

S B

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5-0156B ✓  
Hein  
3/5/87

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."

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, 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

Board  
Authority

16.05.221  
Sec 12

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.

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SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of \_\_\_\_\_ 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

\*\*FISCAL NOTE(S) ATTACHED \_\_\_\_\_ \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

1/19/87 DATE TURNED INTO OFFICE \_\_\_\_\_  
Mr. President:

RESOURCES \_\_\_\_\_ Committee considered \_\_\_\_\_ SB 53

relating to the Board of Fisheries.

and recommended:

replace with CS SB 53 (res)  same title  
 attached amendment(s) and  new title

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted and attached

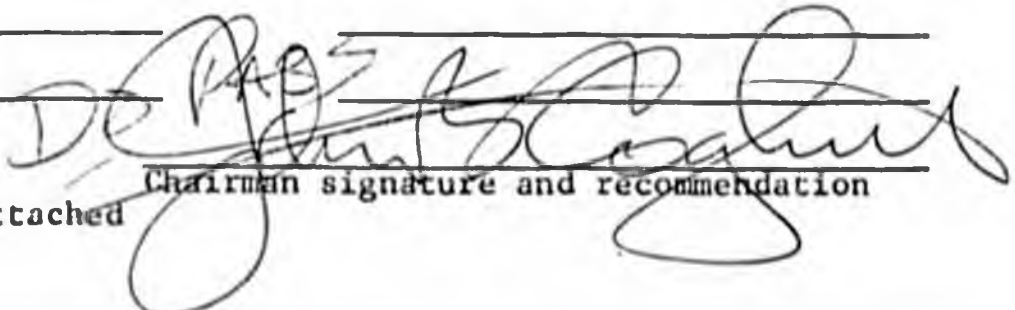
\*\* Committee  attached or  adopted fiscal note(s)  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Thompson (No Rec)*  
*W. Blain (no rec)*  
*Paul Bluff (No Rec)*  
*Jim Duncan (no rec)*

  
Chairman signature and recommendation

Committee Backup Attached

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

MAR 10 1987

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						
REVENUE						

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 1

Date: March 6, 1987

Approved by Commissioner: Grace Berg Schaible, Atty. Gen

Agency: Department of Law

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

# 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.

Harold Sparck  
Box 267, Bethel, AK 99559  
March 2, 1987

Senator Jack Coghill  
Chairman, Senate Resources Committee  
Alaskan State Senate  
Pouch V  
Juneau, AK 99811

Dear Senator Coghill,

I am writing in support of SB 53 as introduced by Senator Binkley. I am a commercial halibut and cod fisherman, and subsistence fish on salmon and herring. My winter residence is Bethel, and my summer residence is Chevak for the past 19 years.

A substantial "grey" area exists in the State's current management and allocative system for wildlife resources. The State Board of Fisheries is currently delegated authority by the Legislature to make conservation decisions and to allocate fisheries resources among competing uses. The Alaskan lower Courts have ruled that the Board does not have the authority to make allocative decisions between gear users. The lower Courts determined that the Legislature did not delegate that specific authority to the Board of Fisheries.

At issue before the Courts was whether the Board's use of an allocative mechanism "Super-exclusive Registration," put in place to conserve damaged, and slowly recovering discrete Eastern Bering Sea herring stocks north of Cape Newenham, was authorized by State law.

The lower Court decision resulted from non-local State and out of State herring fishermen contesting their prosecution for violation of the Board of Fisheries Super-exclusive Use regulation. These individuals participated in other limited entry herring fisheries in the State before entering these small Western Alaskan herring fisheries.

On equity issues, these non-local fishermen have closed their herring fisheries to new entrants, denying Western Alaskan herring fishermen the chance to participate in those fisheries, yet claim as a right their opportunity to double-dip into another region's herring resource. At no time did the lower Court review the damaged state of this herring resource that lead the Board to put in place this form of restriction.

Little biological information on a long term nature exists in this fishery, first pioneered in 1978. The State Board and ADFG have wisely chosen to conserve these stocks during their recovery by putting in place harvest limits, and attempting to spread that harvest throughout the year classes.

The Super-exclusive Use Registration was to prevent intense gear

efforts at the start of the fishery from taking the target stock before managers could survey all year classes to determine stock abundance, and spread effort to prevent over harvest of any other year class. Both the Board and ADFG feared that an over-harvest of one year class could lead to stock collapse in the event that one dominant year class's strength masked failed year classes in this recovery fishery.

Small, low technology local fleets are incapable of massing capital and taking the harvest guideline in one period. Their effort would by necessity be spread throughout the herring runs, preventing stock collapse. Throughout the history of this fishery, high technology fleets have demanded immediate and unfettered access to the resource, a move resisted by both the Board and ADFG for conservation purposes.

Under the State's governing legislation on allocation, the recently modified subsistence law, there is no right to a resource. The State Legislature delegates authority to its Boards of Fisheries and Game to make the opportunity available to harvest a chosen resource. Senator Binkley's legislation would extend the "opportunity" provision of the State Subsistence law of the Legislature's delegation of authority to the Board of Fisheries.

By statute, the Commercial Fisheries Entry Commission can only enter a fishery when it is fully-developed, and distressed by the amount of gear in operation. The controversial herring fishery in question, like many other fisheries in the State, does not meet the statutory requirement for CFEC involvement. These fisheries must be managed by regulations crafted by the Alaskan Board of Fisheries. The "grey" area continues to exist, Senator Binkley's legislation addresses this issue also.

Throughout its history, the Board of Fisheries has weighed conservation and allocation, and has made allocative decisions between competing gear types. The Board has done this for its entire history. When a particular gear group feels aggrieved by the allocative actions of the Board, that group has an alternate forum for its equity claim through the courts. This system has worked well.

But the crisis in conservation brought on by the Western Alaskan herring situation exposes this "grey" area clearly. A legislative solution is required to make official a practice that the State has had operating since Statehood.

I request that the Committee support Senator Binkley's legislation. If the Committee determines that further review of S.B. 53 is required, I request that the Committee make its next meeting on S.B. 53 available for Legislative teleconferencing.

In peace,

*Harold Sparck*  
Harold Sparck

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

February 10, 1987

The Honorable Lyman Hoffman  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Re: Herring area legislation

Dear Representative Hoffman:

You have asked for a description of the herring superexclusive use area litigation, and of its possible ramifications. As I understand it, you are inquiring about this case because it relates to HB 63, which you introduced. (That bill is virtually identical to SB 53, introduced by Senator Binkley.)

The Alaska Board of Fisheries has adopted superexclusive use areas in managing the herring commercial fisheries in the state. The regulations require that participants in the commercial herring fisheries either fish in one of several small areas, or anywhere else in the state. See, for example, 5 AAC 27.987. This mandate was violated by a Mr. Hebert, who, in a criminal prosecution before a state district court, moved to dismiss the charge, alleging that the regulation exceeded the authority of the Board of Fisheries. State v. Hebert, No. 2NO-S86-069 Cr. (Alaska Dist. Ct., Feb. 6, 1986). The Board of Fisheries in general has the authority to adopt regulations for the "conservation and development" of fishery resources. AS 16.05.221(a).

The judge in that case ruled that he could find no evidence supporting a conservation rationale. He found that the regulation had been adopted in order to benefit the less efficient, less well-financed fishermen from particularly cash poor areas of Alaska, and that while the socioeconomic goals were laudable, they did not fall within the board's current authorities.

That case is currently on appeal to the Alaska Court of Appeals. State v. Hebert, Court of Appeals No. A-1743. Briefing is completed, and eventually a decision will be issued. In the meanwhile, the regulations are technically enforceable; a district court decision dismissing a criminal prosecution is not equivalent to a superior court decision in a civil case enjoining the enforcement of a regulation. The decision is not binding on

other courts; the result of the judge's order is simply that that particular criminal prosecution is dismissed.

The superexclusive use area regulatory mechanism as applied to vessels has been common for years in the state's salmon fisheries, and has also been employed in other fisheries, such as king crab and tanner crab. 5 AAC 39.120; 5 AAC 34.020; 5 AAC 35.020. Assuming for the moment that the district court was correct in determining in the Hebert case that the Board of Fisheries may not regulate for only socioeconomic reasons within a particular commercial fishery under the current statutes, the other instances in which superexclusive use area had been employed are not necessarily invalid. The analysis in each situation would depend upon what the board record discloses about the conservation basis for the regulation. Clearly, even under the Hebert case, a conservation related justification which was supported by the facts would provide adequate legal support for superexclusive use areas.

The district court decision in the Hebert case hinges solely upon statutory construction, and any decision from the court of appeals will be similarly limited in scope, since those are the only issues presented in the appeal. Thus, whatever the court determines the statutes to currently mean, the legislature has the authority to modify the statutes to reflect some other intention, consistent, of course, with relevant constitutional principles.

Sincerely,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:   
s/r Larri Irene Spengler  
Assistant Attorney General

LIS:cck

cc: Senator Binkley  
Alaska State Legislature

Don Collinsworth, Commissioner  
Steve Penoyer  
Norman Cohen  
Roland Shanks  
ADFG

The Honorable Lyman Hoffman  
Alaska State Legislature

February 10, 1987  
Page 3

Ed Hine  
LAA/Legal Services Office

Liza McCracken  
Deborah Vogt  
Pete Froehlich  
B.J. Jordan  
DOL

HB63 file  
SB53 file

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 17, 1987

Representative Lyman Hoffman  
House of Representatives  
P.O. Box V  
Juneau, Ak 99811

Dear Representative Hoffman:

Re: State v. Hebert  
(herring use areas)

Lee Goodman of your staff has requested our office to expand upon Larri Spengler's February 10, 1987, analysis of State v. Hebert, to explain the wider ramifications that the district court's decision may have for fisheries board allocation regulations, if the decision is affirmed on appeal.

As explained in Larri Spengler's letter, the trial court in Hebert held that as of the date the board of fisheries adopted the Norton Sound superexclusive herring area regulation, 5 AAC 27.987, the board's statutory authority to conserve and develop the state's fisheries (AS 16.05.251) did not allow the board to make allocations within one user group (i.e., among commercial users) in order to provide an economic advantage to one segment of the user group. The court, in dicta, also opined that the 1986 amendment to the board's authority, AS 16.05.251(e) (Ch. 52, SLA 1986), which expressly allows "allocation of fishery resources among personal use, sport, and commercial fishing ..." also does not allow the board to make allocations within one use group. The Hebert court also found that there was insufficient evidence to support a finding that the superexclusive herring area regulation was intended in part as a conservation measure, to require less efficient harvesting means.

The Hebert decision is presently on appeal before the Alaska Court of Appeals. If the Court of Appeals (and any higher appellate court) simply affirms the trial court decision without modification, this decision might provide a basis for challenges to other fisheries board regulations that, to a greater or lesser extent, provide an economic advantage to, or otherwise allocate a certain portion of the harvest to a particular segment of a commercial, sports or personal use fishery. Each case would have to be analyzed on its own facts, but it is possible that the Hebert decision, if affirmed could be a basis for challenging such fisheries allocation regulations as the Cook Inlet management plan

~~MAIL STOP FIELD, GOVERNOR~~  
Steve Cowper, Governor  
REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

P.O. BOX K-STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

Representative Lyman Hoffman  
House of Representatives

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Page 2

(which allocates among various segments of a commercial fishery) the False Pass fishery (which allocates to an existing local fishery), the Stepovak fishery plan (which also allocates among commercial uses), and several other regulatory provisions that make similar allocations. You may wish to consult the Department of Fish and Game for additional examples.

It would be difficult to predict the outcome of a challenge to fish board allocation regulations that might be brought under the Hebert rationale, because any decision would turn upon the particular board record and facts in each situation. If the Hebert decision were to be affirmed, however, it would place new constraints upon the fisheries board regarding its ability to make harvest allocations within a particular use group.

As mentioned in Larri Spengler's letter, the Hebert case turns upon statutory construction; the legislature has the authority to modify the statutes to reflect a different intent, so long as it is consistent with relevant constitutional principles.

If we can be of further assistance to you, please let us know.

Yours sincerely,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By: *Sarah E. McCracken*  
Sarah E. McCracken  
Assistant Attorney General

SEM/jmo

cc: Don W. Collinsworth, Comm'r ADF&G  
Steven Pennoyer, Deputy Comm'r ADF&G  
Roland Shanks, ADF&G  
Larri I. Spengler, AGO Jnu  
-Pete Froelich, AGO Jnu  
B. J. Jordan, AGO Jnu

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

February 27, 1987

Honorable Dick Eliason  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: SB 53/HB 63 on the Board  
of Fisheries

Dear Senator Eliason:

Your staff has asked us to comment briefly on SB 53 which would amend two provisions in AS 16.05, subsec. 221(a), concerning the purpose of the Board of Fisheries, and subsec. 251(e), concerning the board's mandate to establish criteria for the allocation of fishery resources.

We have previously provided copies to your staff of two letters from this department to Representative Hoffman, sponsor in the House of an identical bill -- HB 63. Those letters discuss the State v. Hebert case in which we have appealed dismissal by the district court in Nome of the criminal prosecution of a fisherman for violating the Norton Sound superexclusive herring area regulation, 5 AAC 27.987. Additional copies of those two letters are attached to this one for your convenience.

Our primary comment on SB 53 and HB 63, which are apparently responses to the district court decision in Hebert, is that such legislation is not now necessary to preserve the superexclusive use area regulatory mechanism. Some sort of similar legislation may become necessary after a final appellate resolution of the Hebert case. However, at this point any responsive legislation seems premature. If such legislation is ultimately necessary or appropriate, it can be better fashioned after we have the benefit of the appellate court analysis and a final resolution of the issues involved. Although briefing has recently been completed before the Court of Appeals, oral argument has not yet been scheduled and we do not anticipate a Court of Appeals decision before this fall. The case could then go to the Alaska Supreme Court.

If these bills are to be pursued now, it is important that great care be taken to ensure that the language of the bills is neither unnecessarily broad in its effect nor violative of constitutional equal protection, commerce clause, and exclusive right of fishery principles. We have discussed our concerns with the legislative counsel who drafted the bill and have agreed in

Hon. Dick Eliason  
Alaska State Legislature

February 27, 1987  
Page 2

concept on language to narrow the effect of sec. 2 of the bill. That section currently amends the first sentence of AS 16.05.-251(e) as follows:

(e) The Board of Fisheries shall establish criteria for the allocation of fishery resources among personal use, sport, and commercial fishing users and groups of users....

We believe that a better, more narrow approach to more directly address the possible effects of an eventual adverse decision in the Hebert case would be similar to the following:

(e) The Board of Fisheries shall establish criteria for the allocation of fishery resources among personal use, sport, and commercial fishing and among groups of commercial fishermen within a fishery....

Please let us know if we can provide additional assistance if these bills are pursued further. Thank you for the opportunity to comment.

Sincerely,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:   
Peter B. Froehlich  
Assistant Attorney General

PBF:md

Enclosures

cc w/o enc.: Hon. John Binkley  
Alaska State Senate

Hon. Lyman Hoffman  
Alaska State House of Representatives

Hon. Don Collinsworth, Commissioner  
Dept. of Fish and Game

Steven Pennoyer, Deputy Commissioner  
Dept. of Fish and Game

Hon. Dick Eliason  
Alaska State Legislature

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Roland Shanks, Special Assistant  
Dept. of Fish and Game

Larri I. Spengler  
Assistant Attorney General  
Juneau

Sarah E. McCracken  
Assistant Attorney General  
Anchorage

B.J. Jordan  
Legal Text Editor  
Juneau

SB 53

March 16, 1987

MAR 18 1987

Senator Arliss Sturgulewski  
Senate  
P. O. Box V  
Juneau, Alaska 99811

Dear Senator Sturgulewski:

In light of recent legislation, Senate Bill 53, an act relating to the allocation of fishery resources by the Board of Fisheries, I would like to point out some aspects of this legislation which may have not yet occurred to you and your fellow lawmakers.

First, there must be distinctions between the Board's authority in matters of commercial fisheries allocations and allocations between user groups. If legislators reword Title 16, to extend the Board's authority of regulation in commercial fisheries so to allow them to allocate between groups of commercial users, they better identify criteria altogether different than current criteria set out in Section 2 of A.S. 16.05.251(1-7). Much of this existing criteria is impertinent to commercial fisheries. Also criteria 2, 5 and 6 relating to residents and non-residents are potentially unconstitutional with regard to commercial fisheries. With limited entry there is the possible occurrence of discrimination against Alaska and out-of-state fishermen who have vested interests in a fishery which has many out-of-state permit holders.

Second, the Legislature must not forget that the Board of Fisheries is not the only regulatory authority over inshore commercial fisheries of Alaska. The C.F.L.E.C. also has the authority to pass regulations and exercise control over commercial fisheries.

Third, the Entry Commission has the authority to regulate numbers of permits in each fishery to preserve the social and economic well-being of commercial fisheries. The Board, on the other hand, has only the authority to conserve and develop fisheries for commercial use. The Board has no clear responsibility to social or economic condition among commercial group of users other than to conserve and develop the fisheries resources from which they draw. If the Board is to exclude or reallocate commercially used resources for the purpose of social or economic well-being, then there is clearly a conflict of regulatory authority between the Board and Entry Commission.

I am a commercial fisherman of 16 years in the State of Alaska and have fished across the State in many different salmon and herring fisheries. My family and I derive our income exclusively from my efforts as a fisherman. I also have considerable experience in matters of the Board of Fisheries and am at

March 16, 1987  
Page Two

this point sorry to see the Board process at this impasse and unable to deal effectively with commercial fisheries issues. I am seriously concerned as I am sure you are over the state of turmoil which has surrounded the Board of Fisheries in recent years and would like to see the system stay intact and working again.

The events that led to total meltdown of the Board process last November, and to which you address Senate Bill 53, have stemmed from conflicting commercial gear groups quibbling over harvest of shared resources and one or the other groups need for an increased share to compensate social or economic hardships. Also, commercial gear groups in developing fisheries not yet economically impaired by over participation have lobbied the Board for exclusive area schemes designed to inhibit growth in their areas. This has caused considerable conflict between gear groups and has raised serious legal questions as to the Board's authority to make such allocation decisions.

This is not just a Board problem but also reflects inadequacies in other parts of the system, particularly the Limited Entry Commission. The Board of Fisheries and the Entry Commission are the two bodies which, through regulation, govern our in-shore commercial fisheries in Alaska. They are separate bodies but necessary to each other and the industry. Ultimately, these two bodies should provide a balance for regulation. The Board of Fisheries on one hand to regulate allocations between user groups (commercial, sport, subsistence, personal use), set seasons and determine means and methods by which users will harvest fisheries resources consistent to good conservation and sustained yield management. The Entry Commission on the other hand has the authority to monitor and regulate participation levels among commercial gear groups consistent to good conservation and sustained yield management and according to sound social and economic principles conducive to a healthy commercial fishing industry.

I would like to suggest that it is because of the inability of the Entry Commission to function to its fullest potential within its authority that the Board of Fisheries is unable to come to terms with adverse growth and economic conditions among commercial gear groups. Fishermen have no other recourse other than the Board process to which they can address growth and economic problems. Distressed gear groups consequently ask the Board to deliberate allocation adjustments and exclusive area schemes designed to perform functions the Entry Commission has the authority to perform.

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Page Three

Title 16.43 gives the Entry Commission authority, but not the rules, to deal substantively with growth and distress among commercial groups. Present statute provides the Entry Commission with rules that limit only fully developed fisheries with levels of participation that impair or threaten the economic welfare of those fisheries. Statute stops short of providing the Entry Commission with programs that would provide gear reduction for economically distressed gear groups. Statute also fails to deal effectively with new and developing fisheries that require paced growth to protect the resource and economically dependent participants.

Possible solutions have been discussed and the Entry Commission has gone so far as to draft preliminary legislation for a legal and workable buy-back program (copy enclosed). I, personally, agree with the principles and mechanics of this proposal and support it or similar legislation. Commissioner Twomley has also expressed interest in exploring methods of providing developing fisheries such as A.Y.K. herring gillnet, in-shore longline and in-shore crab, fisheries with other controlled means of permitting. Discussions have included various methods of participation control by establishing moratorium fisheries which would pace growth conducive to protecting the resource and fishermen without the negative spinoffs of permanent limited entry as we know it under the current maximum number rules.

With such programs in place, the Entry Commission would have viable alternatives for commercial fishermen and many problems which they now look to the Board for solution. Unfortunately, the only alternatives the Board can offer are those of exclusion or relocation of resource. Short term, these solutions are as damaging to the excluded parties as they are beneficial to the included parties. Long term, it is this type of regulation that often socially and economically retard gear groups into one fishery dependency. Hopefully, once in place, sensitive issues of commercial allocation based on social and economic motivations would be dealt with in a more meaningful way outside the Board process. Our Board of Fisheries would then be more effective in deliberating regulation for conservation and development rather than shaky legal deliberations concerning social or economic well-being of commercial gear groups.

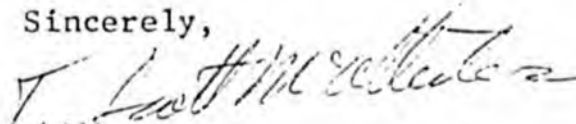
These concepts need investigation and much discussion to be understood before any clear direction for proper legislation can be taken. I would like to promote these ideas with you and your fellow lawmakers and caution that wholesale legislation granting the Board carte blanche authority in matters of commercial allocation will only serve to further confuse issues in the Board

March 16, 1987  
Page Four

process and further inhibit the Board's ability to operate effectively within the scope of their present authority.

Thank you for your consideration in this matter. Hopefully we can get the process of fisheries regulation working again to provide the guidance for a healthy fishing industry for all Alaska.

Sincerely,



Thomas Scott McAllister  
9156 North Douglas Highway  
Juneau, Alaska 99801

TSM:pas



PO BOX 021186

(907) 586-8125

Juneau, Alaska 99802

"DEDICATED TO THE PROFESSIONAL FISHERMAN"

April 2, 1987

Honorable Lloyd Jones  
Alaska Senate  
Room 11  
Juneau, Alaska 99801

Dear Senator Jones:

United Southeast Alaska Gillnetters (USAG) a regional association of 1000 members supports Senate bill 57 as a necessary clarification of the powers of the Board of Fisheries. The bill makes clear that the Board of Fisheries has the statutory power to allocate for beneficial purposes among different users within a single user group. For example, the Board has established different allocations of brook salmon among Southeastern trolliers, gillnetters and seiners who are all members of the commercial user group. In practice, the Board has traditionally been making these kind of decisions in a great number of cases, but now as a result of a legal challenge, a judge in Nome has ruled that such a decision is beyond the Board's authority.

Some people are reading other notices into the purposed of this bill but they are missing the point. This is really only a house-keeping measure which defines the authority for the Board of Fisheries to do what it has always done that is, to allocate, as it has traditionally been making, the fishery resource within a user group. The Board of Fisheries is not a court and it is not a legislature but merely to ensure that the Board has the necessary authority to conduct its business. The bill is not intended to remove the resource from the user group but to ensure that the Board has the authority to do so. The bill is not intended to remove the resource from the user group but to ensure that the Board has the authority to do so.

Thank you for considering our concerns

Sincerely,

*Gerard Bruce*

Gerard Bruce

Executive Director

cc: Senator Cognill, Chair  
Senate Resources Committee

P. O. Box 924  
Petersburg, AK 99833  
April 1, 1987

Senator Lloyd Jones  
P. O. Box V  
Juneau, AK 99811

Dear Lloyd,


I am strongly opposed to HB53. This bill would give an appointed board the authority to allocate fish to or from certain groups with no accountability.

I am especially against the provision in this bill that would allow the Board of Fisheries to allocate fish based on area residency. Mr. Binkley's purpose with this bill is to give his constituents exclusive use of the herring near their villages. This exclusive-use system is not necessary for the biological management of the herring stocks.

If the area residency form of allocation in westward Alaska is allowed to stand, it could snowball throughout the state. Each village or town could plead dependancy on local stocks of fish and be granted exclusive use of local stocks by the Board of Fisheries.

The fisheries resources in the state belong to all the people of the state of Alaska and should be managed accordingly.

Sincerely,

  
Robert L. Swanson

I am strongly opposed to HB 53. this bill would give an appointed board the authority to allocate commercial fisheries resource to certain groups with no accountability.

I am particularly opposed to the provisions which would allow the Board of Fisheries to allocate commercial fish stocks based on area residency. It is quite obvious that Mr. Binkley's intent is to provide his constituents the exclusive right to commercially harvest the herring stocks which pass by their villages.

The successful management of Alaska's fisheries resource has been based on biological data and should continue to be managed solely in this manner. These commercial fishery resources belong to all the people of the State of Alaska, and not to certain special interest groups.

I have been a resident of Alaska all my life and I still believe that the area residency form of allocation of commercial fishery resources would be a dangerous and unfair way to interfere with the livelihoods of Alaskans. I feel the lobbying pressure would be far too great on the Board of Fisheries members and would result in a loss of integrity on their part.

In summary, I strongly feel Alaska's commercial fisheries resource should continue to be managed strictly by biological methods and that the fisheries resource in the State of Alaska belong to all the people of the State of Alaska and not just a select chosen few.

Thank you



John R. Swanson  
P o Box 1546  
Petersburg, Alaska 99833

P. O. Box 1363  
Petersburg, AK 99833  
March 31, 1987

Senator Lloyd Jones  
P. O. Box V  
Juneau, AK 99811

Dear Lloyd

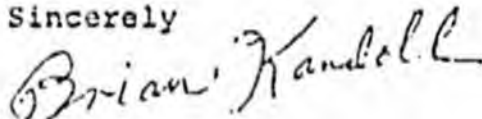
I am opposed to S.B. 53. This bill, as I see it, would give the Board of ~~Resources~~ powers that they were never intended to have. In effect, the board would be asked to manage a fisheries resource on the basis of where a person lives in relation to that resource.

We already have limited entry. It's not a perfect system, but it seems to be working reasonably well as far as managing the fishery stocks.

With this bill, the Board would have the power to manage people and would be able to say, "Since you live in this town or village, you are entitled to the fishery resources within so many miles of where you live."

It may seem like I'm reading a lot into this bill, but I believe that super-exclusive areas per village is where this bill will lead. I don't think that this would be a healthy fisheries policy-- it is close to welfare.

Sincerely



Brian W. Kandoll

cc Senate Resources



Official Business

# Alaska State Legislature

## House of Representatives

### Special Committee on Fisheries

Pouch V  
Juneau, Alaska 99811

Phone:  
(907) 465-4924

DATE: March 12, 1986  
TO: Members of the Fisheries sub Committee  
FROM: Lee Goodman  
SUBJECT: 1983 Fisheries Policy Task Force Report to Governor  
Bill Sheffield

I have summarized and outlined the report that was done for Governor Sheffield by his Fisheries Policy Task Force. The report was a comprehensive look at the status of fisheries policy - or lack thereof - in the State four years ago. Some of the issues addressed in the report are dated, but many are as important, or more important than they were four years ago.

The new administration has expressed its desire and intention to form a comprehensive fisheries policy for the state. Several members have suggested that the subcommittee should be involved in that process, and should convene in working sessions to identify, discuss and perhaps make proposals towards formation of a comprehensive policy.

The attached document may be a useful guide in this process. If you are interested in being involved in this working group, please contact either Representative Hoffman or myself, and we will get started as soon as possible.

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BILL SHEFFIELD. June, 1983  
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Outline of the FISHERIES POLICY TASK FORCE REPORT TO GOVERNOR  
BILL SHEFFIELD. June, 1983

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Part I, Statement of Findings.

- A. ECONOMIC SIGNIFICANCE OF COMMERCIAL SEAFOOD INDUSTRY. 7  
WE CAN'T ASSUME A DIRECT CONNECTION BETWEEN THE ECONOMIC  
MAGNITUDE OF THE INDUSTRY AND THE BENEFITS THAT IT  
PRODUCES FOR THE CITIZENS OF THE STATE. MUST MEASURE  
VALUE OF BENEFITS THAT LEAVE THE STATE TO SEE HOW MUCH  
BENEFIT STAYS IN THE STATE.
- B. ECONOMIC AND RECREATIONAL SIGNIFICANCE OF SPORT FISHING 13  
ACTIVITIES.  
SPORT FISHING HAS GROWN INTO AN INDUSTRY OF INCREASING  
ECONOMIC IMPORTANCE
- GOVERNMENT OFFICIALS RESPONSIBLE FOR REGULATING SPORT  
FISHING HAVE NOT PRODUCED A PROGRAM THAT IS CAPABLE OF  
MATCHING THE SUPPLY OF FISH TO THE DEMAND.
- ACCESS TO SPORT RESOURCES HAS NOT BEEN ADEQUATELY  
DEVELOPED
- THERE HAS BEEN INADEQUATE EFFORT TO SUPPLEMENT NATURAL  
STOCKS
- IT IS IMPORTANT TO IDENTIFY ACTIVITIES OF STATE 14  
GOVERNMENT THAT ARE NECESSARY TO FULFILLMENT OF SPORT  
FISH POLICY OBJECTIVES
- ADVERSARIAL ATTITUDES BETWEEN SPORT AND COMMERCIAL  
FISHING ARE DETRIMENTAL TO BOTH CONCERNS
- C. EXAMINATION OF STATE'S HISTORICAL ROLE IN FISHERIES. 15
- RESPONSIBILITIES FIRST STATED IN STATE CONSTITUTION,  
ARTICLE VIII, SECTIONS 1, 2, 3, 4, 15:
- LAYMANS INTERPRETATION:
- 1) STATE MUST INSURE MAINTENANCE AND PRESERVATION OF THE  
FISHERY RESOURCES, THIS IS BIOLOGICAL FUNCTION,
- 2) STATE MUST INSURE THAT FISHERY RESOURCES ARE UTILIZED  
TO PROVIDE MAXIMUM BENEFITS TO MAXIMUM PUBLIC INTEREST,  
THIS IS ECONOMIC FUNCTION
- BECAUSE OF BIOLOGICAL AND ECONOMIC FUNCTION, THE TWO  
DEPARTMENTS MOST INVOLVED IN FISHERIES ARE, FISH AND  
GAME, AND COMMERCE AND ECONOMIC DEVELOPMENT. IN PUBLIC  
PERCEPTION AT LEAST, FISH AND GAME SEEMS TO BE MAJOR  
FISHERIES DEPARTMENT
- CONCERN FOR FISHERIES CONSERVATION WAS PARAMOUNT IN EARLY  
YEARS. WITH ADVENT OF LIMITED ENTRY AND THE LOAN  
PROGRAM, THE STATE BEGAN TO DEFINE A NEW ROLE FOR ITSELF

IN FISHERIES, THIS WAS AN ECONOMIC ROLE, AND ADDRESSED PROBLEMS OF DEVELOPING FISHERIES FOR UNDERUTILIZED SPECIES AND OF MARKETING.

THE FOLLOWING PROGRAMS RESULTED FROM THE INCREASE IN ECONOMIC EMPHASIS; 19

- LIMITED ENTRY, 1973
- HATCHERY ACT RESULTING IN P.N.P. HATCHERIES, 1974
- FISHERIES ENHANCEMENT LOAN PROGRAM, 1976
- C.F.A.B., 1978
- ALASKA RENEWABLE RESOURCES CORPORATION (NOW DEFUNCT), 1978
- FISHERIES INDUSTRIAL TECHNOLOGY CENTER, 1981
- A.S.M.I., 1981
- FISHERY PRODUCT REVOLVING LOAN GUARANTEE FUND, 1982.

THIS SHIFT IN EMPHASIS FROM CONSERVATION TO ECONOMIC PROGRAMS DID NOT OCCUR AS THE RESULT OF A COMPREHENSIVE ANALYSIS AND EVALUATION OF STATE FISHERIES ACTIVITIES.

WITH THE AMOUNT OF TIME AND MONEY BEING INVESTED IN FINANCING, MARKETING AND QUALITY CONTROL, IT IS IMPERATIVE THAT STATE FISHERIES PROGRAMS AND POLICY BE DEFINED AND STATED AND THAT THEY INCORPORATE SOCIAL AND ECONOMIC GOALS AND OBJECTIVES AS WELL AS BIOLOGICAL ONES. WHERE RESOURCES ARE BIOLOGICALLY SOUND, THIS IS THE PRIMARY PROBLEM. WHERE RESOURCE IS NOT BIOLOGICALLY SOUND, ECONOMIC PROBLEMS STILL EXIST. 20

"WHAT THEN IS THE PROPER FISHERY RESOURCE ROLE OF STATE GOVERNMENT IN TH 1980s? IT WOULD APPEAR FROM THE FOREGOING THAT IF THE STATE IS TO FULFILL ITS CONSTITUTIONAL RESPONSIBILITIES OF MANAGING ITS FISHERIES RESOURCES TO SERVE THE MAXIMUM PUBLIC INTEREST AND TO PROVIDE THE MAXIMUM BENEFIT TO THE PEOPLE, THEN IT MUST ADOPT A STATE FISHERIES POLICY THAT INCORPORATES BIOLOGICAL,S SOCIAL AND ECONOMIC GOALS, AND IT MUST REORGANIZE THE STRUCTURE OF STATE FISHERIES PROGRAMS SO AS TO FACILITATE THE EFFICIENT REALIZATION OF THOSE GOALS."

## Part II, Organizational and Policy Recommendations

24

### A. GENERAL STATEMENT.

1. A STATE FISHERIES POLICY MUST BE DEVELOPED AND IMPLEMENTED, INCLUDING A STATEMENT OF GOALS WITH BENEFITS DEFINED. POLICY MUST CONTAIN MEASURABLE OBJECTIVES.
2. A PLAN OF IMPLEMENTATION MUST BE DEVELOPED THAT DESCRIBES GOALS AND OBJECTIVES AND IDENTIFIES NEEDED MODIFICATIONS IN GOVERNMENTAL STRUCTURE.
3. AN INDIVIDUAL MUST BE GIVEN A POSITION OF AUTHORITY TO

ENSURE SUCCESSFUL IMPLEMENTATION OF STATE FISHERIES  
POLICY.

B. FISHERIES POLICY STATEMENT

26

PURPOSE OF FISHERIES POLICY IS TWOFOLD. FIRST, OBJECTIVE ARTICULATION IS NEEDED TO PREVENT THE VALUES OF PUBLIC OFFICIALS AND INDUSTRY LEADERS FROM EXPRESSING THEMSELVES IN THE FORM OF PROGRAMS THAT DO NOT PRODUCE THE DESIRED EFFECT. SECOND, FISH POLICY WILL BE A MANAGEMENT TOOL FOR CONTROLLING, EVALUATING AND DIRECTING ACTIVITIES OF STATE GOVERNMENT. FISHERIES POLICY MUST BE A WORKING DOCUMENT.

Goal Statement

"IT IS THE POLICY OF THE STATE OF ALASKA THAT THE GOAL OF ALL GOVERNMENT ACTIVITIES INVOLVED WITH OR RELATED TO THE FISHERY RESOURCES OF THE STATE SHALL BE TO PERPETUALLY PRODUCT THE MAXIMUM ECONOMIC AND SOCIAL BENEFITS FOR THE PEOPLE OF THE STATE."

27

THE PROPER ROLE OF GOVERNMENT IS TO FACILITATE THE PERPETUAL PRODUCTION OF BENEFITS FOR PEOPLE. FISHERY ACTIVITIES OF STATE GOVERNMENT MUST THEREFORE CONTRIBUTE TO THE PRODUCTION OF THOSE BENEFITS.

Example Statement of Objectives and Activities

"IT IS THE INTENT AND PURPOSE OF THE STATE OF ALASKA TO:"

29

1. INCREASE THE NUMBER OF ALASKANS WHO PARTICIPATE IN HARVEST OF STATE'S FISHERY RESOURCE FROM \_\_\_ TO \_\_\_ THROUGH:

- a. A commercial fishing loan program.
- b. Others?

2. INCREASE INVESTMENT IN THE PROCESSING AND MARKETING SECTORS OF THE INDUSTRY FROM \_\_\_ TO \_\_\_ TO MAXIMIZE BENEFITS AND INVOLVEMENT TO ALASKANS THROUGH:

- a. Program for long term financing.
- b. A tax incentive program to encourage investment Alaskan owned facilities.

3. INCREASE HARVESTING AND PROCESSING BY ALASKANS OF THE RESOURCES IN FCZ FROM \_\_\_ TO \_\_\_ THROUGH

- a. loan programs for vessel conversions
- b. programs to provide markets for Alaskans
- c. phase-out of foreign fishing and processing
- d. Others?

4. INCREASE ANNUAL INVESTMENT IN MODERNIZATION OF PROCESSING FACILITIES FROM \_\_\_ TO \_\_\_ THROUGH:

- a. loan programs
- b. tax incentive
- c. others?

5. INCREASE INVESTMENT IN QUALITY IMPROVEMENT FROM \_\_\_ TO \_\_\_ THROUGH:

- a. Program of minimum quality standards for seafoods.
- b. Voluntary premium quality label program.
- c. Tax incentive program
- d. Loan program
- e. Others.

6. INCREASE EMPLOYMENT OF ALASKANS IN THE INDUSTRY FROM \_\_\_ TO \_\_\_ THROUGH:

- A. Educational programs to train Alaskans in food technology., business, marketing.

7. INCREASE THE QUANTITY OF FISHERY RESOURCES AVAILABLE FOR HARVEST BY ALASKANS FROM \_\_\_ TO \_\_\_ THROUGH:

- a. educational programs to skills of resource managers
- b. stock assessment programs to create a data base
- c. aquaculture programs to increase the harvestable number of salmon
- d. shellfish research programs to increase knowledge available to biologists
- e. others?

8. INCREASE CONSUMPTION OF ALASKAN SEAFOOD THROUGHOUT THE WORLD FROM \_\_\_ TO \_\_\_ THROUGH:

- a. expansion of ASMI
- b. adoption of a quality control program.
- c. others?

9. INCREASE THE QUANTITY OF FISHERY RESOURCES AVAILABLE TO SPORT FISHERMEN FROM \_\_\_ TO \_\_\_ THROUGH:

- A. Aquaculture of king and coho salmon.
- b. access to fishery resources through public acquisition of waterfront lands and construction of ramps etc.
- c. others

THE FOREGOING IS AN EXAMPLE OF THE STRUCTURE AND CONTENT OF OF THE DOCUMENT NEEDED FOR A COMPREHENSIVE REVIEW OF PROGRAMS PRIOR TO THE NEXT STATE BUDGET. AS WITH BUDGETING, POLICY REVIEW SHOULD BE AN ON-GOING ACTIVITY.

33

AGAIN, A FISHERIES POLICY COUNCIL IS NEEDED TO PROVIDE GOVERNMENT WITH INFORMATION OF SUCCESS AND FAILURE OF EXISTING PROGRAMS AND THE NEED FOR NEW PROGRAMS.

#### C. SPECIFIC ORGANIZATIONAL RECOMMENDATIONS

34

EXISTING PROGRAMS HAVE BEEN FOUND TO BE SUFFERING FROM A LACK OF COORDINATION, DEPARTMENTAL COOPERATION AND OVERALL MANAGEMENT.

IT IS THEREFORE RECOMMENDED THAT THE PRESENT STRUCTURE OF STATE PROGRAMS BE MODIFIED TO INCLUDE:

1. A FISHERIES POLICY ADVISORY COUNCIL
2. A SPECIAL STAFF ASSISTANT FOR FISHERIES IN THE GOVERNORS OFFICE

FISHERIES POLICY COUNCIL

IT IS IMPORTANT THAT RELATIONSHIP BETWEEN PUBLIC AND PRIVATE SECTORS BE ONE OF MUTUAL COOPERATION, COUNCIL WOULD PROVIDE A FORUM FOR GOVERNMENT-INDUSTRY INTERACTION.

ACTIVITIES OF THE COUNCIL WOULD COMPLEMENT, NOT DUPLICATE THE ACTIVITIES OF THE BOARD OF FISH.

THE COUNCIL WOULD ASSIST THE BOARD AND THE DEPARTMENT BY IDENTIFYING PROBLEMS WITH LONG TERM RAMIFICATIONS AND SUGGESTING POLICIES FOR SOLUTIONS

COUNCIL WOULD BE ADVISORY TO THE GOVERNOR. IT IS ESSENTIAL PART OF STATE'S FISHERIES MANAGEMENT SYSTEM.

SPECIAL STAFF ASSISTANT FOR FISHERIES

WILL SERVE AS LINK BETWEEN INDUSTRY INTERESTS, COMMISSIONERS, AND GOVERNOR.

35

MUST HAVE AUTHORITY TO INSURE INTERAGENCY COORDINATION AS PART OF THE GOVERNMENTAL PROCESS

Part III. Committee Reports

38

COMMITTEE FOR DEVELOPING AND STABILIZING ALASKA'S FISHING INDUSTRY.

GOAL

OPTIMUM DOMESTIC UTILIZATION OF ALL HARVESTABLE FISHERY RESOURCES WITHIN ALASKAN WATERS AND ADJACENT FCZ.

GOAL ENCOMPASSES NOT ONLY THE DOMESTIC DEVELOPMENT OF UNDERUTILIZED SPECIES, BUT ALSO DIVERSIFICATION OF EXISTING FULLY UTILIZES SPECIES INTO VALUE-ADDED PRODUCTS.

40

OVERVIEW OF THE INDUSTRY

41

LARGEST PRIVATE EMPLOYER. INDUSTRY IMPACT EXTENDS BEYOND COMMUNITIES AND PEOPLE DIRECTLY INVOLVED IN THE INDUSTRY.

THIS IS A VERY VOLATILE ECONOMIC BASE. IT IS BOOM AND BUST. FLUCTUATIONS IN RESOURCE, EXCHANGE RATE, AND MARKETS CAUSE FLUCTUATIONS IN EMPLOYMENT AND INCOME. THE RESULT IS ECONOMIC INSTABILITY SO LONG TERM PLANNING IS HINDERED.

INDUSTRY SUFFERS FROM LACK OF A SOUND FINANCIAL BASE, AND SO IS LESS ABLE TO WEATHER DIFFICULT ECONOMIC TIMES. PROCESSING SECTOR IS HEAVILY DEBT FINANCED, CAUSING INSTABILITY IN THE ENTIRE INDUSTRY.

FINANCIAL STABILITY DEPENDS UPON DIVERSIFICATION. DIVERSIFICATION IS NEEDED TO OVERCOME BOOM AND BUST HISTORY.

STABILITY AND DIVERSIFICATION ARE THUS LINKED AND BECOME THE PRIMARY FOCUS OF THE TASK FORCE.

#### ROLE OF GOVERNMENT

ROLE OF GOVERNMENT SHOULD BE TO COMPLEMENT AND SUPPORT THE NEEDS AND ACTIONS OF INDUSTRY AS THEY RELATE TO SPECIFIC DEVELOPMENT GOALS AND NEEDS. 44

GOVERNMENT HAS NOT ACTED TO SMOOTH THE COURSE OF PRIVATE INDUSTRY, NOR DOES IT UNDERSTAND THE NEEDS OF PRIVATE INDUSTRY. FOR GOVERNMENT TO ASSIST THE FISHING INDUSTRY IT MUST UNDERSTAND THE PROBLEMS IN THE INDUSTRY.

#### COMMERCE AND ECONOMIC DEVELOPMENT

THE PROGRAMS UNDER DCED HAVE BEEN REMARKABLE IN THEIR LACK OF DIRECTION, IMAGINATION, COMMITMENT AND ACCOMPLISHMENTS. 46

APPOINTMENTS TO DCED TRADITIONALLY HAVE LITTLE INDUSTRY EXPERIENCE IN FISHERIES.

SEAFOOD INDUSTRY OCCUPIES AN INSIGNIFICANT ROLE IN DCED AFFAIRS.

#### OFFICE OF COMMERCIAL FISHERIES DEVELOPMENT

OFFICE HAS NOT PRODUCED TO ITS EXPECTATIONS AND NEEDS OF THE INDUSTRY. THIS IS LARGELY BECAUSE OF ITS BEING USED AS A POLITICAL FOOTBALL, BY THE LACK OF COORDINATION AND BY LACK OF APPROPRIATE GOALS AND ERRATIC FUNDING. 47

IT IS RECOMMENDED THAT A DIVISION RATHER THAN AN OFFICE CONDUCT BUSINESS OF FISHERIES DEVELOPMENT.

#### ASMI

ASMI DESERVES ACCOLADES. ASMI FUNDING SHOULD BE INCREASED. ASMI NEEDS TO EMPHASIZE WHITE FISH MARKETING. 48

#### ADF&G

ADF&G MANAGES ON BIOLOGICAL CONSIDERATIONS. IT IS RECOMMENDED THAT THERE BE A FISHERIES DATA AND RESEARCH BANK FOR USE BY ALL GOVERNMENT AGENCIES. THIS WOULD BIO-ECONOMIC MANAGEMENT. LABOR AND COMMERCE, ECONOMIC DEVELOPMENT AND ENTRY COMMISSION WOULD ALSO CONTRIBUTE AND BENEFIT BY SUCH A SOURCE. 49

LACK OF ADF&G FUNDING MEANS LITTLE MONEY IS AVAILABLE FOR RESEARCH ON DUS (DOMESTIC UNDERUTILIZED SPECIES). RESULT IS LITTLE ENTRY INTO THESE FISHERIES.

ADF&G MUST INCREASE FORECAST ACCURACY TO STABILIZE INDUSTRY.

ADF&G SHOULD TAKE AN "ECOSYSTEM" APPROACH TO BIOLOGICAL MANAGEMENT.

MAXIMIZING ALASKAN INVOLVEMENT IN AND BENEFITS FROM DEVELOPMENT OF UNDERUTILIZED RESOURCES.

52

U.U. SPECIES ARE HARVESTED IN THE FCZ BY FOREIGN AND JOINT VENTURE FLEETS.

POTENTIAL IMPACT INCLUDES THOUSANDS OF JOBS.

ECONOMIC STABILITY FOR ALASKAN COMMUNITIES WOULD RESULT FROM DOMESTIC UTILIZATION OF THE RESOURCES.

MAIN IMPEDIMENTS ARE A LACK OF PROCESSING CAPACITY AND DOMESTIC MARKETS, INADEQUATE INFRASTRUCTURE, LACK OF DATA, LACK OF TECHNICAL EXPERTISE AND OF COST OF LABOR OVERHEAD.

NORWEGIANS PLACED PRIMARY EMPHASIS ON PORT AND HARBOR DEVELOPMENT WHEN DEVELOPING BOTTOMFISH INDUSTRY. THEY ASSUMED THAT DEVELOPMENT OF A FISHING INDUSTRY WOULD FOLLOW DEVELOPMENT OF FACILITIES.

PORTS AND HARBORS ARE NEEDED AS WELL AS FUEL STORAGE, TRANSPORTATION NETWORK WAREHOUSES, ETC.

COMMITMENT OF SHEFFIELD ADMINISTRATION TO MAXIMIZE BENEFITS TO THE STATE FROM FISHING ACTIVITY IN THE WATERS OFF ALASKA.

56

NEW ADMINISTRATION SHOULD MAKE A STRONG PLEDGE TO WORK TO ENSURE THE STABILITY OF FISHING INDUSTRY. A REORGANIZATION AND UPGRADING OF THE VARIOUS FISHERIES PROGRAMS THAT ARE SCATTERED THROUGH NUMEROUS DEPARTMENTS WOULD CONFIRM THIS COMMITMENT.

DEVELOPMENT OF FISH AND CHIPS POLICY

57

IT IS CRITICAL TO THE INDUSTRY DEVELOPMENT THAT EXPLOITATION OF THE RESOURCE BE USED AS A TOOL FOR THE DOMESTIC DEVELOPMENT OF THE INDUSTRY ITSELF, BUT NOT IN EXCHANGE FOR OTHER TRADE CONCESSIONS.

A SIMILAR POLICY SHOULD BE DEVELOPED ON BEHALF OF THE STATE. THE STATE SHOULD DEMAND A QUID PRO QUO FOR INVOLVEMENT BY VARIOUS USER GROUPS.

A TEAM OF STATE PERSONNEL SHOULD DEVELOP A LONG-TERM FISH AND CHIPS POLICY POSITION FOR THE STATE.

JOINT VENTURE AND FOREIGN PROCESSING

NPFMC MANAGEMENT AND ALLOCATION DECISIONS HAVE A LARGE EFFECT UPON THE DEVELOPMENT OF THE DOMESTIC INDUSTRY. NPFMC HAS THE AUTHORITY TO MAKE ALLOCATION DECISIONS THAT WOULD POSITIVELY IMPACT DOMESTIC DEVELOPMENT.

59

THE UNCONTROLLED GROWTH OF JOINT VENTURES MAY SERVE AS AN IMPEDIMENT TO THE DEVELOPMENT OF A DOMESTIC INDUSTRY. THE DOMESTIC INDUSTRY SHOULD INCLUDE REQUIREMENTS THAT THE FOREIGN PARTICIPANTS: ENGAGE IN, COOPERATIVE MARKETING ARRANGEMENTS, PURCHASE A POUNDAGE OF WHITEFISH FROM DOMESTIC OPERATIONS, UTILIZE AMERICAN LABOR. A JOINT VENTURE POLICY THAT DELINEATES THE RANGE OF J.V. OPERATIONS IN ORDER OF PREFERENCE SHOULD BE ESTABLISHED BY THE NPFMC.

RECOMMENDATION

A TEAM OF STATE PERSONNEL AND INDUSTRY REPRESENTATIVES NEEDS TO DEVELOP AND INTERIM POLICY POSITION OF THESE TWO IMPORTANT QUESTIONS WITHIN THE IMMEDIATE FUTURE. ALSO, AN ON-GOING EFFORT MUST CONTINUE IN ORDER TO DEVELOP A LONG-RANGE POSITION FOR THE STATE. THE POLICY POSITION FOR THE STATE MUST BE COORDINATED WITH THE NPFMC AS WELL AS WITH THE U.S. DPT. OF COMMERCE AND STATE AND OUR CONGRESSIONAL DELEGATION. SUCH A POSITION MIGHT WELL MIRROR THAT TAKEN BY THE NEW ENGLAND AND MID-ATLANTIC MANAGEMENT COUNCILS. (see appendix C.)

FOREIGN FISHING IN FCZ

THE PHASE OUT OF FOREIGN FISHING WITHIN THE EEZ OVER THE NEXT FIVE YEARS IS ENCOURAGED. SENATOR STEVEN'S CONCEPT OF THE EXCLUSIVE ECONOMIC ZONE IS SUPPORTED.

63

COMPREHENSIVE FISHERIES RELATED DATA BANK

DATA IS NEEDED FORM BIOLOGICAL INFORMATION, ECONOMIC AND SOCIAL IMPACT INFORMATION. DATA SHOULD BE CENTRALLY ACCESSIBLE.

64

A COMPREHENSIVE DATA BANK SHOULD BE DESIGNED USING FISHERIES DEVELOPMENT MONIES. THIS PROGRAM COULD BE DEVELOPED WITH KNOWLEDGE AND EXPERTISE OF ADF&G, CFEC, ASMI, NMFS AND U.OF AK.

STATEMENT OF NEED FOR DOMESTIC AT SEA PROCESSING

IT IS NEITHER ECONOMICALLY REALISTIC NOR ADVISABLE FOR BOTTOMFISH DEVELOPMENT TO BE EXCLUSIVELY SHOREBASED. A SIGNIFICANT OFFSHORE PROCESSING FLEET IS DESIRABLE. IT IS IN THE BEST INTEREST OF THE STATE TO RECOGNIZE THE VALUE OF A FLOATING PROCESSING FLEET.

65

RECOMMENDATION

STATE, FEDERAL GOVERNMENT AND INDUSTRY SHOULD PLACE SIGNIFICANT EMPHASIS ON INFRASTRUCTURE DEVELOPMENT,

INCLUDING DOCKS, HARBORS, REDUCTION FACILITIES,  
WAREHOUSES, FUEL STORAGE, ETC.

ENCOURAGE SECONDARY PROCESSING VALUE-ADDED PRODUCTS

66

SECONDARY PROCESSING IS TRADITIONALLY PERFORMED IN THE LOWER 48. SECONDARY PROCESSING REPRESENTS AN ADDITIONAL OPPORTUNITY TO STABILIZE THE INDUSTRY AND MAXIMIZE THE BENEFIT OF THE INDUSTRY TO ALASKA.

RECOMMENDATIONS

- THE RAW FISH TAX BE REDESIGNED TO GIVE INCENTIVES TO PRIVATE INDUSTRY TO DIVERSIFY AND DEVELOP NEW PRODUCTS.
- LONG-TERM LOW-INTEREST LOANS AND TAX INCENTIVES BE ALLOWED FOR ALASKAN SEAFOOD PROCESSING AND MARKETING MODERNIZATION.
- TAX INCENTIVES FROM MARINE FUEL TAX CREDITS, AND LOW-INTEREST LOANS BE PROVIDED TO HARVESTERS OF UNDERUTILIZED SPECIES.
- TAX ON FOREIGN FISH HARVESTS IN FCZ WATERS SHOULD BE INCREASED.

EXPANDED FISHERIES EXPORT EFFORT

69

A SEAFOOD EXPERT SHOULD BE PLACED IN THE ALASKA ASIAN OFFICE WITH SIGNIFICANT TRAVEL BUDGET.

THE STATE MUST RENEW ITS EFFORT AND PRESENCE IN EUROPE.

STATE SHOULD CONTINUE TO WORK TO ACCOMPLISH THE JOINT INTERNATIONAL TRADE PROGRAM WITH U.S. INTERNATIONAL TRADE ADMINISTRATIONS.

TRAINING AND RESEARCH AND DEVELOPMENT PROGRAMS

71

THESE PROGRAMS ARE ESSENTIAL TO MINIMIZE THE ECONOMIC RISKS. ENGLAND, NORWAY, ICELAND AND JAPAN HAVE EDUCATION AND RESEARCH AND DEVELOPMENT PROGRAMS OF INDUSTRY MEMBERS. THE MAJORITY OF SEA GRANT MONIES ARE COMMITTED TO THE U. OF WASHINGTON. MORE OF THIS MONEY SHOULD BE DIRECTED TO DEVELOPING THE FISHERIES OF THE NORTH PACIFIC.

PROGRAMS SHOULD BE COORDINATED WITH AFDF, NMFS, AND THE (PROPOSED) FTC IN KODIAK.

UNIVERSITY SHOULD MAKE AN EFFORT TO WIN A LARGER SHARE OF THE SEA GRANT MONEY.

SUMMATION

72

THE HEALTH OF ALASKA'S FISHING INDUSTRY HINGES ON STABILITY, DIVERSIFICATION AND DEVELOPMENT. IT IS TIME TO BRING OUR RESOURCE HOME FOR OUR OWN BENEFIT.

## I. ALASKA RESOURCES CORPORATION

84

### RECOMMENDATION

ARC SHOULD CEASE TAKING OVER FAILING COMPANIES AND THEIR SELECTION PROCESS SHOULD BE TIGHTENED. ARC'S ROLE SHOULD BE REDEFINED, AND ARC SHOULD PHASE OUT OWNERSHIP ONCE THE VIABILITY OF THE COMPANY HAS BEEN ESTABLISHED.

## II. INTERNATIONAL TREATIES

85

TREATY AGREEMENTS HAVE NOT BEEN FAVORABLE TO ALASKA'S INTERESTS. THERE IS NO APPARENT STATE POLICY IN ANY EXISTING OR FUTURE TREATY NEGOTIATIONS.

### RECOMMENDATIONS

- THE STATE SHOULD FORM A FIRM NEGOTIATING POSITION IN TREATY SITUATIONS;
- FISHING INDUSTRY MEMBERS SHOULD BE INVOLVED IN DEVELOPING ALASKA'S POSITIONS AND MONITORING NEGOTIATIONS,
- A FISHERY PRESENCE SHOULD BE CREATED IN D.C. BY ADDING A FISHERIES POSITION UNDER JOHN KATZ.
- TREATY POSITION SHOULD BE TO MAXIMIZE THE BENEFITS TO THE ALASKA SEAFOOD INDUSTRY.
- ALASKA POSITION ON TREATIES BE COMMUNICATED TO COUNCILS, COMMISSIONS, BOARDS, AND OTHER ENTITIES.
- CONGRESSIONAL DELEGATION AND INDUSTRY OFFICIALS SHOULD AGREE ON AND SUPPORT ALASKA POSITION.
- TREATIES SHOULD BE PROCESSED THROUGH A CENTRAL POSITION SUCH AS GOVERNORS FISH ADVISOR.
- BENEFITS FROM COMPLIANCE FROM TREATIES SHOULD BE DEFINED FOR ALASKANS.
- TREATIES SHOULD INCLUDE A RENEGOTIATION CLAUSE FOR ALASKANS TO ADJUST TO UNANTICIPATED EVENTS.

## III. INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION

87

INPFC DOES NOT COORDINATE WELL WITH STATE AND OTHER REGULATORY AGENCIES. APPOINTMENTS ARE MADE BY FEDERAL GOVERNMENT, WITH ALASKA HAVING NO FORMAL CONTROL OVER THE ACTIVITIES OF THE INPFC.

### RECOMMENDATIONS

- THE STATE SHOULD HAVE A WORKING RELATIONSHIP WITH THE INPFC.
- THE STATE SHOULD MAKE INFORMAL RECOMMENDATIONS FOR APPOINTMENTS TO THIS BODY.
- GOVERNORS FISH ADVISOR SHOULD DISCUSS THE ALASKAN POSITIONS WITH MEMBERS OF THE INPFC BEFORE MEETINGS.
- INPFC SHOULD BE REQUESTED TO FORMULATE REGULATIONS TO ELIMINATE THE INTERCEPTION OF ALASKA STOCKS BY JAPANESE HIGH SEAS FLEETS.
- ALASKA SHOULD ASK STATE DPT. TO RENEGOTIATE INPFC CONVENTION FOR A BAN ON FOREIGN HIGH SEAS SALMON FISHERIES.
- THE STATE SHOULD ALLOCATE A LARGER PORTION OF CAPITAL AND OPERATIONAL BUDGETS TO FISHERIES PROGRAMS.

89

## IV. BUDGET

THERE IS A LACK OF COORDINATION AMONG PROGRAMS AND LACK OF RESOURCE INVESTMENT IN THE FUTURE ECONOMIC DEVELOPMENT OF FISHERIES. THE BUDGET PROCESS IS INSULATED FROM PUBLIC INPUT.

RECOMMENDATIONS

- INDUSTRY REPRESENTATIVES SHOULD PARTICIPATE IN POLICY FORMULATION, INCLUDING OBJECTIVES AND ACTIVITIES FOR DETERMINING BUDGET PRIORITIES.
- MORE EFFORT AND FUNDING BE EXPENDED FOR RESEARCH THAT EXPANDS THE RESOURCE KNOWLEDGE OF FISHERIES MANAGERS.
- BUDGETS FOR FISHERIES AGENCIES SHOULD HAVE GOALS AND OBJECTIVES STATED.
- FISH PROGRAMS SHOULD REALLOCATE RESOURCES TOWARDS ACTIVITIES WHICH MOST BENEFIT ALASKAN FISHERIES.

V. COMMERCIAL FISHERIES DIVISION MANAGEMENT

91

MANAGEMENT METHOD OF COMMERCIAL FISHERIES DIVISION HAS AGGRAVATED FLUCTUATION OF FISHERY STOCKS. THERE ARE THREE CAUSES OF THIS.

- 1) LACK OF KNOWLEDGE OF THE RESOURCES
- 2) A PURELY BIOLOGICAL APPROACH TO FISHERIES MANAGEMENT, NEGLECTING SOCIAL AND ECONOMIC FACTORS.
- 3 THE DEPARTMENT AND DIVISION EMPHASIZES MANAGEMENT OVER ALL OTHER CONSIDERATIONS, AT THE COST OF BIOLOGICAL KNOWLEDGE.

RECOMMENDATIONS

A THOROUGH REVIEW OF MANAGEMENT PRACTICES AND PERSONNEL OF ADF&G IS NEEDED.

VI TAXATION

REVENUES ARE GENERATED BY THE ASMI TAX, NON-PROFIT AQUACULTURE TAX, AND RAW FISH TAX. MANY LOCAL GOVERNMENTS ARE IMPOSING A TAX ON RAW FISH SALES. THE CURRENT TAXING STRUCTURE DOES NOT ENCOURAGE ALASKA-BASED OPERATIONS NOR DEVELOPING FISHERIES.

94

RECOMMENDATIONS

- THE STATE SHOULD EVALUATE THE EXISTING FISHERIES RELATED TAXING PROGRAMS, AND DISTRIBUTION OF THE TAXES.
- THE STATE SHOULD CONSIDER A TAX INCENTIVE PROGRAM. ALASKA TAXING PROGRAM SHOULD ENCOURAGE INCREASES IN SHORE-BASED OPERATIONS OF ALL KINDS.

VII. OFFICE OF COMMERCIAL FISHERIES DEVELOPMENT

95

A LARGE NUMBER OF SMALL PROGRAMS IN EXISTENCE ARE NOT ADDRESSING THE NEEDS OF THE INDUSTRY. SPECIFIC DIRECTION IS NEEDED.

RECOMMENDATIONS

"SUNSETTING" THE PROGRAM WAS CONSIDERED, BUT RATHER IT IS RECOMMENDED TO REORIENT THE PROGRAMS INTO A FEW THAT DIRECTLY ADDRESS THE NEEDS OF THE INDUSTRY.

VIII. ALASKA SEAFOOD MARKETING INSTITUTE

96

ASMI HAS MADE A CONTRIBUTION TO SALES AND PUBLIC AWARENESS OF ALASKA SEAFOOD.

RECOMMENDATIONS

- THE STATE SHOULD DEVOTE MORE DOLLARS TO GENERIC PROMOTION THROUGH ASMI
- THE INDUSTRY COMPOSITION OF ASMI MUST BE MAINTAINED
- THE DOLLAR ALLOCATION BY SPECIES SHOULD BE CONDUCTED WITH THE INTENTION OF PROMOTING DEVELOPING FISHERIES PRODUCTION.
- ASMI SHOULD CONTINUE PROMOTING QUALITY IMAGE.

IX. EDUCATION

97

THE UNIVERSITY IS NOT ADEQUATELY ADDRESSING THE STATES FISHERIES.

RECOMMENDATIONS

- THE UNIVERSITY SHOULD OFFER A GREATER VARIETY OF PROGRAMS ON VARIOUS FACETS OF FISHERIES. THERE SHOULD BE MORE ECONOMIC ANALYSIS, MORE SCIENCE AND TECH., AND MORE INDUSTRY MANAGEMENT EMPHASIS.
- UNIVERSITY ADMINISTRATORS SHOULD WORK WITH THE FISHERIES POLICY COUNCIL IN PLANNING RESEARCH PROGRAMS.

X. RESEARCH

99

RESEARCH IS CENTRAL TO MAXIMIZING BENEFITS TO ALASKANS AND IN GIVING ALASKAN FISHERIES A LEVEL OF STABILITY.

RECOMMENDATIONS

- THE ADMINISTRATION SHOULD INSTRUCT ADF TO REORIENT BUDGETS TO INCLUDE MORE HARD SCIENTIFIC RESEARCH. TRADITIONALLY RESEARCH HAS ONLY BEEN GIVEN PRIORITY IN CRISIS SITUATIONS.
- MORE RESEARCH IS NEEDED IN THE FOLLOWING AREAS
  - 1) Migratory research
  - 2) Ocean condition research
  - 3) Habitat research
  - 4) Stock origin research
  - 5) Reproduction and life cycle research
  - 6) Ecosystem research. This is needed to bring management by ADF&G the beyond single species approach.
  - 7) University - based research
  - 8) The state should allocate research funds for the purpose of improving forecasting accuracy.

XI. DOMESTIC AND INTERNATIONAL FISHERIES ADVISOR

102

A POSITION SHOULD BE ESTABLISHED FOR A FISHERIES POSITION IN THE GOVERNOR'S OFFICE TO ASSIST THE GOVERNOR IN IMPLEMENTING AND COORDINATING THIS FISH POLICY.

XII. PORT AND HARBOR DEVELOPMENT

103

THERE IS A LACK OF OBJECTIVE, CONSTRUCTIVE CRITERIA FOR ALLOCATING STATE FUNDS TO PORTS AND HARBORS.

RECOMMENDATIONS

- D.O.T.P.F. SHOULD COMMUNICATE WITH LOCAL PEOPLE PRIOR TO DESIGN AND LOCATION OF HARBORS.
- THE STATE SHOULD ADOPT A POLICY THAT ENCOURAGES HARBOR DEVELOPMENT AND SITING THAT WILL SERVE DEVELOPING FISHERIES.
- THE STATE SHOULD CONDUCT A COST-BENEFIT ANALYSIS OF COMPETING HARBOR PROJECTS. EMPLOYMENT, INCOME TO ALASKANS, SAFETY AND SHORE-BASED DEVELOPMENT SHOULD BE SELECTION CRITERIA.
- THE STATE SHOULD IDENTIFY MAJOR PORT SITES FOR HARBORS, AND PROCESSING, DISTRIBUTION, AND SERVICE. SUCH PLANNING COULD DISPLACE SOME OF THE SEATTLE - BASED DISTRIBUTION SYSTEM.

XIII. WATER AND SEWER DEVELOPMENT

104

FISHERIES DEVELOPMENT PLANNING SHOULD INCLUDE IDENTIFYING WATER AND SEWER NEEDS.

XIV. NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL

MAJOR PROBLEMS WITH THE NPFMC ARE

- 1) decisions of the council have not served to produce benefits to Alaskans in a manner consistent with State policy.
- 2) the council suffers from divided interests by members and others.

RECOMMENDATIONS

- ALASKA APPOINTEES SHOULD COMMUNICATE WITH STATE FISHERIES OFFICIALS, THE BOARD OF FISH AND THE GOVERNOR. ALASKA MEMBERS MUST UNDERSTAND ALASKA POSITION ON ISSUES.
- DOMESTIC PROCESSING AND HARVESTING INTERESTS SHOULD BE GIVEN CONSIDERATION FOR THE RESOURCE ALLOCATIONS BY THE COUNCIL.
- THE COUNCIL SHOULD IDENTIFY SPECIES FOR DOMESTIC HARVEST AND PROCESSING.

XV. BOARD OF FISH.

106

THE BOARD OF FISH MUST MAINTAIN ITS STATUS AS A LAYPERSON'S BOARD, AND IT MUST BE KEPT INFORMED OF THE STATE'S FISHERY POLICY.

RECOMMENDATIONS

- THE GOVERNOR'S OFFICE SHOULD CLARIFY THE RELATIONSHIP BETWEEN THE BOARD AND THE COMMISSIONER'S OFFICE AND THE GOVERNOR'S OFFICE.

- THE CHAIRMAN OF THE BOARD SHOULD REPORT DIRECTLY TO THE GOVERNOR AND THE COMMISSIONER.
- THE CHAIRMAN OF THE BOARD OF FISH, THE COMMISSIONER OF DCED, THE COMMISSIONER OF ADF&G, THE CHAIRMAN OF NPFMC, THE GOVERNOR'S FISHERIES ADVISOR, AND THE CHAIRMEN OF CFEC SHOULD MEET REGULARLY TO COORDINATE FISH POLICY.
- THE BOARD SHOULD GET FORMAL ECONOMIC INPUT FROM THE STATE TO BALANCE MANAGEMENT, BIOLOGICAL AND ECONOMIC FACTORS.
- THE GOVERNOR SHOULD DRAFT CRITERIA TO BE USED BY THE BOARD WHEN MAKING AN ALLOCATIVE DECISION.
- CFEC AND DCED SHOULD JOINTLY PREPARE ECONOMIC INFORMATION FOR THE BOARD.

XVI. FISHERIES MANAGEMENT

109

RECOMMENDATIONS

- EACH AGENCY SHOULD DISCARD EXISTING GOALS, AND DEFINE WHAT THEY EXPECT TO ACCOMPLISH WITH RESPECT TO FISHERIES DEVELOPMENT.
- MEASURES OF PERFORMANCE SHOULD BE EXPRESSED IN TERMS OF PROGRESS TOWARD GOALS. (i.e. IT IS MORE IMPORTANT TO MAKE 10 CONTACTS AND ARRESTS WITH MAJOR FOREIGN VESSELS THAN IT IS TO MAKE 10,000 CONTACTS WITH SPORT FISHERMEN ON THE KENAI RIVER.
- THE STATE SHOULD REVIEW THE PROFESSIONAL CAPABILITIES OF FISHERIES MANAGERS.
- AN EVALUATION OF FISHERIES MANAGEMENT PROGRAMS SHOULD BE CONDUCTED AT THE END OF EACH CYCLE.

XVII. ALLOCATION DECISIONS

111

THE BOARD OF FISH, THE NPFMC AND INPFC ALL MAKE ALLOCATION DECISIONS AS DO FISHERIES MANAGERS.

RECOMMENDATIONS

- ALLOCATION DECISIONS SHOULD MAXIMIZE BENEFITS TO ALASKANS. CRITERIA MIGHT INCLUDE, TRADITIONAL USAGE, RESIDENCY, ECONOMIC DEPENDENCY, HARVESTABLE VALUE, ECONOMIC BENEFIT OR HARM OF ALLOCATIVE DECISION.
- THE STATE SHOULD GET LEGAL COUNCIL ON ALLOCATION CRITERIA
- THE STATE SHOULD INITIATE A PROCESS FOR LONG TERM CHANGES IN RESOURCE ALLOCATION.

XVIII. GOVERNOR'S OFFICE IN D.C.

112

THE GOVERNOR'S OFFICE IN D.C. SHOULD INCLUDE A PERSON KNOWLEDGEABLE IN FISHERIES ISSUES.

XIX. ON-GOING STATE FISHERIES COUNCIL

113

A PERMANENT INDUSTRY BASED FISHERIES ADVISORY GROUP SHOULD BE ESTABLISHED. THE GROUP WOULD PARTICIPATE IN BUDGET PLANNING AND EVALUATION.

XX. ENFORCEMENT

ENFORCEMENT DIVISION LACKS DIRECTION, GOALS AND MEASURES OF PERFORMANCE. THEY SEEM TO CONCENTRATE ON QUANTITY RATHER THAN QUALITY OF THEIR ACTIVITIES.

#### RECOMMENDATIONS

- THE DIVISION SHOULD SET NEW GOALS AND RELATE THEM TO MAXIMIZING THE BENEFIT TO ALASKA'S FISHERIES
- THE DIVISION SHOULD PRIORITIZE ITS ENFORCEMENT ACTIVITIES ACCORDING TO LOSS TO THE STATE AND ITS CITIZENS.
- THERE SHOULD BE A COOPERATIVE EFFORT BY FEDERAL AND STATE LAW ENFORCEMENT PERSONNEL.
- THERE SHOULD BE 100 PERCENT OBSERVER COVERAGE OF FOREIGN FISHING VESSELS IN AMERICAN WATERS.

#### XXI REGULATORY POLICY

115

THE REGULATORY POLICY SHOULD BE GOVERNED BY THE GOALS AND OBJECTIVES OF THE STATE'S FISHERY POLICY. THE SOCIOECONOMIC IMPACT OF REGULATORY MEASURES SHOULD BE ASSESSED BEFORE THE MEASURES ARE IMPLEMENTED.

#### XXII POLICY TOWARD EXISTING FISHERIES

THE STATE SHOULD MAINTAIN AND ENHANCE THE WELL BEING OF ALASKA'S EXISTING WHEREVER POSSIBLE.

#### RECOMMENDATIONS

- THE STATE POLICY SHOULD SUPPORT THE MAINTENANCE AND ENHANCEMENT OF EXISTING FISHERIES AND RESOURCES.

#### XXIII. ORGANIZATIONAL RECOMMENDATIONS

116

- 1) APPOINT A GOVERNOR'S DOMESTIC AND INTERNATIONAL FISHERIES ADVISOR.
- 2) APPOINT A FISHERIES STAFF PERSON IN THE ALASKAN OFFICE IN D.C.
- 3) REPLACE THE OFFICE OF COMMERCIAL FISHERIES DEVELOPMENT WITH A DIVISION OF FISHERIES DEVELOPMENT. THE DIVISION WOULD HAVE EQUAL STATUS WITH THE DIVISION OF TOURISM AND WOULD COORDINATE THE FISHERIES WITHIN THE DEPARTMENT.
- 4) FISHERIES RELATED PROGRAMS SHOULD BE COORDINATED THROUGH THE GOVERNOR'S SPECIAL STAFF ASSISTANT FOR FISHERIES
- 5) THE GOVERNOR SHOULD SET UP A FISHERIES CABINET CONSISTING OF THE CHAIRMAN OF THE CFEC, THE CHAIRMAN OF THE BOARD OF FISH, THE COMMISSIONER OF ADF&G, AND COMMISSIONER OF DCED, AND THE GOVERNOR'S STAFF ASSISTANT.
- 6) FISHERIES POLICY COUNCIL SHOULD BE APPOINTED TO PARTICIPATE IN THE BUDGET PLANNING PROCESS, PERFORMANCE EVALUATION AND TO PROVIDE INPUT TO THE GOVERNOR AND PROGRAM MANAGERS.

7) DCED SHOULD REORIENT ITS FISHERIES AND ECONOMIC RESEARCH PROGRAMS TO TAKE AN ACTIVE ROLE IN FISHERIES ECONOMIC DEVELOPMENT.

8) STATE ECONOMIC PARTICIPATION IN FISHERIES SHOULD BE EXPANDED TO CONTRIBUTE TO THE SAME EXTENT AS ITS BIOLOGICAL COUNTERPARTS.

COMMITTEE ON MARKETING AND QUALITY ASSURANCE

132

STRIKES

IT IS RECOMMENDED THAT THE GOVERNMENT NOT GET INVOLVED IN ANY FISH PRICE DISPUTE. THE COMMISSIONER OR DEPUTY OF THE DEPARTMENT OF LABOR COULD SERVE AS AN INFORMAL NON-BINDING MEDIATOR

PRICES TO FISHERMEN

133

PRICE TO FISHERMEN SHOULD BE DETERMINED IN A FREE AND OPEN MARKET. THE STATE SHOULD CONTINUE TO SUPPORT EXISTING AUTHORITY FOR THE FORMATION OF COOPERATIVES AND MARKETING ASSOCIATIONS. THE DEPARTMENT SHOULD ATTEMPT TO ALLOW HARVESTING WHEN STOCKS ARE IN PRIME CONDITION.

QUALITY CONTROL.

ASMI SHOULD CONTINUE ITS VOLUNTARY PREMIUM LABEL CONCEPT, AND GUIDELINES FOR GUIDELINES FOR HANDLING FROM THE WATER TO THE TABLE ARE SUPPORTED.

MARKETING

134

MARKETING STUDIES HAVE NOT BEEN HELPFUL IN THE PAST IN NEGOTIATING PRICES. THE STATE SHOULD PROVIDE THE VEHICLE FOR THE VOLUNTARY REPORTING OF AVERAGE PRICES WHERE PARTIES REQUEST IT.

PROCESSOR PROFITS

PROCESSOR PROFITS OUGHT NOT TO BE A MATTER OF STATE REGULATION. THE STATE SHOULD REVIEW TAXING AND REGULATORY POLICIES WITH THE INTENT OF CREATING A BENEFICIAL REGULATORY AND TAXING CLIMATE FOR GROWTH OF THE PROCESSING INDUSTRY.

FOREIGN PHASE-OUT

THE GOVERNOR SHOULD SUPPORT THE PHASE-OUT OF FOREIGN FISHING AND PROCESSING WITHIN THE FCZ.

ASMI

ASMI'S BUDGET SHOULD BE SUPPORTED.

135

COMMITTEE ON FINANCE AND INVESTMENT

136

A. COMMERCIAL FISHING LOAN PROGRAM

136

THE PROGRAM PROVIDES ALASKANS THE FINANCING NECESSARY FOR THE PURCHASE OF COMMERCIAL FISHING ENTRY PERMITS AND VESSELS. IF ALASKA IS TO MAINTAIN AND PROMOTE THE DEVELOPMENT OF A STRONG AND VIABLE RESIDENT COMMERCIAL FISHING INDUSTRY, THEN THIS PROGRAM IS AN ABSOLUTE NECESSITY.

THE PROGRAM IS NOT INTENDED TO GENERATE A PROFIT. RATHER THE STATE IS COMPENSATED BY INDIRECT ECONOMIC BENEFITS PRODUCED BY A RESIDENT FISHING FLEET. THE FOCUS OF THE LEGISLATION IS FOR A PROGRAM OF SERVICE FOR A SOURCE OF FINANCING TAILORED TO THE NEEDS AND CIRCUMSTANCES OF THE INDUSTRY.

THE PERFORMANCE OF THE PROGRAM HAS REFLECTED THESE GOALS. LENDING PERSONNEL HAVE EXPRESSED ARROGANCE, INSENSITIVITY AND CONDESCENSION.

138

RECOMMENDATIONS

1. THE PROGRAM SHOULD HAVE TWO GOALS. FIRST, THEY SHOULD MAKE LONG-TERM LOANS AVAILABLE TO ALASKANS FOR PERMITS AND COMMERCIAL VESSELS.

SECOND, THE INTERESTS OF THE STATE SHOULD BE PROTECTED BY COMPETENT PROFESSIONALS WHO ARE SKILLED LOAN ISSUES AND KNOWLEDGEABLE ABOUT THE FISHING INDUSTRY.

THE EXISTING PROGRAM SHOULD BE IMPROVED, OR DISSOLVED AND GIVEN OVER TO PRIVATE INSTITUTIONS.

2. IF THE PROGRAM IS RETAINED, THE FOLLOWING CHANGES ARE RECOMMENDED:

- A. THERE SHOULD BE A SYSTEM FOR PREQUALIFYING APPLICANTS.

- B. SPECIFIC CRITERIA FOR LOAN EXTENSION REQUESTS SHOULD BE ADOPTED. THE FOLLOWING PROBLEMS HAVE BEEN EXPERIENCED BY BORROWERS:

- 1) UNWILLINGNESS BY LOAN OFFICERS TO WORK WITH BORROWERS EXPERIENCING PROBLEM LOANS.

- 2) OVERLY STRINGENT REQUIREMENTS FOR EXTENSION REQUESTS.

- 3) ADVERSARIAL ATTITUDES BY LOAN OFFICERS TOWARDS BORROWERS.

- C. THE DIVISION OF BUSINESS LOANS SHOULD REQUEST PERMIT VALUATIONS FROM THE CFEC.

- D. SPECIFIC PERSONNEL SHOULD BE DELEGATED THE PRIMARY RESPONSIBILITY FOR FISHING LOANS SO THAT THOSE

INDIVIDUALS MAY DEVELOP A FUND OF KNOWLEDGE ABOUT FINANCES OF FISHING.

E. THERE SHOULD BE A METHOD OF ON-GOING PROGRAM EVALUATION.

F. THERE SHOULD BE AN APPLICATION INSTRUCTION MANUAL TO ASSIST APPLICANTS WHO ARE NOT SOPHISTICATED BORROWERS.

G. THERE SHOULD BE A CIRCUIT RIDER PROGRAM TO BRING THE PROGRAM TO THE FISHERMEN.

H. COLLATERAL REQUIREMENTS SHOULD BE REVIEWED.

B. COMMERCIAL FISHERIES ENTRY COMMISSION

143

THE PURPOSE OF CFEC IS THREE-FOLD.

- 1) ENHANCING THE ECONOMIC BENEFIT TO FISHERMEN
- 2 CONSERVING THE FISHERY
- 3) AVOIDING UNJUST DISCRIMINATION IN ALLOCATION OF PERMITS.

TO THESE ENDS, THE COMMISSION IS TO "...REGULATE ENTRY INTO THE COMMERCIAL FISHERIES FOR ALL FISHERY RESOURCES IN THE STATE;" AND "...TO REDUCE THE NUMBER OF OUTSTANDING ENTRY PERMITS TO THE OPTIMUM NUMBER OF ENTRY PERMITS." THROUGH THE ADMINISTRATION OF A BUY-BACK PROGRAM.

THE COMMISSION HAS ENGAGED IN ONLY THE FIRST ACTIVITY.

THE PURPOSES FOR WHICH CFEC WERE FORMED ARE STILL VALID. THE PROGRAM IS NOT PERFECT, BUT NECESSARY.

THE COMMISSION HAS A HIGH CALIBER STAFF. IT HAS DEVELOPED A GOOD INFORMATION SYSTEM THAT IS PRODUCING DATA FOR AN ECONOMIC UNDERSTANDING OF COMMERCIAL FISHERIES.

RECOMMENDATIONS

1. COLLATERAL VALUES OF PERMITS SHOULD REFLECT CURRENT MARKET CONDITIONS FOR PURPOSES OF THE LOAN PROGRAM.
2. THE CFEC OFFICE IN KODIAK SHOULD BE CONTINUED.
3. THE CFEC OFFICE IN ANCHORAGE SHOULD BE EXPANDED.
4. THE REPRESENTATIVES OF CFEC, THE BOARD OF FISH, AND DNR SHOULD MEET TO RESOLVE CONFLICTS IN PERMITS AND MANAGEMENT REGULATIONS.

PROBLEMS TO BE FURTHER ADDRESSED 1. THE BUY-BACK PROGRAM IS NOT A DESIRABLE METHOD FOR REDUCING THE NUMBER OF PERMITS. ALTERNATIVE METHODS SHOULD BE INVESTIGATED.

2. THE COST OF PERMITS IS AN OBSTACLE TO INCREASING ALASKAN PARTICIPATION IN SOME FISHERIES. THE DEPARTMENT OF LAW SHOULD INVESTIGATE POSSIBLE SOLUTIONS SUCH AS THE CONCEPT OF A QUOTA PERMIT SYSTEM.

3. THE NEED AND JUSTIFICATION FOR EXTENDING THE LIMITED ENTRY PROGRAM TO OTHER FISHERIES SHOULD BE INVESTIGATED.

SUBCOMMITTEE ON HABITAT

148

DNR PLANNING AND CLASSIFICATION REGULATIONS.

DNR'S PLANNING AND CLASSIFICATION PROPOSALS DO NOT ACKNOWLEDGE THE NEEDS OF RENEWABLE RESOURCES.

PROPOSED REGULATIONS ALLOW STATE -OWNED LANDS TO BE CLASSIFIED AS COAL, MINERAL, OIL OR GAS LANDS. ON THESE LANDS DEVELOPMENT OF NON-RENEWABLE RESOURCES DEVELOPMENT BECOMES THE PRIMARY USE. PROTECTION OF FISH SPAWNING AREAS WILL NOT BE REQUIRED.

THE PROPOSED PLANNING AND CLASSIFICATION REGULATIONS REQUIRE MORE THOROUGH REVIEW.

PERMIT REFORM

149

STREAMLINING THE RESOURCE AGENCIES' PERMIT PROCESS CAN IMPROVE EXISTING REGULATORY FUNCTIONS.

CONFLICTS IN RESOURCE DEVELOPMENT AMONG STATE AGENCIES SHOULD BE RESOLVED IN THE OFFICE OF MANAGEMENT AND BUDGET OR IN THE GOVERNOR'S OFFICE.

MARINE OIL POLLUTION

151

OFFSHORE OIL EXPLORATION, DEVELOPMENT AND PRODUCTION POSES A THREAT TO ALASKA'S FISHERIES AND WILDLIFE POPULATIONS.

NECESSARY RESEARCH MUST BE CONDUCTED. THE STATE MUST BE COMMITTED TO THE TWIN TASKS OF ENSURING ADEQUATE RESEARCH AND ENERGY IMPACT PLANNING IF MARINE FISHERIES AND WILDLIFE RESOURCES ARE TO BE MAINTAINED.

INSTREAM FLOW LAW

152

THIS AMENDMENT TO THE ALASKA WATER USE ACT MAKES IT POSSIBLE TO RESERVE ENOUGH WATER IN A STREAM OR RIVER TO ALLOW: PROTECTION OF FISH AND WILDLIFE HABITAT, MIGRATION AND PROPAGATION; RECREATION; NAVIGATION AND WATER QUALITY MAINTENANCE.

ALTHOUGH THE AMENDMENT WAS PASSED IN 1980, THE DEPARTMENT STILL HAS NOT IMPLEMENTED IT. THE REGULATION SHOULD BE IMPLEMENTED AS SOON AS POSSIBLE.

BRISTOL BAY COOPERATIVE LAND USE PLAN

154

THE ALTERNATIVES FAVORABLE FOR PERPETUATION OF FISH AND WILDLIFE RESOURCES, THE MORE RESTRICTIVE OPTIONS SHOULD BE ADOPTED.

LAND USE PLANS SUCH AS THOSE DEVELOPED FOR BRISTOL BAY COULD BE OF USE IN THE REST OF THE STATE.

MINING

COAL AND OTHER SURFACE MINING CAN BE DETRIMENTAL TO THE LONG-TERM PRODUCTION OF FISHERY AND WILDLIFE RESOURCES.

THE STATE NEEDS TO DEVELOP DATA ON FISH AND WILDLIFE RESOURCES THAT MAY BE AFFECTED BY MINING ACTIVITIES. THE STATE SHOULD DEVELOP COST-EFFECTIVE RECOMMENDATIONS FOR MITIGATING IMPACTS TO FISH AND WILDLIFE HABITAT.

PLACER MINING

157

UNREGULATED PLACER MINING CAN DEGRADE AQUATIC HABITAT. DEC AND ADF&G'S HABITAT DIVISION MUST BE STAFFED AND COORDINATED TO ENSURE THAT REGULATIONS ARE MET. STREAM RECLASSIFICATION SHOULD BE DONE UNDER CLOSE SCRUTINY.

CORPS OF ENGINEERS WETLANDS PERMITS (SECTION 404)

THE CORPS IS PROPOSING TO CHANGE ITS 404 PERMIT PROGRAM FROM INDIVIDUAL, CASE BY CASE TO A NATIONWIDE, BLANKET PERMIT. THIS WILL REDUCE THE ABILITY TO PROTECT WETLANDS.

THE GOVERNOR AND THE CONGRESSIONAL DELEGATION SHOULD TAKE A STRONG STAND TO RETAIN THE 404 PERMIT PROGRAM IN ITS PRESENT FORM.

LOGGING AND FISHERY HABITAT

TIMBER HARVEST AND ASSOCIATED ROAD CONSTRUCTION RESULTS IN UNAVOIDABLE IMPACT ON SUSTAINABLE PRODUCTIVITY OF FISHERY HABITAT.

THE GOVERNOR SHOULD DIRECT ADF&G AND OTHER AGENCIES TO RESEARCH BIOLOGICAL AND ECONOMIC IMPACT OF LOGGING ACTIVITIES ON SPORT, SUBSISTENCE AND COMMERCIAL FISHERIES. THE STATE SHOULD ALSO PLACE INCREASED EMPHASIS ON ENFORCEMENT TO ENSURE THAT TIMBER HARVESTERS COMPLY WITH REGULATIONS.

# Senator Johne Binkley

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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

March 11, 1987

TO: SENATOR JACK COGHILL, CHAIRMAN  
Senate Resources Committee

FROM: SENATOR JOHNE BINKLEY *Johne*

SUBJ: Scheduling of SB 53, "An Act relating to the Board  
of Fisheries"

Senate Bill 53 remedies a situation which threatens the livelihood of hundreds of commercial herring fishermen in western Alaska. I am most concerned that the local fishermen be afforded the opportunity to develop the necessary knowledge and skills and upgrade their vessels and gear so that they may eventually be able to compete in the western Alaska commercial herring fisheries. I believe this bill adequately and fairly addresses this problem.

This bill has been referred to the Senate Resources Subcommittee on Fisheries, which has reviewed the bill and recommends a committee substitute. I support the changes made in the CS in that the intent of the proposed legislation has been more clearly defined.

I would respectfully request that this bill be scheduled for a hearing in the Resources Committee at the earliest convenient time. Thank you for your consideration.

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

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

Bill Version : CSSB 53 (Resources)  
Publish Date : \_\_\_\_\_

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						
<b>TOTAL OPERATING</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>

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						
<b>TOTAL</b>						

**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  
*Richard I. Pegues / FOR 1*  
Approved by Commissioner: Grace Berg Schaible, Atty. Gen Date: March 6, 1987  
Agency: Department of Law

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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.

# Senator Johne Binkley

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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

February 6, 1987

TO: SENATOR DICK ELIASON, CHAIRMAN  
Senate Resources Subcommittee on Fisheries

FROM: SENATOR JOHNE BINKLEY *JB.*

Subj: Senate Bill 53: "An Act relating to the Board of Fisheries."

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.

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.

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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.

Senator Dick Eliason  
February 6, 1987  
Page 2

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 the herring fisheries were only recently developing, and that 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

Senator Dick Eliason  
February 6, 1987  
Page 3

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 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.

Senate Bill 53 would remedy both of the problems pointed out by the court. Section 1 expands the authority of the board by allowing it to enhance and protect people's ability to take and use fishery resources. This would include protecting fishermen in given areas of the state by setting up superexclusive use areas. 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 amends AS 16.05.251(e) to make clear that the board may distinguish among users in a single use group, as well as among different groups. This language

Senator Dick Eliason  
February 6, 1987  
Page 4

is needed in conjunction with section 1 to clearly authorize the board to create the superexclusive use areas.

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**

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

Bill Version : HB63

Publish Date : \_\_\_\_\_

Revision Date: \_\_\_\_\_

Agency Affected: Department of Law

Title: "An Act relating to the Board  
of Fisheries."

BRU: Legal Services

Sponsor: Repr. Hoffman

Components: Legal Services Operations

Requestor: Repr. Hoffman

**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-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS : (Attach a separate page if necessary)**

Please see attached analysis.

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: Jan. 28, 1987

Ronald W. Lorensen,

Approved by Commissioner: Acting Attorney General

Date: Jan. 28, 1987

Agency: Department of Law

**Distribution (by preparer):**

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB63

This bill amends AS 16.05.221(a) by clarifying the Board of Fisheries' authority to allocate fishery resources within user groups, as well as among the various 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.

# Alaska State Legislature

## Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman  
Sen. Paul Fischer, Vice-Chairman  
Sen. Lloyd Jones  
Sen. Arliss Stunqlewski  
Sen. Jim Duncan  
Sen. Fred Zhatoff  
Sen. Dick Eliason

Box V  
Juneau, Alaska 99811  
(907) 465-4007

TO: SENATE RESOURCES COMMITTEE  
FROM: COMMITTEE STAFF  
DATE: MARCH 30, 1987  
RE: CS SB 53 "An Act relating to the Board of Fisheries

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### CONTENTS

1. Sponsor's Bill Analysis
2. Fish and Game Bill Analysis
3. Fish and Game Fiscal Note
4. Department of Law Fiscal Note
5. Memo of support from Senate Resources Fisheries Subcommittee
6. Letter, Department of Law
7. Letter, Department of Law
8. Letter, Department of Law

# 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

March 11, 1987

TO: SENATOR JACK COGHILL, CHAIRMAN  
Senate Resources Committee

FROM: SENATOR JOHNE BINKLEY

A handwritten signature in cursive script, appearing to read "Johne Binkley".

Subj: Senate Bill 53: "An Act relating to the Board of Fisheries."

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.

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.

---

<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.

Senator Jack Coghill

March 11, 1987

Page 2

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 the herring fisheries were only recently developing, and that 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.

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Senator Jack Coghill  
March 11, 1987  
Page 3

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On February 6, 1986, a criminal complaint was filed in the district court for the second judicial district at Nome, alleging that 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.

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Senate Bill 53 would remedy both of the problems pointed out by the court. Section 1 expands the authority of the board by allowing it to enhance and protect people's ability to take and use fishery resources. This would include protecting fishermen in given areas of the state by setting up superexclusive use areas. 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 amends AS 16.05.251(e) to make clear that the board may distinguish among users in a single use group, as well as among different groups. This language

Senator Dick Eliason  
February 6, 1987  
Page 4

is needed in conjunction with section 1 to clearly authorize the board to create the superexclusive use areas.

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  
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Boards	BILL NUMBER SB 53	SPONSOR Senator John Binkley
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DEPARTMENT POSITION  
The department's position on this bill must be neutral. Allocation of fish resources is a public policy issue reserved to the Legislature and Board of Fisheries

PREPARED BY Beth Stewart	DATE 2/26/87	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 3-2-87
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SUMMARY

AGENCIES AFFECTED BY BILL  None known	CONSTITUENT GROUP(S) AFFECTED BY BILL This bill affects sub-categories of fishermen within specific sport, commercial, and personal use fisheries.
ORGANIZATIONAL SUPPORT FOR BILL Groups who wish to insure that the board has the authority to create super-exclusive registration areas for herring.	ORGANIZATIONAL OPPOSITION TO BILL No organized opposition is known at this time.

FISCAL IMPACT  NONE  FISCAL NOTE ATTACHED

BACKGROUND LEGISLATIVE INTENT  
The bill appears to allow the Board of Fisheries, within guidelines outlined in AS 16.05.251 to allocate fish between categories of fishermen within a single user group. For instance, the board would have the authority to allocate fish between different kinds of drift gillnet in Bristol Bay, or different kinds of sport fishermen on the Kenai River.

ANALYSIS OF BILL/PROGRAM EFFECTS

RECOMMENDATIONS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_  
 Revision Date: \_\_\_\_\_  
 Title: An Act relating to the  
Board of Fisheries  
 Sponsor: Joffman  
 Requestor: \_\_\_\_\_

Bill Version: HB 63  
 Publish Date: 1/22/87

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					
REVENUE	0					

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 Phone: 465-4100  
 Division: Commissioner's Office Date: 3/2/87

Approved by Commissioner: [Signature] Date: 3/2/87  
 Agency: Fish and Game

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

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

MAR 10 1987

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						
<b>TOTAL OPERATING</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>	<b>- 0 -</b>

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						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services

Phone: 465-3672  
Date: MARCH 6, 1987

Approved by Commissioner: Richard I. Pegues / FOR 1  
Grace Berg Schaible, Atty. Gen  
Agency: Department of Law

Date: MARCH 6, 1987

Distribution (by preparer):

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

# 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.

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, VICE CHAIRMAN  
LEGISLATIVE COUNCIL  
RESOURCES COMMITTEE  
FISHERIES SUBCOMMITTEE, CHAIRMAN



P.O. BOX 143  
SITKA, ALASKA 99835

P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4916

M E M O R A N D U M

TO: Senator Jack Coghill, Chair  
Senate Resources Committee


FROM: Senate Resources Fisheries Subcommittee


DATE: March 5, 1987

RE: S.B. 53 - An Act relating to the Board of Fisheries

The fisheries subcommittee has reviewed the above mentioned legislation and recommends that the attached committee substitute be considered by the Senate Resources Committee.

  
\_\_\_\_\_  
Senator Dick Eliason, Chair

  
\_\_\_\_\_  
Senator Jim Duncan, Member

  
\_\_\_\_\_  
Senator Fred Zharoff, Member

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

February 27, 1987

Honorable Dick Eliason  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: SB 53/HB 63 on the Board  
of Fisheries

Dear Senator Eliason:

Your staff has asked us to comment briefly on SB 53 which would amend two provisions in AS 16.05, subsec. 221(a), concerning the purpose of the Board of Fisheries, and subsec. 251(e), concerning the board's mandate to establish criteria for the allocation of fishery resources.

We have previously provided copies to your staff of two letters from this department to Representative Hoffman, sponsor in the House of an identical bill -- HB 63. Those letters discuss the State v. Hebert case in which we have appealed dismissal by the district court in Nome of the criminal prosecution of a fisherman for violating the Norton Sound superexclusive herring area regulation, 5 AAC 27.987. Additional copies of those two letters are attached to this one for your convenience.

Our primary comment on SB 53 and HB 63, which are apparently responses to the district court decision in Hebert, is that such legislation is not now necessary to preserve the superexclusive use area regulatory mechanism. Some sort of similar legislation may become necessary after a final appellate resolution of the Hebert case. However, at this point any responsive legislation seems premature. If such legislation is ultimately necessary or appropriate, it can be better fashioned after we have the benefit of the appellate court analysis and a final resolution of the issues involved. Although briefing has recently been completed before the Court of Appeals, oral argument has not yet been scheduled and we do not anticipate a Court of Appeals decision before this fall. The case could then go to the Alaska Supreme Court.

If these bills are to be pursued now, it is important that great care be taken to ensure that the language of the bills is neither unnecessarily broad in its effect nor violative of constitutional equal protection, commerce clause, and exclusive right of fishery principles. We have discussed our concerns with the legislative counsel who drafted the bill and have agreed in

Hon. Dick Eliason  
Alaska State Legislature

February 27, 1987  
Page 2

concept on language to narrow the effect of sec. 2 of the bill. That section currently amends the first sentence of AS 16.05.-251(e) as follows:

(e) The Board of Fisheries shall establish criteria for the allocation of fishery resources among personal use, sport, and commercial fishing users and groups of user.....

We believe that a better, more narrow approach to more directly address the possible effects of an eventual adverse decision in the Hebert case would be similar to the following:

(e) The Board of Fisheries shall establish criteria for the allocation of fishery resources among personal use, sport, and commercial fishing and among groups of commercial fishermen within a fishery.....

Please let us know if we can provide additional assistance if these bills are pursued further. Thank you for the opportunity to comment.

Sincerely,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:   
Peter B. Froehlich  
Assistant Attorney General

PBF:md

Enclosures

cc w/o enc.: Hon. John Binkley  
Alaska State Senate

Hon. Lyman Hoffman  
Alaska State House of Representatives

Hon. Don Collinsworth, Commissioner  
Dept. of Fish and Game

Steven Pennoyer, Deputy Commissioner  
Dept. of Fish and Game

Hon. Dick Eliason  
Alaska State Legislature

February 27, 1987  
Page 3

Roland Shanks, Special Assistant  
Dept. of Fish and Game

Larri I. Spengler  
Assistant Attorney General  
Juneau

Sarah E. McCracken  
Assistant Attorney General  
Anchorage

B.J. Jordan  
Legal Text Editor  
Juneau

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 17, 1987

Representative Lyman Hoffman  
House of Representatives  
P.O. Box V  
Juneau, Ak 99811

Dear Representative Hoffman:

Re: State v. Hebert  
(herring use areas)

Lee Goodman of your staff has requested our office to expand upon Larri Spengler's February 10, 1987, analysis of State v. Hebert, to explain the wider ramifications that the district court's decision may have for fisheries board allocation regulations, if the decision is affirmed on appeal.

As explained in Larri Spengler's letter, the trial court in Hebert held that as of the date the board of fisheries adopted the Norton Sound superexclusive herring area regulation, 5 AAC 27.987, the board's statutory authority to conserve and develop the state's fisheries (AS 16.05.251) did not allow the board to make allocations within one user group (i.e., among commercial users) in order to provide an economic advantage to one segment of the user group. The court, in dicta, also opined that the 1986 amendment to the board's authority, AS 16.05.251(e) (Ch. 52, SLA 1986), which expressly allows "allocation of fishery resources among personal use, sport, and commercial fishing ..." also does not allow the board to make allocations within one use group. The Hebert court also found that there was insufficient evidence to support a finding that the superexclusive herring area regulation was intended in part as a conservation measure, to require less efficient harvesting means.

The Hebert decision is presently on appeal before the Alaska Court of Appeals. If the Court of Appeals (and any higher appellate court) simply affirms the trial court decision without modification, this decision might provide a basis for challenges to other fisheries board regulations that, to a greater or lesser extent, provide an economic advantage to, or otherwise allocate a certain portion of the harvest to a particular segment of a commercial, sports or personal use fishery. Each case would have to be analyzed on its own facts, but it is possible that the Hebert decision, if affirmed could be a basis for challenging such fisheries allocation regulations as the Cook Inlet management plan

~~BY THE GOVERNOR~~  
Steve Cowper, Governor  
REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

P.O. BOX K-STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

Representative Lyman Hoffman  
House of Representatives

February 17, 1987  
Page 2

(which allocates among various segments of a commercial fishery) the False Pass fishery (which allocates to an existing local fishery), the Stepovak fishery plan (which also allocates among commercial uses), and several other regulatory provisions that make similar allocations. You may wish to consult the Department of Fish and Game for additional examples.

It would be difficult to predict the outcome of a challenge to fish board allocation regulations that might be brought under the Hebert rationale, because any decision would turn upon the particular board record and facts in each situation. If the Hebert decision were to be affirmed, however, it would place new constraints upon the fisheries board regarding its ability to make harvest allocations within a particular use group.

As mentioned in Larri Spengler's letter, the Hebert case turns upon statutory construction; the legislature has the authority to modify the statutes to reflect a different intent, so long as it is consistent with relevant constitutional principles.

If we can be of further assistance to you, please let us know.

Yours sincerely,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By: *Sarah E. McCracken*  
Sarah E. McCracken  
Assistant Attorney General

SEM/jmo

cc: Don W. Collinsworth, Comm'r ADF&G  
Steven Pennoyer, Deputy Comm'r ADF&G  
Roland Shanks, ADF&G  
Larri I. Spengler, AGO Jnu  
—Pete Froelich, AGO Jnu  
B. J. Jordan, AGO Jnu

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

February 10, 1987

The Honorable Lyman Hoffman  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Re: Herring area legislation

Dear Representative Hoffman:

You have asked for a description of the herring superexclusive use area litigation, and of its possible ramifications. As I understand it, you are inquiring about this case because it relates to HB 63, which you introduced. (That bill is virtually identical to SB 53, introduced by Senator Binkley.)

The Alaska Board of Fisheries has adopted superexclusive use areas in managing the herring commercial fisheries in the state. The regulations require that participants in the commercial herring fisheries either fish in one of several small areas, or anywhere else in the state. See, for example, 5 AAC 27.987. This mandate was violated by a Mr. Hebert, who, in a criminal prosecution before a state district court, moved to dismiss the charge, alleging that the regulation exceeded the authority of the Board of Fisheries. State v. Hebert, No. 2NO-S86-069 Cr. (Alaska Dist. Ct., Feb. 6, 1986). The Board of Fisheries in general has the authority to adopt regulations for the "conservation and development" of fishery resources. AS 16.05.221(a).

The judge in that case ruled that he could find no evidence supporting a conservation rationale. He found that the regulation had been adopted in order to benefit the less efficient, less well-financed fishermen from particularly cash poor areas of Alaska, and that while the socioeconomic goals were laudable, they did not fall within the board's current authorities.

That case is currently on appeal to the Alaska Court of Appeals. State v. Hebert, Court of Appeals No. A-1743. Briefing is completed, and eventually a decision will be issued. In the meanwhile, the regulations are technically enforceable; a district court decision dismissing a criminal prosecution is not equivalent to a superior court decision in a civil case enjoining the enforcement of a regulation. The decision is not binding on

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other courts; the result of the judge's order is simply that that particular criminal prosecution is dismissed.

The superexclusive use area regulatory mechanism as applied to vessels has been common for years in the state's salmon fisheries, and has also been employed in other fisheries, such as king crab and tanner crab. 5 AAC 39.120; 5 AAC 34.020; 5 AAC 35.020. Assuming for the moment that the district court was correct in determining in the Hebert case that the Board of Fisheries may not regulate for only socioeconomic reasons within a particular commercial fishery under the current statutes, the other instances in which superexclusive use area had been employed are not necessarily invalid. The analysis in each situation would depend upon what the board record discloses about the conservation basis for the regulation. Clearly, even under the Hebert case, a conservation related justification which was supported by the facts would provide adequate legal support for superexclusive use areas.

The district court decision in the Hebert case hinges solely upon statutory construction, and any decision from the court of appeals will be similarly limited in scope, since those are the only issues presented in the appeal. Thus, whatever the court determines the statutes to currently mean, the legislature has the authority to modify the statutes to reflect some other intention, consistent, of course, with relevant constitutional principles.

Sincerely,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

  
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cc: Senator Binkley  
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HB63 file  
SB53 file