

Public Testimony on HB 125: "An Act Relating to Membership of the Board of Fisheries"

I am here today to testify in opposition to HB 125 unless significant amendments are made. This bill, which restructures the Board of Fisheries, poses serious legal, environmental, and economic risks that must be addressed. While the intention to clarify representation on the board is commendable, HB 125 ultimately prioritizes commercial and sport fishing interests at the expense of Indigenous subsistence rights, environmental accountability, and scientific oversight. If enacted in its current form, this legislation would undermine Alaska's constitutional mandates, tribal sovereignty, and long-term sustainability of our fisheries.

Key Issues with HB 125

1. Legal and Constitutional Concerns

HB 125 grants the governor unchecked power to reject nominations from the Alaska Federation of Natives (AFN) and the National Oceanic and Atmospheric Administration (NOAA). This raises multiple constitutional and legal concerns, including:

Violation of Alaska's Constitution, Article VIII, Section 3, which ensures the common use of natural resources. By potentially reducing subsistence representation, this bill could result in unequal access to fisheries resources.

Potential violation of federal tribal sovereignty protections under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5301 et seq.), as well as the Alaska National Interest Lands Conservation Act (ANILCA, 16 U.S.C. § 3113), which guarantees Indigenous subsistence rights.

Conflicts with legal precedent from *John v. United States* (1995), which affirmed federal protections for Native subsistence fishing. HB 125 could trigger legal challenges on preemption grounds, arguing that state law cannot override federal protections.

Risk of regulatory capture, as the bill provides no conflict-of-interest protections for commercial or sport fishing representatives, potentially allowing individuals with financial stakes in fisheries to exert undue influence over regulations.

2. Overrepresentation of Commercial and Sport Fishing Interests

HB 125 mandates equal representation for commercial and sport fishing (two members each) but only two for subsistence fishing—despite the fact that subsistence fishing is federally protected and essential for Indigenous communities.

The governor's ability to reject AFN's nominees further weakens Indigenous representation, reducing their ability to advocate for sustainable fisheries management.

This shift in representation favors economic exploitation over sustainability, potentially leading to policies that prioritize short-term profit over long-term conservation.

3. Weak Environmental and Scientific Oversight

NOAA is tasked with submitting nominees for the scientific community representative, but HB 125 allows the governor to reject their list without justification. This risks politicizing the selection process, excluding independent scientific voices critical for sustainable fisheries management.

The bill provides no provisions ensuring environmental representation, despite increasing threats such as overfishing, climate change, and habitat destruction.

The Alaska Supreme Court has ruled that the state has a fiduciary duty to manage fisheries sustainably (*Pullen v. Ulmer*, 1993)—this bill could jeopardize that responsibility by undermining independent scientific input.

4. Economic and Corporate Accountability Risks

The bill does not require financial disclosure from commercial or sport fishing representatives, opening the door for corporate influence and conflicts of interest.

It ignores windfall profits from large-scale commercial fisheries, which have historically benefited from loopholes in state tax structures (Holen, 2014).

Reducing subsistence representation could devastate rural economies, where Indigenous communities rely on subsistence fishing as an economic and cultural necessity.

Recommended Amendments

To ensure that HB 125 protects all Alaskans, I propose the following amendments:

Independent Scientific and Environmental Oversight

Remove the governor's ability to reject NOAA's nominee for the scientific representative.

Add a requirement that at least one board member has expertise in environmental sustainability.

Strengthen Indigenous and Subsistence Representation

Increase subsistence fishing representation from two to three members to reflect its unique legal status under ANILCA.

Require formal tribal consultation before rejecting AFN's nominee list.

Conflict-of-Interest Protections and Transparency

Mandate financial disclosure requirements for commercial and sport fishing representatives to prevent regulatory capture.

Establish an independent ethics review panel to oversee board appointments.

Legal Accountability Mechanisms

Require the governor to provide a public, written explanation if rejecting nominees from AFN or NOAA.

Establish an appeal process for rejected nominees to ensure fairness.

HB 125, as written, presents significant risks to legal protections, environmental sustainability, and Indigenous rights. The proposed amendments would make this bill legally robust, equitable, and aligned with Alaska's constitutional and federal obligations. Without these changes, I urge the legislature to reject HB 125 to prevent the further erosion of Alaska's fisheries governance and Indigenous subsistence rights.

Thank you for your time and consideration.

Susan Allmeroth

Two Rivers

Myself

References

Holen, D. L. (2014). Fishing for community and culture: The value of fisheries in rural Alaska. University of Alaska Fairbanks, Institute of Social and Economic Research.

Metlakatla Indian Community v. Dunleavy, No. 3:20-cv-00204 (D. Alaska 2023).

Pullen v. Ulmer, 923 P.2d 54 (Alaska 1993).

John v. United States, 72 F.3d 986 (9th Cir. 1995).

The Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3113.

The Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301 et seq.

The Alaska Constitution, Article VIII, Section 3.

If NOAA were to be dissolved, an alternative agency or entity would need to assume its responsibilities for scientific oversight in fisheries management. Possible replacements could include:

National Science Foundation (NSF) – As a federal agency supporting scientific research, NSF could provide independent scientific nominees with expertise in marine biology, fisheries, and climate science.

United States Geological Survey (USGS) – The USGS has expertise in environmental monitoring and could assume NOAA's role in providing scientific recommendations for fisheries.

Regional Fisheries Management Councils – The North Pacific Fishery Management Council (NPFMC) or another regional body could nominate independent scientific experts.

State-Level Scientific Advisory Boards – Alaska could establish an independent Fisheries Science Advisory Board to ensure impartial, data-driven decision-making.

University-Based Marine Science Programs – Institutions such as the University of Alaska Fairbanks (UAF) College of Fisheries and Ocean Sciences could provide nominees for the scientific representative.

The U.S. Fish and Wildlife Service (USFWS) – While traditionally focused on wildlife, USFWS oversees certain fisheries management functions and could play a role in filling NOAA's vacancy.

The Bureau of Ocean Energy Management (BOEM) – If the responsibility shifts to another federal agency, BOEM, which deals with offshore resource management, could be involved in fisheries-related decisions.

For HB 125, if NOAA is dissolved, the bill should be amended to designate one of these agencies or an independent scientific board as the new nominating entity to maintain scientific integrity and sustainable fisheries management.