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# Senator John Binkley

Alaska State Senate  
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985



Finance Committee  
Co-Chairman

## MEMORANDUM

May 11, 1987

To: Representative Sam Cotten

From: Senator John Binkley *J. Binkley*

Subject: Resolution suspending uniform rules regarding changes to the title of Senate Bill 53.

Senate Bill 53 would clarify and confirm the Board of Fisheries' authority to establish superexclusive use area regulations, presently in place for several Bering Sea herring fisheries. The superexclusive regulation was adopted by the Board of Fisheries to ensure, among other things, a significant local participation in these small developing fisheries. The number of fishermen and vessels that can participate in these fisheries, in a way somewhat analogous to the limited entry system for salmon fisheries in Alaska.

The District Court in Nome ruled last year that the Board of Fisheries did not have the statutory authority to establish the superexclusive use area regulation. Senate Bill 53 would resolve any doubts raised by the court as to whether the Board has that authority.

The Senate Finance Committee Substitute for SB 53 passed the Senate 18-1. However, some concerns regarding the Senate version were raised in the House Resources Committee, and a new version was drafted. Unfortunately, the title of the Senate Finance version is not broad enough to allow the language worked out in the House Resources Committee.

I would therefore respectfully request that the House of Representatives consider suspending Uniform Rules 41(b), 24(c), and 35 of the Alaska State Legislature concerning SB 53. Thank you.



Finance Committee  
Co-Chairman

## Senator John Binkley

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Alaska State Senate  
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985

### MEMORANDUM

May 6, 1987

TO: REPRESENTATIVE ADELHEID HERRMAN, CO-CHAIR  
REPRESENTATIVE SAM COTTEN, CO-CHAIR  
House Resources Committee

FROM: SENATOR JOHN BINKLEY *John Binkley*

Subj: CSSB 53: "An Act establishing criteria for the allocation of fishery resources by the Board of Fisheries among commercial fisheries and among groups of commercial fishermen within a fishery for the purpose of preventing economic distress among commercial fishermen and those dependent upon them for a livelihood; and providing for an effective date."

For several years local advisory committees and fishermen attempted to resolve the problem of how people in the Cape Romanzof, Norton Sound, Nelson Island, Nunivak Island, and Goodnews Bay areas could be given the opportunity to develop commercial herring fisheries as part of their economic base. The regulation which later became known as "superexclusive use area" <sup>1/</sup> was first adopted by the Board of Fisheries in 1982. It was intended to assist people in certain western Alaska areas who were recognized as being among the most economically disadvantaged in the state.

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<sup>1/</sup> A person who participates as a permit holder in a superexclusive use area may not during the same season participate either as a permit holder or a crewmember in either another superexclusive use area or any nonexclusive area. The regulation also provides that a person who participates as a crewmember in commercial herring fishing in a superexclusive use area may not during the same season participate as a permit holder in either another superexclusive use area or any nonexclusive area. Under the regulation, a person may participate--as a crewmember only--in commercial herring fishing in all the areas, superexclusive and nonexclusive.

Representative Adelheid Herrmann  
Representative Sam Cotten  
May 6, 1987  
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The regulation reflects a decision by the board to construct a mechanism which would allow those people in those communities to develop the knowledge, skills and financial base to insure that their participation in the commercial herring fisheries would continue, and would not be overwhelmed by the more efficient, larger vessels with more ample financial backing from other areas of the state and outside the state.

In conjunction with continuing and expanding the superexclusive use areas, the board entered written findings regarding superexclusive areas for the Arctic/Yukon/Kuskokwim (AYK) herring fisheries. The board noted in the findings that the superexclusive use area, though not appropriate for all fisheries, is a management tool that has enabled the "orderly conservation and development" of the AYK herring fisheries. The board has also found that the commercial herring fisheries are an important segment of the local economies of these communities, in which there are "few employment alternatives to commercial [herring] fishing."

The board found that the herring fisheries were only recently developing, and that the local people "in general do not have sophisticated equipment or skills," though they "do have the capability to fully harvest and utilize all available resources in their area." The board expressed the intent to allow local people the "opportunity to acquire the skills and equipment so that they may fairly compete" with the other, more efficient fishing fleets, and noted that superexclusive use areas would permit the local people the time to develop "those skills needed to be competitive," and income generated from the fisheries would enable them to upgrade their vessels and gear.

The board noted that because the fisheries in question are "so recently developed compared to other Alaska sac roe fisheries," there is less knowledge of the resource status than elsewhere in the state. The board concluded that regulations which "reduce the amount of effort and efficiency of the participants" or which reduce the growth rate of effort and efficiency are necessary. Further, a "slower paced fishery on stocks of unknown magnitude, distribution, and resiliency" is desirable. Finally, the significant degree of subsistence utilization of the herring resource in the region, compared to other regions in the state, "supports the board's desire for a cautious, conservative regulatory environment."

Representative Adelheid Herrmann  
Representative Sam Cotten  
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The intent of the board to assist the local communities in developing their fishing capabilities so that they may be competitive with the other more efficient components of the herring fishery throughout the state has been consistent from the outset. The data developed over the years for which the regulation was adopted indicates that this regulatory mechanism promotes the intended results.

The board has expressed concern that the lack of data on these particular herring resources, and the reliance of the area on herring for subsistence uses, a slow paced, less efficient fishery is appropriate. As the skills and technology of the local people increase, and as the knowledge of those herring resources grows, the board may determine it is appropriate at a later date to remove this regulatory mechanism.

On February 6, 1986, a criminal complaint was filed in the district court for the second judicial district at Nome, alleging that a Mr. Hebert had violated 5 AAC 27.987(a) and (b) during June 1985, by delivering herring as a permit holder in a superexclusive use area (Norton Sound) and in nonexclusive areas (Bristol Bay and Security Cove) during the same season. On May 5, 1986, a motion to dismiss was filed on behalf of Mr. Hebert. On August 18, 1986, the court dismissed the case, holding that the regulation did not serve any conservation purpose, and that the allocation purpose intended by the board exceeded its authority. On September 19, 1986, the state filed a notice of appeal from the court's decision. On October 21, 1986, the Court of Appeals granted the state's motion for leave to have filed a late notice of appeal.

In essence, the District Court found that the board acted outside the scope of its statutory authority when it established the superexclusive use areas at Cape Romanzof and Norton Sound. Although the court recognized that improving and maintaining the economic health of those localities is a "legitimate and highly desirable goal for the state," the board has the authority to act only for the purposes of conserving or developing the fishery resources of the state. And although the board has authority under AS 16.05.251(e) to allocate among different fishery user groups (i.e., personal use, sport, and commercial), the board does not have authority to allocate among members of a single user group, the court said.

Representative Adelheid Herrmann  
Representative Sam Cotten  
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CS for SB 53 would remedy the problems pointed out by the court.

Section 1 expands the authority of the board by allowing it to prevent economic distress among commercial fishermen and those dependent upon them for a livelihood by establishing criteria for the allocation of fishery resources among commercial fisheries and among groups of commercial fishermen within a fishery. Granting the board such authority is consistent not only with the Hebert case, but also with Art. VIII, sec. 15, of the Alaska Constitution. That section allows the state to limit entry into any fishery to prevent economic distress among fishermen and those dependent upon them for a livelihood. This is an exception to the prohibition in that same section against the establishment of an exclusive right or special privilege of fishery.

Section 2 of the bill provides for an immediate effective date.

There are mechanisms in place which would prevent arbitrary abuse by the board in making allocation determinations as a result of this bill. For instance, Article VIII, section 17 of the state constitution states that "Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation." Article VIII, section 2, requires the legislature to "provide for the utilization, development, and conservation of all natural resources . . . for the maximum benefit of its people." And AS 16.05.251(e) requires the board to establish criteria for allocations. These provisions should be adequate to protect against arbitrary abuse of the board's discretion.

CSSB 53 (FIN)

LEGISLATIVE INTENT

The Legislature believes that the Board of Fisheries presently has the authority to establish regulations where appropriate to prevent severe economic distress among commercial fishermen and those dependent upon them for a livelihood, such as the superexclusive use area and vessel restriction regulations established in certain Bering Sea herring fisheries. The Legislature intends that this legislation clarify and confirm the Board's authority in making the type of allocative decisions exhibited by the Bering Sea herring regulations, and that through this legislation, the Legislature seeks to resolve any doubts raised by the Hebert case as to whether the Board of Fisheries had the authority to establish superexclusive use areas.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB 63 & SB 53  
Publish Date: \_\_\_\_\_

REQUEST: \_\_\_\_\_

Revision Date: 5/8/87 Agency Affected: Fish and Game  
Title: An Act authorizing Bd. of Fish and Game to adopt regulations establishing certain types of registration  
Sponsor: Hoffman/Binkley and use areas Components: \_\_\_\_\_  
Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Roland Shanks Phone: 465-4100  
Division: Commissioner's Office Date: 5/18/87

Approved by Commissioner: (Orin) Callensworth Date: 5.14.87  
Agency: Fish and Game

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

# HOUSE COMMITTEE REPORT

5/10

Date referred: 4/30/87

FURTHER REFERRALS: Finance

DATE: May 16, 1987

Title Resources Committee has considered CSSB 53 (Fin)

"An Act establishing criteria for the allocation of fishery resources by the Board of Fisheries among commercial fisheries and among groups of commercial fishermen within an administrative area for the purpose of preventing economic distress among commercial fishermen and those dependent upon them for a livelihood; and providing for an effective date."

**RECOMMENDS:**

- replace with ACS CSSB 53 (Res)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  Res. letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published 5/8/87
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

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Adelheid Herrmann Herrmann

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Heinrich Springer Springer

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Lynn Hoff Hoffman

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E. C. Cotten Cotten

\_\_\_\_\_  
D. J. Davidson Davidson

\_\_\_\_\_  
D. N. Pearce Pearce

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Navarre Navarre

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Mike Navarre - no rec

\_\_\_\_\_  
Adelheid Herrmann  
Chairman's signature



# Alaska State Legislature

HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES

POUCH V  
JUN-AU, ALASKA 99811  
(907) 465-3715

## HOUSE RESOURCES COMMITTEE LETTER OF INTENT FOR

HCS CSSB 53

The Legislature believes that the Board of Fisheries presently has the authority to establish regulations such as the superexclusive use area and vessel restrictions established in certain Bering Sea herring fisheries. The Legislature intends that this legislation clarify and confirm the Board's authority in making the type of allocative decisions exhibited by the Bering Sea herring regulations, and that through this legislation, the Legislature seeks to resolve any doubts raised by the Hebert case as to whether the Board of Fisheries had the authority to establish superexclusive use areas for regulating commercial fishing.

A handwritten signature in cursive script that reads "Adelheid Herrmann".

Adelheid Herrmann  
Adelheid Herrmann  
Co-chairman  
May 16, 1987

The bill does not make any change in the status quo of the Board of Fisheries activities.

The Board of Fisheries established superexclusive use areas in the western herring fisheries four years ago. In addition, exclusive use regulations have been established by the Board for salmon and king crab.

Exclusive use areas do not prohibit anyone from participating in the fisheries.

The fisheries are still open to anyone wishing to participate. It only restricts the number of separate herring fisheries a person may participate in. Numerous individuals from Anchorage, S.E. Alaska and outside the State have fished in these areas during the last four seasons while superexclusive registration has been in effect.

The proposed legislation does not require or mandate any action by the Board of Fisheries.

The legislation merely insures that the Board of Fisheries has the option of using exclusive, superexclusive and nonexclusive use areas as a management tool. The decision to do so remains with the Board.

LEGISLATIVE INTENT

The Legislature believes that the Board of Fisheries presently has the authority to establish regulations such as the superexclusive use area and vessel restrictions established in certain Bering Sea herring fisheries. The Legislature intends that this legislation clarify and confirm the Board's authority in making the type of allocative decisions exhibited by the Bering Sea herring regulations , and that through this legislation, the Legislature seeks to resolve any doubts raised by the Hebert case as to whether the Board of Fisheries had the authority to establish superexclusive use areas for regulating commercial fishing.

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 63 ( )  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the Board of Fisheries to adopt  
7 regulations establishing certain types of registra-  
8 tion and use areas."

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

10 \* Section 1. AS 16.05.251(a) is amended by adding a new paragraph to  
11 read:

12 (14) establishing nonexclusive, exclusive, and superexclu-  
13 sive registration and use areas for conservation purposes or to imple-  
14 ment allocation decisions made in accordance with criteria established  
15 under (e) of this section.  
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CS FOR HOUSE BILL NO. 53

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act authorizing the Board of Fisheries to adopt regulations establishing certain types of registration and use areas for regulating commercial fishing."

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

\* Section 1. AS 16.05.251(a) is amended by adding a new paragraph to read:

(14) establishing nonexclusive, exclusive, and superexclusive registration and use areas for regulating commercial fishing.

Original sponsor: Binkley

1  
2 IN THE SENATE

3 HOUSE CS FOR CS FOR SENATE BILL NO. 53 ( )

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FIFTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

7 For an Act entitled: "An Act authorizing the Board of Fisheries to adopt  
8 regulations establishing certain types of registra-  
9 tion and use areas for regulating commercial fish-  
10 ing; and providing for an effective date."

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

12 \* Section 1. AS 16.05.251(a) is amended by adding a new paragraph to  
13 read:

14 (14) establishing nonexclusive, exclusive, and superexclu-  
15 sive registration and use areas for regulating commercial fishing.

16 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).  
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