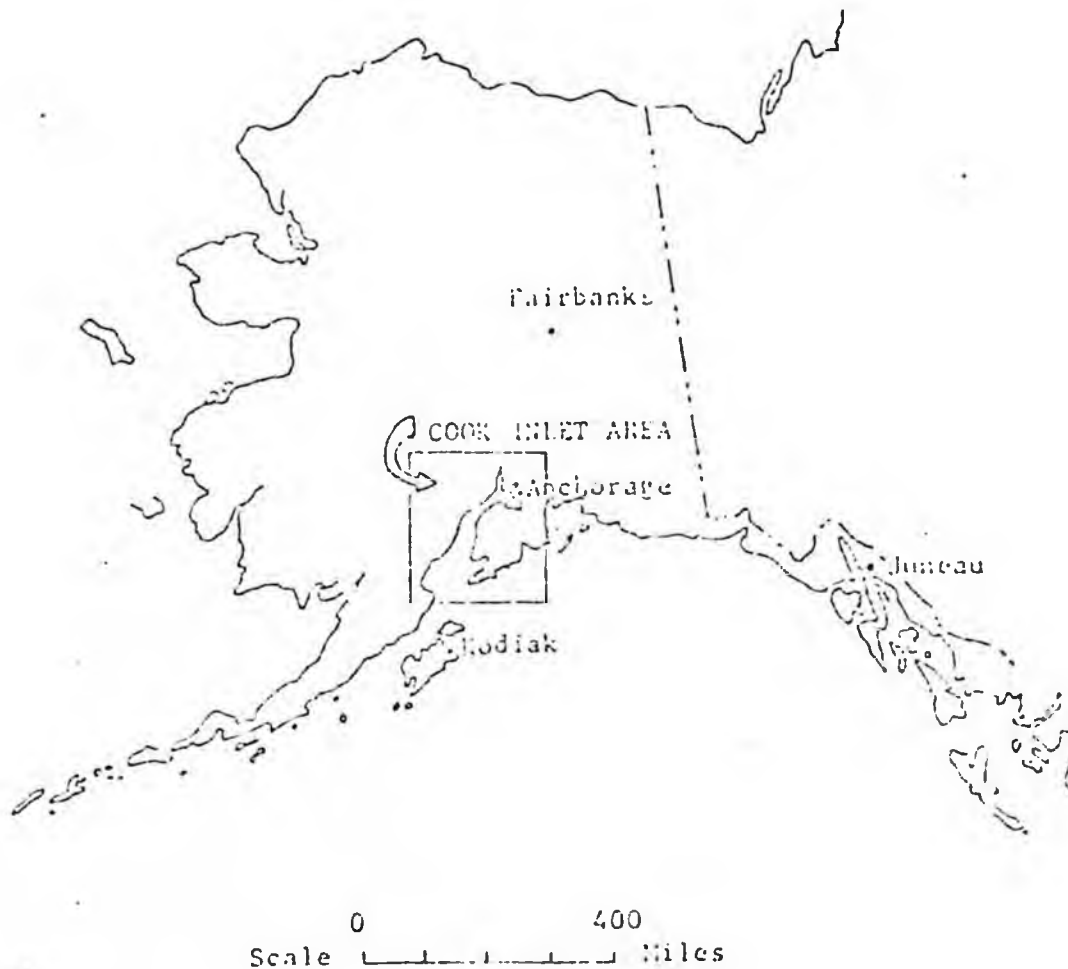
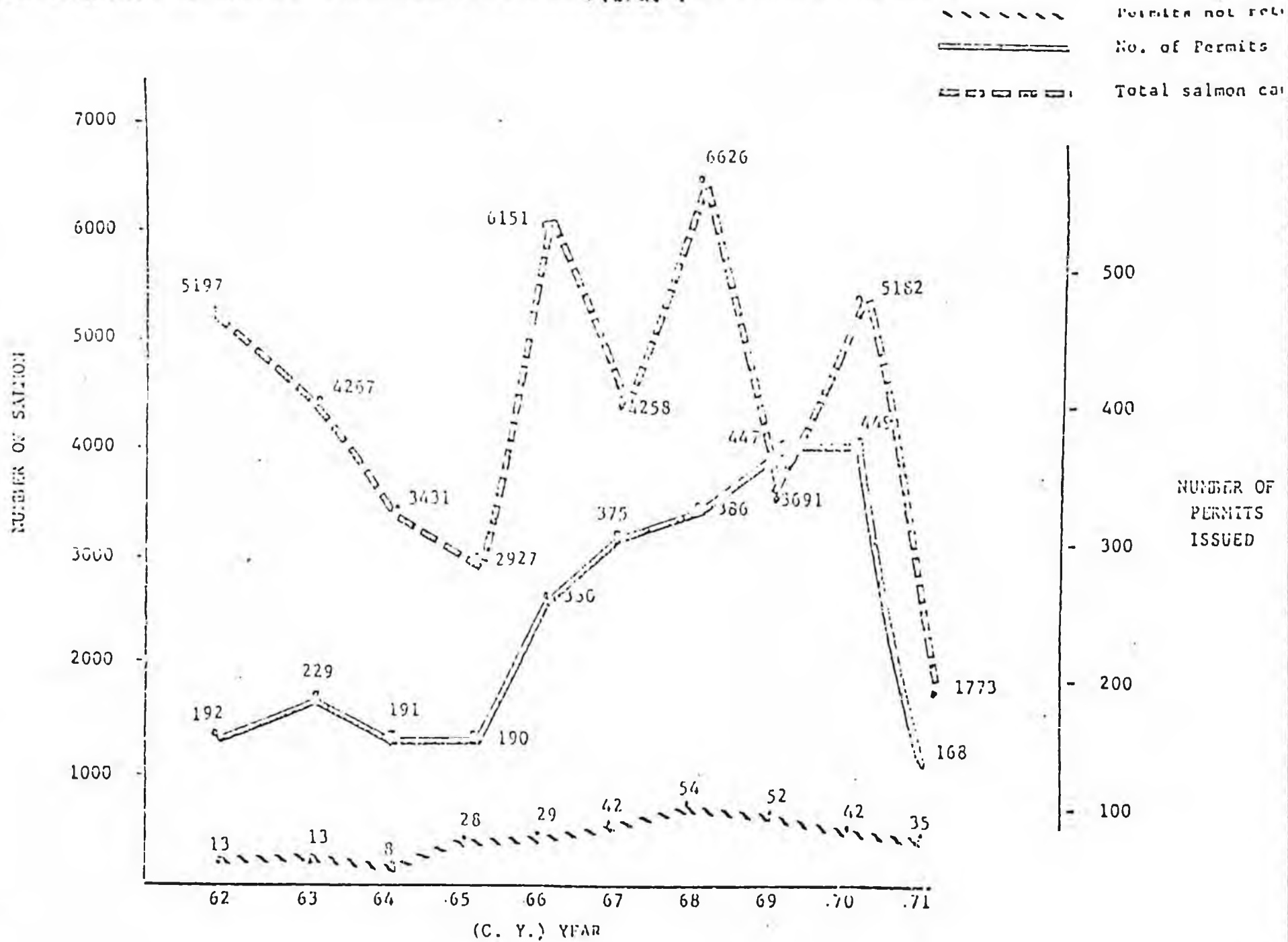


Figure 1. Cook Inlet area location map.

TABLE 1

## COOK INLET SUBSISTENCE CATCH OF SALMON, 1962-1971

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## B. History of Fishery

1. Methods of Fishing: A variety of subsistence fishing methods are used in the Cook Inlet area, as it is a multi-species utilization area.
  - a. Salmon: Set nets, seines and drift nets are currently used with set nets accounting for about 95 percent of the effort. Since statehood, all subsistence salmon fishing has been in conformance

with commercial regulations and, therefore, areas open and methods used have been identical to those in commercial fishing. Prior

to statehood, much of the subsistence fishing took place in salmon spawning streams with gear ranging from hook and line to gill nets. Snagging was one of the more popular methods.

- \* b. Shellfish: King crab, tanner crab, dungeness crab and shrimp are taken with various forms of pots. Most fishing takes place at or near the small boat harbors of Homer and Seward. Clams for subsistence are taken by use of a clam shovel. The methods currently used for taking shellfish species for subsistence purposes do not differ appreciably from those used prior to statehood.
- c. Smelt: Both bill nets and dip nets have been used in the Cook Inlet area for taking smelt, however, in 1972 dip nets became illegal gear for taking smelt in the waters of the Kenai Peninsula. A limited amount of hook and line snagging for smelt also exists.

d. Freshwater species: The gear most commonly utilized for freshwater species is small mesh gill nets and seines. In the past, fish-wheels and dip nets have also been used in freshwater.

2. Catches and Fishing Effort

a. Salmon: Salmon fishing is the only subsistence fishing for which reliable catch and effort data exists and this data covers from 1962 to 1971 only. During those years, a total of 2,957 subsistence permits were issued and all but 336 were returned. The total reported salmon catch from 1962 to 1971

\* is as follows: 101 kings, 8,793 reds, 22,574 cohos, 2,365 chums, 3,672 pinks, for a total of 43,505 salmon.

The number of permits issued and the total catch by species appears in Table 1 and is depicted in graphic form in Figure 2.

b. Smelt: Catch data on smelt is only available for the past two seasons. In 1971, there were 1,387 smelt reported taken and in 1972, the reported catch was 8,542. Most effort has taken place along the western shoreline of the Kenai Peninsula and around Turnagin Arm.

The number of permits issued by year since 1969 appear below:

<u>Year</u>	<u>Salt Water</u>	<u>Kenai River</u>	<u>Total</u>
1969	150	194	344
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\*Smelt permits not required for Kenai River.

- c. Shellfish: No permits are required for taking shellfish and, therefore, no records are available on effort or catch. Most effort occurs in Kachemak and Resurrection Bays.
  - d. Freshwater species: Relatively few permits have been requested for taking freshwater species and most of these have been for Lake Louise and Tyone Lakes. Whitefish comprise about 90 percent of the catch.
3. Management Regulations: The following is a history of subsistence regulations in Cook Inlet from 1943 to 1972.

1942 through 1950

No mention made in Cook Inlet section of commercial fisheries regulations.

1951

First mention in commercial regulations. Required notification of intention to take salmon for personal use, with statement of type of gear to be used, area, time, number of fish to be taken and intended disposition of fish taken.

Fish, Ship, and Campbell and Cottonwood Creeks closed to subsistence fishing.

1952

No intent to take notification required. More streams closed, including all tributaries to Knik Arm, Willow Creek (tributary to Susitna), Campbell Creek, and all streams and lakes of Kenai Peninsula that are tributary to Cook Inlet: Provided this  
\* shall not apply to fishing with rod, hook and line for personal use.

(Apparently this was the first time many Cook Inlet streams were closed to use of nets for personal use of fish.)

1953

Above regulations same, plus added stipulation that no personal use fishing allowed within 300 feet of weirs and ladders. Snagging was prohibited for the first time.

Also, personal use fishing prohibited within 500 yards of all other streams or lakes except with hand rod, hook and line. Day limit two (2) per day per person.

And subject to laws regulating commercial fishing 48 hours before and continuing 40 hours after each fishing period. Except for fall season and/or place greater than 25 miles from waters open to commercial fishing. . .

\* And in Knik Arm where 15 fathom set nets, 100 yards apart, shall be operated prior to August 6, only during hours open to commercial fishing in the Northern district.

1954

Same as 1953 with additional sections that. . . Commercial gear may be used for personal fishing during any fall season. . .

Fishing allowed in Turnagain Arm east of a line between Hope and Indian, and. . .

Fishing allowed more than 5 miles upstream from tidewater on all streams and lakes of Cook Inlet drainage South and West of the Susitna River or South of town of Homer.

1955

General regulations and. .

Cook Inlet regulations same as 1954.

1956

Same as 1955 with added restrictions. . .

Closed Kenai & Russian Rivers within 300 yards of their confluence (this to 'Sportsmen').

Rod and line. . . limited take to two (2) salmon over 16 inches, per person per day.

1957

General regulations same as 1956.

Cook Inlet about same except for limit on take by rod and line fishermen ('. . . not to exceed 10 inches'. . . per person per day by hook and line, and not more than two (2) may exceed 16 inches').

1958

General same as 1957 plus. .

A series of regulations devised to try to curb snagging. . including limiting size hooks and making it illegal to use weights with multiple hooks.

Cook Inlet same as 1957.

1959

General same as 1958.

Cook Inlet--added restrictions that. . .personal use fishing be allowed in the main stem of the Susitna River above the town of Alexander. . with nets less than 30 feet and more than 100 yards from any other set net and from tributary streams-- and identified with name and address of owner.

And personal use fishing must be done in conformance with commercial regulations (This closed Knik Arm and Turnagain Arm).

Many Kenai Peninsula streams closed above ~~markers~~ placed from 3 to 5 miles up from mouth (Anchor, Deep Creek, Stariski and many others).

Added closure of Cooper Creek, Little Willow Creek and Montana Creek. . And. . allowed 30 yards of set nets for use in Knik Arm after August 9, also Fish Creek closed July 21 (snaggers harrassing red run).

1960

General same as 1959.

Cook Inlet--personal use fishing to be allowed on Northwest shore Knik Arm. . with nets 90 feet or less and more than 500 yards from terminus of any salmon stream. . and conform to commercial open periods in Northern district. . and identified with name and address of owner.

1961

General same as 1960.

Cook Inlet added open fishing season on clams, crabs, and bottomfish. . all in conformance with commercial regulations.

Salmon for subsistence was broken into districts. . . apparently this did away with fishing in main stem of Susitna River above Alexander (see subsistence regulations for Northern district 1961).

1962

General regulations added restrictions--personal use fishing must be done by permit only, issued by commissioner. . . limited subsistence catch to individual regional regulations.

Cook Inlet---same as 1961.

1963

General regulations--new regulation--fish other than salmon may be taken at any time in any area of state by any method except by use of explosives or chemicals, except as hereinafter provided or as provided in the Sport Fishing Regulations of the Department.

Cook Inlet--same as 1962.

1964

General same as 1963.

Cook Inlet--new regulation--must have permit for salmon and all catches by species, location and date of catch must be reported. Freshwater species except for trout, grayling, and char may be taken for subsistence purposes via permit and these permits be issued by commissioner or his representative when deemed warranted.

Also not more than 50 salmon be taken per permit and subsistence fishing is prohibited in any area closed to commercial fishing except for parts of Knik Arm.

And all districts with exception of Outer district, must have name and address of owner on fishing gear. The Outer district regulations were amended to conform with commercial regulations.

Another Cook Inlet regulation was amended-- sports fishing licenses required for clams and/or bottom fish and crab pot floats will contain the name of owner. No sex or size limitations on crab.

1965 through 1969

Outside of minor amendments and a few changes in regulations in the different fishing districts, personal use fishing regulations are about the same for that period from 1965 to 1969.

1969

Cook Inlet--new regulations--

Restrictions:

(a) Subsistence fishermen taking herring and smelt in the Kenai River must be physically present at all times said net is being fished.

(b) A sports fishing license is required when bottom fish are taken with fishing rod and line.

(c) A sports fishing license is required for the digging of razor clams.

Size Limits: There are no size or sex limitations on crab.

1970

Cook Inlet--new regulations--

Salmon - The subsistence fishery on the Northwest of Knik Arm was deleted.

Smelt - In the Kenai River the length of gill nets may not exceed 20 feet in length.

Smelt may be taken in that portion of the Kenai River from its mouth upstream to the Soldotna bridge from April 1 through May 31.

1972

Cook Inlet--new regulations--Smelt - Dip nets may not be used for taking smelt in the waters of the Kenai Peninsula.

Problem Areas

1. Northwest Shore Knik Arm: This area is no longer a problem as it was closed to subsistence fishing in 1971. The number of permits issued for this area had increased during the mid-60's to a level of 290 during the last two years of the fishery. (1969 and 1970) The reported catch during this period averaged 3,300 salmon (Table 2). The main justification for closing this area was the declining red salmon escapements into Fish Creek which reached a low of 6,233 in 1969.
2. Mud Bay: The problem here appears to be over-utilization of available fishing space rather than over-utilization of the resource. Commercial fishing, sports fishing, and subsistence fishing all take place in this rather confined area of Kachemak Bay along the Northeast side of the Homer Spit. Peak utilization occurs in mid to late August when approximately 10 scine fishermen, 50 subsistence fishermen and several hundred sports fishermen fish

TABLE 2

COOK INLET SUBSISTENCE SALMON FISHERY  
Permits Issued and Total Salmon Catch By District, 1967 - 1972

YEAR	NORTHERN <sup>1/</sup>		NORTH and SOUTH CENTRAL		SOUTHERN		EASTERN	
	Permits	Total Catch	Permits	Total Catch	Permits	Total Catch	Permits	Total Catch
1967	218	2,947	13	119	51	942	91	262
1968	276	5,395	30	303	79	953	--	--
1969	290	1,563	40	400	85	1,067	32	929
1970	290	3,448	45	206	78	1,386	36	181
1971	9	10	28	138	112	1,616	19	7
1972	9	<u>2/</u>	5	<u>2/</u>	151	<u>2/</u>	5	<u>2/</u>

<sup>1/</sup> Northern district represents Northwest shore at Knik Arm

<sup>2/</sup> Catch data not available for 1972.

this area. The main species being sought are silver salmon and the subsistence catch has averaged about 1,000 since 1967. The commercial catch in the Southern district has averaged 2,800 silvers since 1967 and an estimated 50 percent of these have been taken from Mud Bay proper. Sports harvest figures are not available, however, the average catch since 1967 would probably not exceed 500 fish. Commercial and subsistence harvest figures indicate no decline in abundance of silver stocks in Mud Bay. A tagging study in 1970 indicated the silver stocks of Mud Bay were mostly local stocks bound for upper Kachemak Bay and escapement indices in this area have been consistent in recent years.

Although there is no biological justification for closing Mud Bay, the time has perhaps come for closing a portion of Mud Bay to commercial and subsistence fishing because of user-group conflicts.

For the last several years proposals have been submitted to the Board of Fish and Game asking for either complete or partial closures of Mud Bay. The commercial fish staff has always opposed these closures on the basis that no biological justification exists.

Because of the increasing sports fish utilization there will be a public proposal submitted to the Board of Fish and Game at the November meeting by a Homer commercial fisherman which will ask for a partial closure of the Mud Bay area. The commercial staff intends to support this proposal.

3. Shellfish: Another potential problem is the crab and shrimp pot fisheries which have developed tremendously in the last few years. A considerable volume of gear is being fished in the immediate vicinity of the Homer small boat harbor and again, rather than over-utilization of the resource, the main problem is over-utilization of area. Gear is so concentrated in this one area that navigation has been hindered. A regulation may be necessary in the near future to close a section of the bay in the immediate vicinity of the small boat harbor entrance.

D. Recommendations:

It is the personal opinion of the area biologist that a need exists for subsistence fishing in Cook Inlet and that it should be continued perhaps with some modifications.

The 5 or 10 percent of the people who actually have a legitimate need to subsistence fish should not be denied this right just because the fishery has become recreationally oriented.

Perhaps a fee could be placed on a subsistence permit or license. This might tend to eliminate some of those who are participating more for recreation than need and yet keep the regulation constitutional. For those who could show need, through an application for a waiver on the license fee, a special free permit would be granted. A maximum income level would be established similar to that used in the Food Stamp Program and those falling below the established level would be eligible for the free permit. These measures would probably reduce subsistence fishing by 75 percent in the Cook Inlet area and subsistence fishing would again conform with the true meaning of subsistence.

APPENDIX

1. A copy of the Cook Inlet Subsistence Fishery Instructions of 1972.

COOK INLET SUBSISTENCE SALMON FISHERY, 1972

Salmon may be taken for subsistence purposes under authority of a permit which may be obtained from the local representative of the department.

Each subsistence fisherman taking salmon shall keep accurate records of the catch involved, by species, location caught, date of catch, and other such information as the department may require.

Salmon may be taken for subsistence purposes only by residents.

Identification of fishing gear shall consist of the name and address of the owner and the number of his subsistence permit.

Not more than 50 salmon may be taken under the authority of a subsistence permit.

Only one salmon subsistence permit will be issued to each person during a year.

A set gill net shall not be longer than 35 fathoms in length and 45 meshes in depth.

The operation of each set gill net shall be performed or assisted by the fisherman in whose name it is registered.

No part of a set gill net may be placed or operated within 600 feet of any part of another set gill net.

FISHING SEASONS:

NORTHERN DISTRICT: from 6:00 a.m. July 21 until 6:00 a.m. September 20 during open commercial fishing periods in conformance with all commercial regulations.

NORTH & SOUTH CENTRAL DISTRICTS: from 6:00 a.m. August 18 during open commercial fishing periods in conformance with all commercial regulations.

SOUTHERN DISTRICT: from 6:00 a.m. August 18 during open commercial fishing periods in conformance with all commercial regulations EXCEPT that set gill nets may be used in any beach area open to commercial salmon fishing.

OUTER DISTRICT: in conformance with commercial regulations.

EASTERN DISTRICT: from June 1 through June 30 during open commercial fishing periods in conformance with all commercial regulations EXCEPT that set gill nets may be used in any beach area open to commercial salmon fishing.

March 30, 1986

Hello Pat:

Per our recent phone conversation, please find enclosed copy of Memorandum with re to intent of our State Constitution!

I will contact Wash DC office of IWLFA and try and get copies of Udall pamphlet.

Do hope any Subsistence law passed has provisions for Rod, hook + line under personal use fisheries method and means.

The only reason Rod, hook + line was removed was a agreement between Mitchell and Commercial fishermen.

The Commercial fishermen agreed to back priority Subsistence provided the natives would back removal of Rod, hook and line from personal use approved method and means!

This than forced the Fisheries board to put the personal use nets on the late run Silvers after August 15th instead of between July 1st and August 15th when 95% of annual run is available.

Its just plain not fair and must be changed.

Your assistance will truly be appreciated.

Have a good day

Sam McDowell  
Concerned American

PS:

Do hope you had time to contact Eblutna!

MEMORANDUM

To Whom It May Concern:

The Delegates to the Alaska Constitutional Convention accurately predicted and foresaw the confusion and dissension that would exist if the Legislature and the executive branch of government attempted to provide in a special way for the traditional rights of some Alaskans to the exclusion of others. The minutes of the Alaska Constitutional Convention are very specific.

An amendment was presented to the members of the Constitutional Convention which stated, in part, as follows:

"The Legislature shall provide for translating the traditional rights of Alaskans of Indian, Aleut, or Eskimo ancestry to the use of land, fishing, hunting and trapping areas into approximately equivalent homestead or other property rights."

One delegate, Mr. Herman, thought that this amendment might very well be class legislation and he did not think the legislature should discriminate between one class of citizens over another.

The Marsden Amendment was defeated by a vote of 34 to 16. I believe that the treatment given that amendment is an indication that the authors of our constitution did believe that all Alaskans should be treated equally in terms of allocation of both fish and game resources.

At least one other American agrees with this interpretation. During July of 1977, remarks were prepared by Stuart L. Udall in a pamphlet entitled "The Alaskan Natives and Their Subsistence Rights: A Discussion of the Constitutional Questions".

Page 7 of that pamphlet prepared by Mr. Udall and given to the American Congress states, in pertinent part, as follows:

"It is not surprising that the Alaskan Legislature dealt gingerly with the Native Subsistence issue and made no effort to deal with the rights of the Alaska Native as a special class of citizens. Under its constitution it is patent that the Alaska Legislature cannot grant meaningful subsistence rights to the Alaskan Natives --- or to any other group of citizens. . . . Thus the State (of Alaska) cannot under its constitution single out its Natives --- or any other distinct class of citizens --- and grant them special subsistence rights. This is particularly true with respect to fishing, for Article 8, Section 15 of the Constitution prohibits the legislature from creating "any exclusive right or special privilege of fishery".

I ask that the Alaska Legislature consider this constitutional mandate. We all know that this question has not yet been presented to the Alaska Supreme Court; however, considering the plain intent of the authors of our constitution and the comments of Mr. Udall, I wonder if it is appropriate to present a scheme which Mr. Udall states, justly I believe, to be contrary to our Alaska Constitution.

Have a Good Day.

*Sam E. McDowell*

Sam E. McDowell  
Concerned American  
336 E. 23rd Avenue  
Anchorage, AK 99503  
Telephone: (907) 272-6605

Hello Don:

March 28, 1986

Please find enclosed data with Re:  
two total disasters!

1st Subsistence:

- (1) See enclosed Memorandum with Re: <sup>to</sup> the delegates stand on subject, during constitutional convention. Fairly clear, eh? (I'll arrange to have copies distributed to Legislators.
- (2) Enclosed Cook Inlet (1973) management report! clearly shows complete history of Subsistence use in upper Cook Inlet before Subsistence law was passed.

Please note hook + line personal use fishing was a equal common use method. However Mitchell arranged to write us out. Same as he arranged to allocate 4200 King Salmon to the (239) residents of Tyonek.

Reasons: lot hook + line fishing! He did this to get support from commercial fishing to back his stand on Subsistence.

(2) The reason for allocation to Tyonek was to set the stage for Subsistence users to be ~~by~~ species selective.

Tyonek, was allocated 4200 King Salmon with a provision they need not count other species! (See Report) Note King Salmon historical harvest % was only 0.2 of total annual harvest.

If a law is going to be passed hook + line should be included like it use to be! This will force the Board of Fisheries to take into con-

March 28, 1986

Siderations equal allocation for personal use fisheries.

I suggest the law states the Lic, bag - limit, method and means, stay the same as for present Sport fishing regulations. However this will force the fisheries managers to allow for larger escapement to provide for all Rod, hook and line fishermen <sup>as a</sup> ~~to~~ equal allocation to the Net personal use fishery!!!

Note: We have at last got the proof we needed to show without a doubt the true intent of proposed Amendment 7C. See Memorandum to AVCP and Calista Inc dated Aug 22, 1985 from attorneys!

Additional data enclosed Re: these two subjects.

Your assistance will truly be appreciated.

Have a good day

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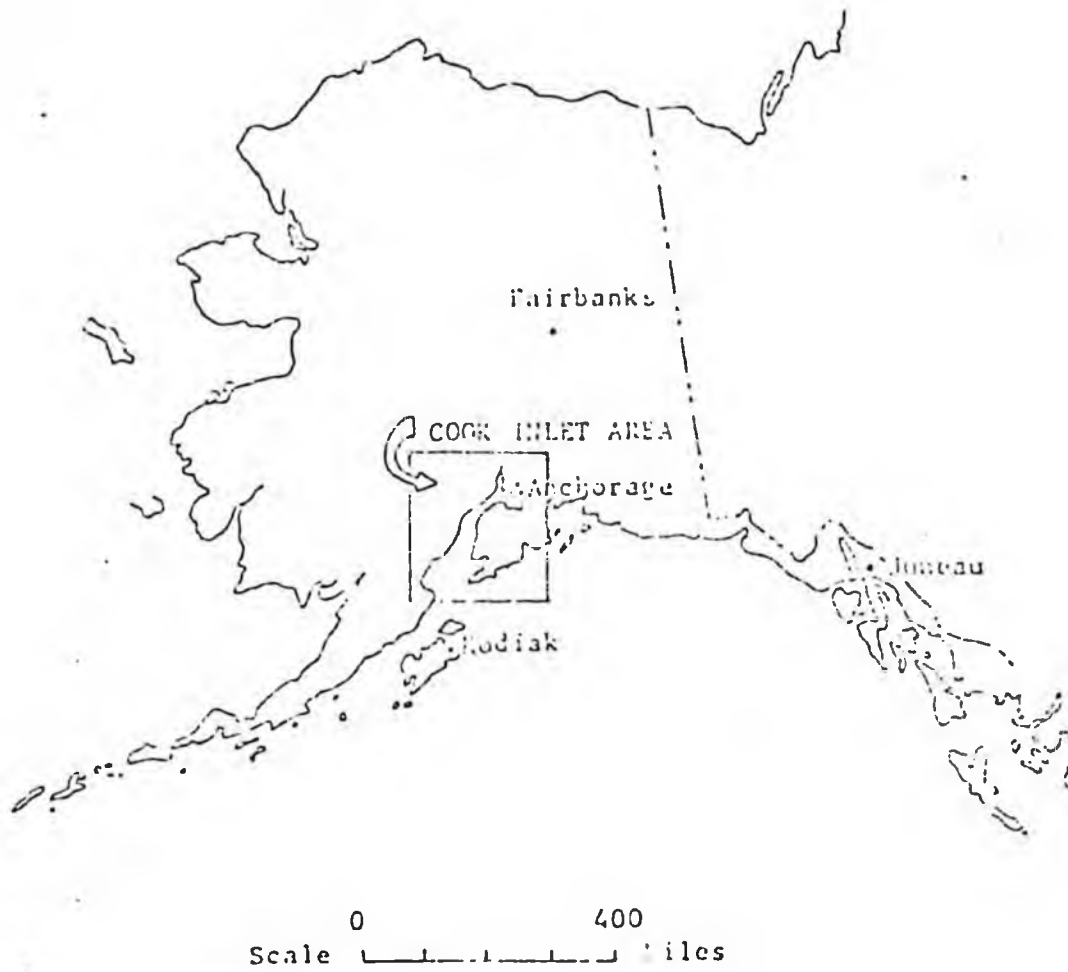
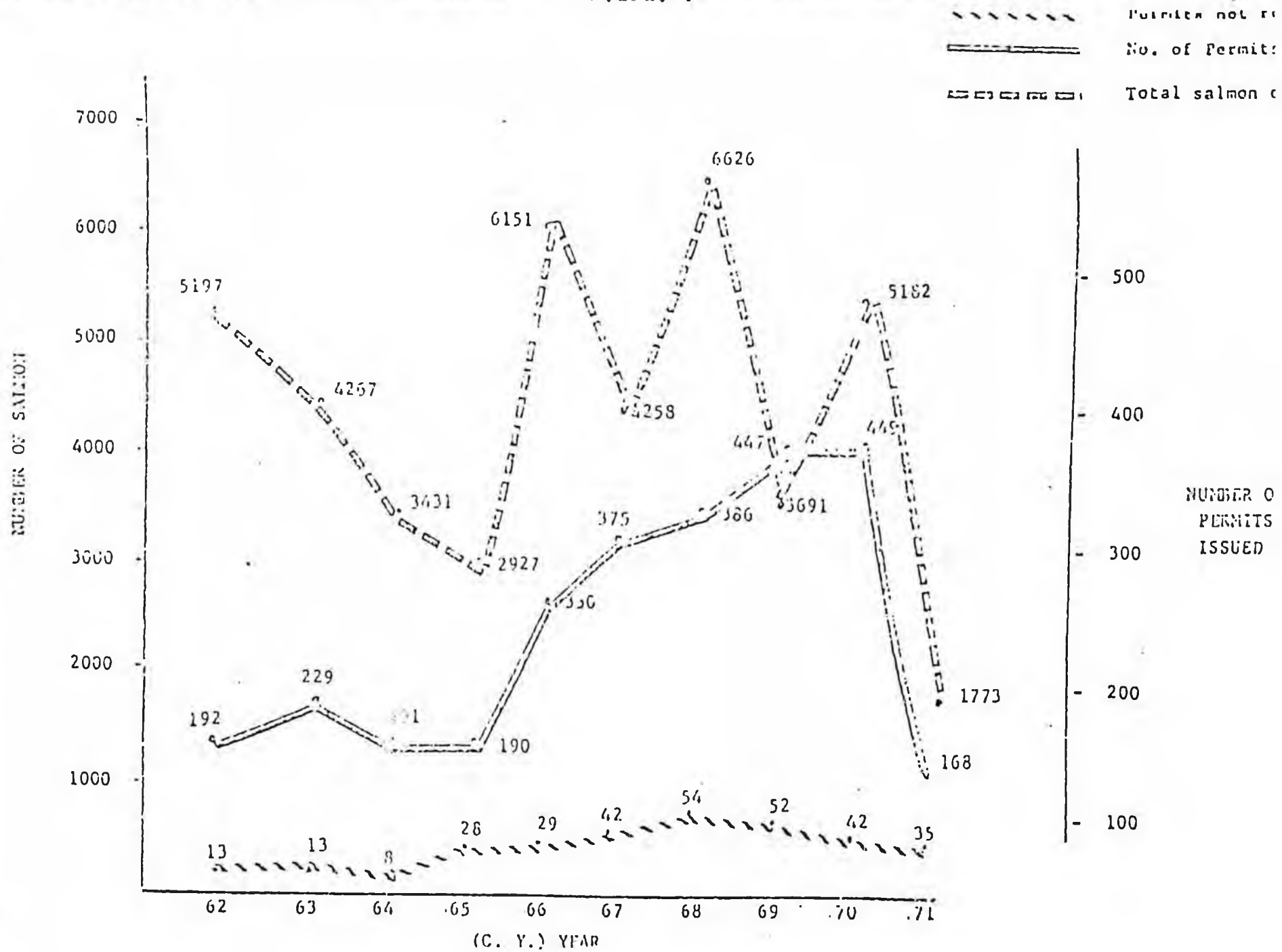


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3. Management Regulations: The following is a history of subsistence regulations in Cook Inlet from 1943 to 1972.

1942 through 1950

No mention made in Cook Inlet section of commercial fisheries regulations.

1951

First mention in commercial regulations. Required notification of intention to take salmon for personal use, with statement of type of gear to be used, area, time, number of fish to be taken and intended disposition of fish taken.

Fish, Ship, and Campbell and Cottonwood Creeks closed to subsistence fishing.

1952

No intent to take notification required. More streams closed, including all tributaries to Knik Arm, Willow Creek (tributary to Susitna), Campbell Creek, and all streams and lakes of Kenai Peninsula that are tributary to Cook Inlet: Provided this  
\* shall not apply to fishing with rod, hook and line for personal use.

(Apparently this was the first time many Cook Inlet streams were closed to use of nets for personal use of fish.)

1953

Above regulations same, plus added stipulation that no personal use fishing allowed within 300 feet of weirs and ladders. Snagging was prohibited for the first time.

Also, personal use fishing prohibited within 500 yards of all other streams or lakes except with hand rod, hook and line. Day limit two (2) per day per person.

And subject to laws regulating commercial fishing 48 hours before and continuing 48 hours after each fishing period. Except for fall season and/or place greater than 25 miles from waters open to commercial fishing. . .

~~X~~ And in Knik Arm where 15 fathom set nets, 100 yards apart, shall be operated prior to August 6, only during hours open to commercial fishing in the Northern district.

1954

Same as 1953 with additional sections that. . . Commercial gear may be used for personal fishing during any fall season. . .

Fishing allowed in Turnagain Arm east of a line between Hope and Indian, and. . .

Fishing allowed more than 5 miles upstream from tidewater on all streams and lakes of Cook Inlet drainage South and West of the Susitna River or South of town of Homer.

1955

General regulations and. .

Cook Inlet regulations same as 1954.

1956

Same as 1955 with added restrictions. . .

Closed Kenai & Russian Rivers within 300 yards of their confluence (this to 'Sportsmen').

Rod and line. . . limited take to two (2) salmon over 16 inches, per person per day.

1957

General regulations same as 1956.

Cook inlet about same except for limit on take by rod and line fishermen ('. . . not to exceed 10 inches'. . . per person per day by hook and line, and not more than two (2) may exceed 16 inches').

1958

General same as 1957 plus. .

A series of regulations devised to try to curb snagging. . including limiting size hooks and making it illegal to use weights with multiple hooks.

Cook Inlet same as 1957.

1959

General same as 1958.

Cook Inlet--added restrictions that. . .personal use fishing be allowed in the main stem of the Susitna River above the town of Alexander. . . with nets less than 30 feet and more than 100 yards from any other set net and from tributary streams-- and identified with name and address of owner.

And personal use fishing must be done in conformance with commercial regulations (This closed Knik Arm and Turnagain Arm).

Many Kenai Peninsula streams closed above markers placed from 3 to 5 miles up from mouth (Anchor, Deep Creek, Stariski and many others).

Added closure of Cooper Creek, Little Willow Creek and Montana Creek. . And. . allowed 30 yards of set nets for use in Knik Arm after August 9, also Fish Creek closed July 21 (snaggers harrassing red run).

1960

General same as 1959.

Cook Inlet--personal use fishing to be allowed on Northwest shore Knik Arm. . with nets 90 feet or less and more than 500 yards from terminus of any salmon stream. . and conform to commercial open periods in Northern district. . and identified with name and address of owner.

1961

General same as 1960.

Cook Inlet added open fishing season on clams, crabs, and bottomfish. . all in conformance with commercial regulations.

Salmon for subsistence was broken into districts. . . apparently this did away with fishing in main stem of Susitna River above Alexander (see subsistence regulations for Northern district 1961).

1962

General regulations added restrictions--personal use fishing must be done by permit only, issued by commissioner. . . limited subsistence catch to individual regional regulations.

Cook Inlet---same as 1961.

1963

General regulations--new regulation--fish other than salmon may be taken at any time in any area of state by any method except by use of explosives or chemicals, except as hereinafter provided or as provided in the Sport Fishing Regulations of the Department.

Cook Inlet--same as 1962.

1964

General same as 1953.

Cook Inlet--new regulation--must have permit for salmon and all catches by species, location and date of catch must be reported. Freshwater species except for trout, grayling, and char may be taken for subsistence purposes via permit and these permits be issued by commissioner or his representative when deemed warranted.

Also not more than 50 salmon be taken per permit and subsistence fishing is prohibited in any area closed to commercial fishing except for parts of Knik Arm.

And all districts with exception of Outer district, must have name and address of owner on fishing gear. The Outer district regulations were amended to conform with commercial regulations.

Another Cook Inlet regulation was amended-- sports fishing licenses required for clams and/or bottom fish and crab pot floats will contain the name of owner. No sex or size limitations on crab.

1965 through 1969

Outside of minor amendments and a few changes in regulations in the different fishing districts, personal use fishing regulations are about the same for that period from 1965 to 1969.

1969

Cook Inlet--new regulations--

Restrictions:

(a) Subsistence fishermen taking herring and smelt in the Kenai River must be physically present at all times said net is being fished.

(b) A sports fishing license is required when bottom fish are taken with fishing rod and line.

(c) A sports fishing license is required for the digging of razor clams.

Size Limits: There are no size or sex limitations on crab.

1970

Cook Inlet--new regulations--

Salmon - The subsistence fishery on the Northwest of Knik Arm was deleted.

Smelt - In the Kenai River the length of gill nets may not exceed 20 feet in length.

Smelt may be taken in that portion of the Kenai River from its mouth upstream to the Soldotna bridge from April 1 through May 31.

1972

Cook Inlet--new regulations--Smelt - Dip nets may not be used for taking smelt in the waters of the Kenai Peninsula.

4. Problem Areas

1. Northwest Shore Knik Arm: This area is no longer a problem as it was closed to subsistence fishing in 1971. The number of permits issued for this area had increased during the mid-60's to a level of 290 during the last two years of the fishery. (1965 and 1970) The reported catch during this period averaged 3,300 salmon (Table 2). The main justification for closing this area was the declining red salmon escapements into Fish Creek which reached a low of 6,233 in 1969.
2. Mud Bay: The problem here appears to be over-utilization of available fishing space rather than over-utilization of the resource. Commercial fishing, sports fishing, and subsistence fishing all take place in this rather confined area of Kachemak Bay along the Northeast side of the Homer Spit. Peak utilization occurs in mid to late August when approximately 10 seine fishermen, 50 subsistence fishermen and several hundred sports fishermen fish

TABLE 2

COOK INLET SUBSISTENCE SALMON FISHERY  
Permits Issued and Total Salmon Catch By District, 1967 - 1972

YEAR	NORTHERN <sup>1/</sup>		NORTH and SOUTH CENTRAL		SOUTHERN		EASTERN	
	Permits	Total Catch	Permits	Total Catch	Permits	Total Catch	Permits	Total Catch
1967	218	2,947	13	119	51	942	91	262
1968	276	5,395	30	303	79	953	--	--
1969	290	1,563	40	400	85	1,067	32	929
1970	290	3,448	45	206	78	1,386	36	181
1971	9	10	28	138	112	1,615	19	7
1972	9	<u>2/</u>	5	<u>2/</u>	151	<u>2/</u>	5	<u>2/</u>

<sup>1/</sup> Northern district represents Northwest shore at Knik Arm

<sup>2/</sup> Catch data not available for 1972.

this area. The main species being sought are silver salmon and the subsistence catch has averaged about 1,000 since 1967. The commercial catch in the Southern district has averaged 2,800 silvers since 1967 and an estimated 50 percent of these have been taken from Mud Bay proper. Sports harvest figures are not available, however, the average catch since 1967 would probably not exceed 500 fish. Commercial and subsistence harvest figures indicate no decline in abundance of silver stocks in Mud Bay. A tagging study in 1970 indicated the silver stocks of Mud Bay were mostly local stocks bound for upper Kachemak Bay and escapement indices in this area have been consistent in recent years.

Although there is no biological justification for closing Mud Bay, the time has perhaps come for closing a portion of Mud Bay to commercial and subsistence fishing because of user-group conflicts.

For the last several years proposals have been submitted to the Board of Fish and Game asking for either complete or partial closures of Mud Bay. The commercial fish staff has always opposed these closures on the basis that no biological justification exists.

Because of the increasing sports fish utilization there will be a public proposal submitted to the Board of Fish and Game at the November meeting by a Homer commercial fisherman which will ask for a partial closure of the Mud Bay area. The commercial staff intends to support this proposal.

3. Shellfish: Another potential problem is the crab and shrimp pot fisheries which have developed tremendously in the last few years. A considerable volume of gear is being fished in the immediate vicinity of the Homer small boat harbor and again, rather than over-utilization of the resource, the main problem is over-utilization of area. Gear is so concentrated in this one area that navigation has been hindered. A regulation may be necessary in the near future to close a section of the bay in the immediate vicinity of the small boat harbor entrance.

D. Recommendations:

It is the personal opinion of the area biologist that a need exists for subsistence fishing in Cook Inlet and that it should be continued perhaps with some modifications.

The 5 or 10 percent of the people who actually have a legitimate need to subsistence fish should not be denied this right just because the fishery has become recreationally oriented.

Perhaps a fee could be placed on a subsistence permit or license. This might tend to eliminate some of those who are participating more for recreation than need and yet keep the regulation constitutional. For those who could show need, through an application for a waiver on the license fee, a special free permit would be granted. A maximum income level would be established similar to that used in the Food Stamp Program and those falling below the established level would be eligible for the free permit. These measures would probably reduce subsistence fishing by 75 percent in the Cook Inlet area and subsistence fishing would again conform with the true meaning of subsistence.

APPENDIX

1. A copy of the Cook Inlet Subsistence Fishery Instructions of 1972.

COOK INLET SUBSISTENCE SALMON FISHERY, 1972

Salmon may be taken for subsistence purposes under authority of a permit which may be obtained from the local representative of the department.

Each subsistence fisherman taking salmon shall keep accurate records of the catch involved, by species, location caught, date of catch, and other such information as the department may require.

Salmon may be taken for subsistence purposes only by residents.

Identification of fishing gear shall consist of the name and address of the owner and the number of his subsistence permit.

Not more than 50 salmon may be taken under the authority of a subsistence permit.

Only one salmon subsistence permit will be issued to each person during a year.

A set gill net shall not be longer than 35 fathoms in length and 45 meshes in depth.

The operation of each set gill net shall be performed or assisted by the fisherman in whose name it is registered.

No part of a set gill net may be placed or operated within 600 feet of any part of another set gill net.

FISHING SEASONS:

NORTHERN DISTRICT: from 6:00 a.m. July 21 until 6:00 a.m. September 20 during open commercial fishing periods in conformance with all commercial regulations.

NORTH & SOUTH CENTRAL DISTRICTS: from 6:00 a.m. August 18 during open commercial fishing periods in conformance with all commercial regulations.

SOUTHERN DISTRICT: from 6:00 a.m. August 18 during open commercial fishing periods in conformance with all commercial regulations EXCEPT that set gill nets may be used in any beach area open to commercial salmon fishing.

WESTER DISTRICT: in conformance with commercial regulations.

EASTERN DISTRICT: from June 1 through June 30 during open commercial fishing periods in conformance with all commercial regulations EXCEPT that set gill nets may be used in any beach area open to commercial salmon fishing.

BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 24, 1986

Honorable Tim Kelly  
Chairman, Senate Rules Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: HB 288 (Subsistence)

Dear Senator *TK* Kelly:

The subsistence bill (HB 288) has been transmitted to the Senate Rules Committee from the Judiciary Committee. Attached for your information is a briefing paper on the background of HB 288, which I introduced last year to solve the problems created by the Madison case. However, I have grave concerns about the recent Senate Judiciary Substitute for HB 288, which does not comply with ANILCA and which would result in federal takeover. (See the discussion in part VII of the attached background briefing.)

The federal government has indicated that it is gearing up to assume management of fish and wildlife on federal lands and waters -- which make up at least 60% of the state -- as of June 1, unless Alaska's statutes are brought into alignment with the requirements of the federal subsistence law. I therefore strongly urge your committee to adopt a substitute for HB 288 that deletes the language in the Judiciary Substitute on page 4, lines 10 through 27, and to pass it on to the Senate floor as soon as possible. Such an amendment is essential to achieve a bill that is constitutional, enforceable, complies with ANILCA, and returns to the Boards of Fisheries and Game the flexibility to treat all Alaskans fairly.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield  
Governor

Enclosure

## Background Briefing on

### HB 288 (Subsistence)

#### I. Introduction

In February 1985 the Alaska Supreme Court interpreted the state subsistence law for the first time in Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985). The decision caused numerous problems for the state, which the governor sought to address in House Bill 288. The bill passed the House in 1985 and the Senate is currently considering it. This analysis describes the effect of Madison, the goals of the Governor's bill, how the Senate Resources Committee substitute for HB 288 would work if enacted, and the serious problems with the Senate Judiciary Committee substitute.

#### II. The Situation Before Madison

A. The state statutes: In 1978, the legislature enacted a state subsistence law which did four things.

1. It defined subsistence uses as "the customary and traditional uses" of fish and game for

food, clothing, trade and other specified purposes.

2. It required the Boards of Fisheries and Game to authorize subsistence hunting and fishing, unless sustained yield would be threatened.
3. It required that in cases of relative resource shortage, subsistence uses would have priority over other uses.
4. In situations where only subsistence uses could be authorized and not all those eligible for subsistence could be allowed to hunt and fish, it required that the boards determine who should be authorized to harvest based on three criteria: dependence, local residency, and available alternatives.

B. The boards' interpretation: The boards adopted a joint procedural regulation interpreting the subsistence law. The regulation did several things.

1. It limited subsistence uses to "customary and traditional uses by rural Alaska residents."

2. It listed eight criteria the boards would use to identify subsistence uses of a community or area, such as skills being passed from generation to generation, and reliance on a wide diversity of resources.
3. It clarified that the boards would provide a reasonable opportunity for subsistence, unless the resource would be jeopardized.
4. It clarified that subsistence uses could not be cut back until all other uses were first cut back, and, if necessary, eliminated. Subsistence uses would be the last to go in times of limited resources.

C. Personal use: The Board of Fisheries in regulation established the personal use fishing category, so that people from areas which did not have subsistence uses (for example, the Fairbanks people who fish at Chitina) would be able to harvest fish with efficient means, such as nets, for their own use, without a priority. The board could allocate among personal use, sport, and commercial fishing in its reasonable discretion in any particular situation.

### III. Madison

- A. The decision: The Alaska Supreme Court ruled that the state legislature in 1978 had not intended that subsistence be limited to rural customary and traditional uses, and did not mean for it to be authorized on a community or area basis.
  
- B. ANILCA consequences: ANILCA allows the state to continue managing fish and game on all land and water in Alaska if the state provides in a law of general applicability, among other things, the same definition of subsistence uses as appears in ANILCA, "customary and traditional uses by rural Alaska residents" of fish and game.
  
- C. Harvest disruptions: Madison in combination with State v. Eluska 698 P.2d 174 (Alaska App. 1985) resulted in extensive disruptions in 1985 of harvest opportunities.
  1. Eluska held that the Board of Game had to have a separate set of regulations for subsistence uses, and could not simply accommodate subsistence through the general hunting regulations, and it also held that unless subsistence hunting regulations were

adopted, people could raise the "subsistence defense" in prosecutions for out-of-season hunting.

2. Since Madison meant that hunting by all Alaskans for food was subsistence hunting, action by the Board of Game in response to Eluska resulted in numerous "tier 2" hunts.

a. The statutes' three criteria (dependency, local residency, and alternative resources) were used in a point system to rank everyone who wanted to participate in those hunts and to decide who could participate.

b. The board could not after Madison use permit drawing lotteries, which had been a standard tool in selecting which non-rural Alaskans could hunt, for example, the Nelchina caribou.

3. Further disruptions can be expected, since at least one lower court has interpreted Madison to give sport fishing by Alaska residents a priority over commercial fishing. State v.

IV. The Governor's Bill

Shortly after Madison, the Governor introduced HB 288, designed solely to address the problems created by Madison.

- A. It would amend the definition of "subsistence uses" in statute to clarify that they are the customary and traditional uses by rural Alaska residents of fish and game.
  
- B. It would add a definition of "personal use fishing" to the statutes to provide a category for non-rural Alaskans to harvest fish for their own use by efficient means, such as nets.
  - 1. For example, the residents of Fairbanks and other parts of Alaska have long fished with dip nets at Chitina for salmon, and the residents of Kenai and Anchorage have long fished with gill nets in Cook Inlet for salmon.

2. The category would be used in the board's discretion on a situation by situation basis, along with sport and commercial fishing, and none would automatically be the last priority, nor the second priority to subsistence.

V. The Senate Resources Substitute Compared to the Governor's Bill

A. Similarities: The Senate Resources Substitute does accomplish the two necessary results which the Governor's bill addressed. It:

1. Adds a clarification that "subsistence uses" are uses of fish and game by rural Alaska residents.
2. Establishes as a definition of "personal use fishing" in statute.

B. Differences: The Senate Resources Substitute also substantially reorganizes the current statutes in ways not necessary to address Madison. It additionally provides the following:

1. Requires the boards to identify fish stocks and game populations used for subsistence.
  - a. This should not result in ANICLA problems if the identification process takes into account the fluctuations which Congress recognized are inherent in subsistence uses, which are often dependent on the sporadic movement of game over time (e.g. the varying migration patterns of caribou).
  - b. This should not result in implementation problems if the intent is an ongoing identification process as data becomes available.
  
2. Authorizes the boards to establish an administrative appeal process.
  - a. This could be cumbersome to implement.
  - b. This would be redundant to the reconsideration and petition procedures already in existence.

3. Prohibits the use of the "subsistence defense" by individuals being prosecuted for violations of a statute or regulation.

a. People who feel the regulations do not adequately accommodate a reasonable opportunity for subsistence may submit a proposal or a petition to the appropriate board requesting change.

b. People still unsatisfied by the board response may file a civil suit challenging the regulation.

4. Mandates that the boards require subsistence permits in many situations where the boards may not find that useful.

a. The boards already may require subsistence permits when useful.

b. This would burden the public with extra paperwork.

c. This could be difficult to implement and administer, if the boards required

individual permits in all cases instead of community or area permits.

5. Requires the Board of Fisheries to adopt criteria upon which to base its allocation decisions.
6. Makes explicit the existing requirement that non-subsistence uses -- sport, commercial, and personal use -- be treated fairly.
7. Provides that Alaska residents have a preference over non-state residents in the use of moose, caribou, elk, and deer consistent with and in addition to the subsistence preference.

VI. The Senate Resources Substitute: How Subsistence Uses Would Be Identified and Regulated

A. The Boards of Fisheries and Game would be required to adopt subsistence regulations

1. The Senate Resources Substitute requires the Boards of Fisheries and Game to adopt subsistence fishing and hunting regulations for each fish stock and game population which

has been subject to subsistence uses, and for which there is a "harvestable portion." Subsistence regulations would have to provide a reasonable opportunity to satisfy subsistence uses (AS 16.05.258(c)).

2. The bill also clarifies that subsistence hunting and fishing are subject to reasonable regulation of seasons, catch or bag limits, and methods and means (As 16.05.258(f)).

B. The bill sets out procedural requirements for the boards to follow in developing subsistence regulations

1. The bill requires the boards to make several specific findings in adopting subsistence regulations. Under AS 16.058(a)and(b), the boards must;
  - a. identify the specific fish stocks and game populations or portions of stocks and populations which have been customarily and traditionally used for subsistence in each rural area;

b. determine what portion, if any, of these stocks and populations can be harvested consistent with sustained yield;

c. determine how much of the harvestable portion is needed to provide a reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

2. In making these findings the boards will have to identify, by community or area, the residents "domiciled in a rural area of the state" who are engaged in subsistence uses of the fish stocks or game populations for which regulations are being developed. This will require the boards to determine which areas of the state are rural and which uses of fish and game are subsistence uses.

C. The bill changes the definition of "subsistence uses" and adds a definition of "rural area."

1. "Subsistence uses" are defined as the "noncommercial, customary and traditional uses of wild renewable resources by a resident domiciled in a rural area of the

state for direct personal or family consumption as food, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption" (AS 16.05940(23)). (The new portions are underlined.)

2. "Rural area" is defined in the bill as "a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principle characteristic of the economy of the community or area" (AS 16.05.940(23)). This is very similar to the definition used in the Governor's bill, except for the term "principal", which replaced the term "significant" in the Governor's bill.

- D. The boards could use the eight criteria to identify subsistence uses and rural areas.

1. The Senate Resources version clarifies that definition of subsistence uses has been narrowed to rural areas, as the boards were doing by regulation before the Madison decision. The boards could therefore go back to identifying subsistence uses using the eight criteria set out in the joint boards procedural regulation (5 AAC 99.010) discussed in II(B) above.
  
2. The boards could therefore implement this section of the bill by using the eight criteria, or a similar regulation, to determine, area by area, which uses of fish and game qualify as subsistence uses by the people living in the area.
  
3. This section also clarifies that the boards have the authority and flexibility to evaluate the facts and determine that there are no subsistence uses on some stocks or populations or portions of stocks or populations. For example if bison, sheep or goat populations are not customarily and traditionally used by residents of rural areas the Board of Game does not need to

adopt subsistence regulations for these populations.

4. If there are customary and traditional uses by particular communities or areas of stocks or populations the boards must provide reasonable opportunities for rural residents in those areas to satisfy their subsistence uses.

5. In making the required findings, the boards would rely heavily on information from the public, the fish and game advisory committees, the regional councils, and the Department of Fish and Game, including the Division of Subsistence.

6. The boards would have to determine, based on this information, whether regulations provide a reasonable opportunity to satisfy subsistence uses, or whether they restrict ("significantly impair") subsistence uses.

E. The bill continues to provide a preference for subsistence uses.

1. The preference for subsistence uses would operate as it does in the existing statute.
2. Non-subsistence uses of fish stocks and game populations can be authorized by the boards as long as there is enough of the resource to accommodate subsistence uses.
3. If there is not enough of a fish stock or game population to accommodate all consumptive uses, then regulations must give subsistence uses a preference over other consumptive uses and provide a reasonable opportunity to satisfy the subsistence uses (AS 16.05.258 (c)). This situation, when all subsistence uses can be accommodated, has been called "Tier One."
4. The boards can use a wide range of regulatory options to provide for subsistence uses and the Tier One preference, including limiting transportation methods, providing winter hunting seasons, and providing different seasons or larger bag limits to rural residents.

5. All non-subsistence hunting or fishing must be closed before subsistence uses can be restricted ("significantly impaired").
  
6. If it is necessary to restrict ("significantly impair") subsistence uses in order to assure sustained yield or continue subsistence uses, the boards must distinguish among subsistence users by applying the following criteria:
  - a. customary and direct dependence on the fish stock of game populations as the mainstay of livelihood;
  - b. local residency; and,
  - c. availability of alternative resources.
  
7. The situation where not all subsistence users can hunt or fish has been called Tier 2. With a rural definition Tier 2 situations would not occur in as many areas, or be as disruptive as they were in 1985 under Madison, because the group to be protected would be so much smaller.

## VII. The Senate Judiciary Welfare Amendment

The Senate Judiciary Committee amended the Senate Resources Substitute to provide that people whose family's gross income is above 130% of the federal poverty level (which changes depending on other indices) will not qualify for subsistence hunting and fishing. This raises the following major problems.

1. An income level test is inconsistent with ANILCA, and would mean federal takeover. Congress clearly stated that ANILCA:

"requires that regulatory systems which employ income requirements not be imposed upon rural residents. Income requirements are by their very nature capricious classifications in rural Alaska..."

126 Cong. Rec. H10546 (daily ed. Nov. 12, 1980).

2. An income level test will result in families making more than the specified amount a year no longer qualifying for subsistence hunting and fishing even if they had relied upon subsistence in the past.

3. Any income level test is likely to violate equal protection.

a. Any income chosen is likely to be arbitrary and not linked to patterns of use and reliance on fish and wildlife.

b. Great variances in income, employment opportunities, and cost of living in different areas of the state would make it impossible to establish a single state-wide standard of economic need which would treat people similarly situated to fish and game resources alike.

4. A definition based on income is not consistent with reality in bush areas of Alaska.

a. Often the most successful members of communities are the most productive in terms of income and in terms of harvest, which is shared throughout the community.

b. In bush Alaska, even people with reasonably high incomes do not have

supplies available to buy with the money.

c. Hunting and fishing is not viewed as a subsidy, but rather as a way of life, in those bush areas.

d. A definition based on need would disrupt long established social and economic patterns in those bush areas.

5. Administrative problems would arise in constructing a system which would accurately identify individuals eligible under some kind of income level test; a system which was geared to be accurate would also be intrusive into people's lives in that some verification of income level might be necessary.

# Bye-bye, hunting, if Senate dawdles further

The issue of subsistence is like a freight train out of control. The throttle is stuck at full-speed ahead and the train is rushing pell-mell toward the station, where, unless something changes, it's certain to crash.

No one wants to climb aboard and slow the engine, despite warnings by the Department of Interior's Bill Horn, Governor Bill Sheffield and a few (very few) men that a serious collision is imminent between the state and federal governments.

It's as if the majority of responsible people in our political system have become tongue-tied. They won't speak out for fear of offending someone or some group and everyone is holding their collective breath — hoping the runaway engine will lose its head of steam.

Aside from Horn's testimony before the Senate Affairs committee — that the federal government is **REQUIRED BY LAW** to take over management of fish and game — the other federal agencies have not said a word. The majority of state officials have remained silent, and most



## Rising to the Bait

Dan Sisson

of the public is in the dark.

Their reasoning, I suppose, is why make a big noise over an issue that can be solved in minutes by a change of one or two votes. So they say and do nothing.

But the federal government, while silent, has not been idle. A group of men from the Forest Service, Park Service, Fish & Wildlife Service, BLM, BIA, FAA, the Solicitor's Office and the Army and Air Force have been meeting regularly — and seriously — for weeks, anticipating the worst case.

Under the leadership of Alaskan Ric Davidge, the coordinator of this Federal Subsistence Resource Management Program (FSRMP), a timetable has been

adopted if no subsistence bill passes the legislature in compliance with federal law.

On May 15th (less than a month from now) the FSRMP will give the state of Alaska a "notice of intent" that they are the federal agency responsible for taking over management of fish and game resources on federal lands. They will also publish documents outlining this purpose in the Federal Register — which gives them legal authority to act.

In this original notice will be specific references to all June and July hunts as well as the sportfishing and commercial fishing seasons that may be halted.

On May 30 they will publish "emergency regulations" on all other hunts if they have the necessary harvest information from the Alaska Board of Game. This will not be possible, though, if the Game Board does not meet in emergency session and agree on harvest numbers by July 31st. And if the numbers do not satisfy the federal managers, there will be **NO OPENING OF SEASONS**.

This effort is being underta-

ken with the approval of the highest officials in the federal government. So, what does it mean?

It means 60 per cent of Alaska (areas now under federal control) will be automatically under federal management. It goes up to 80 percent when one includes all private and non-federal lands within or adjacent to federal boundaries, plus waters and native lands. And, when one adds federal refuges, parks and preserves — plus the fish, birds and game in them — it comes close to 100 per cent of the resources.

It means a very conservative philosophy of managing wildlife resources. The feds — unlike the state — do not automatically act on management plans recommended by their biologists.

A detailed and exhaustive analysis of all biological implications is followed by an even more exhausting and time consuming administrative procedure that federal managers are required to follow by law. The Administrative Practices Act and the National Environmental Protection Act are just two laws that require hearings, hearings and more hearings in order that fed-

eral management plans will not be litigated and shot down in the courts. In sum, it means the feds will take a lot of time before they do anything. Months, if not years.

If the state senate fails to pass a bill acceptable to the feds there will be dozens, if not hundreds, of court battles by white sport hunters, guides, sportfishermen, commercial fishermen, wilderness advocates, urban residents, rural residents, subsistence users, natives, private organizations interested in conserving a particular resource, and undoubtedly out-of-state organizations. In short there will ensue a legal nightmare that paralyzes the FSRMP's attempts to manage fish and game.

According to legal experts this tangle of suits will take at least three to four years to settle. Meanwhile there may be **NO HUNTING** and limited fishing.

Those who pay will be the urban sportsmen, because of a few politicians. Mitch Abood threw up his hands and said, "It (subsistence) is too complicated," and passed the bill to another committee. Rich Halford

introduced an amendment (that Bill Horn specifically said was in violation of federal law) and then refused to answer questions about why he had done so. Pat Rodey refuses to pass the subsistence bill out of his Senate Judiciary Committee until his fire-arm bill (which is unrelated to subsistence) is reported out of the House Judiciary committee. Because of these politicians, majority of Alaskans may not be hunting for years.

Is this what we want? A frustrating and enraging scene which poisons an election year? One in which the voters are polarized over the use of resources common to all and which should be enjoyed by all?

The subsistence crisis is now a reality. Unless responsible people begin to speak out and tell a handful of state senators that they are like children, playing house with power, we will rue our silence.

*Dan Sisson, an outdoors writer and college instructor living on the Kenai Peninsula, is a contributor to Field and Stream magazine.*

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 288 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taking of fish and game for  
7 subsistence and personal use; and providing for an  
8 effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 16.05.251(a)(6) is amended to read:

11 (6) classifying as commercial fish, sport fish, personal  
12 use fish, subsistence fish, or predators or other categories essential  
13 for regulatory purposes;

14 \* Sec. 2. AS 16.05.251(a) is amended by adding a new paragraph to read:

15 (12) regulating commercial, sport, subsistence, and personal  
16 use fishing as needed for the conservation, development, and utiliza-  
17 tion of fisheries.

18 \* Sec. 3. AS 16.05.251 is amended by adding new subsections to read:

19 (d) Regulations adopted under (a) of this section must, con-  
20 sistent with sustained yield and the provisions of AS 16.05.258,  
21 provide a fair and reasonable opportunity for the taking of fishery  
22 resources by personal use, sport, and commercial fishermen.

23 (e) The Board of Fisheries shall establish criteria for the  
24 allocation of fishery resources among personal use, sport, and commer-  
25 cial fishing. The criteria may, as appropriate to particular alloca-  
26 tion decisions, include factors such as

27 (1) the history of each personal use, sport, and commercial  
28 fishery;

29 (2) the number of residents and nonresidents who have

1 participated in each fishery in the past and the number of residents  
2 and nonresidents who can reasonably be expected to participate in the  
3 future;

4 (3) the importance of each fishery for providing residents  
5 the opportunity to obtain fish for personal and family consumption;

6 (4) the availability of alternative fisheries resources;

7 (5) the importance of each fishery to the economy of the  
8 state;

9 (6) the importance of each fishery to the economy of the  
10 region and local area in which the fishery is located;

11 (7) the importance of each fishery in providing recreation-  
12 al opportunities for residents and nonresidents.

13 \* Sec. 4. AS 16.05.255(a) is amended by adding a new paragraph to read:

14 (10) regulating sport hunting and subsistence hunting as  
15 needed for the conservation, development, and utilization of game.

16 \* Sec. 5. AS 16.05.255 is amended by adding a new subsection to read:

17 (d) Regulations adopted under (a) of this section shall provide  
18 that, consistent with the provisions of AS 16.05.258, the taking of  
19 moose, deer, elk, and caribou by residents for personal or family  
20 consumption has preference over taking by nonresidents.

21 \* Sec. 6. AS 16.05 is amended by adding new sections to read:

22 Sec. 16.05.256. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME.

23 (a) The Board of Fisheries and the Board of Game shall identify the  
24 fish stocks and game populations, or portions of stocks and popu-  
25 lations, that are customarily and traditionally used for subsistence  
26 in each rural area identified by the boards.

27 (b) The boards shall determine

28 (1) what portion, if any, of the stocks and populations  
29 identified under (a) of this section can be harvested consistent with

1           sustained yield; and

2                   (2) how much of the harvestable portion is needed to pro-  
3           vide a reasonable opportunity to satisfy the subsistence uses of those  
4           stocks and populations.

5           (c) The boards shall adopt subsistence fishing and subsistence  
6           hunting regulations for each stock and population for which a harvest-  
7           able portion is determined to exist under (b)(1) of this section. If  
8           the harvestable portion is not sufficient to accommodate all consump-  
9           tive uses of the stock or population, but is sufficient to accommodate  
10          subsistence uses of the stock or population, then nonwasteful subsis-  
11          tence uses shall be accorded a preference over other consumptive uses,  
12          and the regulations shall provide a reasonable opportunity to satisfy  
13          the subsistence uses. If the harvestable portion is sufficient to  
14          accommodate the subsistence uses of the stock or population, then the  
15          boards may provide for other consumptive uses of the remainder of the  
16          harvestable portion. If it is necessary to restrict subsistence  
17          fishing or subsistence hunting in order to assure sustained yield or  
18          continue subsistence uses, then the preference shall be limited, and  
19          the boards shall distinguish among subsistence users, by applying the  
20          following criteria:

21                   (1) customary and direct dependence on the fish stock or  
22           game population as the mainstay of livelihood;

23                   (2) local residency; and

24                   (3) availability of alternative resources.

25           (d) The boards may adopt regulations consistent with this sec-  
26           tion that authorize taking for nonsubsistence uses a stock or popula-  
27           tion identified under (a) of this section.

28           (e) Fish stocks and game populations, including bison, or  
29           portions of fish stocks and game populations, not identified under (a)

1 of this section may be taken only under nonsubsistence regulations.

2 (f) Takings authorized under this section are subject to reason-  
3 able regulation of seasons, catch or bag limits, and methods and  
4 means. Takings and uses of resources authorized under this section  
5 are subject to AS 16.05.831 and AS 16.30.

6 \* Sec. 7. AS 16.05 is amended by adding new sections to read:

7 Sec. 16.05.261. NO SUBSISTENCE DEFENSE. In a prosecution for  
8 the taking of fish or game in violation of a statute or regulation, it  
9 is not a defense that the taking was done for subsistence uses.

10 Sec. 16.05.262. SUBSISTENCE LICENSE. (a) The department shall  
11 issue a subsistence license to a resident domiciled in a rural area of  
12 the state who

13 (1) applies for the license on a form provided by the  
14 department;

15 (2) pays an annual license fee of 25 cents; and

16 (3) presents proof that the applicant's annual family gross  
17 income for the preceding calendar year was below 130 percent of the  
18 official federal poverty line established by the director of the  
19 federal Office of Management and Budget, as revised by the Secretary  
20 of Health and Human Services under 42 U.S.C. 9847 and 9902.

21 (b) A subsistence license expires one year after the date of  
22 issuance.

23 Sec. 16.05.263. LICENSE REQUIRED FOR SUBSISTENCE TAKINGS. A  
24 person who takes fish or game for subsistence uses shall have in  
25 possession a current, valid subsistence license that was issued under  
26 AS 16.05.262 to the person or to another individual for whose benefit  
27 the person is taking the fish or game.

28 \* Sec. 8. AS 16.05.330 is amended by adding a new subsection to read:

29 (c) The Board of Fisheries and the Board of Game may adopt

1 regulations providing for the issuance and expiration of subsistence  
2 permits for rural areas as needed for authorizing, regulating, and  
3 monitoring the subsistence harvest of fish and game. The boards shall  
4 adopt these regulations when the subsistence preference requires a  
5 reduction in the harvest of a fish stock or game population by nonsub-  
6 sistence users.

7 \* Sec. 9. AS 16.05.940(22) is amended to read:

8 (22) "subsistence fishing" means the taking of, fishing for,  
9 or possession of fish, shellfish, or other fisheries resources by a  
10 resident domiciled in a rural area of the state for subsistence uses  
11 with gill net, seine, fish wheel, long line, or other means defined by  
12 the Board of Fisheries;

13 \* Sec. 10. AS 16.05.940(23) is amended to read:

14 (23) "subsistence uses" means the noncommercial, customary  
15 and traditional uses [IN ALASKA] of wild, renewable resources by a  
16 resident domiciled in a rural area of the state for direct personal or  
17 family consumption as food, shelter, fuel, clothing, tools, or trans-  
18 portation, for the making and selling of handicraft articles out of  
19 nonedible by-products of fish and wildlife resources taken for per-  
20 sonal or family consumption, and for the customary trade, barter, or  
21 sharing for personal or family consumption; in (FOR THE PURPOSES OF)  
22 this paragraph, "family" means [ALL] persons related by blood, mar-  
23 riage, or adoption, and a [ANY] person living in [WITHIN] the house-  
24 hold on a permanent basis;

25 \* Sec. 11. AS 16.05.940 is amended by adding new paragraphs to read:

26 (28) "domicile" means the true and permanent home of a  
27 person from which the person has no present intention of moving and to  
28 which the person intends to return whenever the person is away; domi-  
29 cile may be proved by presenting evidence acceptable to the boards of

1 fisheries and game:

2 (29) "fish stock" means a species, subspecies, geographic  
3 grouping or other category of fish manageable as a unit;

4 (30) "game population" means a group of game animals of a  
5 single species or subgroup manageable as a unit;

6 (31) "personal use fishing" means the taking, fishing for,  
7 or possession of finfish, shellfish, or other fishery resources, by  
8 Alaska residents for personal use and not for sale or barter, with  
9 gill or dip net, seine, fish wheel, long line, or other means defined  
10 by the Board of Fisheries;

11 (32) "rural area" means a community or area of the state in  
12 which the noncommercial, customary, and traditional use of fish or  
13 game for personal or family consumption is a principal characteristic  
14 of the economy of the community or area;

15 (33) "subsistence hunting" means the taking of, hunting for,  
16 or possession of game by a resident domiciled in a rural area of the  
17 state for subsistence uses by means defined by the Board of Game.

18 \* Sec. 12. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

19 \* Sec. 13. This Act takes effect June 1, 1986.  
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26  
27  
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29

Halford Ver.  
Hein  
4/3/86 ✓

Original sponsor: Rules/Governor

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17 tion of fisheries.

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19 (d) Regulations adopted under (a) of this section must, con-  
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22 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME.

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26 in each rural area identified by the boards.

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3 vide a reasonable opportunity to satisfy the subsistence uses of those  
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5 (c) The boards shall adopt subsistence fishing and subsistence  
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