

Bristol Bay Fishermen's Association

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February 26, 2018

Representative Louise Stutes
Chair, House Fisheries Committee
State Capitol, Room 406
Juneau AK, 99801

Via email to: Representative.Louise.Stutes@akleg.gov
cc: Fisheries Committee Members

Re: Opposition to CS HB 188 (Version L), and Offering and Supporting a Better Idea.

Dear Representative Stutes and Members of the House Fisheries Committee,

I am president of the Bristol Bay Fishermen's Association (BBFA). It is the largest and oldest voluntary association of commercial fishers in Bristol Bay.

BBFA opposes HB 188. It would create Regional Fisheries Trusts (RFT) that will own, buy, sell, and lease Limited Entry Permits for commercial salmon fishing. The bill would –

- (1) establish approximately sixteen regions in Alaska based on existing boundaries of administrative areas used by the Commercial Fisheries Entry Commission to assign limited entry permits for salmon fishing;¹
- (2) allow municipalities in each region to apply to the Department of Commerce, Community and Economic Development (DCCED) for approval of a "public corporation and instrumentality of the state" called a "regional fisheries trust," operated by a board of directors appointed by the governor selecting one from each municipality in the region, and any staff;²
- (3) allow DCCED to approve up to three trusts out of approximately sixteen regions;³
- (4) authorize each trust to borrow funds,⁴ and seek and use public funds, grants and gifts, to acquire or purchase limited entry commercial salmon fishing permits, pay board members and staff, and pay for facilities and operations;⁵
- (5) require each fund to:
 - (a) "establish criteria for the temporary transfer" of acquired permits so as to "ensure the solvency and financial strength of the fisheries trust," which implies that a transferee would pay fees or remunerate the trust to ensure its solvency and financial strength;⁶
 - (b) select individuals lacking permits to receive a temporary transfer of a permit for up to six years, based on competitive bids and other criteria, and who in return would pay other

¹ See CS HB 188, version L, § 56(a)(1); see also AS 16.43.200, and CFEC administrative areas at 20 AAC 05.230 and gear registration areas at 5 AAC 39.129(d).

² CS HB 188, version L, § 16.44.010(a) and (d), § 16.44.020.

³ CS HB 188, version L, § 16.44.010(a).

⁴ CS HB 188, version L, § 16.44.050(a)(3).

⁵ CS HB 188, version L, § 16.44.050(a)(5).

⁶ CS HB 188, version L, § 16.44.050(b)(2).

fees to the state associated with the permit, which would be appropriated to the trust, less any costs of DCCED;⁷

- (6) provide that a trust may not hold more than 2.5 percent of the permits issued for a region, and may not sell a permit unless it receives fair market value.⁸

In sum, the trusts, as “instrumentalities of the state,” would receive money and other assets by at least six means: (1) borrowing funds, (2) public funds and grants, (3) private grants and gifts, (4) competitive bids of transferees for a permit, (5) fees and other remuneration paid by transferees to a trust under the terms of a transfer, and (6) fees associated with the permit paid to the state, less costs of DCCED, and appropriated to the respective trusts. All these funds and assets would be tax exempt.⁹ All would be used to acquire the maximum number of permits allowed,¹⁰ pay directors of the trusts at rates comparable to those of the highest paid elected officials in the region,¹¹ pay staff at rates of comparable state officials,¹² pay expenses, and acquire real and personal property. Although the trusts could only hold 2.5 percent of permits at any given time, nothing in HB 188 prevents the trusts from churning permits -- buying permits when the value is down, putting them into transferee status when useful or profitable to do so, and selling them when the value is high. Thus, HB 188 appears to be a scheme to (1) achieve profits for the trusts, salaries and benefits for their directors and staff, permits for a few temporary transferees, (2) do so at public expense through use of public funds and subsidies based in state and federal tax law, and (3) shield the profits and assets from taxation.

DISCUSSION

Alaska’s salmon fisheries are the envy of the world because commercial fishers, not corporations, own the permits. Commercial fishers are self-employed business people, not employees or contractors of corporations. We fish for our families, children’s educations, health care, etc. That is why we fight to protect salmon, habitat and fisheries. Those who fish elsewhere for corporations do so less and lose their fisheries.

We understand the goal of trying to encourage residents of depressed areas to participate in fisheries. However, HB 188 would turn fishermen into “temporary transferees” under contract to corporations. I’ll explain why HB 188 is not a good idea and offer a better one.

A. HB 188 should be discarded for several reasons.

CS HB 188, version L, is apparently the twelfth draft of HB 188, not counting similar unsuccessful legislation (HB 366) in the 29th Legislature. The problems within HB 188 cannot be solved because its foundation is ill-thought-out.

1. **HB 188 would create regional fisheries trusts and allow them to use public funds and state and federal tax law to subsidize the trusts’ acquisition of permits.**

The regional fisheries trusts would be public corporations, presumably nonprofit, authorized to borrow funds, and seek gifts or grants from federal, state and municipal governments, or any other

⁷ CS HB 188, version L, § 16.44.055.

⁸ CS HB 188, version L, § 16.44.060(a) and (f).

⁹ CS HB 188, version L, § 16.44.040.

¹⁰ CS HB 188 version L, § 16.44.050(a)(8).

¹¹ CS HB 188 version L, § 16.44.030(a).

¹² CS HB 188 version L, § 16.44.020(i).

source, including grants and gifts of money, permits and other assets from individuals, businesses and charities.¹³ All this subsidizes the trusts through public funds and federal and state tax laws. For example, if a trust were a charitable nonprofit, then a commercial fisher who gives a permit to the trust could deduct a portion of the value of the permit on his or her federal tax return.

The public has more important uses for federal and state taxes than to use or deduct them to subsidize corporations which seek to turn a dollar on acquiring and temporarily transferring fishing permits to a few dozen or few hundred individuals. No benefit for the greater public occurs from using public funds and tax law for such private gain. HB 188 would take from the greater public and provide no benefit to the greater public. HB 188 would benefit a handful of trust corporations, their directors and staff, and a few individuals who would temporarily fish a permit.

If the legislature uses public funds and tax policy for what HB 188 seeks to achieve, a public agency should do it, not corporations with over-populated, over-paid boards and staff, all feeding at the public till.

2. Four facts indicate that the driving force behind HB 188 is a desire of regional businesses to participate in the purchase and sale of permits, more than a desire to help fishermen.

First, HB 188 bars a trust from spending any money on "programs and projects that benefit commercial fishermen" until "after" the trust acquires "the maximum number of entry permits allowed under [the proposed] AS 16.44.060(a)."¹⁴ That bars spending one cent on comments to state or federal government, including to the Board of Fisheries, ADF&G, DNR, DEC, the governor, legislature, Congress, or on bringing or defending law suits, or on opposing or supporting projects like Pebble mine, until "after" the trust acquires the maximum number of entry permits allowed. Aside from whether that bar violates constitutional rights of a trust corporation to free speech, peaceable assembly, and petitioning government, the main objective is to get the maximum number of permits out of the hands of commercial fishers and into the trusts. Otherwise there would be no reason to bar other activities that benefit commercial fishers.¹⁵ Any fisheries trust that voluntarily encumbers its First Amendment rights to support fishermen, fish and habitat deserves no support.

Second, HB 188 provides that "for a fishery that is conducted in more than one fisheries trust region, only the fisheries trust in the fisheries trust region with the greatest number of resident permit holders for the fishery may acquire and temporarily transfer a permit for the fishery."¹⁶ That disproves that claim that the objective of HB 188 is to help residents who are not permit holders, because if that claimed objective were true, then the bill would provide just the opposite -- that for a fishery that is conducted in more than one fisheries trust region, only the fisheries trust in the fisheries trust region with the greatest number of residents who are not permit holders for the fishery may acquire and temporarily transfer a permit for the fishery. Based on these facts, one can only conclude that HB 188 looks deceptive.

¹³ See CS HB 188 version L, § 16.44.050(a)(3) and (5).

¹⁴ CS HB 188 version L, § 16.44.050(a)(8).

¹⁵ CS HB 188 (version L), § 16.44.010(b)(4), would make promoting resource conservation a purpose of a trust, but the proposed § 16.44.050(a)(8) bars a trust from doing so until after it has acquired the maximum number of permits. That bar implies that the drafters of HB 188 care more about getting permits into the hands of the trusts than conservation.

¹⁶ CS HB 188, version L, § 16.44.060(b).

Third, HB 188 provides that the fisheries trusts, operating as instrumentalities of the State of Alaska –

may also share resources and staff with a regional [aquaculture] association qualified under AS 16.10.380(a), an Alaska Native village or regional corporation established under 43 U.S.C. 1606 (Alaska Native Claims Settlement Act), a regional development organization as defined in AS 44.33.896, or another entity created for a purpose related to commercial fishing in the fisheries trust region.¹⁷

Due to three inconsistencies, that sentence makes no sense. (1) Native village and regional corporations are not “created for a purpose related to commercial fishing,” so there is no reason related to commercial fishing to include them. (2) AS 44.33.896 defines “regional development organization” as –

a nonprofit organization or nonprofit corporation formed to encourage economic development within a particular region of the state that includes the entire area of each municipality within that region and that has a board of directors that represents the region's economic, political, and social interests.

Nothing in that definition suggests that such regional development organizations are uniformly “created for a purpose related to commercial fishing.” In places like Cook Inlet and Southeast Alaska where allocation disputes exist between commercial and sport fisheries, such organizations cannot act only in behalf of commercial fishing. (3) The same is true of aquaculture associations. Under AS 16.10.380(a) they too must represent and serve all user groups that seek to belong to the association, not just commercial fishing. The risks of conflicts of interest between the trusts focused solely on commercial fishing and entities having other interests is obvious. It appears that entities not created for purposes related to commercial fishing, such as Native corporations and regional development organizations, are seeking to get into the purchase and sale of limited entry permits.

Fourth, that brings us to matters of conflict of interest. The proposed § 16.44.020(g) would prohibit a board member of a fishery trust from receiving a temporarily transferred permit but does not prohibit a family member from doing so. Ordinary conflict-of-interest standards reach board members, family members of board members, and business partners of board members. HB 188 still invites conflicts of interest. We raised that concern in our 2017 comments, but it was ignored. If the people who are drafting HB 188 cannot reconcile themselves to ordinary standards for conflict of interest, then we cannot believe that their objective is to help people become commercial fishers. Otherwise, HB 188 would contain conventional standards for conflicts of interest, but it does not.

3. HB 188 needs a hard look by accountants because the costs in relation to benefits appear out of balance.

HB 188 and a fiscal note address costs. If one considers the Bristol Bay region, as an example, it has about 3000 salmon permits and thirty communities. Each community could have a director on the board of a regional trust.¹⁸ Each director could be paid “not to exceed the median rate of compensation” of elected municipal officials of the three most populated municipalities in the region, presumably Dillingham, King Salmon and Naknek.¹⁹ Although the directors would have fewer duties than officials running a local government, the cost of paying as many as 30 directors appears out of proportion to the benefits of temporarily transferring permits to 50 to 75 people (up to 2.5 percent of 3000 permits). All

¹⁷ CS HB 188, version L, § 16.44.020(j).

¹⁸ CS HB 188 version L, § 16.44.020(b) and (c).

¹⁹ See CS HB 188 version L, § 16.44.030(a).

that compensation must be added to the cost of acquiring the permits. Next, the costs of operations, facilities, and staff paid at the rate of state employees also must be added. Then, DCCED has added a fiscal note of about a half million dollars for three staff positions, paid with general funds in FY 2019, and reimbursements from the trusts of roughly that amount in each of the out-years which are added costs too. Thus, the total costs in relation to benefits to temporary transferees appear out of balance. The legislature would be wise to have accountants take a hard look at the bill.

B. A better idea is to focus on the Bristol Bay drainages and the state's most valuable fisheries.

We recommend companion state and federal legislation.

The state legislation that would have two elements. First, it would designate most state lands in the Kvichak and Nushagak drainages as a critical habitat area under AS 16.20.500 et seq., managed by the Alaska Department of Fish and Game, closed to new mining claims, but allow development of pre-existing claims if doing so would be "no danger" to fisheries and "compatible" with the critical habitat area. The "no danger" to fisheries standard is existing law, at AS 38.05.142, and was enacted by the voters by initiative in 2014 for approval of mining metallic sulfide deposits (such as the Pebble deposit) in the drainages of the Bristol Bay Reserve established by AS 38.05.140(f). The compatibility test, at AS 16.20.500, is the current standard for uses such as mining within a critical habitat area. Second, the state legislation would establish a program similar to HB 188, operated by ADF&G, and by which residents of villages within or adjacent to the critical habitat area could obtain the benefits sought by HB 188, and more, including actual acquisition of permits, if the associated ANCSA village corporation agrees to conserve riparian lands and stream beds of anadromous streams consistent with the critical habitat area. That creates a clear public benefit for the use of public funds and tax advantages.

The companion federal legislation would increase and target the availability of federal funds to acquire mining claims or mineral interests at metallic sulfide deposits, such as the Pebble deposit, within the state critical habitat area, if the minerals were incapable or impractical to develop because of state or federal law or agency decisions, or because of economics. That would use federal dollars to benefit the state, and its most valuable commercial fisheries, by protecting habitat and public uses of public resources.

This idea of companion state and federal legislation would create public benefits for the use of public funds and tax policy to subsidize the program sought by HB 188. We would be pleased to work with the sponsor of HB 188 to pursue this idea.

CONCLUSION

For these reasons, I encourage the House Fisheries Committee to hold, rather than advance, HB 188, and I encourage the sponsor to work with the Bristol Bay Fishermen's Association to pursue the better idea outlined above. Thank you for considering these comments. If given the opportunity, I will be pleased to testify and answer your questions.

Regards,



David Harsila,
BBFA President