

S B

267



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 488-5250

DURING SESSION:


STATE CAPITOL BLDG., JUNEAU, ALASKA 99801-1182 • (907) 485-3473 • FAX: (907) 483-3043

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Representative Cliff Davidson, Chairman
House Resources Committee

FROM: Senator Fred Zharoff 

RE: Scheduling of CSSSSB 267, relating to notice of the Board of Fisheries' intention to consider approval of a petition to CFEC to establish a moratorium on entrants into a commercial fishery

DATE: April 16, 1992

I am writing to request that you schedule CSSSSB 267 for a committee hearing at your earliest convenience.

CSSSSB 267 amends AS 16.05.251(g) to provide that notice of, and a copy of, a petition from the Commissioner of Fish and Game to the Commercial Fisheries Entry Commission to establish a moratorium on entry in a commercial fishery shall be available to the public at Fish and Game Department offices, and distributed to the Fish and Game advisory committees in the areas affected by the proposed moratorium, 30 days before the Board takes action on the petition. The bill also requires that the Commissioner document the criteria used to determine that the fishery requires a moratorium in the petition.

This legislation will increase the public comment period from 15 to 30 days, and help to assure that the public has access to material critical to their considerations regarding the management of fish and game resources in their area in a timely manner.

Backup information is included.

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 267 (RESOURCES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/13/92

Referred: Rules

Sponsor(s): SENATOR ZHAROFF

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Board of Fisheries' consideration of a petition to the Alaska
 2 Commercial Fisheries Entry Commission to establish a moratorium on new entrants into
 3 a commercial fishery; and providing for an effective date."

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

5 * Section 1. AS 16.05.251(g) is amended to read:

6 (g) The Board of Fisheries shall consider a written request of the commissioner for
 7 approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a
 8 moratorium on new entrants into a commercial fishery under AS 16.43.225 at the board's next
 9 regular or special meeting that follows the receipt by the board of the petition and the written
 10 request for approval of the petition and that allows time for the notice required under this
 11 subsection. The written request of the commissioner for approval of the petition must
 12 document that the fishery, that is the subject of the petition, meets requirements for a
 13 moratorium on new entrants under AS 16.05.050. The board may consider the petition and
 14 the written request of the commissioner for approval of the petition only after receiving the

1 petition and the written request and only after 30 [15] days' public notice of the board's
2 intention to consider approval of the petition. The board shall distribute in a timely manner
3 a copy of the petition and the written request of the commissioner for approval of the
4 petition to each fish and game advisory committee and office of the department in the
5 administrative area where the proposed moratorium would be established. The board shall
6 consider whether the commissioner, in [SUPPORT OF] the request for approval of the petition,
7 has adequately shown that the fishery meets requirements for a moratorium on new entrants
8 under AS 16.05.050. The board by a majority vote of its members at the meeting when the
9 petition must be considered shall approve or disapprove the petition.

10 * Sec. 2. This Act takes effect July 1, 1992.

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 267
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATOR ZHAROFF

Introduced: 3/25/92
Referred: Resources

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to notice of the Board of Fisheries' intention to consider approval of
2 a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium
3 on new entrants into a commercial fishery; and providing for an effective date."

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

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8 new entrants into a commercial fishery under AS 16.43.225 at the board's next regular or special
9 meeting that follows the receipt by the board of the request for approval of the petition and that
10 allows time for the notice required under this subsection. The board may consider the request
11 of the commissioner for approval of the petition only after 30 [15] days' public notice of the
12 board's intention to consider approval of the petition. The board shall distribute in a timely
13 manner a copy of the public notice and the petition to each fish and game advisory
14 committee and office of the department in the administrative area where the proposed

1 moratorium would be established. The board shall consider whether the commissioner, in
2 support of the request for approval of the petition, has adequately shown that the fishery meets
3 requirements for a moratorium on new entrants under AS 16.05.050. The board by a majority
4 vote of its members at the meeting when the petition must be considered shall approve or
5 disapprove the petition.

6 * Sec. 2. This Act takes effect July 1, 1992.

(f) Except as expressly provided in AS 16.40.120(e) and 16.40.130, the Board of Fisheries may not adopt regulations or take action regarding the issuance, denial, or conditioning of a permit under AS 16.40.100 or 16.40.120, the construction or operation of a farm or hatchery required to have a permit under AS 16.40.100, or a harvest with a permit issued under AS 16.40.120.

(g) The Board of Fisheries shall consider a request of the commissioner for approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225 at the board's next regular or special meeting that follows the receipt by the board of the request for approval of the petition and that allows time for the notice required under this subsection. The board may consider the request of the commissioner for approval of the petition only after 15 days' public notice of the board's intention to consider approval of the petition. The board shall consider whether the commissioner, in support of the request for approval of the petition, has adequately shown that the fishery meets requirements for a moratorium on new entrants under AS 16.05.050. The board by a majority vote of its members at the meeting when the petition must be considered shall approve or disapprove the petition. (§ 3 ch 206 SLA 1975; am § 2 ch 218 SLA 1976; am § 4 ch 151 SLA 1978; am §§ 1, 2 ch 110 SLA 1980; am §§ 8, 9 ch 132 SLA 1984; am §§ 1 — 3, 12 ch 52 SLA 1986; am § 4 ch 76 SLA 1986; am § 1 ch 33 SLA 1987; am § 2 ch 93 SLA 1988; am § 7 ch 145 SLA 1988; am § 3 ch 34 SLA 1991)

Revisor's notes. — In 1988, a reference to "AS 16.40.120(d)" was deleted from (f) of this section to correct a manifest error in § 7, ch. 145, SLA 1988.

Cross references. — For legislative findings in connection with the 1988 amendment to (a)(2) of this section, see § 1, ch. 93, SLA 1988 in the Temporary and Special Acts.

Effect of amendments. — The first 1988 amendment, effective June 3, 1988, in subsection (a), added all of the lan-

guage at the end of paragraph (2) beginning with "if consistent" and made a series of minor punctuation changes throughout the rest of the subsection.

The second 1988 amendment, effective June 9, 1988, added subsection (f).

While neither amendment gave effect to the other, both have been given effect in this section as set out above.

The 1991 amendment, effective June 13, 1991, added subsection (g).

NOTES TO DECISIONS

Regulation upheld. — In promulgating a regulation governing commercial herring fishing in Norton Sound, the board pursued a permissible objective (allocation of a fishery resource between resident and nonresident fishermen) and employed means within its powers, and the

regulation itself was reasonable and nonarbitrary. *State v. Hebert*, 743 P.2d 392 (Alaska Ct. App. 1987).

Applied in *Meier v. State Bd. of Fisheries*, 739 P.2d 172 (Alaska Ct. App. 1987).

FISCAL NOTE

BILL NO. SSSB 267

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: 3/25/92

Department Affected: Fish and Game

Title: Notice of Fish and Game Regulations

BRU: Boards/Boards Services

Component: Boards/Boards Services

Sponsor: Senator Zharoff

Requestor: Senate Resources
Expenditures/Revenues: (Thousands of Dollars)

COMPONENT SERIAL NO.

	4	8	2
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OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Geron Bruce G.B. Phone: 465-4100

Division: Commissioner's Office Date: 4/4/92

Approved by Commissioner: [Signature]

Agency: Department of Fish and Game Date: 4/6/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OAG/DBR, Gov. Legis. OSC., & Impacted Agency(ies).

- ADFG FISCAL NOTE, POSITION + CFEC -

DEPARTMENT OF FISH AND GAME

POSITION PAPER

Bill Number: SSSB 267

Sponsor: Senator Zharoff

Bill Title: Notice of Fish and Game Regulations

Department Position: Support

Legislative Intent: It is the intent of this legislation to increase the existing 15 day public notice requirement on a petition from the Alaska Board of Fisheries to the Commercial Fisheries Entry Commission requesting a moratorium on new entrants into a commercial fishery. This legislation would also require the board to distribute, in a timely manner, a copy of the public notice and a copy of the petition to each fish and game advisory committee and the office of the department in the administrative area where the proposed moratorium would be established.

Effects of Legislation on Department Programs: Requiring a minimum 30 day public notice will provide greater public notice. This will not be burdensome, or cost any more than the existing 15 day public notice requirement. The department supports the intent to provide the public with greater notice.

It is not clear what "in a timely manner" means or is trying to accomplish. Currently, when the Division of Boards publishes the public notice to fulfill the Administrative Procedures Act (APA) for the board, the notice is also distributed pursuant to APA requirements. The public notice is an informative summary of the issue the board has accepted.

For fish issues, there is a standing distribution of 1,670. This includes all the advisory committee members on file, the 60 legislators, and any organization and individual that has requested to receive fish issue mailings. The notices are currently distributed to each of the Department of Fish and Game's divisions.

We do have concern on distributing the "petition" itself to the full mailing. Some petitions can be very lengthy. Just the other day we received a petition that was over two inches thick (though this was not a moratorium petition). The commissioner's petition to the board regarding the scallop petition was approximately 20 pages in length.

It is also not clear the parameters of what department offices are "in the administrative area where the proposed moratorium would be established." If not clearly defined, people can argue that this requirement was not fulfilled.

Department of Fish and Game
Position Paper 888B 267
Page 2

I would note that as the statutory requirements get more complex the chances of missing a procedural step increase. The courts historically turn over regulations and laws for procedural errors.

Commissioner's Signature

Paul S. Durvill for

Date

4/6/92

TO: The Honorable Fred Zharoff
Chairman
Senate Rules Committee

DATE: March 31, 1992

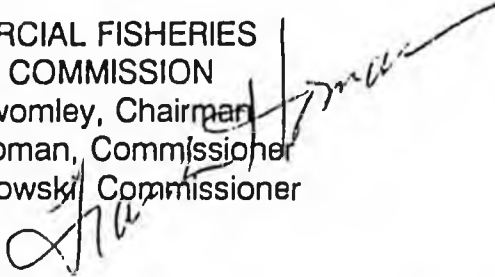
FAX NO: 789-6170

ATTN: David Shrader

TELEPHONE NO: 789-6160

FROM: COMMERCIAL FISHERIES
ENTRY COMMISSION
Bruce Twomley, Chairman
Frank Homan, Commissioner
Rich Listowski, Commissioner

SUBJECT: SSSB 267



You asked for our comments on SSSB 267 extending the time for public notice for moratorium requests under Board of Fisheries consideration from 15 days to 30 days. In the event of a petition for a moratorium from the Commissioner of Fish and Game, with the approval of the Board of Fisheries, comes to the CFEC, we would undertake our own separate public notice procedures as required by the Alaska Administrative Procedures Act. SSSB 267 together with CFEC public notice procedures extends the time period to the public for comments. While we cannot comment for the Board of Fisheries or the Department of Fish and Game, our statutes are not affected and we have no problem with this legislation.

If we can provide any additional information, please do not hesitate to contact us.

cc: Geron Bruce, Special Assistant to the Commissioner, ADF&G
Laird Jones, Director, Board of Fisheries, ADF&G

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

April 3, 1992

SUBJECT: Sectional Summary: Sponsor Substitute for SB 267

TO: Senator Fred Zharoff

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is a sectional summary of SSSB 267: an Act relating to notice of the Board of Fisheries' intention to consider approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery; and providing for an effective date.

A sectional summary is not an authoritative interpretation of a bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 16.05.251(g) which relates to the procedures of the Board of Fisheries for considering the request of the commissioner of fish and game for approval of the commissioner's petition to Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225.

The new language requires the board to provide 30 days' public notice of its intention to consider the petition of the commissioner. Current law requires only 15 days' public notice before the board can act on the commissioner's request for approval of the petition for a moratorium.

The new language also requires the board to distribute the public notice and a copy of the petition to all advisory committees and fish and game offices in the area where the proposed moratorium would be established. The board must distribute the public notice and copy of the petition in a timely manner, so as to give the public a meaningful opportunity to respond to and comment on the proposed petition.

Section 2 of the bill provides that the bill takes effect July 1, 1992.

GU:pl
92-240.plm

- SECTIONAL SUMMARY -

KODIAK FISH AND GAME ADVISORY COMMITTEE
211 MISSION RD.
KODIAK, ALASKA 99615

APRIL 2, 1992

Senator Fred Zharoff
Room 121
State Capital Bldg.
Juneau, AK. 99801-1182

Dear Senator Zharoff,

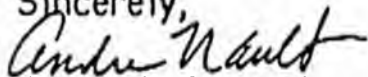
This letter is in regards to S.B. 267. The Kodiak Advisory Committee (K.A.C.) supports changes to the present law as we believe the 15 day notice period is very inadequate. We feel the public would be better served if the notices and copies of the petitions were distributed in a more timely manner and adequate review time was available.

We might suggest that even 45 days may be a more realistic notice period due to the normal length of time between advisory committees meetings. We also agree that it is important to provide copies of the petitions to the local advisory boards and local ADF&G offices.

In order to have time to notify the public of details of proposals, changes, and other actions, and be prepared to comment and make recommendations ourselves, we feel the Board and ADF&G has a responsibility to make information available as early as possible. As you know, the K.A.C. has written to you in the past about problems in receiving important fisheries related information, and any steps that can be taken to help correct this situation are appreciated.

Thank you for introducing this bill and for your consideration of our comments.

Sincerely,



Andre Nault, Chairman

Kodiak Fish and Game Advisory Committee

- SB267 Public Support -

Area K Seiners Association
P.O. Box 2399 Kodiak, Alaska 99615
Phone 907/486-4686 FAX 907/486-7655



March 31st, 1992

Senator Fred Zharoff
Room 121, State Capitol
P.O. Box V
Juneau, AK 99801-1182

Dear Senator Zharoff:

We strongly support Senate Bill 267. The recent attempt to place a moratorium on the 23 year old Alaska Scallop fishery showed some oversight in current law that SB 267 would correct.

A large part of the scallop fishery occurs near Kodiak. The Kodiak Advisory Committee was never informed of the process that could have closed this fishery to new entrants and granted a four year monopoly to ten or fewer vessels. The Committee chairman, Andre Nault, did enough research so that the committee was able to comment on the proposed moratorium. When the scallop moratorium proposal came before the Board, the public wasn't properly noticed. Additionally, the proposal was buried on the agenda under a category called "other" instead of listed as an individual item to be discussed.

It is clear that some fishermen will try to take advantage of the moratorium law to increase their own economic advantage. Senate Bill 267 would insure that the public could more adequately participate in the process.

Sincerely,

Oliver Holm,
Area K Seiners Board of Directors

**KODIAK LONGLINE
VESSEL OWNERS' ASSOCIATION**



326 CENTER AVENUE, P.O. BOX 135
KODIAK, ALASKA 99615
(907) 486-3781 FAX (907) 486-2470

HALIBUT • SABLEFISH • PACIFIC COD • CRAB

April 2, 1992

The Honorable Fred Zharoff
Alaska State Legislature
Juneau, Alaska 99811

SENT BY FAX: 463-3043

RE: Substitute for Senate Bill No. 267

Dear Fred,

We would like to express our support for Substitute SB 267. In the past, we have experienced frustration over not receiving adequate notice on Board of Fisheries agenda items. While legal requirements may have been met, it is sometimes difficult for groups in the state to track legal notices and information doesn't always get to groups which might be impacted.

In our opinion this bill is extremely important and we would like to urge you to pass this legislation.

Sincerely,

Linda Kozak
Executive Director

United Fishermen's Marketing Association, Inc.

P.O. Box 1035 Kodiak, Alaska 99615

Telephone 486-3453



April 4, 1992

Senator Fred Zharoff
Room 121
State Capitol
Juneau, AK 99801-1182

SENT VIA FAX # 463-3043

Dear Senator Zharoff,

We would like to provide you with some comments regarding SSSB 267 ("An Act relating to notice of the Board of Fisheries' intention to consider approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery; and providing for an effective date." SSSB 267 addresses AS 16.05.251.

We support the changes to AS 16.05.251(g) that are proposed in SSSB 267. The 15 days public notice that is presently required by AS 16.05.251(g) is not adequate nor reasonable. Therefore, we believe that the 30 days public notice that is proposed in SSSB 267 is a much needed improvement to AS 16.05.251(g). However, we believe that 60 days or 45 days public notice is preferable and more reasonable than 30 days, and we respectfully suggest that SSSB 267 be amended to provide for 60 days public notice.

We also support those provisions of SSSB 267 that address the issue of the distribution of the public notice and of the petition to each ADF&G Fish and Game Advisory Committee and to each ADF&G office in each of the management areas where the proposed moratorium is proposed to apply. Recent occurrences regarding the manner in which a recent request and petition for a moratorium were handled by ADF&G dictate that it is absolutely necessary to require a provision such as this which is provided in SSSB 267. However, we believe that not only the public notice and the petition, but also the "request of the Commissioner for approval of the petition" that accompanies the petition should be included in this provision of SSSB 267.

We also believe that the petition and the "request of the Commissioner for approval of the petition" that accompanies the petition should be in writing, and submitted to the Board office in writing prior to the public notice being published by the Board that the Board intends to address a moratorium.

Thankyou very much for your attempt to improve and amend AS 16.05.251(g) in a manner that will allow the public a fair opportunity to have knowledge of, and to comment on, those ADF&G initiatives that apply to the establishment of a moratorium and which ADF&G proposes to submit to the Alaska Board of Fisheries.

Sincerely,

Jeffrey R. Stephen

United Fishermen's Marketing Association, Inc.



P.O. Box 1035 Kodiak, Alaska 99615

Telephone 486-3453

April 5, 1992

Senator Fred Zharoff
Room 121
State Capitol
Juneau, AK 99801-1182

SENT VIA FAX # 463-3043

Dear Senator Zharoff,

As you know, we have previously provided you with some comments regarding SSSB 267 ("An Act relating to notice of the Board of Fisheries' intention to consider approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery; and providing for an effective date." SSSB 267 addresses AS 16.05.251.

These comments should be considered additive to those comments regarding SSSB 267 that we have previously provided to you in our letter of April 4, 1992.

We believe that AS 16.05.251 (g) should be amended in the following manner:

(g) The Board of Fisheries shall consider a petition and a written request of the commissioner for approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225 at the board's next regular or special meeting that follows the receipt by the board of the petition and the written request for approval of the petition and that allows time for the notice required under this subsection. The board may consider the petition and the written request of the commissioner for approval of the petition only after 60 [15] days' public notice of the board's intention to consider approval of the petition and the written request of the commissioner for approval of the petition. The board shall have in its possession the petition and the written request of the commissioner before the board may issue a public notice of the board's intention to consider approval of the petition and the written request of the commissioner. The written request of the commissioner must address the rationale that is required of the commissioner under AS 16.05.050(20). The board shall distribute in a timely manner a copy of the public notice, the petition and the written request of the commissioner for approval of the petition to each fish and game advisory committee and office of the department in the administrative area where the proposed moratorium would be established. The board shall consider whether the commissioner, in support of the written request for approval of the petition, has adequately shown that the fishery meets requirements for a moratorium on new entrants under AS 16.05.050. The board by a majority vote of its members at the meeting when the petition and the written request of the commissioner for approval of the petition must be considered shall approve or disapprove the petition and the written request of the commissioner for approval of the petition.

*submit
notice to
fish
office
before
notice.*

During recent activities that addressed a request by the Commissioner of ADF&G for a moratorium in the scallop fishery, the official request of the Commissioner (with his limited rationale for requesting such a moratorium) as well as the petition that the Commissioner intended to submit to CFEC, were not transmitted to the Board until the day that the Board

addressed the issue. Neither of these documents were considered ready or complete for submission to the Board until the day before the Board was expected to take action on the proposed scallop moratorium. On what basis, then, did the Board publish the legal notice that advertised that the Board intended to address the petition and the request of the Commissioner for approval of the petition to establish a moratorium on new entrants into the commercial scallop fishery under AS 16.43.225? Verbal requests that require the Board to address issues as significant as a moratorium, without any associated rational or draft petition language, do not serve the public process.

Under AS 16.05.050(20), the Commissioner has the power to petition to establish a moratorium on new entrants into commercial fisheries:

"(A) that have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;

(2) that have achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and

(3) for which there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery."

It is obvious that the requirements that govern the procedures under AS 16.05.251(g) must be made clear, and must be modified to provide that the public will have a fair opportunity to have knowledge of, and to comment on, those ADF&G initiatives that apply to the establishment of a moratorium, and which ADF&G proposes to submit to the Alaska Board of Fisheries and to the Commercial Fisheries Entry Commission.

It is reasonable to require in statutory language that the official request from the Commissioner (including the statutorily required rationale), and the language of the petition that has been drafted by the Commissioner, should be available in writing to the public during the public notification period.

It is also reasonable to require in statutory language that the Board must not give public notice that the Board intends to consider a petition and a written request of the Commissioner for approval of a petition to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225 unless the Board has first received, in writing, the petition and the request of the Commissioner for approval of the petition to establish a moratorium on new entrants into a commercial fishery.

Thankyou for your consideration of our comments regarding SSSB 267.

Sincerely,



Jeffrey R. Stephan



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

STATE CAPITOL BLDG., JUNEAU, ALASKA 99801-1182 • (907) 465-3473 • FAX: (907) 463-3043

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SSSB 267 SPONSOR STATEMENT

March 31, 1992

SSSB 267 amends AS 16.05.251(g) to require 30 days public notice of the intent of the Board of Fisheries to consider the approval of a petition by the Commissioner of Fish and Game to the Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery. SSSB 267 also provides that a copy of the public notice and the petition be distributed to each Fish and Game advisory committee and ADFG office in the administrative area where the moratorium would be established.

Current law requires only 15 days public notice of the board's intent to consider the approval of a petition to establish a moratorium on entry into a fishery, and there are no specific provisions to assure the prompt availability of the petition to the public for consideration.

Consideration and comment regarding fish and game issues by an informed public is the basis for the development of rational and effective fishery regulations under Alaska's Fish and Game Board system. Current statutory language does not provide adequate time for the public to be notified of, obtain material related to, and comment on the petition to be considered by the board. It is vital to this process that the public be given sufficient time and information to comment on issues and proposals that will affect their area.

This legislation will help to assure that the public and the Board of Fisheries are provided sufficient time and information in their considerations regarding the approval of a petition to establish a moratorium on entry into a commercial fishery.

SSSB 267
- SPONSOR STATEMENT -

RECEIVED MAR 2 1992

NOTICE OF REVIEW OF PROPOSED PETITION
BY THE ALASKA BOARD OF FISHERIES

Notice is given that the Alaska Board of Fisheries, under authority vested by AS 16.05.251(g), proposes to approve or disapprove a petition from the Alaska Department of Fish and Game, under AS 16.05.050(20), to the Commercial Fisheries Entry Commission that seeks to place a four year moratorium on new entrants into the statewide scallop fishery. A petition can be submitted if the department finds

- (1) that a fishery has experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;
- (2) that a fishery has achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and
- (3) there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery.

If the board approves the petition it will be submitted to the Commercial Fisheries Entry Commission for review. CFEC has the authority to establish a four year moratorium on new entrants to a fishery while the commission is investigating the need of limiting entry to that fishery.

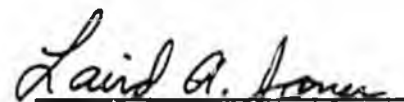
This action may require an increased appropriation.

Copies of the proposed petition may be obtained by writing to the Alaska Department of Fish and Game, Division of Commercial Fisheries, P.O. Box 25526, Juneau, Alaska, 99802-5526. Notice is also given that anyone interested may present written comments or arguments relevant to the proposed actions in this notice. Written comments may be submitted to the Board of Fisheries any time before the beginning of the public hearing tentatively scheduled as follows:

March 13, 1992 in Juneau, Alaska at the Baranof Hotel.

Anyone interested in or affected by the proposed moratorium is hereby informed that, by publishing this legal notice, the Board of Fisheries may consider all of the subjects covered by the proposed changes contained in this notice. The board is not limited by the specific language of the actual petition that has been submitted. The board's actions are limited to the subject matter given in this legal notice, but pursuant to AS 44.62.200(3), the board may review the full range of activities appropriate to any of the subjects listed.

DATE: 2.26.92


Laird Jones, Director
Division of Boards

Public notice re: SCALLOP MORATORIUM

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

March 10, 1992

Board of Fisheries
1255 West 8th Street
Juneau, AK 99801

Attention: Michael Martin, Chairman

Dear Board Members:

Recently some participants in the scallop fishery submitted information to me they are anticipating large increases in effort that could have serious negative effects on the state's scallop stocks. They also requested me, under authority granted in AS 16.05.050(20), to petition the Commercial Fishery Entry Commission to impose a moratorium on new entrants to the statewide scallop fishery to protect the resource and to stabilize the economic health of the commercial fishery.

Statute requires the board to approve or disapprove the petition before it is submitted to the Commercial Fisheries Entry Commission.

AS 16.05.050. POWERS AND DUTIES OF THE COMMISSIONER. The commissioner has, but not by way of limitation, the following powers and duties:

(20) to petition the Alaska Commercial Fisheries Entry Commission, unless the Board of Fisheries disapproves the petition under AS 16.05.251(g), to establish a moratorium on new entrants into commercial fisheries

(A) that have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;

(B) that have achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and

(C) for which there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery.

Board Members

-2-

March 10, 1992

AS 16.05.251. Regulations of the Board of Fisheries

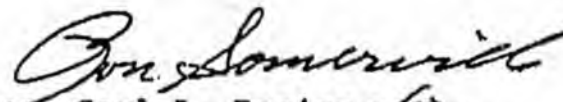
(g) The Board of Fisheries shall consider a request of the commissioner for approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225 at the board's next regular or special meeting that follows the receipt by the board of the request for approval of the petition and that allows time for the notice required under this subsection. The board may consider the request of the commissioner for approval of the petition only after 15 days public notice of the board's intention to consider whether the commissioner, in support of the request for approval of the petition, has adequately shown that the fishery meets requirements for a moratorium on new entrants under AS 16.05.050. The board by a majority vote of its members at the meeting when the petition must be considered shall approve or disapprove the petition.

There is little information available on the scallop fishery. Fish ticket data has been collected since 1969. Limited work has been done on life history. The department has limited information on distribution, no solid data on abundance, recruitment rates, exploitation rates, and other knowledge necessary to properly manage a fishery. The limited information available indicates scallop populations may be easily overfished.

A moratorium on new entrants to the fishery could enable the department to develop a statewide scallop fishery management plan that would conserve the resource and stabilize the fishery.

In sum, I believe that present circumstances in the scallop fishery meet all three of the requirements of AS 16.05.050(20). I therefore request the board to approve the enclosed petition to the Commercial Fisheries Entry Commission.

Sincerely,


Carl L. Rosier
Commissioner

Enclosed: Petition to Commercial Fisheries Entry Commission

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

SCALLOP MORATORIUM PETITION

Under authority of AS 44.62.220, the Department of Fish and Game hereby petitions the Commercial Fisheries Entry Commission to establish, under AS 16.43.225, a moratorium on new entrants into the Alaskan scallop fishery. The Board of Fisheries has approved this petition under AS 16.05.251(g).

There are three statutory criteria that must be met before the department can request a moratorium:

- (1) the fishery must have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;
- (2) the fishery must be at a level of harvest that may approach or exceed the maximum sustainable level for the fishery; and
- (3) there must be insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery.

Interest in an Alaskan scallop fishery has existed since the early 1950's when the Bureau of Commercial Fisheries began systematic surveys to determine if commercial quantities were available. It was not until 1967 that the first commercial deliveries were made. Since then the commercial harvest of scallops has fluctuated greatly, ranging from a high in 1969 of 1,850,187 pounds of shucked meats by 19 vessels in 157 landings to no fishing effort being reported in 1978. Table 1. shows the variation in vessels, landings and pounds harvested by year.

A dramatic increase in the number of landings during the two most recent seasons is of concern to the department. Effort may continue to intensify and may threaten the conservation of the state's scallop resources if new management measures are not implemented. Additionally, as a result of a pending moratorium and other management efforts in the east coast scallop fishery, it is possible that some scallop vessels from that area could migrate to Alaska.

Large variations in effort and landings may indicate maximum sustainable levels for the fishery are being exceeded. However, at the present state of knowledge it is not known what level of harvest the state's scallop populations can withstand.

There is certainly not sufficient biological and resource management information available to promote the conservation and sustained yield of the fishery. The department issued a report in 1968, Informational Leaflet 125, that summarized the

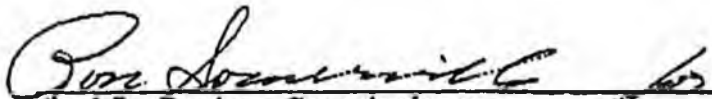
Scallop Moratorium Petition

state of scallop knowledge. Since that time there has been little additional information acquired on Alaskan scallop stocks, although the fishery has been prosecuted in every year except 1978. The department has a fair idea of the distribution of scallops in Alaskan waters, but no solid information on, abundance, recruitment rates, exploitation rates, and other knowledge necessary to properly manage the fishery. The limited information available indicates scallop populations may be easily overfished.

The Department of Fish and Game finds that the Alaskan scallop fishery meets the statutory criteria necessary for a moratorium under AS 16.05.050(20). Such a moratorium on new entrants would give department time to develop a management plan that would conserve the resource and stabilize the fishery. Expected increases in fishing effort may adversely impact the health of the resources which could result in a complete closure of the fishery. A moratorium would promote the orderly development of the state's scallop fishery and is necessary to protect Alaska's scallop stocks from over-exploitation, and to preserve the economic health and stability of the commercial fishery.

DATE:

3/13/92


Carl L. Rosier, Commissioner
Alaska Department of Fish and Game

ALASKA BOARD OF FISHERIES

TENTATIVE AGENDA

Spring Meeting
Part II

Westmark Baranof Hotel
Juneau, Alaska

March 7 - 14, 1992
1:00 p.m.

1. Call to Order
2. Introductions of Board Members & Staff
3. Board Member Ethics Disclosures
4. Staff Reports on Southeast Alaska Chinook Salmon Management
5. ^{3:00} Public Testimony on Southeast Alaska Chinook Salmon Management
6. Advisory Committee & Regional Council Reports on Southeast Alaska Chinook Salmon Management
7. Board Deliberations on Southeast Alaska Chinook Salmon Management

IMPORTANT AGENDA NOTE: This portion of the meeting will not begin prior to March 11. The actual beginning of the meeting will depend on the conclusion of the deliberations of the above portion of the meeting.

8. Board member Ethics Disclosures
9. Staff Reports on 1987 Area M Tagging Study
10. Public Testimony on Tagging Study and Chum Cap
11. Advisory Committee and Regional Council Reports on Study and Chum Cap
12. Board Deliberations on Tagging Study and Chum Cap
13. Petitions/Resolutions/Findings/Letters/Other
14. Adjourn

NOTE: This schedule is tentative and subject to change during the meeting. Schedule updates can be obtained by calling the board's recorded message phone during the meeting. The number is 586-9819.

U:\BDIR\AGENDA.JUN [02/14/92 @ 4:32pm]

BOARD AGENDA/MAR 7-14 MEETING

ALASKA BOARD OF FISHERIES

Summary

June Area M Chum Cap Issue and Other issues the Board Considered

The board had met from early afternoon of Friday, March 13 through the late evening of Sunday, March 15 on the June Area "M" Chum Cap Issues. Following the Area "M" issues, the board took actions on the other petitions and requests.

The department first briefed the board on the 1987 tagging study as the only staff report for this portion of the meeting. The board then heard from two public panels on interpretations of the significance of the 1987 tagging study. One panel represented the general western Alaska area from Bristol Bay through the Norton Sound areas. The other panel represented the Alaska Peninsula and Aleutian Islands Area ("Area M"). Each panel was provided 30 minutes to state their case on the 1987 tagging study. [Note: There was one coin toss to select which person representing each panel was going to call heads or tails (the Area M person won). The second coin toss was won by the Area M person. They selected to go second in the panel presentations]

After the panel presentations, the board asked the department additional questions about the study and items brought up during the panel presentations. The board voted unanimously to proceed with considering the June Area M Chum Cap (03/14/92 @ 3:11pm).

The evening of March 13 the chairman of the board (Mike Martin) met with five fishermen from Area M and five fishermen of the A-Y-K areas to see if there was common ground the groups could agree on. The next morning the chair reported that the groups could not agree on a solution to the issues but did agree on some other ideas. He also hoped the affected fishermen would continue the dialogue to see if there could be at least an understanding between the fishermen.

The board heard from approximately 83 people and 5 advisory committees that afternoon, next morning and into the afternoon.

At 4:30 the first motion was:

To amend the adoption order to amend: 5AAC 09.365. SOUTH UNIMAK AND SHUMAGIN ISLANDS JUNE SALMON MANAGEMENT PLAN. (f) to provide the following: The total chum salmon harvest shall not exceed "a range of 500,000 - 700,000 fish (cap). When the chum harvest reaches 500,000, a working group comprised of 4 area M and 4 A-Y-K persons and the ADF&G shall implement a plan to reduce chum harvest to allow for Area M to reach their project 8.3% allocation while not exceeding the chum cap. This will sunset in one year with the board reviewing the progress of the working group and the fishery. The department shall monitor both fisheries in concurrence with any

11:20 AM HUR&G BUREAU JUNE 1992 P. 3
existing subsistence needs in any of the effected areas." This motion was withdrawn at 5:26 p.m.

The second motion provided:

To amend the adoption order to amend: 5AAC 09.365. SOUTH UNIMAK AND SHUMAGIN ISLANDS JUNE SALMON MANAGEMENT PLAN. (f) to provide the following: [40 PERCENT OF THE FORECASTED SOCKEYE SALMON GUIDELINE HARVEST LEVEL. THE TOTAL ANNUAL CHUM SALMON HARVEST SHALL NOT EXCEED 900,000] [bracketed language to be deleted] "700,000". "When the harvest reaches 400,000 chum salmon, the department shall take appropriate management action, in season, to reduce the remaining chum harvest rate while attempting to allow full harvest of the sockeye guideline harvest level." Note: underlined language to be added. This motion carried at 6:45pm [6 in favor; 1 against].

The third motion provided [intent language]:

To amend the adoption order to amend: 5AAC 09.365. SOUTH UNIMAK AND SHUMAGIN ISLANDS JUNE SALMON MANAGEMENT PLAN. (f) to provide the following: "for the set gillnet fishermen approximately 16 hours of fishing opportunity during the periods after the 400,000 threshold is reached and to end when the 700,000 cap is reached." This carried at 7:47pm [6 in favor; 1 absent]. This is not to expand the set gillnet allocations. It is to maintain status quo on the allocations. Only to be implemented between the 400,000 and 700,000 chum harvest times.

NOTE: The draft regulatory language for 5AAC 09.365. is enclosed.

The board denied the request from the Commissioner of Fish and Game to petition Commercial Fisheries Entry Commission on providing a moratorium for the Scallop Fisheries [1 in favor; 5 against; 1 absent].

The board delegated authority to the commissioner to adopt certification:decertification for the shellfish onboard observer program [6 in favor; 2 absent].

The board approved adding to the October 1992 Soldotna meeting considering two proposals from Fish and Wildlife Protection to correct two statewide fish regulations (house keeping issues) [carried without objection].

The board denied a petition from the Chair of the Prince William Sound Aquaculture Corporation Production and Planning Committee [0 for; 6 against; 1 absent]. The petition requested the board to amend: 5AAC 24.367 (b)(1) to allow for "drift gillnet fleet to set amongst the setnets on openers only, to benefit from buildups."

After a long hard, but productive meeting cycle, the board adjourned at 10 pm.

DRAFT REGULATORY LANGUAGE - MARCH 1992 BOARD MEETING
FALSE PASS JUNE CHUM CAP
DRAFT AS OF MARCH 18, 1992

5 AAC 09.365. SOUTH UNIMAK AND SHUMAGIN ISLANDS JUNE SALMON MANAGEMENT PLAN.

(f) The department shall close the June fishery before the sockeye guideline harvest levels are taken if incidental harvest of chum salmon reaches [40 PERCENT OF THE FORECASTED SOCKEYE SALMON GUIDELINE HARVEST LEVEL. THE TOTAL ANNUAL CHUM SALMON HARVEST SHALL NOT EXCEED 900,000 FISH] 700,000 fish. When the harvest reaches 400,000 chum salmon, the department shall take appropriate management action, in season, to reduce the remaining chum salmon harvest rate while attempting to allow full harvest of the sockeye salmon guideline harvest level. The documented contribution of Russell Creek Hatchery chum salmon to the June fishery shall be added on over the existing chum salmon numerical quota beginning in 1993.

(g) If it becomes necessary for the department to take management actions, as specified in (f) of this section, to reduce the chum salmon harvest rate, the fishing periods for set gill gear shall not be less than 16 hours in duration, unless such a period will result exceeding the chum salmon guideline harvest level.

v:\paul\FALSE92.REG



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

STATE CAPITOL BLDG., JUNEAU, ALASKA 99801-1182 • (907) 465-3473 • FAX: (907) 463-3043

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

March 13, 1992

Mr. Michael Martin
Chairman
Alaska Board of Fisheries
P.O. Box 25526
Juneau, AK 99802-5526

Dear Mr. Martin:

It has come to my attention that, during the Board of Fisheries meeting now being conducted, the board will review a petition from the Alaska Department of Fish and Game, which proposes to place a four year moratorium on entry into the Alaska statewide scallop fishery.

Notice of review of this proposal, dated February 26, 1992, indicating that a comment period on this proposal would end on March 13, 1992, was received by my office on March 2, 1992. According to the notice, the public is required to have received the notification of this proposal, written to ADF&G in Juneau to obtain data relative to the proposal, and returned their comments to the Board of Fisheries between the dates of February 26, and March 13, 1992. The petition itself was not provided to the Kodiak Fish and Game Advisory Committee, the area where much of this fishery is conducted, for consideration. Review of this petition is not apparent on the tentative agenda for the March 7-14 Board of Fisheries meeting, except under item number 13, "Petitions / Resolutions / Findings / Letters / Other".

In my view, public notice of consideration of this moratorium proposal by the board has been seriously inadequate, and the ADF&G petition itself has not been adequately available for consideration and comment. Consideration of the approval of the petition from ADF&G to the Commercial Fisheries Entry Commission regarding a moratorium on entry into the statewide scallop fishery is not appropriate at this time.

In the interest of providing the public sufficient notification and opportunity to provide meaningful comment on this proposed action as intended, I most respectfully and strongly urge you to delay consideration of this petition by the Board of Fisheries at least until the next regular board meeting.

Sincerely,

Fred F. Zharoff
Alaska State Senator

FFZ/ds

- WRITTEN PUBLIC COMMENT -

KODIAK FISH AND GAME ADVISORY COMMITTEE
211 Mission Road
Kodiak, Alaska 99615

March 13, 1992

Alaska State Board of Fisheries
Post Office Box 25526
Juneau, Alaska 99802-5526

Dear Board Members:

The Kodiak Advisory Committee (KAC) voted unanimously to oppose a moratorium on entrants into the statewide scallop fishery. The Department of Fish and Game (ADF&G) should not have submitted this petition to the Board because the three criteria necessary are not met:

- 1) This fishery has not experienced recent increases in fishing effort that are beyond a low sporadic level of effort. Landings, vessels and catch are all within the historic range for this 23 year old fishery.
- 2) This fishery has not achieved a level of harvest that may be approaching or exceeding the maximum sustainable level. Weathervane scallop landings have fluctuated greatly with effort, but catches over one million pounds have occurred over relatively long periods. Average landings per vessel last year were almost exactly the same as the average for the first 23 years. (Bay scallops are not utilized at all.) Since the State is so large and abundance fluctuates locally, it is unlikely that all scallop beds are being exploited.
- 3) There is not much biological information on scallops, but the catch information indicates that current levels of harvest are sustainable although probably do vary. Intensive exploitation on the East Coast has not managed to eliminate scallops there. The Department has the ability, under their permitting powers, to require more information if they wanted to. The fact that the Department has not required observers or other changes in the fishery indicates that they do not feel more information is needed.

The KAC feels that the petition is being pushed strictly to limit competition. Scallop vessels around Kodiak have usually come from the East Coast. The petitioner came from the East Coast. The Committee would look with favor on conservation measures, but a moratorium is not a conservation measure. It is an allocation measure.

To protect crab stocks and to gather more detailed scallop information, we recommend including all scallop vessels in the shellfish observer program.

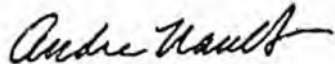
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Alaska State Board of Fisheries
March 13, 1992
Page 2

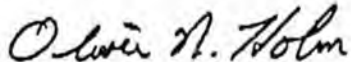
The KAC feels that the use of a moratorium may have some merit when used in a new and emerging fishery, providing that the Department and Board have exhausted all other reasonable management options and a serious increase in effort is demonstrated to be threatening the health of stocks. However, we do not feel this has been proven to be the case in the Alaska scallop fishery. We do not think the Board should use a moratorium to take the place of good biological management, and we object to creating a defacto limited entry program for a select few boats in a multi million dollar fishery.

After reviewing the history of the scallop fishery in Alaska, we are extremely surprised that the Commissioner forwarded this petition to the Board of Fisheries. We urge the Board to reject this petition. We would also point out that the agenda does not adequately notice when this will come before the Board.

Respectfully,



Andre Nault, Chairman
Kodiak Fish and Game Advisory Committee



Oliver Holm, Vice Chairman
Kodiak Fish and Game Advisory Committee

AN/OH/gp

copies: Senator Cliff Davidson
Senator Fred Zharoff

United Fishermen's Marketing Association, Inc.



P.O. Box 1035 Kodiak, Alaska 99615

Telephone 486-3453

March 12, 1992



Mr. Michael Martin
Chairman
Alaska Board of Fisheries
P. O. Box 25526
Juneau, AK 99802-5526

COMMENT ON ADF&G PETITION REGARDING A MORATORIUM IN THE ALASKAN SCALLOP FISHERY

Dear Mr. Martin,

We request the Alaska Board of Fisheries ("Board"), under the authority granted to the Board in AS 16.05.251(g), to disapprove the Scallop Moratorium Petition that is submitted to the Board by the Commissioner of The Alaska Department of Fish and Game ("Commissioner"). The Board has authority to disapprove the Scallop Moratorium Petition.

In the Scallop Moratorium Petition, the Commissioner petitions the Commercial Fisheries Entry Commission ("CFEC") to establish, under AS 16.43.225, a moratorium on new entrants into the Alaskan scallop fishery.

Under AS 16.05.050(20), before the Commissioner can petition the CFEC to establish a moratorium in the Alaskan scallop fishery, he must demonstrate to the Board that the following three criteria exist:

(1) the Alaskan scallop fishery must have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;

(2) the Alaskan scallop fishery must have achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and

(3) that there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the Alaskan scallop fishery

The Commissioner is grossly incorrect in his claim that the three statutory criteria exist. The Commissioner has not demonstrated, nor has he ever remotely substantiated, that the three statutory criteria have been met, other than to little more than simply state that they have been met.

Prior to a request for the proposed moratorium by a predominant beneficiary of any moratorium in the Alaskan scallop fishery, there was no such request from any member of the staff of the Alaska Department of Fish and Game ("ADF&G") who have the responsibility to manage the Alaskan scallop fishery. Indeed, we challenge the Commissioner to produce documents, reports, memorandum, etc. that would demonstrate that ADF&G staff had any difficulty or concern that related to the three statutory criteria that have been claimed to exist by the Commissioner.

This Petition was requested by a member of the Alaskan scallop industry who will be one of a very few predominant beneficiaries of a moratorium in the Alaskan scallop fishery (such member claims to be one of 5 "traditional" scallopers at present). The very few beneficiaries

of the proposed moratorium will share in a scallop fishery that was worth, ex-vessel value, approximately \$4 Million in 1991, and approximately \$5.2 Million in 1990.

In the Scallop Moratorium Petition, the Commissioner states that, "Such a moratorium on new entrants would give the department time to develop a management plan that would conserve the resource and stabilize the fishery". We ask the Board to ask the Commissioner to explain several aspects of the management of the scallop fishery, including the details of developing a management plan for the Alaskan scallop fishery:

1. On what basis has ADF&G been managing the Alaskan scallop fishery to the present time?
2. Why has ADF&G failed to develop a management plan for the Alaskan scallop fishery before now?
3. What human and financial resources has the Commissioner currently budgeted for the development of this proposed management plan?
4. How much time does the Commissioner feel he needs to develop the proposed management plan?
5. Has the Commissioner proposed any human and financial resources in the ADF&G F/Y 1993 budget to develop the proposed management plan?
6. Is the Commissioner able to develop a management plan for the Alaskan scallop fishery without having a moratorium in place?
7. Is a moratorium a necessary prerequisite for developing a management plan for the Alaskan scallop fishery?
8. Is it not the responsibility of the Board to develop a management plan?
9. Has the Commissioner ever indicated to the Board in the past that such a management plan is necessary, or that he is unable to conserve or manage the Alaskan scallop fishery?
10. Has the Commissioner substantiated that his staff is unable to manage and conserve the Alaskan scallop fishery?
11. Can the Commissioner produce any past reports, documents, memorandum or verbal testimony from his staff who have responsibility for managing the Alaskan scallop fishery that ADF&G is unable to manage and conserve the Alaskan scallop fishery?
12. Has the Commissioner ever discussed, or proposed to the Board, any other solutions that would address the problems that he perceives to exist in the scallop fishery [ie, 100 % observer coverage on scallop vessels (wrap them into the Alaska shellfish observer program); the development of an enforcement plan in cooperation with the Fish and Wildlife Protection Division of the Department of Public Safety that would result in a focused enforcement effort on scallop vessels; the requirement of satellite or some other type of position indicators on scallop vessels; outright closures of areas that are determined to be in jeopardy; limiting the width of a scallop dredge; establishing a minimum ring size greater than the currently permitted 4 inches; limiting the length of a scallop vessel; establishing a trip limit for scallop vessels; establishing registration areas for scallop vessels (including exclusive and super-exclusive registration areas); etc.]?
13. Can the Commissioner provide information regarding the length of time that the beneficiary vessels, owners, operators and crews of a scallop moratorium have participated in the Alaskan scallop fishery?
14. How does the Commissioner reconcile the fact that he is now proposing a step as drastic as a moratorium, but yet has not submitted any other regulatory proposals to the Board that would assist ADF&G in conserving, stabilizing and managing the Alaskan scallop fishery?
15. Does the Commissioner intend to develop any regulatory proposals regarding the Alaskan scallop fishery prior to the April 10, 1992, proposal deadline?

16. Are there any areas of the state where the scallop fishery is regulated in such a manner that ADF&G is able to conserve and manage the scallop fishery?

17. Are regulations and other Permit Requirements that govern the Alaskan scallop fishery applied uniformly throughout the state, or have different management areas developed specific management regimes, Permit Requirements and Regulations that allow ADF&G to conserve and manage the scallop fishery?

It appears that the legal notice that pertains to the Board action on the Scallop Moratorium Petition may allow the Board to take a variety of regulatory action, apart from action on the Scallop Moratorium Petition, during your current meeting. Also, there are several options that are available to the Board, and several options that are at the immediate disposal of the Commissioner, that would address any ADF&G or Industry concerns regarding the scallop fishery. Independent of Board direction or action, the Commissioner may stipulate, at his discretion, any variety of Permit Requirements regarding any aspect of the Alaskan scallop fishery

AS 16.05.251(g) states, "The Board of Fisheries shall consider a request of the commissioner for approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225 at the board's next regular or special meeting that follows the receipt by the board of the request for approval of the petition and that allows time for the notice required under this subsection. The board may consider the request of the commissioner for approval of the petition only after 15 days' public notice of the board's intention to consider approval of the petition. The board shall consider whether the commissioner, in support of the request for approval of the petition, has adequately shown that the fishery meets requirements for a moratorium on new entrants under AS 16.05.050. The board by a majority vote of its members at the meeting when the petition must be considered shall approve or disapprove the petition." (emphasis added)

We understand that the required official request of the Commissioner for approval of the petition was not transmitted to the Board prior to the date that the legal notice was published (2/26/92); that is, that the legal notice relative to this issue was published prior to the Board having received the required official request from the Commissioner. We further understand that as of today, the Commissioner has not yet transmitted the required official request to the Board. Therefore, we believe that the legal notice was improperly and prematurely released, which would not permit the Board to take action on this issue at this meeting. Additionally, as we have submitted previously, the Commissioner has not adequately shown that the fishery meets the requirements for a moratorium on new entrants under AS 16.05.050.

We respectfully request that the Board judge that the issue of a moratorium in the Alaskan scallop fishery is not properly or legally before you at this meeting. If the Board decides to take action on this issue at this meeting, we respectfully request that the Board disapprove any Petition from the Commissioner regarding a moratorium in the Alaskan scallop fishery. Thankyou for your consideration of our comments regarding this issue.

Sincerely,



Jeffrey R. Stephan

5 AAC 39.205 ALASKA AD

sonal use fisheries. The primary purpose is to protect the sustained yield of the fishery at the same time providing an equitable distribution of fish between various users. The regulations are intended to aid in the achievement of these goals and apply to all fishery management plans contained in 5 AAC 03 - 1 AAC 39.

(b) In some fishery management plans, the distribution of harvestable fish between various users is determined by the harvest that occurs during a specific time period, at a specific location or by a specific group or groups of users. At times fishermen, due to circumstances that are beyond the control of the department, such as weather or price disputes, will not harvest fish. When this happens in a fishery governed by a management plan, the goals of that plan may not be achieved. Therefore, when a fishery is open to the taking of fish and the group or groups of users whose catch determines the distribution of the harvest as set out in the applicable management plan is not taking the harvestable fish available to them, the department shall manage the fishery as if the available harvest is being taken. When determining the available harvest, the department shall consider the number of fish needed to meet spawning requirements, the number of fish present in the fishery and in spawning areas that are in excess of spawning requirements and the estimated harvesting capacity of the group or groups of users that would normally participate in the fishery. (Eff. 4/16/83, Register 86)

Authority: AS 16.05.251

5 AAC 39.205. CRITERIA FOR THE ALLOCATION OF FISHERY RESOURCES AMONG PERSONAL USE, SPORT, AND COMMERCIAL FISHERIES. Before adopting regulations that allocate fish among personal use, sport, and commercial fisheries, the board will, as appropriate to particular allocation decisions, consider factors such as those set out in AS 16.05.251(e). (Eff. 6/10/82, Register 102)

Authority: AS 16.05.251

5 AAC 39.210. MANAGEMENT PLAN FOR HIGH IMPACT EMERGING FISHERIES. (a) To guide management of high impact emerging commercial fisheries, a plan is needed that ensures resource conservation, minimizes impacts on existing users, and provides orderly development of new fishery resources.

(b) The department may regulate a commercial fishery as a high impact emerging commercial fishery if the commissioner determines

Any of the following conditions apply to a species or species group in an area or region:

- (1) harvesting effort has recently increased beyond a low sporadic level;
 - (2) interest has been expressed in harvesting the resource by more than a single user group;
 - (3) the level of harvest might be approaching a level that might not be sustainable on a local or regional level;
 - (4) the board has not developed comprehensive regulations to address issues of conservation, allocation, and conduct of an orderly fishery.
- (c) The commissioner shall notify the board if a determination is made to manage a fishery as a high impact emerging fishery.
- (d) The department shall close a high impact emerging commercial fishery once it has been designated as such by the commissioner, and may not reopen the fishery until an interim management plan and associated regulations have been adopted by the commissioner. If an interim management plan and regulations have been adopted, the commissioner may allow the fishery to continue.
- (e) The department shall develop an interim management plan for each high impact emerging commercial fishery. An interim management plan shall contain at least the following information:
- (1) a review of the history of commercial exploitation of the species in Alaska and other relevant jurisdictions;
 - (2) a review of the life history of the organism;
 - (3) identification of specific management goals and objectives;
 - (4) an evaluation of potential impacts on existing users;
 - (5) designation and justification of the preferred management measures;
 - (6) an evaluation of the conservation impacts of the preferred management approach on non-target species and on non-target individuals of the same species;
 - (7) a plan for determining the productivity of the species and impact of the fishery;
 - (8) a list of proposed interim regulations;
 - (9) a cost estimate for plan implementation;
 - (10) an analysis of customary and traditional subsistence use patterns.
- (f) The commissioner may adopt regulations and open the fishery consistent with measures identified in the interim management plan. The regulations will remain in effect until the board adopts regulations under (g) of this section.
- (g) Upon completion of an interim plan, the department shall petition the board under 5 AAC 96.625 to consider adoption of the management plan and associated regulations at its next regularly scheduled meeting.

SALMON FISHERIES

Change Request

5 AAC 39.230 ALASKA ADMINISTRATIVE CODE 5 AAC 39.250

(h) The department may require onboard observers as specified in 5 AAC 39.141 and 5 AAC 39.645 on fishing vessels, catcher/processors and floating processors that participate in high impact emerging commercial fisheries. (Eff. 4/30/91, Register 118)

Authority: AS 16.05.251

Article 2. Salmon Fishery

Section	Section
230. Gear	240. Identification of stationary fishing gear
240. General gear specifications and operations	281. (Repealed)
250. Gill net specifications and operations	290. Closed waters
260. Seine specifications and operations	292. (Repealed)
270. Troll specifications and operations	

5 AAC 39.230. GEAR. Only those gill nets, seines, troll lines, fishwheels, spears or other appliances as provided for in 5 AAC 03-5 AAC 39 may be used to take salmon. (In effect before 1988)

Authority: AS 16.05.251

5 AAC 39.240. GENERAL GEAR SPECIFICATIONS AND OPERATIONS. (a) A salmon fishing vessel shall operate, assist in operating, or have aboard it or any boat towed by it, only one legal limit of salmon fishing gear in the aggregate except as otherwise provided in this title.

(b) Unhung gear sufficient for mending purposes may be carried aboard fishing vessels.

(c) A purse seine, hand purse seine or beach seine may not be fished simultaneously with gill net gear by any individual or vessel.

(d) Salmon fishing nets must be measured, either wet or dry, by determining the maximum or minimum distance between the first and last hanging of the net when the net is fully extended with traction applied at one end only.

(e) The interim-use or entry permit card holder is responsible for the operation of the net. (In effect before 1985; am 5/31/85, Register 94)

Authority: AS 16.05.251

5 AAC 39.250. GILL NET SPECIFICATIONS AND OPERATIONS. (a) The trailing of gill net web is prohibited at any time or place where fishing is not permitted.

(b) Set gill nets shall be removed from the water during any closed period.

... 20 elements, except that

5 AAC 39.260 FISH AND GAME

(1) in the Southeast Alaska, Yakutat, Pri Cook Inlet Areas, gill net web must meet requirements:

(A) the web must contain at least 30 meshes must be of equal diameter, or

(B) the web must contain at least six f. must be at least 0.20 millimeter in dia

(2) effective 1/1/89, the requirements in subsection apply in the Kodiak, Chignik, A Peninsula, Bristol Bay, Kuskokwim, Yuk Clarence, and Kotzebue-Northern Areas.

(d) The float line and floats of gill nets r surface of the water while the net is fishing, t cause the net to temporarily sink. The restr does not apply to the Kotzebue-Northern (Sound-Port Clarence (5 AAC 04.100), Y: Kuskokwim (5 AAC 07.100), and Kodiak (5 effect before 1983; am 4/16/83, Register 86; a am 2/88, Register 105)

Authority: AS 16.05.251

5 AAC 39.260. SEINE SPECIFICATIONS. (a) In the use of purse seines and nar than one anchor may be used to hold the se during a set.

(b) Repealed 3/26/76.

(c) Unless otherwise provided in 5 AAC (seine is considered to have ceased fishing wh the water.

(d) A hand purse seine is considered to h both ends of the seine are fast to the ves:

(e) A beach seine is considered to have ce the lead line is above the water on the b.

(f) Where the use of leads is permitted, a p have or use more than one lead of legal le purse rings attached, and with a minimum r

(g) If a purse seine and a lead are oper

(1) the lead must be attached to the

(2) the lead may be attached to only or

(3) the lead may not be attached at an

seine;

(4) the web of the purse seine must over

at least one fathom, or the web of the pu:

the end of the lead for the entire depth

(5) — (8) repealed 6/2/88.