

SB 553

Rec'd 5/19/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____ Bill Version: HB 63 & SB 53
Publish Date: _____
Revision Date: 5/8/87 Agency Affected: Fish and Game
Title An Act authorizing Bd. of Fish BRU: _____
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: (Orme) Callinsworth 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

RECEIVED
MAY 19 1987

LEGISLATIVE FINANCE

SENATE COMMITTEE REPORT

FURTHER:

DATE TURNED INTO OFFICE 4/28/87

Mr. President:

FINANCE Committee considered SB 53

relating to the Board of Fisheries.

and recommended:

replace with CS FOR CS 53 (Fin)) same title
 or adopt _____ CS FOR _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous
 zero fiscal impact

MEMBERS SIGNING DO PASS

[Handwritten signatures]

OTHER RECOMMENDATIONS

[Handwritten notes]

[Handwritten signature] DO PASS
Chairman signature and recommendation

Committee Backup Attached

N

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SB 53 (Rev)
Publish Date: 1/22/87

Revision Date: _____
Title: An Act relating to the
Board of Fisheries
Sponsor: Hoffman
Requestor: _____

Agency Affected: Fish and Game
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0					
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REVENUE	0					
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS						
OTHER						
TOTAL	0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Roland Shanks
Division: Commissioner's Office

Phone: 465-4100
Date: 3/2/87

Approved by Commissioner: [Signature]
Agency: Fish and Game

Date: 3/2/87

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

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.

5-0156L ✓
Hein
4/27/87

Original sponsor: Binkley

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 53 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing criteria for the allocation of
7 fishery resources by the Board of Fisheries among
8 commercial fisheries and among groups of commercial
9 fishermen within an administrative area for the
10 purpose of preventing economic distress among commer-
11 cial fishermen and those dependent upon them for a
12 livelihood; and providing for an effective date."

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

14 * Section 1. AS 16.05.251 is amended by adding a new subsection to
15 read:

16 (f) For the purpose of preventing economic distress among com-
17 mercial fishermen and those dependent upon them for a livelihood, the
18 board shall establish criteria for the allocation of fishery resources
19 among commercial fisheries and among groups of commercial fishermen
20 within an administrative area. In establishing criteria under this
21 subsection, the board shall use the same factors that it includes in
22 criteria established under (e) of this section.

23 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).
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Senator Johne Binkley

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



Finance Committee
Co-Chairman

M E M O R A N D U M

April 25, 1987

TO: SENATE FINANCE COMMITTEE

FROM: SENATOR JOHN E BINKLEY, CO-CHAIRMAN *Johne*
Senate Finance Committee

Subj: CS for SB 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" 1/ 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.

1/ 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.

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."

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.

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.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: CSSB 53 (Resources)
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: "An Act relating to the
Board of Fisheries"

Agency Affected: Department of Law
BRU: Legal Services

Sponsor: Senate Resources Committee
Requestor: Senator Eliason

Components: Operations

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	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 6, 1987

Approved by Commissioner: Richard I. Pegues / FOR
Grace Berg Schaible, Atty. Gen. Date: March 6, 1987
Agency: Department of Law

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

RECEIVED

MAR 09 1987

LEGISLATIVE FINANCE

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 53

CSSB 53

This bill amends AS 16.05 by clarifying the Board of Fisheries' authority to allocate fishery resources among and within user groups. This clarification will not have a fiscal impact on the Department of Law, and it should help to diminish recurring disputes over the board's authority.

1 IN THE SENATE

BY BINKLEY

2

SENATE BILL NO. 53

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the Board of Fisheries."

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

8 * Section 1. AS 16.05.221(a) is amended to read:

9 (a) For purposes of the conservation and development of the
10 fishery resources of the state, and for the purposes of enhancing and
11 protecting the ability of people to take and use the fishery resources
12 of the state, there is created the Board of Fisheries composed of
13 seven members appointed by the governor, subject to confirmation by a
14 majority of the members of the legislature in joint session. The
15 appointed members shall be residents of the state and shall be ap-
16 pointed without regard to political affiliation or geographical lo-
17 cation of residence. The commissioner is not a member of the Board of
18 Fisheries, but shall be ex officio secretary.

19 * Sec. 2. AS 16.05.251(e) is amended to read:

20 (e) The Board of Fisheries shall establish criteria for the
21 allocation of fishery resources among personal use, sport, and commer-
22 cial fishing users and groups of users. The criteria may, as appro-
23 priate to particular allocation decisions, include factors such as

24 (1) the history of each personal use, sport, and commercial
25 fishery;

26 (2) the number of residents and nonresidents who have
27 participated in each fishery in the past and the number of residents
28 and nonresidents who can reasonably be expected to participate in the
29 future;

- 1 (3) the importance of each fishery for providing residents
2 the opportunity to obtain fish for personal and family consumption;
3 (4) the availability of alternative fisheries resources;
4 (5) the importance of each fishery to the economy of the
5 state;
6 (6) the importance of each fishery to the economy of the
7 region and local area in which the fishery is located;
8 (7) the importance of each fishery in providing recrea-
9 tional opportunities for residents and nonresidents.

Original sponsor: Binkley

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE BILL NO. 53 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Board of Fisheries."

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19 * Sec. 2. AS 16.05.251(e) is amended to read:

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21 allocation of fishery resources among personal use, sport, and commer-
22 cial fishing, and among groups of commercial fishermen within a fish-
23 ery. The criteria may, as appropriate to particular allocation de-
24 cisions, include factors such as

25 (1) the history of each personal use, sport, and commercial
26 fishery;

27 (2) the number of residents and nonresidents who have
28 participated in each fishery in the past and the number of residents
29 and nonresidents who can reasonably be expected to participate in the

- 1 future;
- 2 (3) the importance of each fishery for providing residents
- 3 the opportunity to obtain fish for personal and family consumption;
- 4 (4) the availability of alternative fisheries resources;
- 5 (5) the importance of each fishery to the economy of the
- 6 state;
- 7 (6) the importance of each fishery to the economy of the
- 8 region and local area in which the fishery is located;
- 9 (7) the importance of each fishery in providing recrea-
- 10 tional opportunities for residents and nonresidents.

