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406

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/14/92

FURTHER: Senate Special Comte.
on Commercial Fisheries

Date of 5-Day Notice: Feb 27, 1992
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: May 6, 1992

Resources Committee considered SB 406

"An Act relating to the management of mixed stock fisheries by the Board of Fisheries."

and recommends:

replace with _____ CS SB 406 (Res)

same title
 new title
 technical
title change
(HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

Governor's bill with fiscal notes:
zero fiscal notes _____

fiscal notes _____

DO PASS:

OTHER RECOMMENDATIONS:

So. Gate no Rec
Frank C. Zbruff No Rec

Hayd Jones (Do Pass)
Chair: Signature and Recommendation

**CS FOR SENATE BILL NO. 406 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY THE SENATE RESOURCES COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR HOFFMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the management of mixed stock fisheries by the Board of Fisheries."

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

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

4 (h) The Board of Fisheries shall adopt by regulation a policy for the management of
5 mixed stock fisheries. The policy shall provide for the management of mixed stock fisheries in
6 a manner that is consistent with sustained yield of wild fish stocks.

DEPARTMENT OF FISH AND GAME
POSITION PAPER

Bill No: SB 406
Sponsor: Senator Hoffman
Division: Commercial Fisheri
Bill Title: Management of M.
Fisheries.

F A X T R A N S M I T T A L M E M O
TO: Terry
DEPT: _____ FAX #: 3922
FROM: Cowan PHONE: _____
CO: _____ FAX #: 2332
Post-it brand fax transmittal memo 7871

NO. OF PAGES
2

Department Position: Oppose

Senate Bill 406 is similar in content to the Board of Fisheries' Policy Statement on Management of Mixed Stock Salmon Fisheries, which the Department of Fish and Game supports. However, adoption of that policy as statute would place a stringent requirement on the board to follow the guidelines when adopting regulations. Given the dynamic nature of Alaska's fisheries, it might be more advisable for the board, which was created to foster both the conservation and development of our fisheries resources, to adopt a mixed stock fisheries policy as a regulation. This would provide the board with the flexibility needed to change the policy if conditions warrant. The Legislature could provide strong guidance, through the form of a resolution, as to what it thinks the board should consider when adopting such a policy.

Stock specific fisheries management is a laudable goal. It is one which the department strives to attain. However, as is the case with many goals, it is one that can not be fully achieved in a practical since. I would like to point out a few factors that it difficult to achieve that goal.

There are few, if any, pure single stock fisheries in the state. From a strictly scientific perspective, a stock is a genetically unique breeding population. Application of that definition could lead one to the conclusion that, ideally, fisheries should only take place on the spawning grounds. One can easily envision how dangerous even a small error in setting the allowable fishing time in such a situation would be to the viability of a stock subjected to that type of fishery. The department and the board take a more broad, pragmatic approach to the concept of stock; that being a concept of more inclusive breeding populations that are manageable as a unit. For example, in management of the commercial fisheries that take place in the lower Yukon River, chinook and fall chum salmon are generally each considered a single management stock, as opposed to breaking those stocks down by their spawning tributaries. The point is that one should take the broad management approach to defining a stock when dealing with the guidelines such as those contained in this bill.

Position Paper Continued

SB 406

There are some important biological, economic, and social reasons for having mixed stock fisheries. As mentioned above, there is a danger to single stock management in the form of over fishing. The area where the fishery is to take place should be large enough to accommodate the fleet without undue congestion and to allow reasonable time to prosecute the fishery. In many areas this requires that the fishery take place before the fish stocks become highly separated. The quality of some fish species, such as pink and chum salmon, quickly deteriorate as they approach their natal streams. It is also very expensive to manage the large returns of these species on a stock specific basis. Thus, economics dictates some degree of mixed stock fishing in those types of situations.

Although a reasonable interpretation of the bill's language should not cause management difficulties, the lack of a strong definition for "stock," "mixed stock fishery," and other terms in the act could provide rich fodder for future litigation over controversial decisions of the Board of Fisheries. A very narrow interpretation of the term "stock" could force the board to adopt stock specific management plans that would require the department to initiate costly data gathering and inseason management projects on stream by stream basis. I recommend that the board be allowed to retain the flexibility to address specific situations, particularly as factors change with time. An important factor that will change with time is the ability to distinguish stocks of fish and the department's fiscal and technical capabilities to manage those stocks.

Commissioner's Signature

C. Meacham

Date: 2-28-97

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 406

Revision Date: 2/20/92 Department Affected: Fish and Game
 Title: Management of Mixed Stock Fisheries BRU: Commercial Fisheries
 Component: Commercial Fisheries
 Sponsor: Senator Hoffman
 Requestor: Senate Resources COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0					
TRAVEL	0					
CONTRACTUAL	0					
SUPPLIES	0					
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS, CLAIMS	0					
MISCELLANEOUS	0					
TOTAL OPERATING	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						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	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: Bob Clasby Phone: 465-4210
 Division: Commercial Fisheries Date: 2/20/92
 Approved by Commissioner: C. Maclean
 Agency: Fish and Game Date: 2-28-92

APFG Zero
Fiscal Note

February 20, 1992

Honorable Senator Lyman Hoffman
Juneau, Alaska 99801

Subject: Senate Bill No. 406

This letter is to support Senate Bill No. 406. "AN ACT RELATING TO THE MANAGEMENT OF MIXED STOCK FISHERIES BY THE BOARD OF FISHERIES".

The board of fisheries does not have a policy nor regulation concerning the management of mixed stock fisheries. The board of fisheries has had in the past used such a policy statement to manage the mixed stock fisheries. This policy has been in the regulation books as a policy statement for a good number of years. In 1989 the board of fish worked over the present mixed fish policy statement. This policy statement is also contained in the 1990-1991 Bristol Bay and westward commercial fishing regulation book. Currently the board of fisheries cannot even mention its mixed fish policy statement because of a judge's ruling. The judge stated, "If the board of fish does not adopt the mixed fish policy statement into a regulation than the board should not use it".

As a past board of fish member I strongly feel that such a policy is vital to the management of our mixed stock fisheries. I have while on the board moved to adopt the mixed fish policy statement into a regulation but to no avail.


The A.G.s office has also urged the board of fish to adopt the mixed stock policy statement into a regulation. The A.G.s office has sent several memos to the board stating if the mixed fish policy statement is not put into regulation then according to the judge's decision and the interpretation of the A.G.s office, the board should refrain from even mentioning it in their deliberations on proposals dealing with mixed stocks of fish.

Senate Bill No. 406 will contain the existing mixed stock fisheries. These fisheries will not be able to expand at the expense of other fisheries that have harvested these stocks in a more terminal fisheries or by fishermen that have traditionally fished for these stocks. A few examples come to mind, presently the Area M fisheries are allocated 8.3% of the forecasted catch of Area T sockeye salmon. This was done by the board of fish. This bill, if passed will not effect that allocation. However, if the Area M fisherman start

Letter of Support
Robin Samuelsen Jr

harvesting 12.5% of the Area T sockeye, the board of fish will have the tools necessary to curtail that new expansion of that fishery. Another example is the Kodiak-Cook Inlet fisheries. In the last Kodiak fish board cycle the board curtailed the expansion of the Kodiak fisherman on the sockeye stocks bound for Cook Inlet. At the time the board could use its mixed fish policy statement and did. Without this tool no telling what will happen the next time the board of fish takes up Kodiak proposals or other fisheries that are allowed to expand at the expense of other fisheries and fishermen. One thing this bill is not is a discrete stock bill, if it was I would not be supporting it. We have fisheries that are of mixed stocks throughout our state. These are long standing and accepted fisheries by fisherman as well as the board of fish. I again urge the passage of Senate Bill No. 406. This bill will not only help the board of fish to manage mixed stock fisheries but also help the public understand the rules the board of fish plays by and hopefully will elevate some of the turmoil surrounding our fisheries.

Thank You



H. Robin Samuelson Jr.

Box 412

Dillingam, Alaska 99576

MEMORANDUM

State of Alaska
Department of Law

TO: Laird Jones
Director, Division of Boards
Department of Fish & Game

DATE December 19, 1990

FILE NO 223-89-0078

TEL NO 465-3600

SUBJECT Mixed stock policy after
Gilbert

FROM: Larri Irene Jones
Assistant Attorney General
Natural Resources Section

You requested more explicit guidance on the Board of Fisheries' mixed stock policy in light of Gilbert v. State ___ P.2d ___, Op. No. 3649 (Alaska December 7, 1990). That case declared that the mixed stock policy was in effect a regulation, because it "makes more specific the law enforced or administered" by the board and "affects the public," as outlined in the definition of "regulation" under AS 44.62.640(a)(3). However, the mixed stock policy was never adopted under the administrative procedure act, with notice, comment, codification, etc. Thus, the court ruled that the policy could not be relied upon by the board in any way as a basis for making regulations. This ruling applies not only to the Stepovak commercial allocation at issue in Gilbert, but to any regulations. (This does not mean, however, that any regulations already adopted by the board are necessarily invalid if the board referred to the mixed stock policy in adopting them. In the Gilbert case, for example, although the mixed stock policy had been referred to, the court found ample grounds in the record for the board's action, even if the mixed stock policy was subtracted out.)

This decision leaves the board two options with regard to the mixed stock policy. The first is adopting it as a regulation, in which case the board could rely on it and refer to it in adopting or rejecting proposals in the regulation-making process. In order to accomplish this option, the subject should be properly noticed, and the board might want to publish the existing policy as a proposal for public comment under the appropriate legal notice.

The alternative course of action would be not to adopt the policy as a regulation, and to simply stop referring to it. If the board chooses this course of action, the policy should be removed from the regulation handy dandy book, where I believe it is still reprinted, and should not be referred to in the deliberation process. The board could, however, use the content of the now invalid mixed stock policy in discussing reasons for or against various proposals. For example, the board members could express their concern that historic mixed stock fisheries not be allowed to grow, because of possible conservation concerns, and concern that those who rely on those fisheries should not suddenly have one of

Attorney General
Legal Memorandum

their sources of livelihood closed down. The key to remember, if this course is chosen, is that the mixed stock policy is invalid procedurally, not substantively, and there is nothing wrong with the board discussing the kinds of concerns and goals expressed in the mixed stock policy in deliberating.

One advantage to not adopting the mixed stock policy as a regulation, and rather simply referring to the goals and concerns in discussions, is that it would remove one possible cause of action for law suits. In other words, if the mixed stock policy is adopted as a regulation, then on any given regulatory action affecting mixed stocks, people could allege inconsistency with the policy, whether the action is to increase the level of mixed stock harvest, decrease it, or leave it the same. Prevailing on those allegations would be another matter, but if the policy has not been adopted as regulation and is not referred to by the board, that cause of action will not be available to potential plaintiffs. However, if the board believes there are worthwhile purposes in converting the mixed stock policy into a regulation, the concerns over a potential additional cause of action should not be determinative.

If you have any questions, please let me know.

cc: Don Collinsworth
Commissioner of Fish & Game

Denby Lloyd
Director of Commercial Fisheries Division
Department of Fish and Game

Tom Koester
Steve White
Bonnie Harris
Department of Law

LIS:nl

At this point, there's hardly anything left to lose.

□ John Tetpon, an Anchorage Journalist, is Vice President of the Native American Journalists Association and a member of the Alaska Native Communications Society.



Fish board should put fish and Alaska fishermen first

Some commend, others curse me for legislation creating boards of fish and game and education in the early 1960s.

It was the ardent desire of Gov. Bill Egan to eliminate boards. Having somewhat more clout than a freshman House member with no party affiliation (I was one of two Independents), Gov. Bill squashed my first bills before they came out of committee so I re-introduced them again ... and again ... and again. Such a pest did I make of myself, watered down versions were finally permitted to pass.

My hope was to shelter fish and game and education from political manipulation. To do so, respective commissioners would serve at the board's instead of the governor's pleasure. While education was so insulated, fish and game was left exposed.

Nonetheless, as governor I treated both departments alike. Instead of replacing



JAY HAMMOND

Fish and Game Commissioner Brooks with a "politically correct" appointee. I retained a competent professional. Moreover, I refused to pressure the board even when I disputed its actions. That I'd not politically orchestrate fish and game management was applauded by all ... save the faction whose "politics" did not prevail.

While I still believe fish and game boards should be sheltered from politics, shelter should be from within as well as without. Absent state policy guidelines on such things as intercept fisheries and harvest allocations, too often the board's politics fills the policy vacuum.

Even when not the case, if board members have financial interests in management, the public will charge "conflict." Areas and interests not represented will feel shortchanged.

As resource competition increased, so did public dissatisfaction. To alleviate that, I proposed local advisory boards. Later, I toyed with regional boards. Cost and complexity compelled me to shelve them.

Board decisions regarding intercept fisheries (i.e., the False Pass "chum cap"), and allocations seemingly favor-

ing non-resident Alaskans, have prompted Rep. Jerry Mackie of Craig to resurrect the idea of regional boards. However, until policy guidelines are imposed, any board system will be defective.

Who should establish these guidelines? Certainly not the board. For example, would drifters like a fish board on which sat only setnetters to be free to allocate salmon as they saw fit?

State policy should be made by the legislature. By this, I don't mean mucking around with specifics. That's for the board and department. What I *do* mean is a broad policy directing the board to place paramount two considerations when evaluating all regulatory proposals:

1. What's in the best interests of the fish?
2. What's in the best interests of Alaska fishermen? (In other words, does the proposal, if adopted, reduce

Alaska residents' share of the harvest?)

Proposals which would expand interception of intermingled fish stocks and reduce the total share of harvest going to Alaska residents should be thrown out.

Similarly, proposals real-locating harvests between gear types which reduce Alaskans' comparative share should be dumped. Instead the board of fish recently wasted time and incurred outrage by voting on elimination of almost 60 set nets. That proposal met neither policy objective:

1. More salmon would be caught which otherwise would escape into their natal streams if setnetters (who fish only part time) vacated locations into which flooded drifters fishing full time, and;

2. Alaska residents' collective comparative payday would be reduced, since over 90 percent of the bay's setnet

harvest goes to residents, compared to less than 50 percent for the drift fleet.

Why was this proposal even considered? Politics. Absent state policy better protecting fish and Alaska fishermen, it will ever be so ... or so presumed.

Recently, encouraged by Rep. Georgianna Lincoln of Rampart, I urged the governor to demand his agencies provide data comparing resident vs. non-resident harvest in all fishing districts. Happily, he demanded they do so.

I believe he'll be enlightened, perhaps even shocked. At the least, I hope it will induce *him* to direct both the board and the department, to place first the best interests of the fish and Alaska fishermen ... no matter whose ox may be gored.

□ Jay Hammond was governor of Alaska from 1974 to 1982.

Democratic ride gets a little rougher as Kerrey goes after Clinton

WASHINGTON — Up to now the Democratic primaries have been like a children's birthday party. Everybody gets a prize; no one, overcome with the chagrin of defeat, rushes sobbing from the room. Now, however, the party is getting

Kerrey says that Clinton's transgressions in love and war make him "a soft peanut" for Republicans in the fall. It is the worst thing he could say about a man whose claim — yet to be proven — is "electability." Kerrey's first attempt to

— which Kerrey eventually opposed — refought.

It is personal, too, because Kerrey, like other Democrats, is irritated with Clinton's latter-day militarism as reflected in his statement that he would have voted for the Gulf War. Kerrey, like

Gen. P.X. Kelley to warn on video that the White House is no place for doves.

Kerrey has tried to translate Clinton's record on the draft into a matter of "personal responsibility." Clinton's reasoning, he says, is

money. He is garlanded with political endorsements from the entire Georgia establishment, beginning with Gov. Zell Miller, Sen. Sam Nunn and — most important, given the state's large black vote — Rep. John Lewis, an

