

SCOMM

102:16

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

RONALD L. OTTE
COMMISSIONER

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF FISH & WILDLIFE PROTECTION "B" DETACHMENT HEADQUARTERS

453 SOUTH VALLEY WAY
PALMER, ALASKA 99645
PHONE: 907-748-9139

April 21, 1998

A

APR 24 1998

Representative Alan Austerman
House Special Committee on Fisheries
Room 434, Capitol Building
Juneau, AK 99801

RE: HB 483

Dear Chairman Austerman,

This letter follows my oral comments made on behalf of Fish and Wildlife Protection on April 15, 1998. The division has mixed feelings about this legislation. We applaud efforts to address growing resource related problems, particularly when our own efforts have been inadequate.

Section 2 of this bill would be advantageous to the division. This provision would require sport fish processors to register with the Department of Fish and Game and maintain certain records of the fish processed. This should enhance the division's enforcement of the sport fishing industry by providing records to help prove over limit and other related offenses after the fact. We would use this information as we now do hunt records, transporter activity reports, and other reports required of commercial service providers. The comments I heard during the hearing such as excluding the processor license fee for lodges or guides providing butchering, packaging and shipping services for their clients should be considered.

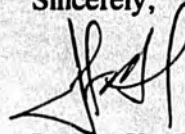
Section 1 of this bill will require all nonresident aliens, excluding Canadian and Mexican residents, to be personally accompanied by a registered sport fishing guide business owner or employee while engaged in sport fishing for salmon. This appears to be an effort to help address European alien overlimit complaints. We don't, however, believe this will address the problem as intended. FWP recognizes that sport fishing enforcement has taken a lower priority than has commercial fishing enforcement. Sport fishing is viewed as having a lower potential for harm to resource stocks so our limited personnel focus on very competitive and intense commercial fisheries. The heart of this problem is the insufficient number of FWP officers available to provide the level of enforcement necessary in all fisheries, commercial and sport.

The provision targeting European aliens is based on information that has not been validated. Although we often hear complaints of Europeans over fishing, there is no tangible information or statistic that suggests Europeans are more violative than are other groups. The specific observations offered in the April 15, 1998 testimony are compelling, but when considered against the volume of fishing visitors we see every year, I don't know if it is a fair characterization of Europeans in general.

Clearly, section 2 will require more of our limited personnel. Unless salmon were caught and visible, sport fishers could claim they were fishing for other species making cases difficult to prove without additional investigative effort. Added license falsifications are also likely with this language, with some aliens claiming residency in Canada or Mexico to avoid the guide mandate. Obtaining information from these other countries to dispute such claims will be time consuming and difficult to obtain.

As Director Delany stated, neither this legislation nor current regulation prevents aliens from registering as sport fish guides. Without such a restriction, a guided requirement would probably not be effective. We feel that the complaints suggest inadequate enforcement, and increasing enforcement resources is the best answer to this important concern.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Hard', written over a horizontal line.

Joel L. Hard
B Detachment
Fish and Wildlife Protection

cc: Commissioner Otte
Colonel Glass

Alaska State Legislature House of Representatives

Committees

Rules Committee, Chair
Legislative Council
International Trade & Tourism
Military & Veterans Affairs
World Trade & State/Federal Relations



Interim:
10928 Eagle River Rd. Suite 141
Eagle River, AK 99577

Session:
Alaska State Capitol
Juneau, AK 99801

SPONSOR STATEMENT HB 483

HB 483 was introduced to improve our stewardship of our fisheries resource.

Section 1 of the bill seeks to require that nonresident alien sport fishermen, except those of Canada and Mexico, be guided by registered sport fish guides. This language will curtail mistakes and abuses by aliens who are often less familiar with our State's Fish and Game regulations which are complicated and may change throughout the season or from season to season.

Section 2 provides language requires processors of sport caught fish to register with ADFG and maintain records of the sport fish processed. Within this section sport fish processing is defined to include activities associated with sport fish processing or those associated with preparation for shipping. Specifically omitted are activities which may be provided by guides in their normal course of business.

HB 483 will assist enforcement efforts and validate a portion of information derived from the statewide harvest survey, a statistical sampling. All users of our fisheries resource will benefit by additional accountability of the processed fish shipped from our state each summer.



Representative Pete Kott

Juneau Office (907) 465-3777 Toll Free 1-800-861-KOTT(5688) Fax (907) 465-2819
Eagle River Office (907) 694-8944 Fax (907) 694-8945 **E-Mail:** representative_pete_kott@legis.state.ak.us



Lance Nelson - Re: NAFTA Question

Page 1

From: Joe McKinnon
To: Lance Nelson
Date: Tue, Apr 21, 1998 9:09 AM
Subject: Re: NAFTA Question

It's been a while since I've reviewed NAFTA, but I don't believe that it would not prohibit a requirement that non-resident aliens be guided. Generally, it only prohibits restrictions on aliens entering into professions and occupations for which they would otherwise be qualified. The exemption for Canadian and Mexican guides that you cited is an example. While the state can impose the same education and experience requirements that it does for its own nationals, it cannot deny entry into an occupation solely because of the non-citizenship of a Canadian or Mexican. My recollection, however, is that NAFTA does not prohibit discrimination against alien consumers of services- only providers.

>>> Lance Nelson 04/20 2:44 PM >>>

Joe, Nancy says you are one of our experts on NAFTA. Amy Dougherty of Rep. Austerman's office called about HB483. A question has come up about HB 483's requirement that nonresident aliens be guided while sport fishing for salmon. The bill currently contains an exemption for Canadian and Mexican residents because of NAFTA concerns, but it seems unlikely that NAFTA would affect recreational fishing, as opposed to commercial fishing, where a person's livelihood is involved, or, I guess, where there is some "trade" going on. But I'm not familiar with NAFTA at all. In an earlier bill, they had an exemption for Canadian and Mexican nonresident aliens to allow them to be sport fish guides. Do you think NAFTA would require an exemption to allow Canadians and Mexicans to fish without guides? Thanks for whatever direction you can give. Lance

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH 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

April 15, 1998

SUBJECT: Requirement that certain nonresident alien sport fishermen be accompanied by sport fishing guide (HB 483)

TO: Representative Alan Austerman
Attn: Amy Daugherty

FROM: George Utermohle *GU*
Legislative Counsel

You have asked about the constitutional implication of section 1 of HB 483 which requires that nonresident alien sport fishermen (other than citizens of Canada and Mexico) be accompanied by a sport fishing guide when fishing for salmon.

Section 1 of the bill contains a significant constitutional issue because it imposes an burden on certain sport fishermen based only on their status as nonresident aliens. This provision is highly suspect under the United States Constitution and is probably unconstitutional. Under the equal protection clause of the federal constitution, discrimination against a person because the person is an alien is viewed in the same light as discrimination against a person because of the person's religion or race. Under equal protection analysis, alienage is considered a suspect class and any discrimination against a person based on the person's status as an alien is subject to strict scrutiny by the courts. In order to validly discriminate against a member of a suspect class, such as aliens, the state must have a compelling state interest to be protected and the means chosen to foster the state's interest must address the specific harm presented by aliens without defining the class of persons subject to discrimination too broadly or too narrowly. Commercial Fisheries Entry Commission v. Apokedak, 606 P.2. 1255 (Alaska 1980); Griffith v. State 641 P.2d 228 (Alaska App. 1982).

Protection of the state's fish and game resources is a compelling state interest. Article VIII of the Alaska Constitution requires the legislature to do so. However, it is not certain that the state can identify a risk to the state's sport fishing resources that arises solely from the fact that a person is an alien or that can be reasonably addressed by requiring aliens to be accompanied by sport fishing guides.

The U.S. Supreme Court has held that a state may not deny a commercial fishing license to aliens; the state's interest in conserving its fishery resources was not sufficient to justify excluding aliens from making a living. Takahashi v. Fish and Game Commission, 92 L.Ed 1478 (1948). The legal interest of an alien in being able to engage in recreational fishing for salmon without having to have a guide is significantly different from the legal interest of an

Representative Alan Austerman
April 15, 1998
Page 2

alien in being able to make a living. It would seem that the ability to make a living (commercial fishing) would be entitled to greater constitutional protection than a purely recreational activity (sport fishing). However, given the rigorous level of judicial review applied to discrimination based on a person's status as an alien, the state may not be able to show a sufficiently significant state interest in the guide requirement and to show that the guide requirement has sufficiently close relationship to the state's interest to satisfy the requirements of equal protection.

The state has a number of requirements that are placed solely on nonresident aliens: license and permit fees and hunting guide requirements for big game. Each of these existing requirements raises similar issues in regard to whether they can be applied to nonresident aliens due solely to their status as aliens. Clarification of these issues must await the results of future litigation before we can have a better feel as to whether the courts would be more sympathetic towards restrictions placed on the recreational activities of aliens.

If I may be of further assistance, please advise.

GU:glc:jr
98-225.glc

A RESOLUTION
Concerning the Custom Processing of Noncommercially Caught Seafood
By
ALASKA BOARD OF FISHERIES
February 11, 1998

WHEREAS, the Board has heard anecdotal information regarding sport fisheries exceeding bag and possession limits, and the unlawful sale of fish taken in sport, personal use, and subsistence fisheries;

WHEREAS, there are current statutes, including AS 16.05.690, and regulations, including 5 AAC 39.130, that require the keeping of records and reports by persons, companies, and firms that buy and process seafood for re-sale;

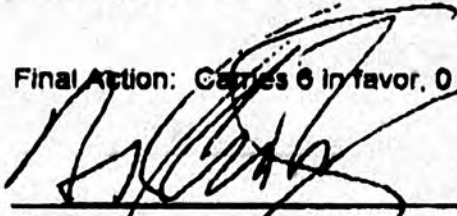
WHEREAS, there are currently no comparable regulations that require guides, lodges, or so-called "custom processors" who sell or offer for sale the services of seafood processing, but who do not own seafood being processed; and,

WHEREAS, the Board believes that imposing reporting requirements on guides, lodges, or "custom processors" who provide seafood processing services would aid in the enforcement of statutes and regulations concerning bag and possession limits and the sale of fish taken in sport, personal use, and subsistence fisheries.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

The Board requests that the Legislature provide statutory authority authorizing the Board and/or the Department to adopt regulations requiring the keeping of reports and records by guides, lodges, or "custom processors" who provide seafood processing services.

Final Action: Carries 6 in favor, 0 opposed, 1 absent



Dr. John White, Chair
Alaska Board of Fisheries

DOT EXPORT LIMITS/Seasonal

limits

11/28 - 11/29

@ Wasilla

4

1 MR. MILLER: Yes.

2 MR. JONES: White?

3 DR. WHITE: Yes.

4 MR. JONES: Umphenour?

5 MR. UMPHENOUR: Yes.

6 MR. JONES: Mr. Chairman, the motion carries, 7 in
7 favor.

8 CHAIRMAN: Thank you. Before we leave this subject, is
9 the staff clear on where we're at on this issue? Do you
10 need any further--? Okay. Thank you very much. We'll move
11 to our next agenda.

12 (Tape 10B/Log #427 - This Portion not requested)

13 (Tape 11B/Log #471)

14 CHAIRMAN: Can we move forward now on our agenda?
15 Okay. The next issue is Export Limits for Nonresidents,
16 and I think some of the data that will be shown will be
17 RC-22. Whose going to-- Mr. Bentz, are you going to lead
18 us through this discussion?

19 MR. BENTZ: Yes.

20 CHAIRMAN: Wait a minute, until everybody-- make sure
21 everybody has RC-22. I've got mine.

22 MR. BENTZ: It looks like this, and we also have some
23 overheads of this also.

24 MR. DELANEY: Mr. Chairman, I'm sorry, I didn't-- we
25 have before us today Rob Bentz, who's a management

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 biologist from southeast Alaska, previously of the Mat-Su
2 area. Rob has specialized in export possession limit
3 issues with our Division for probably the last 6 or 8
4 years. He was previously our regulation specialist in
5 headquarters as well, and very knowledgeable about the
6 issue, and we ask him to make the presentation today.

7 CHAIRMAN: All right, Mr. Bentz. We are ready.

8 MR. BENTZ: Thank you, Mr. Chairman. This is a short
9 report on export limits for nonresidents. A short
10 background: harvest in sport fisheries is currently
11 controlled by daily bag and possession limits, methods
12 and means restrictions, and time and area closures, which
13 are either established in regulation or implemented by
14 emergency order. In addition, many sport fisheries are
15 managed under provisions of codified fisheries management
16 plans adopted by the Board. In recent years, there have
17 been several proposals presented to the Board of
18 Fisheries that seek to establish a new regulatory device,
19 export limits for sport caught fish. The primary reasons
20 for these proposals are: one, that nonresident
21 participation in Alaska sport fisheries is increasing;
22 two, there is a perception that nonresident sport
23 fishermen are taking huge quantities of salmon and
24 halibut home with them; three, many nonresident sport
25 anglers are financing their vacations by selling their

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 catch; and four, that harvest and the quality of fishing
2 available to other users is being affected by excessive
3 harvest of nonresident sport anglers. An export limit
4 would undoubtedly decrease harvest by nonresidents. The
5 amount of this decrease is difficult to estimate, and it
6 will vary by species and area. We can evaluate the need
7 for and the potential effect of export limits by
8 examining past effort and harvest patterns. I'd like to
9 present now some nonresident harvest and effort data that
10 will help put this issue into perspective for the Board.
11 This is statewide harvest information from the statewide
12 harvest survey. Figure one depicts the number of resident
13 and nonresident anglers in Alaska during the past 5
14 years, from 1991 through 1995. During this time, the
15 number of nonresidents fishing in Alaska has increased
16 steadily from 41% of the total in 1991 to 49% in 1995.
17 Figure 2 presents the harvest of king salmon by residents
18 and nonresidents. The average harvest by residents during
19 this 5 year period was 87,000 fish, and 83,300 for
20 nonresidents. Nonresident harvest has ranged from 62,000
21 fish in 1992 to over 100,000 fish in 1994. Nonresidents
22 harvested more king salmon than resident anglers in both
23 1994 and 1995. Figure 3 shows the harvest of coho. Here
24 residents harvested an average of nearly 290,000 coho per
25 year, while residents took an average of 116,000.

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 Nonresident harvests ranged from 63,000 fish in '92 to
2 154,000 in 1994. Figure 4 shows the same information for
3 halibut. Average harvest by residents during this 5 year
4 period was 152,000 and 148,000 for nonresidents.
5 Nonresident harvest has increased steadily from 104,000
6 in 1992 to 191,000 in 1995, and again, like king salmon,
7 nonresidents harvested more halibut than resident anglers
8 on a statewide basis in both '94 and '95. Figure 5
9 depicts the number of king, coho and halibut harvested by
10 the average nonresident angler during the years, again,
11 from 1991 to '95. And the number of king salmon harvested
12 by the average nonresident angler ranged from one-third
13 of a fish to just over one-half of a fish per year. The
14 number of coho salmon harvested by the average
15 nonresident ranged from one-third of a fish to seven-
16 tenths of a fish, where in the number of halibut ranged
17 from 6/10 to 9/10 of a fish per year. Mr. Chairman, now
18 I'd like to present some more detailed information on
19 king salmon harvests by residents and nonresidents in
20 1995. I chose king salmon because it is probably the most
21 fully allocated species throughout the state. Figure 6
22 shows the number of resident and nonresident anglers that
23 harvested various numbers of king salmon in 1995. The--
24 if you look at the 2 largest columns, those are--
25 represent the number of anglers that caught zero fish,

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 and the next columns over represent the number of anglers
2 that caught one fish, 2, etc., etc. 66% of all
3 nonresident anglers that purchased a sport fishing
4 license and a king salmon tag did not catch a single king
5 salmon during the year. 70% of all resident anglers that
6 purchased a sport fishing license and a king tag did not
7 catch a fish during the year. Of the 34% of the
8 nonresident anglers that did catch one or more king
9 salmon, 13% caught one fish, 8% caught 2, and 4% caught
10 3. So nearly 3/4 of the nonresident anglers who were
11 successful in catching a king salmon or more, harvested
12 3 fish or less during the entire year, and this pattern
13 is very similar for residents. Of the 30% of all resident
14 anglers that caught one or more kings, nearly 2/3 caught
15 3 fish or less for the entire year. There's an old saying
16 that most of the fish are caught by a handful of anglers;
17 this was true with king salmon in 1995. At the far
18 righthand end of the graph, you'll see a column for
19 anglers that caught 10 or more king salmon during the
20 year. Only 775 nonresident anglers fell into this
21 category, 1% of all nonresident anglers who purchased a
22 license and a king tag, yet these anglers caught 8,700
23 king salmon, 10% of the entire statewide harvest by
24 nonresidents. This fish hog behavior is not restricted to
25 nonresident anglers; over 1,260 resident anglers caught

STERLING COURT REPORTERS

44680-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 10 or more king salmon in '95. This number represents 2%
2 of all resident anglers who purchased a license and a
3 king tag during the year. This 2% caught 14,200 king
4 salmon, 20% of the entire statewide harvest by resident.
5 And this harvest pattern is for the state, but it's
6 similar for the 3 regions when it's broken down on a
7 regionwide basis also. And I have regional graphs, if
8 you'd like to see them later. There have been a lot of
9 newspaper articles this summer about season-long canning
10 operations and huge amounts of fish being taken out of
11 state on the Kenai Peninsula. I talked to Dave Nelson,
12 the Area Management Biologist, last week, about harvest
13 patterns on the Kenai River, and he gave me the following
14 information which I'd like to present. The final figure,
15 figure 7, shows the number of resident and nonresident
16 anglers that harvested various numbers of sockeye salmon
17 in '94 and '95 on the Kenai River. 62% of all anglers,
18 both resident and nonresident, that were interviewed
19 during the creel survey, did not catch a single sockeye
20 salmon during the day that they were interviewed, and
21 less than 2% of the anglers surveyed caught 4 or more
22 fish. Mr. Chairman, the point I'm trying to make with the
23 king salmon and sockeye salmon information just presented
24 is that there are some anglers, both residents and
25 nonresidents, who do catch large numbers of fish in

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

ADFG
Position

[

1 various fisheries throughout the state. Some of these
2 fish are undoubtedly exported out of the state, but the
3 number of anglers involved is very small, between one and
4 2% of all anglers involved in these fisheries. As I
5 pointed out at the beginning of my report, the issue of
6 export limits is not new. Proposals were submitted to the
7 Board for consideration at statewide meetings in 1991 and
8 1995, which would have restricted nonresident harvest
9 and/or transport of sport caught fish. Similar proposals
10 have been submitted to the Board at various area meetings
11 during these years also. The Department of Fish and Game
12 has consistently opposed the establishment of transport
13 or export limits because regulations-- these regulations
14 would not help us achieve any of our management
15 objectives, and implementing an enforceable reporting
16 system that would provide accurate information is
17 estimated to cost several hundred thousand dollars on an
18 annual basis. If the objective of transport or export
19 limits is to allocate fish between residents and
20 nonresidents, the Department's position was, and
21 continues to be, that the Board do so under existing
22 sport fish regulations, for example, seasonal bag limits.
23 During past Board discussion of export limits, the
24 Department of Law stated that nonresidents could be
25 restricted to a greater degree than residents only if

Dept of Law position

1 these restrictions were necessary for conservation or
2 development. A relatively recent State law allows the
3 Board to allocate resources between resident and
4 nonresident sport anglers. The Board has not yet adopted
5 a regulation based on this statute. The Department of Law
6 cautioned, however, that, quote, "if the Board decides to
7 adopt a regulation which is more restrictive for
8 nonresident sport fishers than residents, it should take
9 special care to establish that: one, there is a
10 legitimate conservation and development purpose for the
11 regulation; two, the regulatory restriction is designed
12 to address the legitimate conservation and development
13 purpose without imposing unwarranted limitations on
14 nonresidents; three, the regulation does not have the
15 purpose of discriminating against nonresidents." End
16 quote. Restrictions that discriminate against
17 nonresidents raise concerns under the U.S. Constitution's
18 equal protection clauses. The Department of Law
19 continued, and I quote, "differential treatment will
20 normally be found unconstitutional if it is intended to
21 discriminate against interstate commerce. Differential
22 treatment of nonresidents may also have incidental
23 effects on interstate commerce, and if so, may be
24 overturned if the burdens are clearly excessive in
25 relation to the local benefits." And finally, the

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

ADDK

1 Department of Law recommended in a September 18, 1996
2 letter to Laird Jones that, "if the Board determines that
3 additional opportunity is needed for residents, it may...
4 (End Tape 11B - Begin Tape 12A - Log 001)
5 MR. BENTZ: ...were adopted by the Board to establish
6 a fishery which allows individuals to participate in
7 customary and traditional fisheries and efficiently
8 harvest fish for their personal use. Current regulations
9 state, and I quote, "since the gear for this fishery is
10 often different from that historically associated with
11 sport fishing, this fishery should not be classified as
12 a sport fishery, to prevent confusion among the public."
13 End quote. And currently rod and reel are not a legal
14 gear for personal use. So, Mr. Chairman, in summary, the
15 Department views the issue of excessive harvest by
16 nonresident sport anglers as a result of a very small
17 minority of anglers that do harvest-- harvesting large
18 numbers of fish, rather than a commonplace, nonresident
19 problem. Nonresident participation in harvest have
20 increased in recent years and the Department recognizes
21 that there are individuals that do catch large numbers of
22 fish in certain sport fisheries. However, based on the
23 info we have, we cannot support export limit regulations
24 at this time, because, one, they do not address the
25 issues as we see it, two, they are not needed to achieve

1 our management goals, three, they will be difficult to
2 implement, and four, expensive to enforce. Some of the
3 excessive harvest by nonresident sport anglers is
4 probably a result of already illegal actions, such as
5 taking multiple bag limits. Fish and Wildlife Protection
6 already have the tools to deal with this. I believe Fish
7 and Wildlife Protection has developing wording to tighten
8 up the statewide regulation prohibiting of sport caught
9 fish. The Department recommends that if harvest levels
10 need to be placed on nonresident anglers, that the Board
11 do so with seasonal limit regulations on a fishery by
12 fishery or area by area basis, designed to address
13 legitimate conservation and development purposes without
14 imposing unwarranted limitations on nonresidents, as
15 recommended by Department of Law. If the Board feels that
16 resident anglers need additional harvest opportunities,
17 the Department recommends that residents be afforded this
18 opportunity through personal use fisheries, using
19 existing methods and means. And Mr. Chairman, that
20 concludes my report. Thank you.

21 CHAIRMAN: Thank you, Mr. Bentz. Maybe we could hear
22 from the Department of Public Safety. Do you have
23 anything to add to the export issue?

24 MR. CAINE: Thank you, Mr. Chairman. I don't know that
25 I have a great deal to add. We concur with staff's report

1 and the basic content of what was just said. I do have
2 3 quick elements to cover along this matter. The first is
3 at this time, we do not have a clear grasp on the scope
4 of this problem. We have-- we do not have clear
5 information how many persons are involved in this
6 activity, or what the entire scope of it is. The second
7 thing is, we do have some facts relating to this
8 activity, and briefly they are: complaints on the Kenai
9 Peninsula started increasing to us around 1985 when an
10 increasing number of nonresidents began spending time and
11 participating in this fishery. The main theme of these
12 complaints as they relate to this issue is that
13 nonresidents-- some nonresidents were taking over limits,
14 mostly red salmon on the Kenai River, smoking or canning
15 them, and then selling them in the Lower 48, primarily at
16 flea markets in Arizona and Florida. We received these
17 type of complaints on quite a few occasions. It was
18 estimated that this last season in 1996, that we received
19 more than 50 of these calls at our office. We do not know
20 how many were received by A.D.F. & G. or by State Parks,
21 but that's a conservative estimate of the number of call
22 that we received. I also, if the Board would like me to,
23 have a brief summary of some of the criminal cases that
24 we did make, and some of the intelligence and information
25 that we did gather in the limited time that we had

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 available, and I could present that if the Board so
2 desires. The third point is that we feel there is a valid
3 concern in this activity, so much so that we plan to
4 designate some of our forces to continue to investigate
5 and gather information on this activity in upcoming
6 seasons. Thank you, Mr. Chairman.

7 CHAIRMAN: Thank you. Does the Department of Law have
8 anything to add to this? You were quoted a number of
9 times by the staff. Mr. Daugherty?

10 MR. DAUGHERTY: Thank you, Mr. Chair. I agree with
11 most of what the staff said here. I would just like to
12 make it clear that the Department of Law believe that
13 export limits per se would be very hard, if not
14 impossible, to defend at this point. We're not saying
15 that they would always be impermissible, but under the
16 commerce clause of the U.S. Constitution, they would
17 certainly be impermissible if there are other
18 alternatives that are less discriminatory that might
19 achieve the same purpose, and until those other means
20 have been tried, if they fail, then export limits may be
21 permissible at some future time, but as long as there
22 other less discriminatory means than export limits, we
23 would certainly encourage the Board to choose those less
24 discriminatory means such as seasonal bag limits, and
25 when you-- we-- I also would like to reaffirm that the

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1- Dep of Law -

1 Board can provide differential bag limits for
2 nonresidents, if that is its desire, and the test that
3 would be applied there is only the rational basis test,
4 that there has to be a legitimate State purpose and the
5 means used by the Board has to bear a rational
6 relationship to the means to that purpose, so it's not
7 a very difficult test to meet, so long as there is a
8 legitimate purpose that the Board is trying to address.
9 Thank you.

10 CHAIRMAN: All right, thank you. I have Mr. Coffey and
11 Mr. Miller.

12 MR. COFFEY: I direct this question to Enforcement. Do
13 you have the tools you need to prevent what is, in
14 essence, a commercial operation? I think if someone is
15 canning and exporting to sell, that they've got a
16 commercial operation, and do you have sufficient statutes
17 and/or regulations to stop that kind of thing?

18 MR. CAINE: Mr. Chairman, Mr. Coffey. We feel that
19 overall we do have sufficient tools. We do not have
20 sufficient numbers of people to handle those tools and
21 implement them effectively, but I do have some
22 suggestions should the Board desire to make refinements
23 in existing law that would assist us and give us a better
24 tool, but the basic answer is yes, at this time there--
25 if we had sufficient people, we could probably curtail

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

Public Safety

1 this segment of illegal activity effectively.

2 MR. COFFEY: Well, if there's sugges-- Mr. Chair, with
3 the Chair's indulgence, if there's suggestions that would
4 make it better, then we'd like to hear that, and we can
5 fight the manpower issue as we go through the process.

6 MR. CAINE: Mr. Chairman, Mr. Coffey. One suggestion
7 that we came up with is adding additional language to
8 5 AAC 75.015 which says at present, "no person may buy,
9 sell or barter sport caught fish or their parts", we
10 would suggest addition to this language which would
11 assist us, that "no person shall take, transport or
12 possess sport caught fish with the intent to sell or
13 barter these fish within or outside Alaska". This would
14 give us a tool to make a case where a person doesn't
15 consummate the sale of fish within the State. As we
16 understand it, Arizona does not prohibit the sale of
17 sport caught fish taken in Alaska. These people can
18 legitimately sell that product there. If this
19 modification were made, we still have the burden of
20 proof, which is a very high burden, of proving intent,
21 which would protect the majority of the innocent public
22 and focus strictly on people who come to Alaska with the
23 intent of taking a large number of salmon and then
24 commercially selling them at a later time. The other
25 suggestion would be, as staff has suggested, a carefully

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

Public Safety-

1 planned seasonal catch limit. The parameters of that
2 would have to be set by the Board, but that would give us
3 an additional tool to work with while these individuals
4 are still here in Alaska. Some kind of annual possession
5 limit or catch limit, that we could look in a freezer and
6 say, well, there's more than your possession limit here,
7 and it would give us an opportunity to seize the fish and
8 make a criminal prosecution here. Thank you, Mr.
9 Chairman.

10 MR. COFFEY: That's the only questions I had. Thank
11 you.

12 CHAIRMAN: Mr. Miller?

13 MR. MILLER: Thank you, Mr. Chairman. I guess, you
14 know, I was one of the people that wanted to see this
15 item on the agenda. I think that it came as a logical
16 approach to dealing with a problem that I see, and many
17 of us see, in southeast Alaska, and in terms of the
18 report that we just heard, I appreciate the report, and
19 I also appreciate the fact that funding for the
20 Department to gather information is probably limited.
21 I have watched the creel census operations take place in
22 Sitka, in the harbors. There are 3 main harbors in Sitka,
23 there's one person assigned to each harbor. That person
24 puts in maybe a good 8 hour day. A lot of these people
25 that come back into these harbors come in after the creel

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 census person has gone home. Also they come in sometimes
2 in great numbers when the person taking the creel census
3 may be dealing with one person, 3 or 4 other boats may
4 come in. We also have a situation where there are lodges
5 on islands where the guests take their catch to these
6 lodges, where they are boxed and packaged and brought in
7 by another boat, taken up the ramp and taken to the
8 airport. It's common knowledge that almost any day during
9 the summer seasons you can walk into the airport and you
10 can see handtrucks piled high with 2 or 3 individuals
11 with maybe 8, 10 150 pound boxes of fish leaving. This is
12 common. This is a common sight. I walked down the dock
13 from where my boat is tied past where all the charter
14 boat fleet is landing their patrons and their fish that
15 they've caught. You look in these totes, there are
16 halibut fillets that are 8 inches long, there's Ling Cod,
17 there's no size limit to the halibut. It's appalling at
18 times. I'm thrilled to death to see them with-- actually
19 catching chum salmon, but the king salmon is a bit of
20 a resentment because there are plenty of times when our
21 commercial fleet has no access to the king salmon and
22 they watch these fish go out over the dock and through
23 the airports and leave on a steady basis. And it's for
24 that reason that people are saying, we've got to do
25 something about it. It's for that reason that I thought

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 of something like an export limit. I appreciate what the
2 Law Department says, that if we exhaust the other
3 possibilities, then maybe that's an area that we can look
4 at, but we have a lot of species that go out in these
5 boxes of fish, Ling Cod, which are of concern
6 conservationwise. The halibut as well, in the Sitka Sound
7 area, and the king salmon to some degree, although
8 through the hatchery programs, there's a lot more king
9 salmon available right now to the sport and the other
10 users. But I think that the information that says that
11 this isn't so much of a problem may be flawed in that
12 there's no way that they could get an accurate accounting
13 of how much fish actually leaves, and when it leaves
14 through an airport or goes across a border, I think those
15 are the 2 places that you would have the best opportunity
16 to at least have declared what's in these boxes and get
17 an idea of what's going out. Otherwise, I don't see too
18 much presence of Enforcement or anybody at the airports,
19 and I know now you do declare somewhat what's in fish
20 boxes. I think I've had to do that myself. And again,
21 Enforcement, with lack of funding, you know, it's a
22 difficult thing. You can't have a fish cop everywhere.
23 You just can't. So I think that the problem is well put
24 by our Department of Public Safety; they have no clear
25 grasp, and I can believe that. But when you have a

1 situation like we have in Sitka where the residents are
2 watching this happen on a daily basis, the frustration
3 there is evident, and I don't think it's-- you know,
4 obviously they've got the same concerns here in the Kenai
5 and Cook Inlet. So I think that we need to look at the
6 other options then; if export limit is not appropriate,
7 then we need to find out what is appropriate and try to
8 address this problem, and it looks like the gates are at
9 the airports and at the border, and it seems to me the
10 best way to be able to see what's going out of the state.
11 And maybe I'll have some other thoughts on this later,
12 Mr. Chair, but that's all I have at this point. Thank
13 you.

14 CHAIRMAN: I have Dr. Bower, then Mr. Umphenour.

15 DR. BOWER: Thank you, Mr. Chairman. Well, it seems
16 to me that all the options, including even export, will
17 be totally ineffective unless there is a way that we're
18 able to enforce them, and I think we've talked about
19 this, at least my 3 years on the Board, consistently that
20 we're not seeing the budgetary support of Enforcement to
21 protect Alaska's fisheries and marine environment. Based
22 on that, could I ask one question? With-- and this is
23 just to help to focus on this. With 50 reports from
24 people that there were potential problems or people
25 canning that you mentioned, how many of those would--

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 did you go and examine or could you do something about?
2 Do you have a figure on that?

3 MR. CAINE: Mr. Chairman, Dr. Bower. Most of the
4 complaints that we are actually able to follow up on, we
5 are unable to prosecute. When we arrive at the campground
6 and interview the people involved, there is no evidence
7 of a commercial sale other than a large quantity of
8 salmon, and they generally have a very plausible
9 explanation of who caught the salmon and how many days
10 they've been there and where they all came from, and can
11 account for them, and we are unable to make a criminal
12 violation. And I'm not aware that we have made any
13 criminal violations from calls that have come in. We were
14 able to make 3 cases last summer to prosecute 3 separate
15 groups of individuals from an undercover operation that
16 we developed, and one of those suspects had been observed
17 selling salmon in Arizona the previous winter, and we
18 specifically developed them as a suspect and they did
19 sell fish to our undercover operator and gave us a great
20 insight into how that operation occurs, and I do have
21 some information on that. But the answer to your question
22 is, we made 3 cases; none of those were related to calls
23 that came from the public.

24 DR. BOWER: Thank you. Then I guess the thing I'd like
25 to just indicate is again, that regardless of what the

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 Board does or anyone else does, that if we don't somehow
2 get the support for Fish and Wildlife Protection to
3 enforce these, we're never going to make a real dent in
4 it. Thank you, Mr. Chair.

5 CHAIRMAN: Mr. Umphenour?

6 MR. UMPHENOUR: Thank you, Mr. Chair. I would like to
7 ask the Department of Public Safety, you mentioned the
8 intent thing, and could you tell me how that would make
9 it easier? How you can prove that these people have the
10 intent to sell the fish?

11 MR. CAINE: Mr. Chairman, Mr. Umphenour. Our greatest
12 concern, of course, is to protect innocent persons who
13 really do enjoy eating a great deal of salmon during
14 winter months, from a criminal prosecution, and we do
15 have a concern in this that some individuals take large--
16 what appears to the public to be larger numbers of salmon
17 than they can reasonably consume, because they have large
18 families, they give them away as gifts, or whatever. And
19 the reason that we came up with the thought of intent in
20 this is, if we did observe individuals selling salmon at
21 flea markets or telling others that their plan is to sell
22 these salmon, that would give us probable cause to obtain
23 a search warrant and to look at their operation here in
24 Alaska. It would also give us probable cause to obtain
25 a search warrant in another state, to look at their homes

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 for records pertaining to these sales. I guess we're
2 assigning a fairly high burden of proof on our part to
3 protect the innocent public. We do feel that we could
4 develop cases if this added language were put in, and our
5 investigative section would be able to follow up on some
6 of these cases, and our hope would be that this would
7 deter others when they were made public through the
8 media.-You're correct, it is a very high burden of proof,
9 but we feel it's better than what we have at the present
10 time. Mr. Chairman.

11 MR. UMPHENOUR: Thank you. I'd like to ask Mr.
12 Daugherty a question. Mr. Daugherty, on seasonal limits,
13 say for instance that the Board-- say we decided, you
14 know, that we want to bring this up at a future meeting
15 and address it and we want to make us a Board generated
16 proposal so we can do this and notice the public and
17 everything, on seasonal limits, being's the Department of
18 Law would prefer seasonal limits over export limits,
19 could you-- what I'm wondering is, would we have-- this
20 would be seasonal limits for nonresidents, now. Could we
21 do this so that it would apply statewide, or would we
22 have to do it region by region or how would we go about
23 doing this?

24 MR. DAUGHERTY: Mr. Chair, Mr. Umphenour. The Board
25 has the authority to regulate residents and nonresidents

1 differently, and it could choose to do that on a
2 statewide or a regional basis. It would probably be
3 easier to defend if you do it on a regional basis where
4 the problems are, target the species and the quantities
5 by region. That would give them more of a rational
6 relationship to the problem than if you address it on
7 a statewide basis. Thank you.

8 MR. UMPHENOUR: Okay, thank you. Then for a-- we'll
9 have some for instances, then. Okay, there's allegedly
10 a large number of people that come over from Germany and
11 go up the Quejack [ph] River and can hundreds or
12 thousands of pounds of fish, and I know this for an
13 absolute fact, but I know that there's a custom processor
14 in Anchorage that processed 3,200 pounds of lox for
15 a French airline pilot that went to France, all vacuum
16 sealed and-- that were all sport caught fish from the
17 Kasilof River. I know that's a fact. So what we would
18 have to do then is, if we're going to have seasonal
19 limits, could we define the seasonal limits-- we have to
20 do it so that it's enforceable, and the easiest way to
21 enforce is the way Mr. Miller said, is at the airport or
22 at the border, and so would the Board have to come up
23 with something that says X numbers of pounds of canned
24 salmon or canned king salmon or, you know, just canned
25 salmon in the aggregate or are we going to list it by

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 specie? But if we list it by specie, the problem is, is
2 that you're going to have to open cans up to find out
3 what's in it, and then unless you're a pretty good expert
4 at identifying what kind of fish it is, you're going to
5 have a hard time doing it, so how would the Department of
6 Law recommend we would go about doing something like
7 this? Or in the case of Sitka, so many pounds of halibut
8 fillets or codfish fillets or whatever. How could we do
9 this so that it would not be burdensome and cumbersome
10 and so that it would be effective and you would be able
11 to enforce it?

12 MR. DAUGHERTY: Mr. Chair, Mr. Umphenour. I don't know
13 if the Board would want to attack this in a way that
14 aimed at pounds of fish or cans of fish. It would seem to
15 get very complex very quickly when you try to do
16 something like that, because the weight of fish varies.
17 I mean, you can't reasonably tie that into a bag or a
18 possession limit, where, particularly with a species like
19 king salmon, where there is a wide variation in the
20 weight. And there is also differences in the weight
21 depending on the processing method. I think that that
22 would be something that would be left to Enforcement, if
23 you said a number of fish as the seasonable bag limit,
24 then Enforcement would figure out what the tables are,
25 how many cans are normally produced from a fish or

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 something, and somebody might get away with an extra
2 fish. It's going to be the person who has an extra case,
3 you know, that is going to be prosecuted. It's not going
4 to be the person who has one can too many. Thank you.

5 MR. UMPHENOUR: Well, let me ask this question, put
6 it a little bit different, I've thought about this a lot.
7 Okay, in our allocation criteria, you know, we have
8 different things that we go through and etc., but could
9 it be-- could the Board establish what a reasonable
10 household would use in, say, pounds of salmon, or pounds
11 of halibut, per person per year, and rather than have a
12 seasonal-- then we can kind of take an average-- you can
13 take an average weight. There's average weights for all
14 species of salmon, for instance, and if you're going to
15 smoke it, there's-- you know how much you're going to
16 lose there, if you're going to can it, you know how much
17 you're going to lose there. There's-- It's easy to--
18 I could spend an hour and do this and be done with it,
19 figuring out the recovery rates and different methods of
20 processing. Different kinds of salmon or halibut or
21 codfish or whatever, it wouldn't take that long to figure
22 that out, and do it in that manner, and then have it as
23 pounds, because otherwise you're going to be having to
24 try to figure out, well, they caught a great big fish,
25 a little bitty fish, and etc., but just take the average

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 weight of that specie of fish and then the average
2 recovery rate for various forms of processing, and
3 there's-- we're only talking about 2 or 3 forms, but that
4 wouldn't be hard to come up with those figures. Would
5 something like that be acceptable and is it in our
6 authority to do something on the order of that?

7 MR. DAUGHEPTY: Mr. Chair, Mr. Umphenour. I'm not
8 certain how we could address that. I think that there
9 might be a way that we could word the regulations in a
10 way that it would fall within the Board's authority to do
11 that. It is tied to the conservation of the fisheries
12 resource, and the development of the fisheries resources.
13 At this time I wouldn't be prepared to draft something up
14 that would meet that, but I would certainly be willing to
15 work with the Board and with the staff and with
16 Enforcement to try to generate a proposal or something
17 that would deal with the pounds issue. I would note,
18 however, that we're not going to be able to deal with
19 halibut, and that creates a problem if you're talking
20 total pounds of fish, because we have-- the State has no
21 authority to limit the amount of halibut that someone can
22 take beyond the Federal limits, which is-- I think it's
23 2 per day, and the State just has no authority to impose
24 any limits beyond that, in the area of halibut. Thank
25 you.

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 MR. UMPHENOUR: Thank you. I'd like to hear from some
2 other Board members, but I-- we need to somehow address
3 the halibut issue also, because that's a big issue.
4 I don't know whether it's true or not, but I've been told
5 that it's possible that the sport fish guides' clients
6 are taking more halibut than the commercial fishermen in
7 many cases in southeast Alaska, but I'd like to hear from
8 some other Board members. Mr. Chair.

9 CHAIRMAN: I have Mr. Angasan, Mr. Coffey, and Mr.
10 Miller in that order.

11 MR. ANGASAN: Thank you, Mr. Chairman. Some of the
12 options that I've been listening to by the Department of
13 Law in trying to resolve some of the-- if there is a
14 problem in this area, I believe that one of the options
15 that was presented was the-- you know, conversion of
16 sport caught fish to personal use for-- I assume that he
17 meant for Alaskans, and then whatever was left was for
18 the sport fish industry, who presumably would be
19 non-Alaskan residents. I think we'd run into some
20 problems with that, because it-- you know, unless we make
21 a clear distinction as to why we're limiting this
22 particular user group, or the local-- you know, the
23 people from this area, the nonresidents. I think the area
24 that we can focus on, Mr. Chairman, is the area of
25 conservation. I think that this issue can't be resolved

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 in-- you know, I think it needs to be addressed as we go
2 along and I think that, you know, probably the most
3 glaring issue to be dealt with at this particular-- on
4 this particular proposal would be for king salmon, and
5 you know, we certainly have a conservation problem in
6 some areas that-- and seasonable bag limits by
7 nonresidents would be a good deterrent to eliminate that
8 particular issue, but in terms of trying to restrict, for
9 example, coho-- or not coho, but sockeye in some areas.
10 You know, the standard that we would use to eliminate--
11 or to limit the nonresidents really don't apply in area--
12 in species that are more abundant than the ones that
13 we're dealing with, so, you know, to focus more on how we
14 can address it, I think if we were to take one issue,
15 like king salmon, and then recognize that are
16 conservation problems, and then move forward. Enforcement
17 is-- you know, is not the reason. I mean, we-- you know,
18 going to the gates of the airports and going to the-- you
19 know, the borders aren't-- just isn't going to, you know,
20 curtail the effort. I mean, there's absolutely no way you
21 could, you know, because the issue seems to be far
22 greater than, you know, the issue-- the examples that
23 I've heard. I know in Bristol Bay, I've heard Dr.-- Mr.
24 Umphenour talk about the Quejack, but I can give a lot of
25 other examples that are-- you know, that show the abuse

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 of this-- you know, the hauling out of fish by
2 nonresidents and aliens even, and so I think that we--
3 we probably-- this is one of those that you probably
4 could lose your schedule on the agenda very easily, and
5 it might be that we-- you know, to focus on one issue
6 that we probably could have a meaningful impact on, that
7 would be chinook and coho.

8 CHAIRMAN: Mr. Coffey?

9 MR. COFFEY: Mr. Chairman, I think we-- our time is
10 short. We've identified problem areas, we've identified
11 some solutions, we've identified some areas we cannot go.
12 What I would like to see is a schedule or a time when
13 we're going to bring some regulatory changes. We've got
14 suggestions from Enforcement that might help, and take
15 this discussion to the level of where we're going to--
16 what regulations we're going to change and when we're
17 going to address those, and I looked at the regulations
18 that were mentioned, and they're in the statewide
19 provisions of the law, and I'm one of those who would be
20 willing to address the changes suggested by staff, and
21 maybe some others, at an appropriate time, and I would--
22 I'm just asking for us to maybe set that time or to move
23 on to other matters on our agenda, because I understand
24 we've got this problem and I understand we've got some
25 solutions, and now we need to get to the point of

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 following the proper process and procedure to get those
2 things implemented.

3 CHAIRMAN: Mr. Miller, and then myself.

4 MR. MILLER: Mr. Chairman, thank you. I think that
5 I will reserve my remarks, because I think that what Mr.
6 Coffey said is appropriate. I think that we have
7 identified a problem, and we need-- and some possible
8 solutions. We need to find a way or schedule a time to
9 elaborate on these, and maybe this isn't the time to
10 elaborate, so with those remarks, I would encourage
11 someone maybe to make a motion to the effect that we
12 establish a time period on an appropriate agenda.

13 CHAIRMAN: Well, there's-- the Department of Public
14 Safety has given us suggested wording to shore up the
15 barter business; that'd be a fairly reasonable proposal
16 if the Board had interest in it, to schedule for some
17 time. What I keep hearing is that seasonable limits, to
18 solve certain geographical problems, are probably in
19 order, and would help Enforcement deal with export
20 problems. We've heard this from the Guide Task Force that
21 saw that seasonable limits, it might be timely for that.
22 For example, let me show how it might work for
23 enforcement. We heard the Lieutenant tell us that they
24 get 50 calls and they go out there and they find people
25 who've got a large volume of fish, but whether they're

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 selling them or whatever-- If you had a seasonal limit
2 and they had more fish than the seasonal limit on hand,
3 it's not a question of whether they're going to export it
4 and sell it or whatever; that would be a tool that would
5 keep large volume-- those small percentage of people that
6 catch large volumes of fish, that the public sees and
7 then presumes, I guess, in some cases, or rationalizes,
8 because there's no evidence in most cases, that they're
9 going to go for sale. So a seasonal limit, to me, would
10 be a very useful tool to-- if it has, you know, reason in
11 certain areas, whether it be directed towards king
12 salmon, as Mr. Angasan said, or coho or whatever, would
13 be the first step to work towards shoring up this type of
14 a situation. There's a lot of ways to-- we use seasonal
15 limits all the time. We-- not all the time, but we use
16 them for a number of fisheries: king salmon, for example,
17 5 per year, and if a guy's got-- he's got a king salmon
18 in his possession and hasn't filled out his harvest
19 record according, he gets a ticket. That happens quite
20 frequently, and if a person has more than 5 in their
21 freezer, they'd have to do some explaining. And there's
22 a lot of things that that seasonable limit would do. We
23 do the same thing for personal use. We say, you know,
24 getting what's enough is enough, and here in Cook Inlet,
25 we say 25 fish for head of household and 10 for each

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 dependent, so there's ways to rationalize what a
2 reasonable seasonal limit might be for people. So I guess
3 what I, you know, my suggestion would be, is that it's
4 probably time, we've heard it from several sources, and
5 for different reasons, that we look at seasonal limits on
6 certain species of fish in certain geographical areas,
7 and the way we might want to do that is that as we go
8 around the state in our normal 3 year cycle, we have
9 a proposal each and every time that that issue will come
10 up, and then the Board can determine whether it's
11 necessary, what the numbers are, what the species are or
12 whatever, and-- or do nothing, and then we could--
13 because again, if it's going to hold up-- if we're going
14 to make a distinction between residents or nonresidents,
15 because of the equal opportunity clause, we have to have
16 some rationale, and there's got to be some basis of why
17 we're imposing this on people, and that would be of
18 a geographical nature, and it would be species, in most
19 cases. I mean, we could-- I guess we could come say, so
20 many fish is enough for the nonresident and then it goes
21 to court, somebody will challenge and say, well, what's
22 the rationale for this sort of thing. But if we can do it
23 on a geographical basis, some reason behind it, then
24 I think it would stand up to court challenges. So as a
25 suggestion, to get us moving on this, mightened we, as we

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

Dept of L&N - important point

1 go to the different areas, have as an automatic trigger,
2 we will look at the need for seasonal limits for all
3 species in those areas, advertise it as such? That might
4 be one way. Mr. Daugherty?

5 MR. DAUGHERTY: Mr. Chair, I just want to clarify
6 something for the Board. I think that the Board may be
7 thinking that this test is a little tougher than it
8 actually is. To satisfy equal protection, basically what
9 you have to show is that the resource is insufficient to
10 handle unlimited fishing by both residents and
11 nonresidents, and in that case, it is permissible to have
12 a preference for in-state residents for obtaining the
13 resource under the equal protection clause. For sport
14 fisheries; this does not apply to commercial fisheries.
15 You're dealing with an entirely different question when
16 you talk about commercial fisheries, but within the
17 context of sport fishing and hunting, the equal
18 protection clause is fairly easy to satisfy, and I
19 would-- it's still-- it's going to be easier on a
20 regional by regional basis, but I just want the Board to
21 understand that it is not a significant barrier to
22 imposing those restrictions. Thank you.

23 CHAIRMAN: Thank you. So you're essentially saying
24 that we could, if we wanted to, just deal with the whole
25 state on salmon, and say, X number is all you can have

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 for a seasonal limit if you're a nonresident, and we
2 justify this on the basis that it's a fully utilized
3 resource statewide and so on and so forth, is that what
4 you're saying?

5 MR. DAUGHERTY: Mr. Chair, that might be difficult to
6 defend in court, particularly with some species, such as
7 pink and chum, that are sometimes not harvested because
8 of the lack of interest of commercial and sport and
9 recreational fishermen in Alaska, but as to species where
10 that there is-- they are fully utilized, it could be done
11 on a statewide basis perhaps, but again, there are areas
12 where those species are probably not harvested, even
13 though they are-- they are just because they're so
14 remote, something that there is an excess that isn't
15 going to be harvested, so a regional approach would be
16 better. Thank you.

17 CHAIRMAN: All right, Board members, what's your
18 wishes on this? Dr. Bower?

19 DR. BOWER: Only one other comment, I think, relating
20 to this, and I brought up on several occasions before the
21 idea that we need to have harvest tickets, and I know
22 that that creates an additional problem for the
23 Department, but I think your comment that if Enforcement
24 comes around and there are on hand so many of a given
25 species, it may not be above what one might consider

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 a season limit, but if there is a harvest ticket that
2 must be filled out as fish are caught, then certainly
3 that would be a way cumulatively for the honest people to
4 have to account for the fish that they've caught, and
5 I think even a harvest ticket that might even indicate
6 that for pink salmon, there is no season limit, for
7 instance, and then if it's pink salmon, it's not a
8 problem, so I guess I still firmly agree-- or believe
9 that it is appropriate for us to finally reach a point
10 where we are going to have harvest tickets, at least for
11 certain areas, on which the various species will be
12 identified, and that that will give Enforcement a tool
13 whereby, even if they're processed, as long as they've
14 been accounted for on this ticket, it would at least give
15 some indication, and it indeed would also provide some
16 information for the Department that I think would be
17 valuable for the Board in the future. Thank you, Mr.
18 Chairman. That's all I have.

19 CHAIRMAN: Well, I concur. I think if you're going to
20 go to a seasonal limit, you're going to have to have some
21 kind of a harvest report card or something like that.

22 That to me is a given. What shape it takes, there's a lot
23 of different options, but that's what I meant also, Dr.
24 Bower. Dr. White and then Mr. Umphenour.

25 DR. WHITE: I guess this question is for

Possession limit

1 Mr. Daugherty. Wasn't one of the original rubs in this
2 issue bag and possession limits where you have an
3 identifiable piece of fish before processing versus after
4 processing, it no longer is a possessed fish?

5 MR. DAUGHERTY: Mr. Chairman, Dr. White. That is
6 correct under the current possession; it would not affect
7 the seasonal bag limit. It would be harder to prove, but
8 if somebody has 60 frozen fish in their freezer, and the
9 bag limit is 20, you've got some evidence that you can
10 bring to a jury to say that they have taken more, but it
11 may be more effective also to change the possession, or
12 have a seasonal possession limit, kind of a freezer limit
13 type regulation as well, so that a person could not
14 possess, even if they had been processed, more than their
15 seasonal limits.

16 DR. WHITE: So I'd like to take this to the Lieutenant
17 also. Is this one of your people's significant problems
18 is this turning a real fish into consumable processed
19 flesh? What I'm trying to do is, we're drifting towards
20 this seasonal limit versus possession limit question, and
21 I-- in this whole discussion, I didn't see anybody
22 identify this as a problem, and I want to know whether
23 it's a problem for you all.

24 MR. CAINE: Mr. Chairman, Dr. White. Our preference
25 would be to deal in numbers of fish. Basically, in some

1 cases it might be more difficult with one form of
2 processed fish over another, but I think the industry has
3 long established a basic number of cans that will come
4 from the average red salmon. Halibut or king salmon vary
5 in size much more, but in my mind, we're-- one of the
6 main topics here is the Kenai River red salmon, and
7 I think we could establish a means to determine how many
8 cans of fish or how many pounds of smoked product, I
9 think we could do that. And to answer your question, we
10 would-- I think we would prefer to work in numbers of
11 fish in a seasonal limit and in a seasonal possession
12 limit, rather than pounds of product or some other form.

13 DR. WHITE: I recognize that. I guess where I'm kind
14 of either getting left in the dust or I'm plain stupid
15 is-- and I'll take this to Kevin now-- I thought one of
16 the original problems was once you no longer had a fish,
17 then your possession limit went out the window, so
18 I guess a yea or nay on that as to whether I'm right or
19 wrong about that.

20 MR. DELANEY: Mr. Chairman, Dr. White. When a fish is
21 preserved in such a fashion that it's fit for human
22 consumption after a period of approximately 14 days, once
23 it's frozen, canned, smoked, freezer wrapped, then it is
24 no longer part of the existing possession limit. The
25 existing possession limit relates, as it's presently

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 defined, to unpreserved fish, and with that in mind, what
2 you'll find in most areas of the state, is to facilitate
3 enforcement, the possession limit is one daily bag limit.
4 For instance, on Kenai sockeye, it's identical to the
5 daily bag limit. That's true for king salmon out in the
6 Kuskokwim area as well. In most cases, where we have
7 discussed and subsequently adopted seasonal limits, we've
8 made those seasonal limits somewhat larger than one daily
9 bag limit, and so there's a confusion that exists because
10 once fish are preserved, they're no longer part of the
11 possession limit, but a lot of our management strategy
12 has grown up to accommodate that premise, and so if the
13 Board were to choose to redefine possession limit to
14 include preserved as well as unpreserved fish, then the
15 Board would necessarily, I believe, be obligated to go
16 through the state and examine whether or not the existing
17 possession limits are in fact what they want, when
18 considering unpreserved fish as part of those possession
19 limits. I-- we-- the discussions we've had prior to this
20 meeting...

21 (End Tape 12A - Begin Tape 12B - Log 001)

22 MR. DELANEY: ...are a valuable tool, and although
23 there's a potential for people to preserve fish and make
24 it more difficult for us to identify the exact number
25 that they have, as Mr. Daugherty and Lt. Caine have

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 mentioned, it is consistent with our experience that when
2 you're trying to deal with this 1 or 2% of the people
3 that are walking out the door with 4, 7, 1,200 pounds of
4 fish, they have a very difficult time explaining how they
5 converted, say, 5 king salmon or 25 sockeye into that
6 freezer load, and it's been a valuable tool. Thank you.

7 DR. WHITE: So in the King's English, seasonal limits,
8 as you all are defining it for the Board ~~at~~ the present
9 time, and its enforceability, includes processed fish,
10 correct?

11 MR. DELANEY: Mr. Chairman, Dr. White, that's correct.

12 DR. WHITE: At this juncture, Mr. Chairman, I heard
13 Mr. Coffey say that he was prepared to put timing and
14 content sideboards on this question, and I would
15 encourage him to do so. Thank you, Mr. Chairman.

16 CHAIRMAN: Well, we'll see if he's ready here in a
17 minute, but we'll hear from Mr. Miller first.

18 MR. MILLER: Thank you, Mr. Chair. I wasn't going to
19 make these comments, but we've been talking about these
20 issues so I'm just going to add a little bit more to the
21 confusion, maybe, but in terms of season limits, I like
22 the idea. I think it's also a good idea, as Dr. Bower
23 suggested, that you have a ticket that-- punched that
24 punches along with that so that you are accounting for
25 that as well as maybe some other information data that

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 would be useful, but when we get to the processed fish
2 aspect of it, depending on whether the people process
3 their own or they have someone else process it,
4 oftentimes the processor will do the processing for half
5 the product, so the person leaving may be able to
6 actually take twice as much, since the processor's going
7 to take half of it, and leave with his identifiable
8 share, and then you'd have to account for that. The other
9 part of the problem would be is that if someone is
10 canning fish in cans, he may mark those cans "pink
11 salmon", and indeed he may have 14 cases of them, but
12 they could well be king salmon. I don't think the
13 Department's going to go in and open the cans, so I
14 mean-- So there's a lot of enforcement problems here
15 that, you know, we're probably just going to have to bite
16 the bullet on, but I think for the most part people-- I'd
17 like to think, for the most part people will obey the
18 law, and if you have a 5 king salmon season limit, and
19 that's your law, most people are going to go with that,
20 and I-- you know, I think we just have to operate that
21 way, because I can't-- I don't think we can get into the
22 nitty gritty of opening cans and seeing where it was
23 processed. But I-- you know, the-- I think the intent
24 here is to prevent the excesses and the large abuses, not
25 to certainly limit the number of pounds a person can eat.

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 I mean, it's kind of our responsibility to encourage
2 people to eat more fish, and I certainly wouldn't want to
3 put a limit as to how many a household should be able to
4 eat. So with that in mind, you know, ~~did really~~ support
5 or even make the motion that we consider a seasonal limit
6 with a harvest tag that has the appropriate information,
7 data collection ability, and if it's ~~more~~ critical
8 to do it regionally, then I'd say, let's do it that way.
9 If we can do it statewide, on king and coho, then in one
10 fell swoop, let's do it. Let's make a motion for a limit
11 of-- a season limit of kings and cohos statewide and be
12 done. But I'd like to see us move on one way or the
13 other. Thank you, Mr. Chair.

14 MR. DAUGHERTY: Mr. Chair, I would just like to note
15 for the Board's information that the practice that Mr.
16 Miller spoke of processing half-- keeping half the fish
17 in return for processing is illegal. It is considered to
18 be the sale of sport caught fish. Thank you.

19 CHAIRMAN: Thank you. We'll hear from Mr. Umphenour,
20 and then I would like to see some kind of an action
21 movement here. It's past lunch time. Mr. Umphenour.

22 MR. UMPHENOUR: Thank you, Mr. Chair. I'm going to
23 defer to Mr. Coffey. I think he's about to make a motion.

24 CHAIRMAN: Mr. Coffey?

25 MR. COFFEY: Mr. Chairman, I would make the following

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 motion: that at our Board meeting in Sitka, we get a
2 report from the staff on the regulations that need to be
3 changed, new regulations that need to be drafted, and
4 seasonal limits on various-- at various fisheries and
5 various areas, with a view toward having a Board
6 generated proposal, and that the Board generated proposal
7 be considered at the statewide finfish meeting in
8 February of '98, and if I can get a second, I'll address
9 this.

10 UNIDENTIFIED: I'll second.

11 MR. COFFEY: Mr. Chairman, I think this might be
12 something that we need to address earlier than February
13 of '98, but I also recognize that we have many, many
14 other items on the agenda. I didn't want to load up
15 December for the reason that we've got a split meeting in
16 Cordova and Fairbanks and we have some rather important
17 issues there, which the committee you appointed wasn't
18 able to resolve, and I think our schedule is very full.
19 I also didn't want to do it in Ketchikan by virtue of the
20 fact that we're going to be focusing on shellfish, and
21 other issues not related to-- necessarily related to
22 this, so it was my thought that the finfish meeting in
23 Sitka would be the most appropriate time in which to do
24 this. That, of course, means that we're limited in time,
25 and that leads us to the February '98 statewide finfish

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 meeting for the next time we could consider any Board
2 generated proposals. It would be timely for that, we
3 would be in time for that, and I would urge any other
4 Board members who think there's a greater sense of
5 urgency to amend this motion perhaps, because it might
6 require us to act sooner rather than later, but I thought
7 that if I put a schedule out there that was the way I've
8 suggested it, that at least we'd have something on the
9 table and we could discuss it, so I'm not adverse to
10 changing the dates, but I think we need to have a
11 schedule. Thank you, Mr. Chair.

12 CHAIRMAN: Mr. Umphenour and then Mr. Angasan.

13 MR. UMPHENOUR: Thank you, Mr. Chair. I'd like to hear
14 what Mr. Delaney says?

15 CHAIRMAN: Mr. Delaney?

16 MR. DELANEY: Mr. Chair, I have a suggestion, and
17 I think what you have here is a Cook Inlet sport fish
18 meeting in November, a Prince William Sound Copper Basin
19 finfish meeting in December, and a southeast Alaska
20 finfish meeting in February? If you take a look at the
21 combined statewide sport fishing effort that occurs in
22 those 3 areas, you've got about 90 some percent of the
23 effort that occurs in the state. Those are regional
24 meetings, perfectly suited for the kinds of detailed
25 discussions that I anticipate you're going to have based

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 on the conversations you've had today. The Department of
2 Public Safety, as Lt. Caine has mentioned, has suggested
3 language for improving the buy, sell, barter proposal.
4 They could submit that to you at any time. You could
5 schedule that for a date certain, perhaps your March
6 meeting, and the other areas of the state, Bristol Bay is
7 up first thing out of the dock next year, and the rest of
8 A.Y.K. follows, so within basically 12 months of today,
9 you'll have visited all of the regions of the state, and
10 if you took the suggestion of Public Safety to amend the
11 buy, sell, barter regulation at a time certain, perhaps
12 March, you'd have a really good start on this.

13 CHAIRMAN: I'd just make one comment, and then we have
14 Mr. Umphenour. The Cook Inlet meeting, there will be no
15 public testimony, because it's a split 2-part meeting. We
16 took the public testimony last February. I would not want
17 to see seasonal limits scheduled for a Cook Inlet meeting
18 without the public being able to provide oral testimony.
19 Just initial thought. Mr. Umphenour?

20 MR. UMPHENOUR: Thank you, Mr. Chair. I was thinking
21 more along the lines of what Mr. Miller had said and what
22 Mr. Delaney just said rather than waiting until '98.
23 I think-- of course we'd have to sit down and look at all
24 the proposals, but there may be proposals there that
25 actually address this subject in a lot of these meetings

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 that we're getting ready to go to, and if not, then we
2 could maybe have a-- have the Department help us come up
3 with Board generated proposals for these, and do it-- and
4 start doing it as soon as possible, which would be-- the
5 next time we would be able to do something would be-- of
6 course it's getting real close now, but this meeting in
7 Cordova and then the meeting in Sitka also, and that
8 would-- as Mr. Delaney said, within the next-- the
9 majority of the sport fishing effort, we're getting ready
10 to cover all those areas, except for the Cook Inlet we
11 won't be able to, but the Copper River and Prince William
12 Sound and Southeast and then A.Y.K., that's most of it,
13 but I think something on the order of that might be
14 better. Otherwise we're, you know, putting it off to
15 a long ways in the future. Mr. Chair.

16 CHAIRMAN: Mr. Angasan and Mr. Miller.

17 MR. ANGASAN: Thank you, Mr. Chairman. I thought
18 that-- I too thought that '98 was too far over the
19 horizon in dealing with the issues that the Department
20 has brought forth to us, based on information that they
21 gathered in undercover operations, etc. I believe that
22 if you look at where we're at today and how long we're
23 going to be in session at this work-- you know,
24 (indiscernible) I think that the Department has enough
25 information that they gathered from the discussions here

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 as well as their own information that they have, and
2 quite possibly could generate a proposal that we could
3 look at to send forward to, you know, into the future,
4 other than the Cook Inlet, but I think Mr. Delaney had
5 it-- pretty much cracked it right on--- the point that
6 I made about, you know, conservation issues and region
7 specific and this-- that would be something that we could
8 start. I think that, you know, we know what the issues
9 are and we know the issues that need to be addressed and
10 I think that we-- we should be able to hack something out
11 in short order to be presented to the Board to move
12 forward with.

13 CHAIRMAN: Thank you. Mr. Miller, then Mr. Coffey.

14 MR. MILLER: Thank you, Mr. Chairman. My concern is
15 the same, the time, the length of time. I would like to
16 find out from Mr. Daugherty if it's possible to address
17 these issues at the next couple meetings and by March
18 actually have a finished product? Is that possible?

19 MR. DAUGHERTY: Mr. Chair, Mr. Miller. I believe that
20 you legally noticed for just about anything that you
21 might do at the Cook Inlet meeting, but as the Chair was
22 saying, there would not be practical notice and an
23 opportunity for the public to give oral comment on those
24 issues at that meeting. For the southeast meeting, I know
25 that there are a number of proposals dealing with

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 possession limits and freezer limit type issues, so it
2 would certainly be available at the southeast meeting to
3 deal with. I'm not sure about the Copper River issues.
4 I haven't looked at the proposals for that meeting.
5 I don't know if there's anything there the Department
6 might have-- But I-- let's see, it might be possible to
7 get out a public notice for that, but that would be a
8 very tight schedule of getting out a public notice for
9 that. The statewide issues, we would definitely have to
10 put out a separate public notice. An action could be done
11 30 days after that public notice, so it would be possible
12 to get something considered by the Board before March,
13 and then it would take a month or 2 to make it through
14 the regulatory process to actually be in regulation. It
15 would certainly be possible to have something in effect
16 by next summer. Thank you.

17 MR. MILLER: If we did this region-wide then, you
18 know, some of them might be-- might be able to be
19 implemented sooner, say, the southeast, if we were to do
20 one, say, for southeast that would be king salmon, coho,
21 I mean, that would be obviously adequately noticed and
22 appropriate to-- and maybe the way to approach this is
23 regionally. I mean, maybe the seasonal bag limit for
24 kings in southeast would be different than the seasonal
25 bag limit for kings in Cook Inlet. I don't know, but it's

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 possible, and maybe it's not-- maybe it's not appropriate
2 to have the same seasonal bag limit for one species
3 statewide, so maybe we should approach it on a regional
4 basis. And if that's possible, then if this motion
5 failed, then I would make a motion to that effect. Thank
6 you, Mr. Chair.

7 CHAIRMAN: Mr. Coffey?

8 MR. COFFEY: Mr. Chairman, I'm glad I couched my
9 motion the way I did, because it's got the discussion
10 going, and with the consent of the second and the Chair,
11 I would amend it as follows: that at the Cordova meeting,
12 we-- to the extent that notice has adequately been given,
13 that we would discuss seasonal limits at the Prince
14 William Sound Cordova meeting, that in the southeast
15 meeting, again, to the extent that notice has been given,
16 we would discuss seasonal limits, and that in March of
17 '97, we are revisiting Cook Inlet on the coho issue in
18 any event, and that we discuss seasonal limits at that
19 time, and we also discuss the buy, sell, barter amendment
20 in '97 at the March meeting, or any other particular
21 statewide regulatory issues of that type, that talk about
22 changing the sport fish sale sort of thing, and that
23 might involve processors or some of that sort of thing,
24 which would be general and across the board, and not just
25 regional, so if-- That would be a motion to amend my

STERLING COURT REPORTERS.

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 original motion, Mr. Chairman.

2 CHAIRMAN: That just takes us through this year. What
3 about when we go to Bristol Bay and we go to some of
4 these other places, A.Y.K. and so on and so forth? Is
5 this a perpetual type thing is it you're.....

6 MR. COFFEY: Yeah, I'm sorry. I was trying to address
7 this cycle, but I think we need to address the seasonable
8 bag limits, because that seems to be the preferred tool,
9 or at least the suggested preferred tool, throughout, so
10 Bristol Bay and I guess if we get into the A.Y.K. and on
11 up, to the extent that sport fishing and seasonal limits
12 are an issue there, we need to address them in all of
13 them, and I would so state that's the intent of my
14 motion, or my amendment.

15 CHAIRMAN: Okay. About an hour and a half ago, I think
16 I suggested something like this, that we ask the
17 Department to put a placeholder in as we went around the
18 state, so I-- and I'm not advocating that it's going to
19 be necessary or that the same species are going to be
20 involved, but I support the concept that we need to look
21 at this, and I'll be voting for that type of an approach
22 to this issue. And is it clear to the Department what
23 we're talking about here? Okay. The question has been
24 called. Everybody clear what the motion is? Mr. Jones,
25 are you clear what's before us?

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 UNIDENTIFIED: Mr. Chair, are we voting on an
2 amendment or an amended motion?

3 CHAIRMAN: That's where I need clarification. I wasn't
4 sure. I was hoping somebody knew. Mr. Jones is doing the
5 writing over here. What are we voting on?

6 MR. JONES: I would have to go back to Mr. Coffey.
7 I thought he was asking for a friendly amendment with the
8 concurrence of the second that that would be the body of
9 the main motion versus.....

10 MR. COFFEY: That is correct.

11 MR. JONES: So we would be voting on the main motion,
12 Mr. Chairman.

13 CHAIRMAN: Thank you. Thank goodness. Would you read
14 the roll, please?

15 MR. JONES: Mr. Chairman, on the motion, Umphenour?

16 MR. UMPHENOUR: Yes.

17 MR. JONES: Engel?

18 CHAIRMAN: Yes.

19 MR. JONES: Bower?

20 DR. BOWER: Yes.

21 MR. JONES: Angasan?

22 MR. ANGASAN: Yes.

23 MR. JONES: Coffey?

24 MR. COFFEY: Yes.

25 MR. JONES: Miller?

1 MR. MILLER: Yes.

2 MR. JONES: White?

3 DR. WHITE: Yes.

4 MR. JONES: Mr. Chairman, the motion carries 7 in
5 favor.

6 CHAIRMAN: Thank you. Do we need any further
7 discussion on the seasonal limit issue?

8 MR. UMPHENOUR: Just a question?

9 CHAIRMAN: Mr. Umphenour?

10 MR. UMPHENOUR: Okay. Thank you, Mr. Chair. I would
11 like to ask the staff, that would cover everywhere, doing
12 it the way we just did it, by, you know, next winter,
13 that would cover every region in the state except for
14 Kodiak, wouldn't it?

15 UNIDENTIFIED: That's correct, Mr. Chair.

16 MR. UMPHENOUR: Okay, Mr. Chair, Kodiak just got left
17 out. I was wondering if there's any way we can get Kodiak
18 in there so that they don't have to wait a couple of
19 years. Mr. Chair, I'd like to make a motion that we also
20 examine this same issue this coming March for Kodiak.

21 MR. ANGASAN: Second.

22 CHAIRMAN: It's been moved and seconded that we
23 examine the seasonal limit issue for the Kodiak area
24 during this next March meeting. Further discussion?

25 UNIDENTIFIED: Question.

1 CHAIRMAN: The question has been called.
2 MR. JONES: Mr. Chairman, on the motion, Engel?
3 CHAIRMAN: Yes.
4 MR. JONES: Bower?
5 DR. BOWER: Yes.
6 MR. JONES: Angasan?
7 MR. ANGASAN: Yes.
8 MR. JONES: Coffey?
9 MR. COFFEY: Yes.
10 MR. JONES: Miller?
11 MR. MILLER: Yes.
12 MR. JONES: White?
13 DR. WHITE: Yes.
14 MR. JONES: Umphenour?
15 MR. UMPHENOUR: Yes.
16 MR. JONES: Mr. Chairman, the motion carries 7 in
17 favor.
18 CHAIRMAN: All right, can we-- is everybody ready to
19 take a lunch break, or does somebody else have something
20 they want to bring up? All right, we're going to take a
21 lunch break in a few minutes, but before-- the next thing
22 up will be the salmon waste law, immediately after
23 returning from the lunch break. We also have to deal with
24 that tabled proposal for the Kodiak area. Maybe our
25 review of the seasonal limit will suffice at some point,

1 and then we have the shell-- a host of shellfish issues
2 that will take up this afternoon, agenda item 16. Dr.
3 White?

4 DR. WHITE: Mr. Chairman, the Vice-Chair requests your
5 attention to the agenda. Do you intend to be through this
6 evening?

7 CHAIRMAN: We-- it would be my intention to complete
8 all agenda items on the work session today, and there
9 will be no-- we've got ground fish people starting to
10 arrive, and we will start at 8:30 tomorrow dealing with
11 those issues of ground fish, a separate meeting, so yes.

12 DR. WHITE: Thank you, Mr. Chairman. I guess
13 I encourage everyone's attention to the agenda and eat
14 well, eat a lot of fat and carbohydrates and try to have
15 some economy in the agenda this afternoon about how we
16 finish with our business, or I think we're going to be in
17 here until 10 o'clock tonight. Thank you, Mr. Chairman.

18 CHAIRMAN: You're more optimistic than I, I was
19 thinking more like midnight if we don't-- We'll take
20 a lunch break until 2 o'clock. We'll return at 2 o'clock.

21 (Off record)

22 CHAIRMAN: ...Board of Fisheries back to order. For
23 the record, it's October 28th, the third day of this work
24 session, meeting of the Board of Fisheries. All 7 Board
25 members are present. When-- just prior to taking our

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 lunch break, we were taking final action on the issue of
2 nonresident seasonal limits, and I think we were all very
3 hungry at that time, and we were maybe proceeding a
4 little faster without thinking some of the stuff out, and
5 I have talked with a number of people during the lunch
6 break and there's another approach. We can essentially
7 get the same product before the Board but using a little
8 bit different technique in terms of the seasonal limits
9 for nonresidents, and in doing it this way, I think we
10 stay more within the normal process of the Board of
11 Fishery. We involve the public right from the get-go,
12 rather than the Board generating proposals and indicating
13 we have these emergencies and rapid need to solve some of
14 these things, and I guess I would ask Mr. Jones-- we've
15 talked about this in great length-- would you outline
16 a procedure that would be more normal that we can get--
17 Nothing's normal with the Board of Fisheries, but there
18 are certain things that are normal, that we do solicit
19 for public proposals on April 10th and we do use agenda
20 change request items and so on and so forth, to get to
21 the same end product without the Board generating its own
22 proposals. Mr. Jones?

23 MR. JONES: Yes, thank you, Mr. Chairman. What we have
24 is right now the Board earlier in this meeting reviewed
25 a call for proposals that dealt with A.Y.K., the Arctic

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 Yukon Kuskokwim area, Bristol Bay, Alaska Peninsula and
2 Aleutian Islands. Mr. Chairman, what we could do is add--
3 I can work with the staff to add a paragraph in there
4 that specifically outlines some concerns the Board has
5 heard regarding seasonal limits for nonresidents. We can
6 add that in there for-- and that would put the people on
7 notice that that's a topic we're-- the Board is
8 specifically interested in. That would cover those
9 6 areas. Upon review with the staff of southeast and
10 Yakutat areas, those fisheries are already covered. There
11 are proposals that deal with that topic, so we're covered
12 in that area. The remaining areas we have, Mr. Chairman,
13 is the Kodiak, Chignik, Prince William Sound and Cook
14 Inlet areas. What we could do, or what the Board could
15 do, is draft a letter-- the staff could draft a letter
16 for the Board using a similar paragraph that we put in
17 the call for proposals, and we could-- in that letter we
18 would be encouraging the public to submit agenda change
19 requests to the Board that the Board would look at this
20 coming March. The Board could then schedule those
21 requests. The Board does not need to hold those requests
22 to the agenda change request policy, since it's
23 soliciting additional topics from the public. It's kind
24 of a narrow call for proposals for seasonal limits on
25 nonresidents, and we could establish a deadline, you

STERLING COURT REPORTERS

44890-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 know, of January 23rd, and that would give the public
2 adequate time to get their-- about 3 months to get their
3 proposals together and to the Board for the Kodiak,
4 Chignik, Prince William Sound and Cook Inlet areas. So by
5 the end of next meeting cycle, the Board would have
6 addressed all regions of the state regarding the seasonal
7 limits for nonresidents. Mr. Chairman, that's an
8 alternative method that would get you to the same end.

9 CHAIRMAN: Thank you, Mr. Jones. And I think the main
10 difference is, this is-- the public is going to identify
11 where we have problems with seasonal limits, or need a
12 seasonal limit, which species, and it preserves the more
13 normal Board process rather than the Board making that
14 decision at this point by its own proposals, so I think
15 there's some merit in this approach, and I guess right u
16 front I'd say, I prefer this approach to what-- the hast
17 action we took just before the lunch break. So I'd like
18 to hear from some of the other Board members. Dr. Bower?

19 DR. BOWER: Thank you, Mr. Chairman. I agree, I would
20 prefer this. I would ask, perhaps-- I've had people that
21 have talked to me before that thought that there ought t
22 be season limits for residents too, and I don't want to
23 just throw a monkey wrench in this, but if we are going
24 to take this approach, would it be possible to not-- to
25 have resident and/or nonresident? Thank you, Mr. Chair.

STERLING COURT REPORTERS

44680-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 CHAIRMAN: Well, anything's possible. I guess I'd like
2 to hear from some of the other Board members. Let's talk
3 about this process first, rather than, you know, how we
4 want to go about doing this. Mr. Miller?

5 MR. MILLER: Thank you, Mr. Chairman. After talking to
6 Laird, Mr. Jones and realizing that the way we had
7 established the method to approach this earlier would
8 probably open us up to a lot of criticism about the due
9 process, and I think this would certainly be a way to
10 accommodate the process and give the public more
11 opportunity to be the presenters of their concerns,
12 rather than the Board presenting it to the public, and
13 for this reason I certainly support the suggestion that
14 Mr. Jones has made, and I would vote, if we come to a
15 vote on that, in favor of that, Mr. Chair.

16 CHAIRMAN: Mr. Angasan?

17 MR. ANGASAN: ...process, Mr. Chairman, would be for
18 us to reconsider the action that we've taken earlier, and
19 I would move to reconsider at this point.

20 UNIDENTIFIED: Second.

21 CHAIRMAN: It's been moved and seconded that we
22 reconsider the action that we took just before the lunch
23 break in relationship to nonresident seasonal limits.
24 What would be the new information, Mr. Angasan?

25 MR. ANGASAN: The new information is that we didn't

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 discuss the options that have now surfaced since lunch,
2 and I believe that it would serve the public better by
3 going with the public process rather than going with the
4 Board process of generating its own proposal. Thank you.

5 CHAIRMAN: I concur. I didn't consider this new
6 approach when we were talking about this issue before the
7 lunch, and certainly it is new information, a new
8 approach, and so I would support reconsideration of this
9 motion, or the proposal. Further discussion, Board
10 members?

11 UNIDENTIFIED: Question.

12 CHAIRMAN: The question has been called.

13 MR. JONES: Mr. Chairman, on a motion for
14 reconsideration, Bower?

15 DR. BOWER: Yes.

16 MR. JONES: Angasan?

17 MR. ANGASAN: Yes.

18 MR. JONES: Coffey?

19 MR. COFFEY: Yes.

20 MR. JONES: Miller?

21 MR. MILLER: Yes.

22 MR. JONES: White?

23 DR. WHITE: Yes.

24 MR. JONES: Umphenour?

25 MR. UMPHENOUR: Yes.

1 MR. JONES: Engel?

2 CHAIRMAN: Yes.

3 MR. JONES: Mr. Chairman, the motion carries 7 in
4 favor.

5 CHAIRMAN: All right, Board members. We have this
6 issue before us. Would somebody like to make a
7 suggestion?

8 MR. COFFEY: Mr. Chairman, I move that the Board adopt
9 the plan as outlined by Mr. Jones in his report to us all
10 here a few minutes ago, without re-enumerating everything
11 he said. That seemed procedurally to be a better way to
12 go than the way we just rescinded. Thank you.

13 UNIDENTIFIED: Second.

14 CHAIRMAN: It's been moved and seconded that
15 essentially what Mr. Jones was saying-- suggesting is
16 that when we call for proposals on April 10th for Bristol
17 Bay, A.Y.K., Alaska Peninsula and this next cycle year,
18 that we have a paragraph in there soliciting the public
19 to comment on seasonal limits, and further to-- for those
20 ~~areas not included in that April 10th deadline, that~~
21 ~~solicit for the public in places like Cook Inlet and~~
22 ~~Kodiak and the rest of the state, in other words, to use~~
23 ~~the agenda change request without meeting the criteria to~~
24 ~~bring to the Board's attention those areas and those~~
25 ~~species that may need seasonal limits, and that would~~

1 include-- then that way, for the March meeting of this
2 coming year, and that way we would cover the entire state
3 by using those 2 methods, and the public would be the
4 catalyst that brings it before the Board. The other part
5 of that is, we already have proposals for southeastern
6 Alaska that allow us-- that were developed by the public
7 to deal with this issue in our Sitka meeting. So I think
8 that's essentially what-- the issue that's before us.

9 UNIDENTIFIED: Question.

10 CHAIRMAN: The question has been called. Mr. Jones?

11 MR. JONES: Mr. Chairman, on the amendment, Angasan?

12 MR. ANGASAN: Yes.

13 MR. JONES: Coffey?

14 MR. COFFEY: Yes.

15 MR. JONES: Miller?

16 MR. MILLER: Yes.

17 MR. JONES: White?

18 DR. WHITE: Yes.

19 MR. JONES: Umphenour?

20 MR. UMPHENOUR: Yes.

21 MR. JONES: Engel?

22 CHAIRMAN: Yes.

23 MR. JONES: Bower?

24 DR. BOWER: Yes.

25 MR. JONES: Mr. Chairman, the amendment carries 7 i:

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 favor.

2 CHAIRMAN: All right. Now we have the final main
3 motion as amended before us, Board members, further
4 discussion? The question has been called. Mr. Jones?

5 MR. JONES: Mr. Chairman, final action on the motion
6 as amended, Coffey?

7 MR. COFFEY: Yes.

8 MR. JONES: Miller?

9 MR. MILLER: Yes.

10 MR. JONES: White?

11 DR. WHITE: Yes.

12 MR. JONES: Umphenour?

13 MR. UMPHENOUR: Yes.

14 MR. JONES: Engel?

15 CHAIRMAN: Yes.

16 MR. JONES: Bower?

17 DR. BOWER: Yes.

18 MR. JONES: Angasan?

19 MR. ANGASAN: Yes.

20 MR. JONES: Mr. Chairman, the amendment carries 7 in
21 favor.

22 CHAIRMAN: Thank you. Mr. Delaney?

23 MR. DELANEY: Mr. Chairman, the remaining loose issue
24 on this is whether or not the Board would like to-- whe:
25 the Board would like us to amend the buy, sell, barter

STERLING COURT REPORTERS

44680-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019

1 regulation? What would be your preference? Should we do
2 that as part of the call? I mean, put a proposal in prior
3 to the April 10th deadline and have it in your statewide
4 finfish meeting next year? Or would you like us to draft
5 a proposal that you could deliberate on prior to the
6 onset of this fishing season? And if so, how would you
7 look-- how and when would you like us to do that?

8 MR. COFFEY: Mr. Chairman, that and any other
9 statewide regulatory change that's-- you know, if there's
10 something in the processor area, I'd like to do that at
11 the March meeting when we're considering some of these
12 other issues. That's when I think it would be
13 appropriate. That would give them time to give notice
14 now, but it would get it done before the '96 season, or
15 excuse me, '97 season.

16 CHAIRMAN: Well, is there anybody that disagrees with
17 that approach? (Silence) Seeing none, that will be our
18 approach, Mr. Delaney. Further comments before we leave
19 this issue? (Silence) It's amazing, with a little food i
20 your stomach, how efficient you can be, or what happens
21 when you don't have food in your stomach. All right,
22 let's move forward to the next agenda item.

23 (End Tape 12B/Log #478 - This portion not requested

24 * * END REQUESTED PORTIONS * *
25

C E R T I F I C A T E

UNITED STATES OF AMERICA)
) ss.
STATE OF ALASKA)

I, Joan E. Crow-Epps, Notary Public in and for the State of Alaska, residing at Sterling, Alaska, and Certified Court Reporter for Sterling Court Reporters, do hereby certify:

That the foregoing pages numbered 3 through 145, contain a full, true and correct transcript of the requested portions of the State of Alaska Board of Fisheries Meeting, October 27 and 28, 1, 1996, transcribed by me to the best of my knowledge and ability, from copies of tapes marked BOF - WK SESSION/STWIDE GROUND FISH 10/26 - 10/30/96, portions as follows:

Tape #8 B	Log Nos. 150-600
Tape #9 A	Log Nos. 001-415
Tape #10 A	Log Nos. 197-600
Tape #10 B	Log Nos. 001-427
Tape #11 B	Log Nos. 471-600
Tape #12 A	Log Nos. 001-600
Tape #12 B	Log Nos. 001-462

That the original transcript of the hearing has been lodged with United Cook Inlet Drift Association;

That I am not a relative or employee or attorney or counsel of any of the parties, nor am I financially interested in this action;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 15th day of January, 1997.

JOAN E. CROW-EPPS
Notary Public
STATE OF ALASKA

Joan E. Crow-Epps
Joan E. Crow-Epps
Notary Public in and for Alaska
My commission Expires: 9/19/99

STERLING COURT REPORTERS

44690-A Sunrise Avenue • Soldotna, Alaska, 99669 • (907) 262-9019



IN REPLY REFER TO:

ARW

United States Department of the Interior

FISH AND WILDLIFE SERVICE

1011 E. Tudor Rd.
Anchorage, Alaska 99503-6199

APR 29 1998

MAY 04 1998

**Representative Alan Austerman
Alaska State Legislature
Room 434, State Capitol
Juneau, Alaska 99801-1182**

Dear Representative Austerman:

This letter is in response to your April 17, 1998, letters to Jay Bellinger, Manager, Kodiak National Wildlife Refuge and me concerning HB 483. The bill deals with guide requirements for nonresident alien anglers. The U.S. Fish and Wildlife Service in managing National Wildlife Refuges focuses on the health of fish and wildlife populations and habitat integrity. The Service does not make distinctions between user groups unless mandated by Federal Law, consequently the Service has no position on HB 483.

I have advised Jay Bellinger that he can testify before the Alaska House of Representatives special Committee on Fisheries about his knowledge and experience concerning law enforcement and refuge management issues related to nonresident aliens operating without authorization on Kodiak and other National Wildlife Refuges where we have direct knowledge. I understand he will speak to these issues tonight by teleconference.

Thank you for the opportunity for input.

Sincerely yours,

for
**David B. Allen
Regional Director**

Alaska Sportfish Council

Post Office Box 32323 • Juneau, Alaska 99803 • (907) 789-7234 • Fax (907) 789-7235

APRIL 21, 1998

JIM HORNADAY
REP. PETE KOTT
ROOM 204
STATE CAPITOL BLDG.
JUNEAU, ALASKA 99801

RE: COMMENTS ON HD 483

DEAR JIM:

1. IN REGARD TO THE NON-RESIDENT ALIENS -- IT WOULD SEEM THAT THE PROBLEM AT HAND COULD BE MOST EASILY SOLVED BY JUST REQUIRING AN ALASKAN FISHING GUIDE TO BE A U.S. CITIZEN.

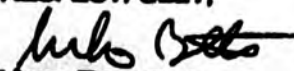
2. IN REGARD TO PROCESSING OF SPORT CAUGHT FISH. LICENSED FISH PROCESSORS SHOULD ALREADY BE REGISTERED WITH THE STATE. THESE BUSINESSES SHOULD KEEP RECORDS OF CUSTOMERS AND PRODUCT PROCESSED. SPORT FISH GUIDES AND OUTFITTERS ARE NOW REQUIRED TO RECORD CATCHES AS PER THE ALASKA BOARD OF FISH 1998. ADDITIONAL REGISTRATION BY THESE OPERATORS WILL ONLY BE A DUPLICATION REQUIRED ON THEIR PART. MOST GUIDES AND OPERATORS LACK FACILITIES TO WEIGHT TOTAL POUNDAGE OF FISH TAKEN BY AN INDIVIDUAL CLIENT AND FURTHER, THIS PROCESS WOULD TAKE CONSIDERABLE TIME WHICH WOULD HAVE TO BE TAKEN FROM FISHING TIME. THIS WOULD BE A REAL HARDSHIP ON OPERATORS WHO DEPEND ON SHORT FISHING TRIPS PROVIDED BY BROKERS.

REQUIRING REPORTS TO CONTAIN FISHERMEN NAMES AND LICENSE NUMBERS WOULD DIVULGE AN OPERATORS CLIENT BASE AND OPERATORS WILL BE VERY HESITANT TO PROVIDE THIS INFORMATION. THIS TYPE OF INFORMATION SHOULD BE CONSIDERED CONFIDENTIAL.

HAVING TO MAINTAIN RECORDS ONLY FOR INSPECTION BY ADF&G OR ADPS DEMONSTRATES THAT THE WRITER OF THE LEGISLATION IS ONLY TRYING TO SHIFT THE BURDEN OF ENFORCEMENT ONTO LEGITIMATE SPORT FISH OPERATORS WHO ARE ALREADY RESPONSIBLE FOR THEIR CLIENTS ACTIONS. THERE IS NO NEED TO PROMULGATE FURTHER REGULATIONS OF THIS TYPE. JUST PROVIDE ADEQUATE FUNDING TO FISH & WILDLIFE PROTECTION TO ENFORCE THE LAWS ALREADY ON THE BOOKS.

THANK YOU, PLEASE KEEP ME POSTED ON THIS LEGISLATION.

RESPECTFULLY,


MIKE BETHERS
EXECUTIVE DIRECTOR

HB 489 - REQUIRING TRANSPONDERS
ON COMM FISHING VESSELS

Alaska Sportfish Council

Post Office Box 32323 • Juneau, Alaska 99803 • (907) 789-7234 • Fax (907) 789-7235

MAY 04 1998

May 1, 1998

Representative Alan Austerman
Room 434
State Capitol Building
Juneau, Alaska 99801

Re: Additional Comments on HB438

Dear Representative Austerman and Fisheries Committee:

1. In regard to the non-resident alien sport fishermen I believe this is much more of a perceived than a documented problem. These anglers contribute significantly to our local, state and national economies to partake in Alaska's sport fisheries and we should be very careful to provide both for enforcement if its needed but not be so restrictive that these visitors are lost. I do believe that Fish and Wildlife Protection currently has all the regulations needed to control any sport fishing abuses. They would only need to investigate reported problem areas and take action using existing regulations.

Prior to taking any action or developing new regulations targeting non-resident alien sport fishermen, Fish and Wildlife Protection should investigate reported abuses and determine if in fact there is a substantial problem. Only after a full investigation should any further regulation be promulgated and then only if abuses cannot be kept in check with existing fishing regulations.

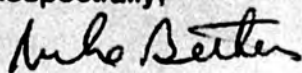
2. In regard to processing of sport caught fish. Licensed fish processors should already be registered with the state. These businesses should keep records of customers and product processed. Sport fish guides and outfitters are now required to record catches in saltwater and will soon be doing so in freshwater. Additional registration by these operators will only be a duplication required on their part. Most guides and operators lack facilities to weigh total poundage of fish taken by an individual client and further, this process would take considerable time which would have to be taken from fishing time. This would be a real hardship on operators who depend on short fishing trips provided by brokers.

Requiring reports to contain fishermen names and license numbers would divulge an operators client base and operators will be very hesitant to provide this information. This type of information should be considered confidential.

Having to main records only for inspection by ADF&G or ADPS demonstrates that the writer of the legislation is only trying to shift the burden of enforcement onto legitimate sport fish operators who are already responsible for their clients actions. There is no need to promulgate further regulations of this type. Just provide adequate funding to Fish and Wildlife Protection to enforce the laws already on the books.

Thank you, please keep me posted on this legislation.

Respectfully,



Mike Bethers
Executive Director