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188

THANK YOU, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE FOR HAVING THIS HEARING ON SB 188.

AT THE OUTSET, I WANT TO SAY THAT I INTRODUCED THIS BILL NOT BECAUSE OF ANY PARTICULAR DISSATISFACTION WITH THE CURRENT BOARD OF FISHERIES OR INDIVIDUAL MEMBERS OF THE BOARD. RATHER, IT IS TO RAISE WHAT I BELIEVE IS A SUBSTANTIAL QUESTION OF THE ABILITY OF THE BOARD SYSTEM TO ADEQUATELY MANAGE INCREASINGLY VALUABLE RESOURCES. THIS LAST LEGISLATIVE SESSION IT SEEMED THAT EVERYONE WAS SEARCHING FOR DIFFERENT WAYS TO ENHANCE ALASKA'S PRIVATE SECTOR TO HELP OFFSET THE EFFECTS OF FALLING OIL PRICES.

TO ME, IT SEEMED THAT TO ACCOMPLISH ANY NEAR TERM SUCCESS, ONE HAS TO LOOK AT WHAT PRIVATE SECTOR IS ALREADY DOING, AND THAT, IN LARGE PART IS THE UTILIZATION OF OUR FISHERY RESOURCE. IT PROVIDES:

1. In excess of 1 billion dollars of wholesale value annually;
2. Our primary export commodity;
3. The largest participation of Alaskan population and their individual investment, and;
4. Growth

MY QUESTION IS WHAT PERCENTAGE OF THIS WORTH DO WE CAPTURE AND WHAT CAN WE ACHIEVE WITH MORE DELIBERATE MANAGEMENT ATTENTION?

THE BOARD SYSTEM OF ALLOCATION IN RECENT YEARS HAS BEEN OVERLOADED. MEETINGS ARE LONG, CONTENTIOUS AND OFTEN CONTROVERSIAL. MANY PROPOSALS ARE LEFT UNADDRESSED OR POSTPONED. THE GROWTH IN THE COMPLEXITY OF FISHERY ISSUES AND VALUE OF THE RESOURCE PROMISES TO FURTHER REDUCE THE BOARD'S DECISION-MAKING ABILITY.

IT SEEMS TO ME THAT THE ONLY WAY TO GIVE THE TIME AND ATTENTION REQUIRED TO RESOLVING ISSUES AND PROVIDES THE BEST MANAGEMENT DECISIONS FOR THE LONG TERM INTERESTS OF RESOURCE HARVESTERS AND THE STATE IS A FULL TIME COMMISSION. THE GROWTH, COMPEXITY, COMPETITION AND VALUE IS JUST TOO LARGE FOR A PART TIME PROCESS.

Alaska State Senate

P.O. Box V
Juneau, AK 99811
Phone: (907) 465-2444
465-3862/465-4923

P.O. Box 1069
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Senate Finance Committee
State Affairs Committee
Vice-Chair, Rules Committee
Chair, Administrative Regulation Review

William L. Hensley

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P.1

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF FISH AND GAME

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 463-4100

OFFICE OF THE COMMISSIONER

RAPIFAX TRANSMITTAL SHEET

To: Becki's Oliva
Game Division

Date: 12/18/87

From: Diana Davidson
C.O.

No. Pages 2
(following this page)

Message: (Per our conversation - thx again!)

Holiday Inn
Ketchikan Room

10:00 AM

Attn: Senator Hensley
or Dave Gray

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 485-4100

December 18, 1987

The Honorable William Hensley
Alaska State Legislature
P.O. Box 710
Kotzebue, AK 99752

Dear Senator Hensley:

Thank you for your letter of December 14 requesting our position on SB 188 dealing with the creation of an Alaska Fisheries Commission. I understand that you have also contacted the Board of Fisheries directly to solicit their position on the bill.

Department staff has reviewed the Senate Advisory Council report on fisheries management alternatives. The report does a good job of addressing the strengths and weaknesses of the current system. As you are aware, Sam Stoker of the Governor's Office is currently leading a task force to review the board process, procedures, and systems. I understand that report will be available in February. John Halterman of the Governor's Office will be available at the hearing to discuss the progress the task force has made thus far.

It would be premature for this department to take a position on SB 188 or any legislation that deals with the board or the way it does business. Our proper role is to review alternatives to determine whether our ability to provide the necessary information concerning the conservation and management of our fisheries resources to the board is enhanced or compromised. As the Senate Advisory Council report points out, our main role is to ensure that the fisheries resources are conserved and managed in the best interest of the citizens of the state and that the board is responsible for the allocation of the harvestable surpluses. The board's allocation role is difficult and controversial and the public policy choices are outside the purview of this agency. The same situation does not apply to the Board of Fisheries and I believe that it is important that you get their perspective on any legislative changes to the current system.

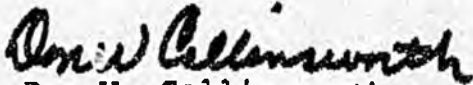
The Honorable
William Hensley

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December 18, 1987

The administration will be developing recommendations based on the task force report being prepared. At that time, we will be able to respond to your request for a position on SB 188.

Sincerely,



Don W. Collinsworth
Commissioner

cc: John Halterman

Alaska State Senate

P.O. Box V
Juneau, AK 99811
Phone: (907) 465-2444
465-3862/465-4923



Senate Finance Committee
State Affairs Committee
Vice-Chair, Rules Committee
Chair, Administrative Regulation Review

William L. Hensley

SECTIONAL ANALYSIS OF

SENATE BILL NO. 188

Section 1, page 1: Purpose of the legislation.

Section 2, pages 1 & 2: Establishes a five member Fisheries Management Commission. Appointed by the Governor and confirmed by the Legislature, members serve four year terms. The terms are staggered. Membership qualifications are broadly constructed to having had some previous experience in utilizing, developing, or managing the state's fishery resources. Members can not have a personal vested interest in the commercial aspects of fishery resources while serving in office.

Section 3, page 3: Members salaries are set at a range 26 level. currently in the neighborhood of \$68,000 per annum. The Department of Law specifically is the Commission's legal council. While the Department of Fish and Game provides staff support, the commission may employ its own staff.

Section 76, page 25: Repeals the Board of Fisheries establishment.

All other sections are technical changes whereby the "Fisheries Management Commission" is effectively substituted for the "Board of Fisheries." Thereby the commission assumes all powers, duties and responsibilities conferred to the Board of Fisheries by current statutes.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

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JUNEAU, ALASKA 99811-0199
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OFFICE OF MANAGEMENT AND BUDGET

DIVISION OF AUDIT & MANAGEMENT SERVICES

December 30, 1987

Senator Jay Kerttula
Chairman
Senate Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

*Ball just file
on Henry
Bill
in lower*

Dear Senator Kerttula:

Please find enclosed copies of the draft report prepared by the Governor's Board of Fisheries Review Committee. The Committee plans to reconvene in Juneau during the first week of February to complete its work.

In general the testimony heard by the Committee was consistent with that received by your Committee during the hearing of December 18th. Citizens are interested in the Board of Fisheries becoming more active in resolving conflicts, through greater participation of board staff in developing management plans and using the advisory committee structure. Implicit in the development of such plans is the creation of a fisheries policy to help guide Board decisions. The Committee has also made recommendations regarding Board member remuneration, scheduling of regulatory proposals, exparte' communication, as well as a number of other areas.

I hope this draft report is useful. When the Committee has completed its work the final document will be forwarded to you as quickly as possible.

Sincerely

John Halterman

John Halterman
Director

Enclosure

cc: Senator Arliss Sturgulewski w/enclosure

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BOARD OF FISHERIES REVIEW COMMITTEE

December, 1987

1. EXECUTIVE SUMMARY

Throughout its history, the people of Alaska have had a close relationship with natural resources. In aboriginal times, existence itself was dependent on hunting and fishing, and for many it still is. At times, mining or oil have become temporarily more important, but fisheries still remain the mother industry of Alaska. This, combined with the legacy, from territorial days, of federal mismanagement has created an abiding distrust of regulatory institutions which do not include free and open public participation. To quote from the recent report of the Senate Advisory Council (1987):

"It is difficult to emphasize just how strongly many believe that 'participatory democracy' is the essence of Alaska's fisheries management regime. They speak very critically of other systems, such as Canada's Department of Fisheries and Oceans of the management agencies in California and Washington as bureaucracies which limit or essentially exclude public involvement. The legacy of territorial days during which Congress and federal regulators routinely ignored the concerns of local fishermen is strong.:

The present committee wholeheartedly endorses this democratic principle, but with the recognition that as times change the interaction between the public and the regulatory agencies may require re-adjustment to match new situations. There is, for instance, widespread concern that the virtually unlimited access to the Fisheries Board enjoyed by Alaskans has, in recent years, created an almost impossible working situation for the Board. Again quoting from the 1987 Senate Advisory Council report:

"On the other hand, many fishermen, past and present board members, and others expressed the conviction that some action to either control the agenda or to enhance the ability to cope with the workload was necessary. They referred to the present system as verging on chaos

and contributing to the length, emotional pitch, and concentration of pressure which have hamstrung the board's efforts to rationally and quickly consider relevant and timely management proposals."

In general, the following recommendations of the review committee address increasing the efficiency of the present system and structuring the proposal process rather than limiting public access and participation.

The cornerstone of any regulatory proposal is the biological basis of the resource, overlain by socio-economic considerations and constraints. In consideration of this the committee is recommending an expansion of professional staff to assist the lay board in its deliberations and thus increase its efficiency, and urges the board, the Department of Fish and Game, the local advisory committees and the regional councils to coordinate efforts for the formulation of up-to-date resource assessment documents and area management plans.

The following recommendations and report concerning the Board of Fisheries is the result of a recent public teleconference and subsequent deliberations by a committee appointed by the Governor for that purpose. The teleconference and committee review were held in Anchorage from November 6 to 13, 1987. The review committee, as finally approved and appointed by the Governor, consisted of:

Ole Mathisen (Chair)	Pete Schaeffer
John Garner	Larry Edfelt
John White	Hank Pennington
Cheryl Sutton	Don Mitchell
Dick Jacobson	

Staff Assistance and support from the Office of the Governor was provided by John Halterman and Sam Stoker.

The content of these hearings and deliberations are summarized in the following report. The Governor's charge to the committee was as follows:

1.1 Guidelines To The Review Committee

- a. Generally, is the present system of fisheries regulations well suited to meet the challenges posed by an increasing complex utilization of valuable resources?
- b. Is the current Board of Fisheries regulatory process fair, efficient, and responsive? If not, what changes should be made to make it so?
- c. Does the current process integrate all available data, including the most recent biological information, economic considerations, and state fisheries policy, in considering regulatory decisions? If not, what changes are required?
- d. How should board members be selected? Should they represent different gear groups, geographic areas, or knowledge and expertise? What other qualifications should be considered? Should membership to the board require divestiture of a personal economic interest in fisheries regulations? Should membership be a full-time paid occupation?
- e. Does the current process provide for sufficient input from all user groups and regions without discrimination or bias, and does the process promote orderly and efficient review of regulatory proposals? If not, what improvements can be made?

2. IDENTIFICATION OF PROBLEMS

The number and diversity of problems, real or perceived, which have been attributed to the board and its processes over the years are myriad and nearly all-inclusive. Many such criticisms are inevitable, at least until such time as we are able to construct a perfect system which is all-knowledgeable and absolutely fair.

Many of the present problems with the board derive direction from the increased and increasing value of the resource at stake, consequent competition for that resource, acknowledgement of and definition of competitive user-groups relying on the resource, and better organization and lobbying pressure on the regulatory agency from these user groups.

The following outline of problems and suggestions relating to the board is summarized from written comments received by the Governor's Office, a recent public teleconference in Anchorage, deliberations of this committee, and recent reports from the Board of Fisheries and the Senate Advisory Council.

- a. Structure of and appointment to the board:
 - o Full-time "professional" versus part-time "lay" board concept.
 - o Creation of regional boards.
 - o Division of boards by resource category.
 - o Process of and criteria for appointment to the board.
 - o Conflict of interest and special interest bias by board members.
 - (1) divestiture of financial interests
 - (2) disclosure of financial and other interests
- b. Function of the board.

- o Relationship of the board to relevant agencies.
 - (1) ADF&G
 - (2) Local advisory committees and regional councils
- o Accountability and documentation.
- o Criteria and guidelines for regulatory decisions.
- o Reliability, applicability and consistency of information supplied to the board.
- o Inadequacy of statewide fisheries policy, resource assessment documents and area management plans for use by the board.
- c. Staff support for the board.
- d. Proposal submittal and review.
 - o Length of board meeting.
 - o Criteria for submittal and screening of proposals.
 - o Role of advisory committees and regional councils.
 - o Public access to the regulatory process.
 - o Level of autonomy and authority of advisory committees and regional councils.

3. RECOMMENDATIONS OF THE COMMITTEE

The following were approved by the committee as formal recommendations to the Governor. Most of these recommendations, if accepted and implemented, will by necessity also apply to or affect the Board of Game.

3.1 Appointment, Structure and Mandate of the Board:

(a) The Governor shall continue to appoint persons to the Board who have a philosophy consistent with the administrations fishery policy. Such persons are expected to be knowledgeable and experienced concerning aquatic renewable resources and their uses in Alaska.

(b) Appointments to the Board shall be from a list of candidates submitted by the Governor's staff.

(c) The present process followed by the board of Fisheries for disclosure of interest, economic or otherwise, and abstention from voting on or discussing issues related to such interests shall be continued.

(d) Appointment to the Board shall not require divestiture of financial interests in fisheries or fishery-related businesses. Board members, however, shall not hold concurrent positions as officers, paid or unpaid, of professional fisheries organizations.

(e) Members of the Board of Fisheries may not have exparte communication relating to regulatory proposals during meetings of the local advisory committees, regional councils, or board of fisheries which they are attending, including periods of recess. Board members have the obligation to inform parties of this ruling if improperly approached, and to disclose such approaches during the next meeting of the board, council or committee. Failure to do so will be considered grounds for removal of the board member.

(f) Any member of the Board of Fisheries

convicted of a willful violation of fish and game regulations shall be subject to removal.

(g) The Board of Fisheries appointment shall be salaried, part-time positions within the state employee system.

(h) The Board shall prepare and submit its own budget to the Governor for staffing and annual expenses.

(i) Policy objectives of the board shall be to develop, in cooperation with staff of the Department of Fish and Game, resource assessment documents (RADS) and area management plans (MPs) for geographic areas which represent ecological systems or entities in so far as such can be defined by available data. Such documents shall be updated on a biannual basis to incorporate new information, and shall be made available to all segments of the regulatory system. Management plans shall be promulgated for the purpose of developing both short-term and long-term sustained harvest and allocation policy addressing subsistence, commercial, sport and personal use needs as well as incidental catch.

(j) The Board shall provide written documentation in the administrative record which identifies sources relied upon by the board in arriving at particular decisions. This administrative record shall also include a summary, by the Board, of reasons for such decisions along with the voting record of Board members on each decision.

3.2 Support Staff

(a) The executive director of the Board of Fisheries shall be a partially exempt position, and shall be hired and fired by mutual consent of the joint boards and the commissioner of the Department of Fish and Game.

(b) A professional board staff, serving exclusively the board, shall be hired and fired by the executive director of the board and shall be partially exempt positions within the state employee system.

(c) Staff needs of the Board of Fisheries, as determined by its executive director, shall be consistent with the recommendations of this report and the statutory duties of the board. The committee recognizes the need for both full and part-time staff to provide biological, socioeconomic and legal advice as required.

(d) In addition to salaried staff, there shall be established a non-salaried review panel representing relevant areas of expertise. This panel shall be appointed by the executive director of the board from a list of candidates provided by the Governor's staff. Funding for travel and expenses shall be provided as necessary by the Board of Fisheries.

3.3 Regulatory Process

(a) The committee supports the Board's recommendation to return to a two-year cycle for proposal submittal and review, by alternate area, except as otherwise provided for.

(b) The Board shall address each section of the regulations as advertised, and shall provide timely and public notification in the event of reconsideration or change of schedule.

(c) The location of board meetings shall be determined by the board, based upon considerations of cost and efficiency, with the provision that adequate and timely notification of such decisions be made public.

(d) In addition to the biannual cycle for proposals by area, as recommended in 3.1 above, all regulatory proposals shall be submitted sufficiently in

advance of board meetings to accommodate adequate review according to the following schedules:

Finfish

January 1	-	deadline for submittal of proposals	-	May 1
March 1	-	deadline for submittal of comments relating to proposals by the board staff, Department staff, or other parties	-	June 1
April 1	-	advisory committee meetings to discuss proposals and comments	-	Sept. 1
May 1	-	regional council meetings for debate and comment on proposals	-	Oct. 1
Sept. 1	-	regional council meetings to review proposals for which new information has been acquired with participation by the board and Department staff	-	Nov. 1
October 1	-	deadline for submittal of recommendations by the regional councils	-	Feb. 1
November 1	-	Board meeting	-	March 1

(e) The Board shall regulate personal use, subsistence, sport and commercial fisheries for long-term sustained utilization and with sufficient regulatory stability to facilitate efficient management and fair and reasonable utilization of such resources. In this context it is recognized that changes in biological, ecological, social and economic conditions may necessitate corresponding changes in the allocation of fisheries resources among the various user groups. In order to facilitate rational decisions by the Board affecting such allocation, it is recommended that the Board adopt the following policy and criteria:

1. It is the policy of the Board that management plans and regulations adopted, amended or repealed for allocation of fishery resources among personal use, sport and commercial interests shall:

- o Be based on the best information available addressing biological and ecological concerns and be reasonably calculated to achieve conservation of the resource addressed,
- o Be designed to achieve fair and reasonable opportunities for the taking of fishery resources by user groups addressed in the plan or regulation, based on the best information available regarding social and economic concerns and consistent with long-term sustained yield management and subsistence priorities as established by the legislature. Such plans or regulations shall provide for the probability of short-term and seasonal fluctuations in standing stock or availability of the resource and shall,

- o Be reasonably enforceable.
- 2. If the Board of Fisheries determines that it is necessary to establish regulations restricting opportunities for the taking of fisheries resources, decisions shall be based upon the following factors as appropriate to each particular decision:

(a) Ecological considerations, including:

- o The biological stock description of the resource addressed and,
- o The carrying capacity of region or area for the resource addressed.
- (b) The economic impact of the proposed regulation on affected users, including:
 - o Losses or benefits which may occur to relevant user groups,
 - o An assessment of the dependency of affected users on the resource for their livelihood,
 - o Alternative fishery resources available to affected users, and the cost to the affected user for switching to the alternative resource,
 - o The importance of the affected fishery to state, local and regional economies.

(c) Social impact, including:

- o The history of the affected fishery, including historic levels of utilization by various user groups,
- o The capacity of the area in terms of physical facilities available to resource users,
- o The importance of the fishery for personal use by local residents,

- o The importance and capacity of the affected fishery for providing recreational opportunities to residents and non-residents.

4. HISTORY AND BACKGROUND OF THE BOARD

The first Alaska Fisheries Board was created in 1949 by the Territorial Legislature as part of the Alaska Department of Fisheries. Board members were appointed by the Governor and confirmed by the legislature to serve staggered five-year terms. Membership consisted of one commercial fisherman from each of three regions, a processor, and one member at large. The Board appointed its own executive director and was empowered to:

determine and promulgate reasonable rules and regulations not in derogation of restrictions imposed by the U.S. Fish and Wildlife Service...
police the fisheries and investigate matters pertaining to the fisheries for fact-finding purposes...
maintain, improve and extend the fisheries resources of Alaska in the interest of the economy and general well-being of Alaska (Ch 68, SLA 1949).

In 1957, preparatory to statehood, the legislature created the Alaska Department of Fish and Game and the Alaska Fish and Game Commission. This commission consisted of seven members, including three commercial fisherman, a sport fisherman, a fish processor, a hunter, and a trapper, appointed by the Governor and confirmed by the legislature. Appointments were for staggered terms of seven years. The mandate to this commission was "... to supervise the department in maintaining, improving, and extending the fish and game resources of Alaska". After Statehood, in 1959, the new State Legislature created the Alaska Board of Fish and Game to replace the Commission.

The present Board of Fisheries was created by the state legislature in 1975, along with its counterpart the Board of Game. As defined in AS 16.05.221, "For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature

in joint session. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence...". In effect, however, appointments to the board have continued to be made along lines of both regional and industry or user group representation, as provided for in the original territorial Fisheries Board.

The procedural process for selection of board members has varied from administration to administration, though it is always a political process. In all cases, a pool of potential candidates has been developed by the governor's staff, from which membership is selected. Board members are at present appointed for three year staggered terms. Members may be removed from the board, by the governor, for inefficiency, neglect of duty, or misconduct in office.

Board staff includes an executive director appointed by the commissioner of the Department of Fish and Game, an assistant executive director, six regulatory specialists, and a clerk typist.

Duties and authority of the board are established in the Administrative Procedure Act and AS 16.05.251. Duties include establishing seasons and areas, quotas and bag limits, and ways and means of taking fish. The board is also charged with classification of species as commercial, sport or predator for management purposes, promulgation of regulations regarding fisheries management, regulation of entrance into research agreements, regulations regarding harvest of aquatic plants, and regulation of licensing activities. Additionally AS 16.05.251 mandates that the board shall establish criteria for the allocation of fishery resources among personal use, sport, and commercial fisheries along guidelines provided in the statute.

The present advisory committee system was established under AS 16.05.260, and regional councils under the Alaska National Interest Lands Conservation Act (ANILCA), section 805. In addition, AS 16.05.300 requires that the board

either meet or hold hearings in each of the five regions of the state each year, further expanding and facilitating public participation in the board process.

The board currently meets twice yearly, in the spring to consider primarily shellfish regulations and in the winter to consider finfish regulations. In most sessions, regulatory proposals statewide have been considered, though in 1983 the board first adopted a system whereby the state is divided into two regions, with regulatory consideration limited to each area every other year. The present board has recently reaffirmed that it will adhere to that approach. In years when an area is not open to regulatory consideration by the board, or during the fishing season when the board is not in session, management authority to open and close harvests and adjust their time or area, or to regulate ways and means of harvest, is delegated to the Department as provided for under AS 16.05.060. The intent is that the use of such emergency orders or emergency regulations be invoked only as necessary to protect the biological base of a stock if an unforeseen or unforeseeable event occurs which threatens that stock. In addition, the advisory committees have the authority under statute to close seasons, though this authority has never been applied.

When the advisory committees were established, part of their intended function seems to have been, as mandated by AAC 96.050, to develop and evaluate regulatory proposals to the board. In practice, however, only about 16% of the proposals voted on by the board between 1975 and 1987 originated with advisory committees or regional councils, while 49% have originated with individuals or interest groups and 35% with the Department or the board itself.

Though there is not total consensus on the reasons for such, it is clear that the number of proposals submitted to the board and the consequent workload has increased dramatically in recent years (since about 1975). In the sixties and early seventies meetings of the joint board

consumed about 10-15 days total for the year, with 100 to 125 proposals considered. Since 1975 fisheries board meetings have occupied from 17 to 81 days per year, with as many as 895 proposals for consideration.

In large part this expanded work load is probably a reflection of the increased value of and competition for fisheries resources themselves. For instance, ex-vessel values have increased from \$70 million in 1965 to nearly \$900 million in 1986, and wholesale values from \$166 million to \$1.6 billion (Senate Advisory Council, 1987). The volume and complexity of conservation and allocation issues to which the board has been subjected have increased accordingly, though its capacity to deal with such volume and complexity, in terms of funding and technical assistance, probably has not.

Other major factors contributing to this increased work load include (1) the delineation of subsistence and personal use categories, (2) revitalization of the state's salmon fishery and, concurrently, increased harvests of other, non-salmonoid, species, (3) lack of a comprehensive state fisheries policy within which to formulate management and allocation guidelines and (4) generally increased public participation in and access to the board process. The increased quantity, if not quality, of proposals with which the board must contend are described in a recent (1987) report of the Senate Advisory Council, as quoted below:

The mushrooming quantity of information and proposals thus presented to the board and the time consumed in public testimony before it has constrained the board's ability to carefully and reasonably consider all of the proposals and issues before it.

The only options, in light of such an increased and increasing work load, would seem to be (1) to somehow limit the number of proposals submitted to the board or (2) increase the efficiency of the board in dealing with this

increased volume. Due to 1988 budget limitations, the board is constrained to 27-30 meeting days this year, which is probably insufficient to deal with the issues facing it (Senate Advisory Council, 1987).

While problems with the board, either in terms of appointments or function, and public criticism of the board are nothing new, the recent collapse and adjournment of the board in Anchorage last December (1986), has resulted in unprecedented, and probably proper, criticism of the board and loss of confidence in the process. This recent collapse of the board can be viewed as a confirmation of sorts that the process does work, at least on a very basic level, for the board did self-destruct itself rather than continue on what seems generally perceived as a counterproductive course. Nevertheless, it did serve notice in a fairly dramatic way that the process was in trouble and badly needed attention. Several measures were undertaken by the legislature and the governor in response to this situation and to the public criticism and general loss of confidence which it engendered.

One response, originating with Senator Hensley, was proposed Senate Bill No. 188, which would have established a full-time, salaried, Alaska Fisheries Management Commission to replace The Board of Fisheries.

The legislature also authorized and budgeted a review of the board of fisheries by the Senate Advisory Council. This review, prepared by Sheila Helgath and Richard Rainery, is referred to and was used extensively during preparation of the present report.

5. DISCUSSION

The issues and problems deliberated by the review committee can be divided into four general categories corresponding to the major categories defined in the earlier section pertaining to formal recommendations of the committee.

5.1 Appointment, structure and mandate of the Board:

5.1.1 Consideration of a salaried, full-time professional board.

The consensus of the committee was that, for the present at least, employment of a full-time board is not necessary and might prove counterproductive to the interests of the state. There was unanimous agreement that the board should be provided with increased and adequate staffing, as discussed more fully later on, and that this, along with other measures to be discussed, would increase efficiency and reduce the work load and time demands on board members to a reasonable level. It was also felt that formation of a full time board might actually result in increased complexity and special interest bias. The tendency might be for the board itself, if employed full-time, to expand and complicate issues to justify such a time commitment. In any case a full-time board would very likely find itself under increased lobbying pressure from special interest groups.

The committee further agrees that many of the present problems derive from lack of a definitive state fisheries management policy by which to focus and direct regulatory and managerial efforts, and that formulation of such policy should be undertaken as soon as possible.

This issue will be discussed at greater length later in the report.

The decision of the committee was that a full-time board is not warranted at this time, and that the creation of such would create undue disruption and complication of a process already in trouble. The committee did reaffirm, however, that appointments to the board should not be representative of or accountable to narrow regional or user-group interests, but should be responsible and responsive to the best interests of the resource and the state as a whole.

5.1.2 Consideration of regional boards, with regulatory authority over local or intra-regional issues.

The committee decision was to not recommend this proposal, for the following reasons:

It was felt that such a division of responsibility and authority into regional boards would very likely result in increased regulatory complexity and inconsistency, and would result in heightened frustration and confusion among users whose interests cross regional boundaries. Also, local autonomy would probably result in increased inter-regional conflict and competition. Since most species and resources currently regulated by the board are not confined to a single region, local autonomy would very likely lead to increased complication and difficulty in management of inter-regional resources.

Also, the committee agreed that the tendency would be for regional boards to be even more susceptible to special-interest pressure and bias than is the case with a statewide board, and that the creation of regional boards would further

complicate the appointment process and would compromise ability to find and appoint board members with statewide perspective.

5.1.3 Consideration of proposals to split the present board into two boards, one to deal with either salmon and herring or anadromous and freshwater finfish, the other to deal with marine fish and shellfish.

The unanimous recommendation of the committee is to not implement this proposal

The committee agrees with the concerns that salmon interests have tended to dominate the board process, sometimes to the neglect of other fisheries. It feels, however, that to split the board along these lines would complicate interjurisdictional management of resources and would not be in the best interest of the state or the resources at present. The committee consensus is that the board should be structured to provide a comprehensive assessment of fisheries and fishery resources as a whole, and that fragmentation of this responsibility would increase the difficulty of designing and implementing a cohesive statewide and resource-wide fisheries policy. The feeling is that better staff support to the board will permit appropriate attention to non-salmon concerns as well as reducing time and effort demands on the board.

5.1.4. Process of appointment to the board, or removal from the board.

The recommendation of the committee is to retain the present process of appointment and removal, with the stipulation that certain specific causes for removal should be defined.

The committee recognizes that the present process of appointment of board members by the governor, subject to majority approval by the legislature in joint session, is by nature a political process and as such is sometimes vulnerable to abuse. It is, however, the responsibility of both the governor and the legislature, and ultimately the electorate, to see that this does not occur. Moreover, the committee agrees that the goal of the appointment process is to appoint board members who will direct and implement state fisheries policy as formulated by the administration, and that it is therefore appropriate that the administration, with legislative concurrence, control such appointments.

A proposal was also entertained to select board members from a list of nominations submitted by the local advisory committees and/or regional councils. As described in the preceding section dealing with the issue of regional boards, the consensus is that such a process would only increase the vulnerability of the system to special-interest pressure, and would remove much of the responsibility from where it rightly belongs, with the administration and the legislature.

Another sub-proposal considered was that board members be elected from their region of residency. The decision of the committee was to not recommend this procedure, primarily on grounds that election of board members, whether on a statewide or regional basis, would only increase special-interest pressure and would compromise the administration's ability to direct statewide fisheries policy.

5.1.5 Removal from the board.

Consideration was also given to the problem of removal of board members, including a proposal that members serve strictly at the pleasure of the governor, subject to removal for failure to follow and implement administration policy. The decision of the committee is that to liberalize the process of removal to the extent would encourage further instability in the system, and would not be in the best interests of the state. The committee did agree, however, for removal. These include violation of fish and game regulations and violation or ex parte communication regulations.

5.1.6 Conflict of interest.

While it is recognized by the committee that conflict of interest and special-interest bias can be and has at times been a problem with board members, the unanimous view of the committee, and the clear majority view received so far from the public, supports appointment to the board of persons with hands-on knowledge of and experience with fisheries resources and the fishing industry, including sport, commercial, subsistence and personal use. The feeling of the committee is that, even with a full-time board divested of financial interest in the industry, persons of sufficient knowledge and experience to qualify for appointment will bring with them, by definition, certain views commiserate with their experience and background. This probably cannot be avoided nor is it altogether undesirable so long as a balance of viewpoints is sought and achieved.

conflict of interest and special interest bias is not necessarily limited to commercial or

financial interests, but can easily be extended to include sport fishing, subsistence and personal use interests. Any broad interpretation of conflict of interest or special interest would, therefore, tend to severely limit the number of qualified and knowledgeable persons available for appointment to the board. This does not mean, however, that both the governor and the legislature should not use reasonable care in avoiding the appointment of persons perceived primarily as advocates of special interest groups.

5.1.7 Divestiture of fisheries interests by persons appointed to the board was carefully considered and ultimately rejected. Again, part of the problem is inherent in the definition of what constitutes financial interest and to what lengths this definition should be applied. In many cases financial involvement in the fisheries industry involves heavy investment of capital for gear and equipment, with consequently demanding payment schedules which cannot easily be divested. To require such divestiture would, again, seriously limit the number of qualified persons available for appointment.

In addition, the feeling of the committee is that it is relatively easy to "fake" such financial divestiture, and that to require it would not necessarily prove meaningful.

5.1.8 While the committee did not feel it necessary to require divestiture of financial interest in fisheries for appointment to the board, it did reaffirm the necessity for full disclosure by board appointees of any financial investments in fisheries or fishery related business as well as membership in fisheries 5.1.9 Conduct of the board.

The major concern voiced in regard to conduct of the board seems to relate to conflict of interest, special-interest bias, or inappropriate and undue influence over board members by special-interest proponents.

As discussed earlier in this report, the committee decided against requiring divestiture of financial interest as a requisite for appointment to the board, the feeling being that such a requirement would be generally ineffective and probably counter-productive. The committee does agree, however, that board members should be required to disclose any and all financial interests in fisheries, and any memberships in fisheries organizations.

The committee also seriously considered a proposal which would require board members to abstain from discussing or voting on issues in which the member has any economic interest, including subsistence or personal use. It was decided, however, that such a requirement would seriously hinder the board's ability to function, and that, while laudable in principle, absention should be at the discretion of the board itself. Currently, the board chairperson decides whether or not a member has a conflict of interest which should preclude his or her discussion or vote on a given issue.

In regard to inappropriate or undue or influence on board members from or by special interest representation, the committee has drafted formal recommendations, which expressly forbid exparte communication with and lobbying of board members during board, advisory committee or regional council meetings. The purpose of this recommendation is not to forbid or curtail

discussion of issues, but rather to ensure that such discussion remains in the public forum where it rightly belongs.

5.1.10 Consideration of salary for board members under the present system

The committee recommends that board members be compensated by an appropriate salary for a limited time period.

The primary concern, as expressed by the committee and received from public comment, is that recent time demands on the board make it financially difficult for persons to accept appointment, and that this difficulty may compromise the ability to appoint the most qualified persons to the board.

5.1.11 Development of regulatory and management documents.

In general, it is the recommendation of the committee that the board and the department interact closely with each other and with the local advisory committees and regional councils and whenever appropriate for formulation of resource assessment documents (RADS), area management plans (MP's) and regulations. In this regard it is recommended that representatives of the department and the board attend and participate in meetings of advisory committees and regional councils whenever possible and appropriate. The department should also make sure that RAD's and MP's are made available to the board, advisory committees, and regional councils for their use in evaluation and deliberation of regulatory proposals.

It is the committee's recommendation that the board be provided with adequate staff, independent of the department, in order to

effectively review and summarize for the board relevant information received from the department and other sources, to work with the department in formulation of RAD's and MP's, and to the department as to informational needs of the board. The board should, with the help of its staff and the department, construct, over time, a record of stock statuses for all major species, and should work with the department to summarize RAD's and MP's on file for use by the board, the advisory committees, and the regional councils. Whenever lacking, the board and the department should cooperate in formulating RAD's and MP's as feasible within the limitations of the available data base, and should establish better minimum sustainable yield estimates (MSY) and confidence limits for major stocks and species.

5.1.12 Documentation and accountability.

In large part, this issue is closely related to the previous one regarding conduct and special-interest bias. The concern, quite properly, is that decisions are too often made for reasons which are never made clear to those affected by them. Understandably, this tends to foster the perception that the board or board members are "making deals" with special-interest groups or are voting on behalf of their own special interests, whether or not such is the case.

Consequently, it is the recommendation of the committee that all contacts and information sources utilized in arriving at a decision be recorded and made public, and that the board provide a summary of its reasons for decisions, including economic and other impacts of that decision in so far as such can be foreseen. It is

also recommended that the board keep an accurate record on how each member votes on each issue and that such be public information. It is hoped that such documentation will serve to define and clarify, for both the board and the public, the criteria and process employed to reach decisions, and will help to remove the board from criticism regarding its decisions.

5.2 Staff

There was unanimous agreement that the board should be provided with increased and adequate staffing.

The conclusion of this committee is that the present staff needs of the board are not being adequately met, and that the board should have the authority and budgetary flexibility to hire and fire its own research and advisory staff. This is not intended as a negative reflection on the department or its staff and their efforts to supply information to the board. The committee does feel it would be both appropriate and constructive, however, for the board to retain its own staff, including biological and biostatistical expertise, for review, evaluation and summation of information acquired from the department and other sources.

The committee also recognizes that many of the decisions the board is called upon to make, particularly those involving allocation of resources, require socioeconomic information and advice which the department, except for subsistence issues, is poorly equipped to provide.

In this context is is the committee's recommendation that biologists in the department are not equipped to deal with issues having socioeconomic implications, and that both the board and the department should retain appropriate staff to address

those matters. Likewise, the findings of the committee indicate that legal advice supplied to the board by the Attorney General's office has not always been adequate or accurate except, for the most part, as relate to subsistence issues, and that the board either should be provided with legal counsel trained and experienced in fisheries issues or should retain such counsel at its own discretion.

5.2.1 Executive director and professional staff

The recommendation of the committee is that the executive director of the board(s) be appointed and dismissed by mutual consent of the joint boards and the commissioner of the department. The board research and advisory staff shall be hired and fired by this executive director and should be salaried, partially exempt positions within the state employee system. Funding for the executive director and staff positions should be the responsibility of the board(s) rather than the department, and will require that the joint boards prepare their own budget, in consultation with the governor's office, for submittal to the legislature. This budgeting process will place responsibility for funding and performance of the board more directly on the administration and the legislature, where it is generally felt to properly reside, will relieve the department of much of that responsibility, and will allow the board increased latitude in structuring its staff and budget requirements to respond to demands placed upon it.

5.2.2 Formation of a scientific/review panel and an industry advisory panel.

The recommendation of the committee is

that in addition to salaried staff a non-salaried review panel be appointed to assist and advise the Board. This committee would consist of persons of appropriate scientific and statistical background and expertise and appointed by the board from the university system and the private sector. Primary duties of this committee would be to review and evaluate resource assessment documents, management plans, stock assessments, and information supplied to the board for use in its deliberations. The committee would serve without salary, but would be reimbursed for per diem and other expenses associated with its duties.

The committee also considered recommending an industry advisory panel, such as is also employed by the North Pacific Fisheries Management Council, but decided that such is probably not necessary at this time given the present composition of the board itself and the use of advisory committees and regional councils.

5.3 Regulatory Process

A major concern regarding the board process, as conveyed to this committee by the public, related to the increasing number of proposals submitted to the board (mostly from that same public), the resultant work load on the board, and the need to somehow limit or screen the input of such proposals for consideration. However, while almost everyone agrees that there is a problem in this regard, there is no general concensus on how such screening or limitation should be accomplished. As discussed in the recent report by the Senate Advisory Council:

The value of much of what the board must consider is questionable.
Many proposals are nearly identical

in intent or are trivial in content. Others are ghosts of proposals past, having suffered numerous previous rejections. There are usually several "pay back" proposals, the purpose of which is primarily to exact revenge on a user group by which the proposer feels it has been wronged. Still others concern actions clearly outside the authority of the board. No formal controls or screening to separate these proposals from the legitimate, thoughtful, articulate variety exists. All must be considered in one way or another by the board at its public meetings.

Suggestions as to methods of screening proposals include appointment to the board of an independent committee of unspecified composition to perform that function, screening and approval by the advisory committees and/or regional councils, and limiting consideration to proposals with multiple sponsorship.

After due consideration, the decision of the committee is that none of these methods would be acceptable or appropriate, and would at any rate probably not serve to alleviate the problem. The feeling of the committee is that screening of proposals by a committee or panel appointed for that purpose would not result in overall savings in either time or money, would probably not be effective, and would very likely lead to further public criticism of and loss of confidence in the process as a whole. Similarly, screening by advisory committees and/or regional

councils would probably be overly time-consuming and costly for those organizations, would be of minimal benefit, and might make the process more vulnerable to special-interest pressure. As outlined in the following section dealing with formal recommendations, the committee does suggest earlier submittal of proposals and more involvement of the advisory committees and regional councils in proposal review and evaluation.

And again, the recommendation of the committee is for additional and independent staffing for the board to review and evaluate proposals and to make appropriate recommendations regarding them. It is felt that this in itself will greatly improve efficiency and reduce demands on the board.

Also, the committee once again strongly recommends that the board, the department, and the administration make every effort to develop a coherent statewide fisheries policy as well as area management plans in order to provide structure and guidelines for the formulation and submittal of proposals.

5.3.1 Rotation of proposals by area

The recommendation of the committee is in accord with the present decision of the board, as expressed in its recent report to the governor (November 9, 1987), to go back to a system of reviewing proposals from each of two areas (Kodiak/Western and Cook Inlet/Gulf of Alaska/Southeast) on an alternate year basis. The concensus is that this plan will reduce to some extent the annual work load faced by the board, and will provide for increased regulatory stability. Protection of the resource can be accomplished, in years when the board is not reviewing an area, through emergency orders or regulations by the department, or advisory

committees can themselves undertake closures of threatened fisheries.

5.3.2 Notification of proposal review and reconsideration of proposals by the board.

Several complaints were received by the governor's office and the committee about the process, or lack of such, used by the board to schedule debate on issues and regulations. The perception is that, in the past, the board has sometimes dealt with an issue during the period scheduled for public testimony and then gone back to reconsider and change its decision on that issue at a later time without public notification.

The committee agrees that the board needs to retain sufficient flexibility to incorporate new information as it is received, and thus may find it appropriate and necessary to undertake such last minute reevaluations. When such is the case, however, the recommendation of the committee is that the board be required to serve sufficient pre-notification to permit public testimony and participation, and should make public the reasons for such reconsideration.

5.3.3. Location of board meetings.

Present statute (AS 16.05.300b) requires the board to hold at least one meeting or hearing a year in each of four areas of the state. On the other hand, the same statute says that "Each board shall select the time and place in the state for the transaction of business".

Not surprisingly, this rule has been variously interpreted. Those living in outlying rural areas frequently feel disadvantaged by having to travel long distances (generally to Anchorage) to participate in board meetings, and are inclined to interpret this statute to mean

that the board must hold full meetings in each region each year.

For the board to move meeting locations around to regional centers would, of course, provide increased access for residents of that region. On the other hand, it would increase considerably the cost and time commitments of the board, and would not improve and might hinder access by residents of other regions. In addition, limitations on physical and communication facilities in some of the outlying regions would very likely complicate the process and reduce effectiveness and efficiency.

The concensus of this committee is that the board should not be constrained to hold full meetings in locations other than those it decides upon as being practical and cost/time effective. On the other hand, it is recommended that board members, along with board and department staff, schedule and attend regular meetings on at least an annual basis in each region for purposes of explaining decisions and receiving testimony. It is also felt that better definition of the role of advisory committees and regional councils, and increased participation of these organizations in the regulatory process, will go far to alleviate the difficulty of public participation.

5.3.4 Role and function of local advisory committees and regional councils.

As discussed earlier, local advisory committees were authorized and institutionalized by passage of AS 16.05.260, and regional councils by section 805 of the Alaska National Interest Lands Conservation Act (ANILCA). The number of advisory committees has increased greatly in recent years, from about 50 early in this decade

to 76 at present. The roles of regional councils and advisory committees, however, and criteria for formation and distribution of advisory committees, have never been clearly defined. The recent (1987) report of the Senate Advisory Council states that:

Fish and Game Advisory Committees are mandated by 5 AAC 96.050 to develop regulatory proposals, evaluate proposals, provide a "local forum" for fish and wildlife matters, to work with the appropriate regional councils regarding conservation and harvest strategies, and to interact with other interested parties. The department has interpreted that role as "committees are intended to provide a local forum for the collection and expression of opinions and recommendations on the management of fish and game" (ADFG, 1981). Congress, in ANILCA, expressed a broader orientation and purpose for the advisory committee/regional council system (Gorsuch, 1983):

The public participation system described in ANILCA section 805 and incorporated into state law was viewed by Congress as

essential. The findings in ANILCA section 801 (5) reflect that assessment:

[T]he proper regulation, protection and conservation of fish and wildlife...and the continuation of the opportunity for a subsistence way of life...require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses...in Alaska.

The intent of the advisory committees and regional councils was to draw upon the expertise of the local residents and to insure that local interests were well represented in the regulatory process.

Some of the local advisory committees seem to function quite well and are effective organizations for providing local input to the regulatory process; others are essentially non-functional and are seldom if ever heard from. In some instances there is criticism that the local advisory committees are merely forums for special-interest groups, and that committees are in fact not representative of the resident population. As discussed in the Senate Advisory Council Report (1967).

There has been considerable criticism of the advisory committee process and composition. Many assert that certain advisory committees are or have been formed around special

interest groups and have not been representative of a community's entire user spectrum or are single issue in scope.

In southeast Alaska, nearly every community, regardless of size has its own advisory committee. In western Alaska, four committees represent the forty some villages of the Calista region. Anchorage, with nearly half the state's population has one advisory committee with a voice equal to that of any other committee.

And, while the stated role of the advisory committees is, among other things, "to develop regulatory proposals", the committees have been minimally effective in this regard. The report of the Senate Advisory Council (1987) states that:

Although the source of proposals is not always clear, the annual number of proposals noted as originating with advisory committees or regional councils has remained relatively unchanged since 1975; about 16% of the total voted on during the period 1975-1987.

Proposals regarding the role and function of advisory committees range from suggestions to reduce or limit the number of committees to expanding the authority of committees and/or regional councils to include passage of local regulations or approval/veto power over regulations passed by the board(s).

The recommendation of this committee is

that the participation of local advisory committees and regional councils in the proposal and regulatory process, and in formulation of resource assessment documents, area management plans, and statewide fisheries policy statements, should be encouraged and actively solicited, and that the format for such participation be more clearly defined.

5.4 Criteria for decisions:

a. Numerous comments were received having to do with conservation decisions by the board. In some cases it is felt that such decisions should not be addressed at all by the board but rather left up to the department, with the board devoting its attention to matters of allocation. Others feel that it is proper for the board to address conservation issues, but that it should be provided with clear and explicit criteria for doing so.

The concensus of this committee is that it is the responsibility of the board to make regulatory decisions affecting the conservation of fisheries resources. After further discussion it was also decided that to impose upon the board explicit criteria, beyond those already established by the legislature, would be to unduly constrain and limit its flexibility.

The committee also agreed, however, that a major problem in arriving at either conservation or allocation decisions derives from the fact that the state has no well-defined and comprehensive fisheries policy in place, and that resource assessment documents and area management plans are often deficient or non-existent. As regards the latter, the committee recommends that the board staff work closely with the Department in

formulating such resource assessment documents and management plans for use by the board, the advisory committees, and the regional councils in their construction, review and deliberation of regulatory proposals.

b. Criteria for allocation decisions.

It is the opinion of this committee that many of the difficulties experienced by the board over the past are attributable to the fact that decisions in regard to allocation should be based on socioeconomic considerations, which neither the board nor the department are adequately equipped to evaluate and which neither the legislature nor the executive have provided adequate standards or criteria for.

It is clear that the responsibility for allocating surpluses in fisheries resources fall to the board of fisheries. As these allocative decisions become more complex, which they are bound to do as our population expands and increasing competition develops for the fisheries, the greater the necessity for definitive criteria regarding such decisions.

The board of fisheries was mandated by the legislature to adopt criteria for the allocation of fishery resources among personal use, sport and commercial interests. In April, 1987, the board adopted the seven criteria suggested by the legislature (AS 16.05.251). The Senate advisory Council report (1987) states, however, that:

"The failure to develop more specific criteria may result in inconsistencies in those (allocation) decisions and more legal problems for the board."

This same report goes on to say that:

"There has been widespread agreement among the industry, science, and public figures interviewed for this report that the allocation decisions and general management of fisheries by the board of fisheries would be improved significantly if relevant, timely socioeconomic data were routinely available to it."

In order to facilitate the meaningful utilization of these data, the board must have definitive criteria to apply, and must have adequate staff to evaluate and summarize such information.

In order to assist the board in developing criteria, the committee has drafted a formal recommendation for such criteria as detailed in an earlier section of the report.