

SB

316

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

WALTER J. HICKEL, GOVERNOR

8800 GLACIER HWY, #109
JUNEAU, AK 99801
(907) 789-6150 Licensing Calls
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February 11, 1994

RECEIVED

The Honorable Rick Halford
President of the Alaska State Senate
Capitol Building, Room 111
Juneau, AK 99801-1182

Re: Your request for comments concerning proposed amendment to
AS 16.05.710

Dear Senator Halford:

We circulated your request to various staff members for their comments. One of our senior hearing officers is David A. Ingram, who was personally responsible for the last amendment to AS 16.05.710, which both toughened the statute and clarified some of its terms.

Mr. Ingram produced a thoughtful memo in response dated February 10, 1994, which is enclosed with this letter. In response to your specific request, some suggested language is provided on page 3 of Mr. Ingram's memo.

There is much additional and relevant discussion in Mr. Ingram's memo. We have not yet thought through all of the implications of the various suggestions. However, in the face of your pending legislative deadline, we wanted you to have the benefit of the best information we have at present, so we are sharing the entire memo with you.

Please call if you have any questions or comments. You are welcome to call Mr. Ingram directly at this office.

Sincerely,

COMMERCIAL FISHERIES ENTRY COMMISSION

Bruce Twomley, Chairman
Frank Homan, Commissioner
Dale G. Anderson, Commissioner

by: _____

Enclosure

cc: David Thompson, Special Staff Assistant
Colonel Bill Valentine, Fish & Wildlife Protection
Commissioner Carl Rosier, Alaska Department of Fish & Game
Clem Tillion, Special Assistant to the Governor for Fisheries
Dean J. Guaneli, Assistant Attorney General

COMMENTS FROM COMMERCIAL FSH. ENTRY
COMMISSION

MEMORANDUM**STATE OF ALASKA**

TO: Commissioners
Management Council
Jesse Walters
Susan Haymes
Elerene McClure

DATE: February 10, 1994

FILE NO:

TELEPHONE NO:

FROM: Dave Ingram *DI*
Hearing Officer

SUBJECT: Proposed Amendment
to AS 16.05.710

Here are my thoughts on the proposal to toughen up AS 16.05.710.

First, as Col. Valentine's synopsis of the 1993 Bristol Bay enforcement effort suggests, the real problem with enforcement in the Bay is not the inadequacy of AS 16.05.710, it's the performance of the prosecutors. They generally reduce misdemeanors down to violations in order to obtain quick guilty pleas and avoid trial. In doing so, however, they allow the offenders to avoid the effects of AS 16.05.710, which requires misdemeanor or felony convictions before the suspension provisions come into play. Col. Valentine correctly stated the problem as follows: "As long as misdemeanor cases are reduced to infractions [violations] there will never [be] any chance of fishing permits being suspended or ultimately revoked after three convictions as provided by statute."

You might ask why the statute can't be amended to provide for suspension upon conviction of mere violations. The answer is that to do so would require a major restructuring of the criminal code as well in order to avoid constitutional problems. AS 11.81.900(b)(57) defines a violation as being a noncriminal offense punishable only by a fine and further provides that a person charged with a violation is not entitled to a trial by jury and is not entitled to have a public defender appointed to the case. The Alaska Supreme Court has made it clear that a defendant is entitled to a trial by jury if conviction may result in the loss of a license to pursue an occupation. See Baker v. City of Fairbanks, 471 P.2d 386 (Alaska 1970). Consequently, no entry permit can be suspended unless the defendant has the right to a trial by jury. The criminal code would have to be changed to allow for trial by jury on violations before permits could be suspended at that level, and I doubt that such a change would find little, if any, support in the Department of Law.

The best cure for rampant violation of fishing laws in the Bay, I think, would be vigorous prosecution of the cases prepared by Fish and Wildlife Protection (F&WP). I can imagine how frustrating it must be for the officers to work up a case and then have a prosecutor reduce it

Sec 16.05.710. Suspension and forfeiture of commercial license and entry permit. (a) Upon the conviction of a person for a misdemeanor or felony violation of a commercial fishing law of this state, the court, in addition to other penalties imposed by law

(1) may suspend one or more of the person's commercial fishing privileges and licenses for a period of not more than one year, if the conviction is the person's first [OR SECOND] misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state or another jurisdiction; or

(2) shall suspend one or more of the person's commercial fishing privileges and licenses for a period of at least one year but not more than three years if the conviction is the person's second [THIRD OR SUBSEQUENT] misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state or another jurisdiction; or

(3) shall suspend one or more of the person's commercial fishing privileges and licenses for a period of at least two years but not more than five years if the conviction is the person's third misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state or another jurisdiction; or

(4) shall suspend one or more of the person's commercial fishing privileges and licenses for a period of at least three years but not more than seven years if the conviction is the person's fourth misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state or another jurisdiction; or

(5) shall order the forfeiture of one or more of the person's commercial fishing privileges and licenses if the conviction is the person's fifth or subsequent misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state or another jurisdiction.

The remaining sections of the statute would have to be renumbered and tweaked a bit to include forfeiture language where appropriate.

There is, of course, another way to get tough on violators that the legislature may wish to consider: provide for suspension and revocation of permits through administrative proceedings as well as court proceedings. The Alaska Supreme Court has held that a respondent has no right to a jury trial and that his professional license may be suspended or revoked in administrative proceedings in which the respondent's fitness to practice a profession is the primary concern. See Loesche v. Alaska Board of Fish and Game, 537 P.2d 1122 (Alaska 1975). Here, it seems, the legislature could assign the task of conducting such proceedings to CFEC and provide guidelines for determining when a person has become unfit for participation in a fishery due to violations of fishing laws and the threat such violations pose to the fishery. The guidelines could be very similar to the proposed statutory amendment set forth above, e.g., suspension would be mandatory after a certain number of convictions and revocation would follow if more violations were committed. The advantage in using administrative proceedings, it seems, are several: (1) no jury trial is required, (2) mere violations could be considered as well as

misdemeanors and felonies in determining whether the person is unfit to continue in the fishery, and (3) the proceedings would be relatively simple if lack of fitness were tied to convictions only (all CFEC would have to do is provide proof of the convictions, apply the formula provided by the legislature, and suspend or revoke the permit).

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 316

Revision Date: February 25, 1994
Title: "An Act relating to commercial fishing penalties."
Sponsor: Senator Halford
Requestor: Senate Resources Committee

Department Affected: Department of Law
BRU: Prosecution
Component: Criminal Justice Litigation
COMPONENT SERIAL NO. 0087

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	43.9	43.9	43.9	43.9	43.9	43.9
TRAVEL	3.5	3.5	3.5	3.5	3.5	3.5
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.2	1.2	1.2	1.2	1.2	1.2
EQUIPMENT	6.5					
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	60.1	53.6	53.6	53.6	53.6	53.6

CAPITAL						
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REVENUE						
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FUNDING:

1002 Federal						
1003 GF Match						
1004 GF	60.1	53.6	53.6	53.6	53.6	53.6
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	60.1	53.6	53.6	53.6	53.6	53.6

POSITIONS:

FULL-TIME						
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

Estimate of current year (FY94) impact: _____

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: February 25, 1994
Date: February 25, 1994

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further information, contact the Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 316

ANALYSIS CONTINUATION:

This bill amends the state commercial fishing penalties laws under AS 16.05.710 to provide, in addition to other penalties imposed by law, that when a person is convicted of a misdemeanor or felony violation of a commercial fishing law, a court may suspend one or more of the person's commercial fishing privileges and licenses for a period of not more than one year, if the conviction is the person's first misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law. Under the existing statute, this additional penalty applies to both a first and second conviction.

This section is further amended to provide that a court shall suspend a person's commercial fishing privileges and licenses for three years, if the conviction is the person's second or subsequent misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law. The existing statute gives the court the discretion to suspend a commercial fishing privilege or license for up to three years for a third or subsequent conviction.

The bill also amends AS 16.05.722(a) to increase the penalty for a person who, without any culpable mental state, violates the state's commercial fishing laws by providing for a fine of not more than \$6,000 for a first conviction and providing for a fine of not more than \$12,000 for a second or subsequent conviction. The existing penalties for these commercial fishing violations are \$3,000 and \$6,000, respectively.

Finally, the bill amends AS 16.05.722(b) and AS 16.05.723(a) to provide that in a defense against a state forfeiture action for fish found on board a fishing vessel that was used in or in aid of a violation of the state's commercial laws, it is the defendant's burden to show by clear and convincing evidence that the fish on board were lawfully taken and retained. Under existing laws, defendants are permitted to use the lesser standard of a preponderance of the evidence to prove that the fish on board were lawfully taken and retained.

We believe that this will have two effects on the enforcement of the state's commercial fishing laws that will be primarily felt in Southwestern Alaska. First, the bill's increased penalties will serve as an incentive for persons engaged in commercial fishing to obey the state's commercial fishing laws and regulations. Second, the bill could also serve as a disincentive for violators to plead guilty and settle out as most do now. For example, in the Bristol Bay salmon fishery which experiences the state's highest number of violations, about 500 violations occur each year. Of this number, between 15 and 20 violations are contested and now go to trial. Most of the remainder of the violations settle before trial. Although we believe that the total number of violations will probably decline, we also believe that the number of contested violations (and subsequent trials) will increase significantly. We therefore request fiscal impact funds to pay for a permanent part-time Attorney III, who would work on the increased caseload from June through November, each year.

02/25/94

15:03:35.4

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 2

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020300 NAME: THIRD JUDICIAL DISTRICT

BRU NAME: PROSECUTION

PCN	UNAUTII PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	R&S MOS BUDG	SALARY	PREM PAY	DENES	PER.SERV. COSTS	G. F. AMOUNT
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03#044		ATTORNEY IV	T	ANCHORAGE	A XE AA	24A 12	61000	0	20660	81668.60	
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**** JUSTIFICATION:

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	13600.00	
SUPPLIES COSTS	3300.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
=====		
TOTAL COSTS	112568.60	81668.60
*** FUNDING DETAIL:		
100% GENERAL FUND RECEIPTS	81668.60	
=====		
TOTAL FUNDING	81668.60	

03#048		ATTORNEY III	P	DILLINGHAM	A XE III	22A 6	33900	0	10011	43911.96	
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**** JUSTIFICATION:

Substantial increases in the penalties for commercial fishing violations will result in a more vigorous defense by defendants and will increase the number of trials significantly.

TRAVEL COSTS	3500.00	
CONTRACTUAL COSTS	5000.00	
SUPPLIES COSTS	1200.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
=====		
TOTAL COSTS	60111.96	43911.96
*** FUNDING DETAIL:		
100% GENERAL FUND RECEIPTS	43911.96	
=====		
TOTAL FUNDING	43911.96	

ALL GF

**** COMPONENT TOTALS:

FULL TIME NEW POSITIONS	1	TOTAL PERSONAL SERVICES	125580.56
PART TIME/SEASONAL NEW POSITIONS	1		
NON PERMANENT NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	172680.56
OTHER.....	0		
	====		

NUMBER OF NEW POSITIONS IN COMPONENT: 2

FUNDING DATA: G.F. & G.F. MATCH:	125580.56
OTHER FUNDS:	0.00
=====	
TOTAL FUNDING:	125580.56

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 25, 1994

SUBJECT: Sectional Summary of CSSB 316 (RES): An Act relating to commercial fishing penalties. (Work Order No. 8-LS1676)

TO: Senator Mike Miller

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of CSSB 316 (RES): An Act relating to commercial fishing penalties.

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

Section 1 of the bill amends AS 16.05.710(a) to provide an escalating schedule for suspension, and eventually forfeiture, of commercial fishing privileges and licenses based on the number of times a person had been convicted of misdemeanor or felony violations of commercial fishing laws in this state or another jurisdiction during the preceding 10 years.

Section 2 of the bill amends AS 16.05.722(a) to double the maximum allowable fines that may be imposed for strict liability violations of commercial fishing laws.

Section 3 of the bill amends AS 16.05.722(b) to increase the evidentiary burden that a commercial fisherman must satisfy in order to rebut the presumption that fish found onboard a fishing vessel that is used in a strict liability violation of a commercial fishing law or fish present at a fishing site where a strict liability commercial fishing violation occurred, were taken unlawfully and thus subject to forfeiture. The burden of proof is increased from a preponderance of the evidence to clear and convincing evidence.

Section 4 of the bill amends AS 16.05.723(b) to increase the evidentiary burden that a commercial fisherman must satisfy in order to rebut the presumption that fish found onboard a fishing vessel that is used in the commission of a misdemeanor commercial fishing offense or fish present at a fishing site where a misdemeanor

SECTIONAL ANALYSIS

Senator Mike Miller
February 25, 1994
Page 2

commercial fishing offense occurred, were taken unlawfully and thus subject to forfeiture. The burden of proof is increased from a preponderance of the evidence to clear and convincing evidence.

GU:pl
94-162.plm

8-LS16760 ✓
Utermohle
2/25/94

CS FOR SENATE BILL NO. 316(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS HALFORD, Jacko, Kerttula, Miller, Frank, Pearce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to commercial fishing penalties."

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

3 * Section 1. AS 16.05.710(a) is amended to read:

4 (a) Upon the conviction of a person for a misdemeanor or felony violation of
5 a commercial fishing law of this state, the court, in addition to other penalties imposed
6 by law,

7 (1) may suspend one or more of the person's commercial fishing
8 privileges and licenses for a period of not more than one year [,] if the conviction is
9 the person's first [OR SECOND] misdemeanor or felony conviction within a 10-year
10 period for violating a commercial fishing law of this state or another jurisdiction; [OR]

11 (2) shall suspend one or more of the person's commercial fishing
12 privileges and licenses for a period of at least one year but not more than three years
13 [,] if the conviction is the person's second [THIRD OR SUBSEQUENT] misdemeanor
14 or felony conviction within a 10-year period for violating a commercial fishing law of

1 this state or another jurisdiction;

2 (3) shall suspend one or more of the person's commercial fishing
3 privileges and licenses for a period of at least two years but not more than five
4 years if the conviction is the person's third misdemeanor or felony conviction
5 within a 10-year period for violating a commercial fishing law of this state or
6 another jurisdiction;

7 (4) shall suspend one or more of the person's commercial fishing
8 privileges and licenses for a period of at least three years but not more than seven
9 years if the conviction is the person's fourth misdemeanor or felony conviction
10 within a 10-year period for violating a commercial fishing law of this state or
11 another jurisdiction; or

12 (5) shall order the forfeiture of one or more of the person's
13 commercial fishing privileges and licenses if the conviction is the person's fifth or
14 subsequent misdemeanor or felony conviction within a 10-year period for violating
15 a commercial fishing law of this state or another jurisdiction.

16 * Sec. 2. AS 16.05.722(a) is amended to read:

17 (a) A person who without any culpable mental state violates AS 16.05.440 -
18 16.05.690, or a regulation of the Board of Fisheries or the department governing
19 commercial fishing, is guilty of a violation and upon conviction is punishable by a fine
20 of not more than

21 (1) \$6,000 [~~\$3,000~~] for a first conviction; and

22 (2) \$12,000 [~~\$6,000~~] for a second or subsequent conviction.

23 * Sec. 3. AS 16.05.722(b) is amended to read:

24 (b) In addition, the court shall order forfeiture of any fish, or its fair market
25 value, taken or retained as a result of the commission of the violation. For purposes
26 of this subsection, it is a rebuttable presumption that all fish found on board a fishing
27 vessel used in or in aid of a violation, or found at the fishing site, were taken or
28 retained in violation of AS 16.05.440 - 16.05.690 or a commercial fisheries regulation
29 of the Board of Fisheries or the department. It is the defendant's burden to show by
30 clear and convincing [A PREPONDERANCE OF THE] evidence that fish on board
31 or at the site were lawfully taken and retained.

1 * Sec. 4. AS 16.05.723(a) is amended to read:

2 (a) A person who negligently violates AS 16.05.440 - 16.05.690, or a
3 regulation of the Board of Fisheries or the department governing commercial fishing,
4 is guilty of a misdemeanor and in addition to punishment under other provisions in this
5 title, including AS 16.05.195 and 16.05.710, is punishable upon conviction by a fine
6 of not more than \$15,000 or by imprisonment for not more than one year, or by both.
7 In addition, the court shall order forfeiture of any fish, or its fair market value, taken
8 or retained as a result of the commission of the violation, and the court may forfeit any
9 vessel and any fishing gear, including any net, pot, tackle, or other device designed or
10 employed to take fish commercially, that was used in or in aid of the violation. Any
11 fish, or its fair market value, forfeited under this subsection may not also be forfeited
12 under AS 16.05.195. For purposes of this subsection, it is a rebuttable presumption
13 that all fish found on board a fishing vessel used in or in aid of a violation, or found
14 at the fishing site, were taken or retained in violation of AS 16.05.440 - 16.05.690 or
15 a commercial fisheries regulation of the Board of Fisheries or the department, and it
16 is the defendant's burden to show by clear and convincing [A PREPONDERANCE
17 OF THE] evidence that fish on board or at the site were lawfully taken and retained.

COST 234

FROM DPS, Div. of Fish & Wildlife Protection

The following is a brief synopsis of the 1993 Bristol Bay Salmon Enforcement Program.

The program began on June 20, 1993, with an opener in the Egegik District, which was covered by the P/V PUBLIC SAFETY #1 (PS1). The P/V TROOPER and the P/V WOLDSTAD arrived in the bay on June 23. The P/V PS1 patrolled the Egegik and Ugashik districts, the P/V TROOPER patrolled the Egegik district, and the P/V WOLDSTAD patrolled the Naknek-Kvichak district. The P/V WOLDSTAD departed the bay on July 16, the P/V TROOPER departed on July 20, and the P/V PS1 patrolled the Ugashik district until July 19, 1993.

Unlike the 1991 season, we didn't have to deal with any strike related activity. This allowed us to concentrate our efforts on enforcement right from the beginning.

The Bristol Bay run this year came back considerably larger than forecast. The preseason forecast was for a return of 41.8 million fish. A commercial harvest of 41.7 million fish was achieved in 1993, with a total return of 53.6 million fish, broken down as follows:

RIVER SYSTEM	CATCHES	ESCAPEMENTS	TOTAL RUN
Naknek-Kvichak	8,914,823	5,931,722	14,846,545
Egegik	21,911,499	1,522,188	23,433,687
Ugashik	4,357,820	1,429,538	5,787,358
Nushigak	5,818,947	2,654,673	8,573,520
Togiak	721,007	356,980	1,077,987
TOTALS	41,724,086	11,895,001	53,619,097

The inshore run of sockeye salmon totaled 52.2 million fish, the third largest inshore return on record (trailing only returns of 62.5 million in 1980, and 53.1 million in 1965). It was approximately 25% greater than the preseason forecast of 41.8 million.

All districts except the Naknek-Kvichak experienced greater than expected runs and a commercial harvest of 40.8 million sockeye was achieved, the largest sockeye harvest on record for Bristol Bay (exceeding the previous high of 37.4 million in 1983). A total of 11.4 million sockeye entered the escapement.

The estimated ex-vessel value of the 1993 Bristol Bay salmon fisheries totaled \$153.7 million. This is the fifth largest ex-vessel value on record, but well below the \$202.3 million record value attained in 1990 when salmon prices were high and below last years ex-vessel value of \$191.3 million. It was, however, well above the 1973 to 1992 mean value of \$102.9 million.

BRISTOL BAY ENFORCEMENT PROGRAM
12/15/93

Bristol Bay Enforcement Recap 1993

Page 2

December 15, 1993

There were twenty commissioned personnel assigned to the program, as well as nine civilians. Six of the civilians were part of the crews on the two large patrol vessels and the other three were clerical support staff. The total number of personnel (including civilian vessel personnel, clerks, etc.) was twenty-nine. A personnel roster is attached. The highest number of personnel at the peak of the 1992 season was only nineteen. At the peak of the 1991 season, the highest number of personnel was thirty-eight.

We had four commissioned Alaska State Troopers assigned to the program full time. Three of these troopers were assigned to the vessels and one was assigned to the beach. Each of these individuals did an outstanding job.

TDY personnel arrived in King Salmon aboard the King Air on June 23, 1993. At which time, a briefing was held prior to their deployment to the vessels and to Dillingham.

We were able to maintain an excellent working relationship with the Alaska Department of Fish and Game staff in King Salmon and Dillingham. We were kept well informed of openings, closures, extensions, etc. Problem areas and enforcement concerns were discussed on a regular basis. The cooperation and coordination between the two agencies continues to be excellent and is expected to remain that way.

As always, our primary fisheries enforcement problems occurred on the district lines. As mentioned earlier, with no strike activity this year, we were able to concentrate on enforcement problems right from the start. This allowed us to stay on top of things as best we could.

It should be noted that on the first day of the fishery at Egegik, June 20, 1993, the crew of the P/V PS1, assisted by Trooper Gary Folger in a Piper Supercub, made approximately 60 closed waters cases.

Again this year, we saw excellent cooperation between the vessels and aircraft. With the exception of the first opening at Egegik, patrol vessel skiffs were able to approach nearly all violators spotted from the air.

While the P/V PS1 did an excellent job at Egegik, it was just not enough and couldn't control the line. Sergeant Rollin Young and FWEO Scott Quist, as stated earlier, made approximately 60 cases the first day and could have probably made that many more if they had the skiffs and troops to do it.

Bristol Bay Enforcement Recap 1993

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December 15, 1993

With the big return to the Egagik district, we had close to 950 boats in that district throughout much of the season. Fishermen appeared to be much more aggressive this season and constantly pushed over the line. They knew at what point we were citing and pushed to that point and beyond continuously.

Our shore based personnel were faced with continuous set net complaints. This was primarily due to two reasons. First, there is always the ongoing dispute between the drifters and the setnetters. Numerous complaints came from the drifters that the setnetters were fishing too far out. Complaints also came from the setnetters that the drifters were on top of their set nets.

This was compounded this year by a regulation change that took effect March 1, 1993, which required setnetters to be no more than 1000 feet from the 18 foot high tide mark. In past years in this area, they could be out to 1200 feet from the 18 foot high tide mark.

Measuring these nets proved almost impossible until we located a La Prosurvey 1000 Laser Ranger 58, which we rented from The Surveyor's Exchange in Anchorage. This device proved invaluable in dealing with the problems of measuring nets, distances, etc.

At Ugashik, we experienced the same problems as in past years. As long as a patrol boat was on the line, we could keep fishermen from pushing over the line for the most part. However, the minute the boat got tied up with a case or left the line, fishermen decided it was open season everywhere.

With that in mind, we did a staksout operation on the north line of Ugashik. We set up range markers on the bluff, utilizing the loran on the P/V PS1. This worked well and we made quite a few cases. Some boats we had over the line as many as three times in one day. The operation went well until the officer was spotted on the bluff by a spotter pilot, who then landed in a dry lake bed and walked up to see what he was doing. It was amazing how well the fishermen knew where the line was once they found out an officer was on the bluff.

We did a similar operation on the Egagik north line on the first opening. In that situation, we put an officer on another vessel with a fisherman who agreed to work with us. The P/V PS1 then left the line and the officer stayed on the private vessel and made approximately 20 cases. He reported seeing many skippers on their flying bridges with binoculars looking for the patrol vessel. His comments were that it was obvious most fishermen were not concerned about where the line was, they were only concerned with where the patrol vessel was.

Bristol Bay Enforcement Recap 1993

Page 4

December 15, 1993

Four vessels were seized in the bay this season. Three of the vessels were seized for fishing closed waters and the fourth was seized as a result of the operators fishing without a permit. Vessels seized are as follows:

Fishing Vessel	Reason Seized	Settlement
GONE FISHING	.5 miles into closed waters after the closure of the Kvichak Section.	Civil: \$10,000
KATIE DEVINE	Closed waters 30 minutes after closure.	Released.
DEACON	Operator did not have a permit.	Has not settled.
MINSTRAL	1.5 miles into closed waters outside the Nushigak District.	Civil: \$25,000

The F/V KATIE DEVINE was released with no settlement. This was done because the defendant stated he had lost a net and that he had approval from Fish and Game to retrieve it from closed waters. A check revealed that Fish and Game did not talk to this individual. However, it was very clear from talking to other fishermen who heard the conversation on the VHF radio that someone came on the VHF and stated that they were ADF&G and that they had given the F/V KATIE DEVINE approval to go in to closed waters to retrieve a net. The F/V KATIE DEVINE did forfeit its illegal fish.

We opened 482 cases during the Bristol Bay fishery this year, up from a previous all time high of 328 in 1991. We filed 509 criminal charges in 1993. There were 52 cases with multiple defendants and we had 31 cases where there were multiple charges per defendant.

We seized 581,474 pounds of fish during the season, of which; 161,172 has been forfeited to date. Based on an average of \$.60 per pound, forfeiture value of this fish is \$96,730.20.

We seized 108 shackles of gillnet during the program. 19 shackles were forfeited as of this date.

As of December 9, 1993, gross fines for the program have been \$1,065,633.86, with only \$230,500 of that being suspended. This leaves a total of \$835,133.86 in net fines due the State.

Bristol Bay Enforcement Recap 1993

Page 5

December 15, 1993

There was nearly a 100% increase in closed waters cases in 1993, with a total of 311 cases in 1993 compared to 168 cases in 1992. This can be attributed in part to the extreme aggressiveness of the fishermen this season and to continued effective enforcement. A break down of the cases are as follows:

<u>VIOLATION</u>	<u># OF OCCURRENCES</u>
ASSAULT III	1
COMMERCIAL FISH AID AND ABET	2
COMMERCIAL FISH ANCHOR DRIFT NET	4
COMMERCIAL FISH CLOSED PERIOD	28
COMMERCIAL FISH CLOSED WATERS	311
COMMERCIAL FISH DRIFT TOO CLOSE	18
COMMERCIAL FISH EMPLOY UNLICENSED CREW	15
COMMERCIAL FISH FAIL TO MARK BUOY	5
COMMERCIAL FISH FAIL TO RECORD	4
COMMERCIAL FISH FAIL TO REGISTER	6
COMMERCIAL FISH FALSE FISH TICKET	2
COMMERCIAL FISH FALSE STATEMENT	3
COMMERCIAL FISH ILLEGAL GEAR	1
COMMERCIAL FISH ILLEGAL POSSESSION	5
COMMERCIAL FISH IMPROPERLY MARKED BUOY	1
COMMERCIAL FISH IMPROPERLY MARKED GEAR	6
COMMERCIAL FISH MISCELLANEOUS CHECK/STOP	1
COMMERCIAL FISH NET OUT TOO FAR	21
COMMERCIAL FISH NO BUOY	4
COMMERCIAL FISH NO CREW LICENSE	26
COMMERCIAL FISH NO PERMIT	3
COMMERCIAL FISH NO PHOTO ID	16
COMMERCIAL FISH NO VESSEL NAME	3
COMMERCIAL FISH NO VESSEL NUMBERS	6
COMMERCIAL FISH PERMIT HOLDER NOT PRESENT	5
LOG: BOATING ACCIDENT	1
LOG: CARCASS FOUND	1
LOG: COMMERCIAL FISH CLOSED PERIOD	1
LOG: COMMERCIAL FISH DRIFT TOO CLOSE	8
LOG: COMMERCIAL FISH FAIL TO REGISTER	2
LOG: COMMERCIAL FISH INTERFERE WITH GEAR	2
LOG: COMMERCIAL FISH MISCELLANEOUS	1
LOG: COMMERCIAL FISH NO VESSEL NUMBERS	1
LOG: COMMERCIAL FISH OVERLIMIT OF GEAR	4
LOG: COMMERCIAL FISH SET NET TOO CLOSE	1

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<u>VIOLATION</u>	<u># OF OCCURANCES</u>
LOG: FOUND NET	2
LOG: GAME NUISANCE BEAR	1
LOG: MEDICAL ASSIST	1
LOG: PERSONAL USE CLOSED SEASON	2
LOG: PROCESS SERVED	1
LOG: PUBLIC ASSIST	3
LOG: UNMARKED GILLNET	1
SPORT FISH NO KING STAMP	2
SPORT FISH NO LICENSE	13
SPORT FISH USE BAIT	1
WARNING: COMMERCIAL FISH ANCHOR DRIFT NET	4
WARNING: COMMERCIAL FISH CLOSED PERIOD	2
WARNING: COMMERCIAL FISH CLOSED WATERS	6
WARNING: COMMERCIAL FISH DRIFT TOO CLOSE	1
WARNING: COMMERCIAL FISH EMPLOY U/L CREW	7
WARNING: COMMERCIAL FISH FAIL TO MARK NET	1
WARNING: COMMERCIAL FISH INTERFERE WITH GEAR	1
WARNING: COMMERCIAL FISH NO CREW LICENSE	5
WARNING: COMMERCIAL FISH NO VESSEL ID	1
WARNING: SPORT FISH NO LICENSE	6

Radio Dispatcher II Jolene Dodge from Kodiak, Clerk IV Cynthia Nestegard from SIS, and Clerk Typist III Kim Spaans from Detachment provided the clerical support for the program. While from outward appearances this seems like a large clerical staff for one program, we must realize that Kim and Cynthia only overlapped each other for a couple of days and that this staff handled 484 cases in approximately three weeks. This included running criminal record checks on all defendants, closing case reports for those that plead out at arraignment, and returning those cases to the boats for full reports were the defendants plead not guilty at arraignment. They also utilized a data base program to keep track of all the statistics for this program.

For the most part the enforcement program went very well with personnel working as hard and carrying as large a case load as humanly possible. Without question the most frustrating part of the program was the process of prosecuting the cases and not receiving adequate penalties to serve as a deterrent to the fishermen. As in the past the Division, in conjunction with the District Attorney's Office in Dillingham, established recommended sentencing guidelines for the various violations occurring in the Bay. These guidelines were based on ten years of experience with the fishery. In 1993 we did begin citing fishermen for a narrower margin of closed water fishing

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than in previous years with this being the only major change.

It is common practice to be approached by the various defendants prior to court arraignments in an effort for them to reach a plea agreement satisfactory to the state and thus avoid a trial. This routinely involves the fishermen and Fish & Wildlife personnel assigned court duty. The district attorney is advised of the agreement and normally makes this recommendation to the court.

During 1993 we had two state attorneys assigned to the program. One attorney was not only new to Bristol Bay but was also a new attorney. The second attorney had several years of experience with the program. For some reason the experienced attorney felt the plea agreements were too harsh, so consequently it became common practice for him to lower the recommended penalty to the court, in many cases by \$1,000 to \$1,500 (sometimes more), and agree to return additional fish and nets. Keep in mind the original plea agreement was agreed to by the defendant. It was then not uncommon for the court to reduce the fine even more.

Another common problem with the District Attorney's office is the practice of reducing cases from a misdemeanor to an infraction (violation). This is done for a number of reasons but for the most part as a cost saving measure. The burden of proof is less for an infraction in that the "intent" of the fishermen to violate the law is not required to be proven (strict liability rule). However, intent has been proven in all cases originally filed as misdemeanors by FWP, the information is in the report. There is a greater chance of the defendant agreeing to plea to an infraction, as opposed to a misdemeanor because the monetary fine is less, there is no chance of serving jail time, and his fishing permit can not be suspended. As a result, this saves the Department of Law and the Court System time and money by not having to schedule expensive trials, convene juries and pay judge and attorney travel expenses to the Bay later in the year. No one debates the expense and time that would be necessary to conduct misdemeanor trials for the several hundred fishing cases.

The number of cases in Bristol Bay are increasing while the fines per case are decreasing. The fishermen already know they may be able to make several illegal sets valued at \$10,000 to \$20,000 before being caught. This combined with the possibility of a mere \$3,000 or even a \$6,000 fine serves as no deterrent to their illegal acts.

As long as misdemeanor cases are reduced to infractions there will never be any chance of fishing permits being suspended or ultimately revoked after three convictions as provided by statute. This, of course is the ultimate deterrent.

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Prior to the 1994 season it is imperative for the Division to meet with the appropriate state attorneys and judges if necessary to resolve these issues. Division personnel and the commercial fishing community are demanding a much higher compliance rate but this will never happen until the penalty exceeds or at least meets the value of the crime.

This is a list of the personnel and equipment which were utilized in the program:

P/V WOLDSTAD (Egegik, Naknek, and Kvichak)

Cpl. Dean Layton
Trp. Lonnie Swanson
VTII Bill Wertanen
BOI Don Wood (cook)
BOI John Gianguilli
BOI Mike Reuter
Trp. Ken Woldstad
AST Trp. Willard Ellis

P/V TROOPER (Egegik)

Trp. Robert Rodrigues
Trp. Scott Jones
BOI Rick Gottwald
VTI Mark Salvog
FWEO Bob Beasley
AST Trp. Jeff Edmondson
AST Trp. Frank D'Angelo

P/V PUBLIC SAFETY #1 (Egegik and Ugashik)

Trp. Rollin Young
FWEO Scott Quist

KING SALMON

Lt. Thomas Schwantes
Sgt. Don Starbard
Trp. Gary Folger (pilot)
Trp. Curt Bedingfield (pilot) (set net)
FWEO Rohn Nelson (set net)
AST Trp. Joanna Roop (set net)
RDII Jolene Dodge
CIV Cynthia Nestegard
CTIII Kim Spaans

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DILLINGHAM

Trp. Ed Painter (pilot) (O.I.C.)

Trp. Jim Lowe (22' Whaler)

FWEO Eric Olsen (22' Whaler)

AIRCRAFT

PA18 Cub on floats (King Salmon)

PA18 Cub on wheels (King Salmon)

PA18 Cub on floats (Dillingham)

King Air (transportation of TDY personnel)

VESSELS

P/V WOLDSTAD (2 skiffs)

P/V TROOPER (2 skiffs)

P/V PUBLIC SAFETY #1 (1 skiff)

22' Whaler (King Salmon)

22' Whaler (Dillingham)

Vessel Sea Days	FY93	FY94	Total
P/V WOLDSTAD	12	20	32
P/V TROOPER	10	23	33
P/V PUBLIC SAFETY #1	10	22	32
22' WHALER (DILLINGHAM)	3	10	13
22' WHALER (KING SALMON)	8	19	27
Grand Total	43	94	137

AIRCRAFT HOURS

Cessna 714NK 1.2 Hours

PA18 24005 42.5 Hours

PA18 7066 54.9 Hours

PA18 88AK 64.4 Hours

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TOTAL AIRCRAFT HOURS 163.4 Hours

FY93 AIRCRAFT HOURS = 82.5

FY94 AIRCRAFT HOURS = 80.9

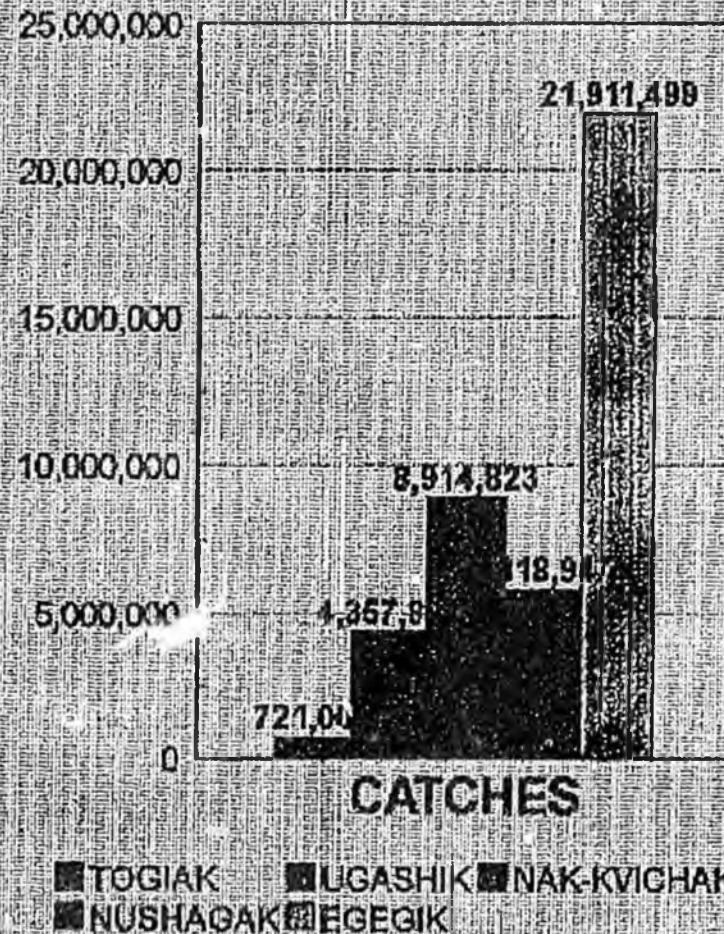
ALASKA
DEPARTMENT OF PUBLIC SAFETY
FISH AND WILDLIFE PROTECTION
BRISTOL BAY SALMON ENFORCEMENT
1993 SEASON

Commissioner,
Richard L. Burton



ADF&G Statistics

- ▶ Ex-vessel value of the harvest
- ▶ **\$153.7 million dollars**
- ▶ (fifth largest ever)
- ▶
- ▶ Total run was **53,619,017 fish.**
- ▶ (third largest run ever)
- ▶
- ▶ Total catch was **41,724,096.**
- ▶ (largest sockeye catch on record, exceeding the prior 1983 record of 37.4 million)
- ▶
- ▶ Total Escapement = **11,895,001**



1993 BRISTOL BAY SALMON PROGRAM COSTS -vs- INCOME COMPARISON

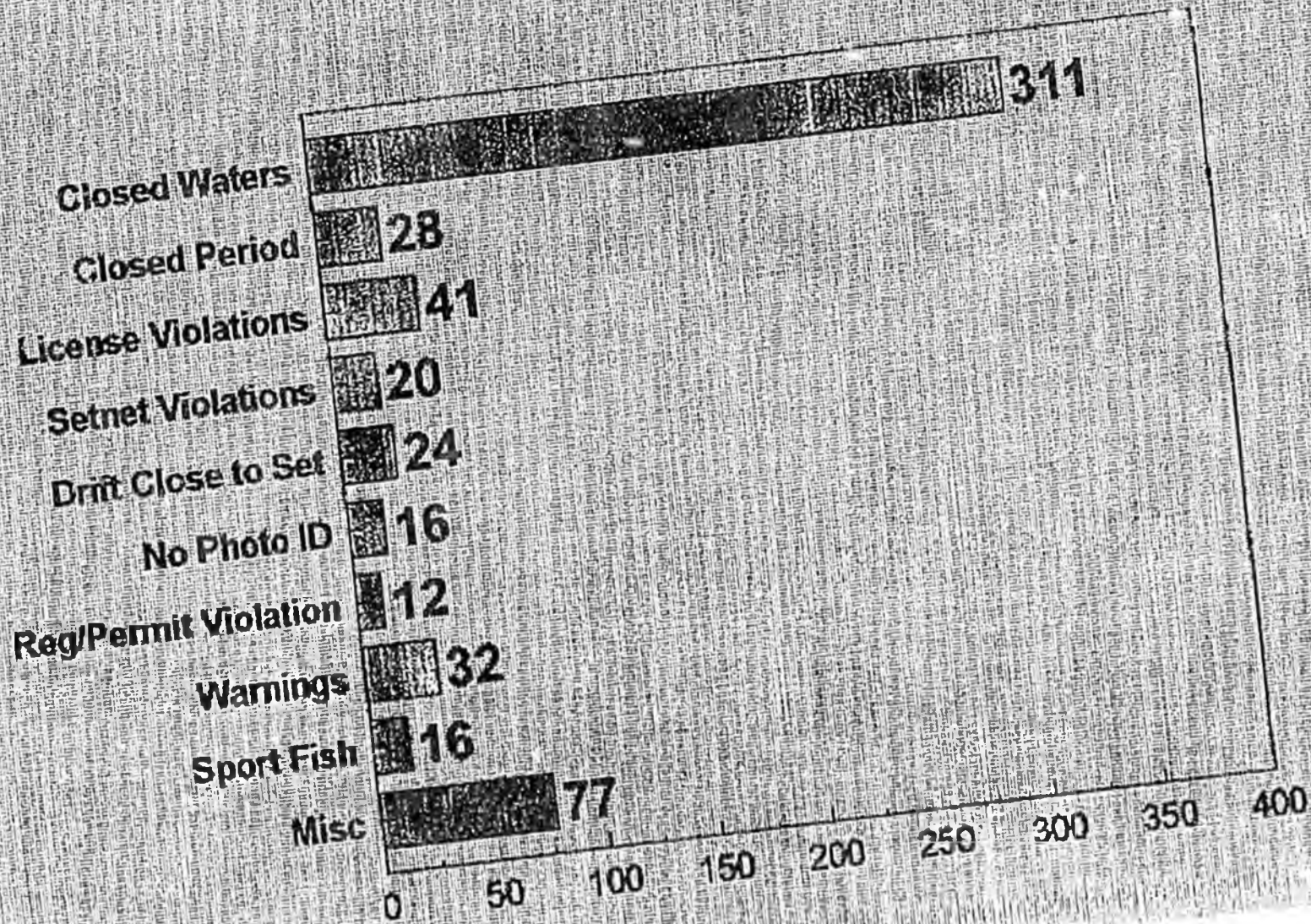
▶ EXPENSES

- ▶ PERSONAL SERVICES
- ▶ \$173,050.00
- ▶ TRAVEL
- ▶ \$ 27,572.00
- ▶ CONTRACTUAL
- ▶ \$ 9,494.00
- ▶ SUPPLIES \$ 17,812.00
- ▶ TOTAL EXPENSES
- ▶ \$227,928.00

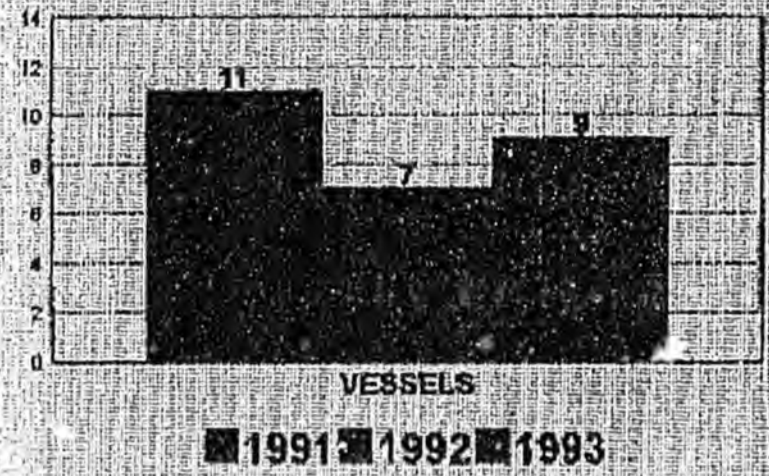
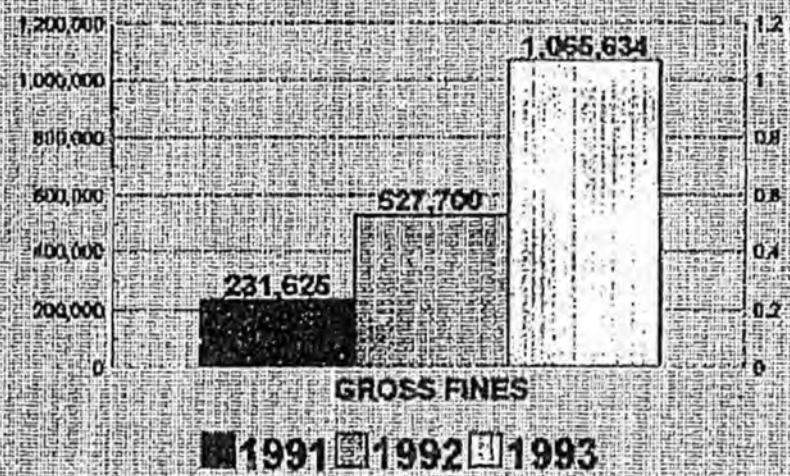
▶ INCOME

- ▶ FINES \$ 835,133.86
- ▶ SEIZED FISH
- ▶ \$ 96,730.20
- ▶ FORFEITED GEAR
- ▶ \$ 5,700.00
- ▶ CIVIL FINES
- ▶ \$35,000.00
- ▶ TOTAL INCOME
- ▶ \$972,564.06
- ▶ Cases remaining to be settled = 65.

1993 Distribution of Case Load



1991 - 92 - 93 COMPARISONS



1991 - 92 - 93 COMPARISONS

