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Juneau, Alaska 99801-1182
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MEMORANDUM

December 3, 2003

SUBJECT: Approval of commercial fishing regulations by affected commercial fishermen

TO: Representative Bill Williams
Chair, Production Subcommittee
Joint Legislative Salmon Industry Task Force

FROM: George Utermohle *GU*
Legislative Counsel

The purpose of this memorandum is to inform you of a potential constitutional issue of unknown significance associated with certain legislation that is being considered by the Production Subcommittee of the Joint Legislative Salmon Industry Task Force.

The Production Subcommittee is considering a number of draft bills relating to the regulation of commercial fishing that contain a requirement for approval of proposed or adopted regulations of the Board of Fisheries by the permit holders in the affected fishery before the regulations could take effect.

The legislature may delegate quasi-legislative regulation-making powers to the Board of Fisheries, because the board is an agency of the state consisting of public officers appointed by the governor and confirmed by the legislature. However, allowing the permit holders in a fishery to vote to approve a proposed regulation raises the issue of improper delegation of legislative power to private parties in violation of the nondelegation doctrine. The nondelegation doctrine basically holds that the legislature may not delegate its lawmaking powers to a private organization.

Although the nondelegation doctrine is virtually dead in the federal courts, state courts adhere to this doctrine, although not uniformly. See, Northern Lights Motel, Inc. v. Sweaney, 561 P.2d 1176, 1181 (1977). At issue in the Northern Lights Motel case was a statute that adopted the uniform building code, and future amendments to the code, as drafted by a private association of building officials as the official building code in Alaska. The adoption of future versions of the building code raised an issue under the non-delegation doctrine. The primary reason for the prohibition against delegation of regulation-making authority to private groups is that the public does not necessarily receive notice of, or have an opportunity to comment on the regulations, as it does when regulations are adopted by the legislature or a state agency. *Id.* However, due to the

Representative Bill Williams
December 3, 2003
Page 2

particular fact situation in the case, the court did not explain whether and to what extent the nondelegation doctrine applies in this state. Id.

The source of concern for the court in the Northern Lights Motel case, lack of notice and opportunity to comment on a proposed regulation, would be less of an issue when the parties affected by the regulation are given the opportunity to vote on the proposed regulation.

The delegation of agency authority to a private person is an invalid use of agency authority, if the agency does not have the authority to make the delegation. For example, without statutory or constitutional authorization, an agency may not make the issuance of a boat-mooring permit contingent upon the written approval of an adjacent upland landowner. Anderson v. Grand River Dam Authority, 446 P.2d 814 (Ok. 1968). Likewise, an agency may not make the granting of a radio-operator's license contingent upon the written approval of the operator of the local airport, unless the legislature has authorized such a scheme. New Jersey Dept. of Transportation, Division of Aeronautics v. Brzoska, 354 A.2d 650 (N.J. 1976). Such standardless delegations of authority to private persons or groups are not subject to public accountability and are fundamentally suspect. However, delegations of authority such as those struck down in these two cases appear to be possible, if the legislature authorizes the delegation and appropriate standards for the exercise of the delegated authority are established by statute.

Though the delegation of authority to affected individuals to approve regulations adopted by a state agency may be inherently unsettling, there are no cases in this state, or in other states that I could find, that have addressed the validity of delegating authority to affected persons to control whether certain regulations may take effect. It is far from clear whether an Alaska court would find such a delegation to private parties to be an improper delegation of legislative power and thus invalid.¹

Consultation with the Department of Law on this issue would be advisable.

If I may be of further assistance, please advise.

GU:mdr
03-214.mdr

¹ However, the delegation of the legislative taxing power to private parties by allowing them to approve the imposition of taxes is clearly prohibited by the Alaska Constitution under art. IX, sec. 1. See, Alex v. State, 646 P.2d 203 (Alaska 1982).

Subject: HB 409

Date: Thu, 5 Feb 2004 18:21:24 EST

From: Scooski@aol.com

To: Rep_Paul_Seaton@legis.state.ak.us

CC: Rep_Bill_Williams@legis.state.ak.us

Dear Represe Seaton:

I support **HB, 409**. Meeting the challenges of today's markets requires modernizing our seine fleets. For the following reasons **HB, 409** the **58 foot limit bill** is good legislation at the right time.

Abstract:

Alaska's salmon net fisheries were tooled for a canned salmon industry that developed at the turn of the last century. Due to complex market conditions beyond the control of fishermen, old regulations such as the 58 foot seine boat limit, limits the potential of Alaska's seine fishermen to maximize the earning power of their operations. Providing for larger vessels will increase individual capacities for volume and improve quality.

Specifically:

HB, 409 will provide fishermen enough deck space for primary processing -- sorting, grading and bleeding to improve quality for fresh and frozen salmon products. As seiners harvest the majority of Alaska's pink salmon, this bill will help move Alaska's pink salmon production out of cans and into other more modern product forms.

Thank you for your considerations in this matter.

Scott McAllister.
Alaskan purseiner.
316 Ave.
Juneau, Alaska, 99801



Cordova District Fishermen United

P.O. Box 939

Cordova, Alaska 99574

(907) 424-3447 FAX (907) 424-3430

Send to file

Feb. 11th, 2004

House Special Committee on Fisheries
Representative Paul Seaton, Chair
Cc: Representative Bill Williams

RE: HB 409, "relating to the maximum length of salmon seine vessels"

Dear Representative Seaton,

My name is John Paul Wiese; I am Chair of the Seine Division of Cordova District Fishermen United. I am writing to state our **opposition** to HB 409. The seine fleet of Prince William Sound does not need bigger vessels; we need a consistent stable market for our product. We feel this bill will not help in the revitalization of the salmon industry but could actually be a detriment to the Prince William Sound Seine fishery by encouraging fishermen to over capitalize.

Respectfully,

John Paul Wiese
Chair, Seine Division
Cordova District Fishermen United

Alaska State Legislature

Co-Chair

House Finance Committee

Subcommittee Chair

Environmental Conservation

Courts



Representative William K. Williams

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Fax (907) 465-3793

In Ketchikan:
50 Front Street, Suite 203
Ketchikan, AK 99901
(907) 247-4672
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SPONSOR STATEMENT

House Bill 409

"An Act relating to the maximum length of salmon seine vessels; and providing for an effective date."

House Bill 409 removes the statutory prohibition for the length of salmon seine vessels and leaves the authority to the Alaska Board of Fisheries. It requires that a regulation of the Board of Fisheries to change salmon seine vessel length must be approved by at least 66 percent of the entry permit holders in the affected fishery. If the board adopts a new regulation, and in subsequent years they amend this regulation, fishermen who registered vessels under the previous rule will be grandfathered into the fishery.

This bill will put salmon seine vessels on the same footing as all other commercial fishing boats in the state. At present, the 58-foot limit on salmon seiners is the only length limit enshrined in statute. The length and size of all other fishing boats can be changed by the Board of Fisheries.

If the Board of Fisheries amends the regulation and lengthens the overall seine vessel length, owners of 58-foot vessels would not be required to purchase larger boats. The upgrade to a larger vessel would be optional.

SPONSOR STATEMENT

Coffman Cove

Hollis

Ketchikan

Meyers Chuck

Saxman

Thorne Bay

Representative_Bill_Williams@legis.state.ak.us



Cordova District Fishermen United

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Cordova, Alaska 99574
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Feb. 11th, 2004

House Special Committee on Fisheries
Representative Paul Seaton, Chair
Cc: Representative Bill Williams

RE: HB 409, "relating to the maximum length of salmon seine vessels"

Dear Representative Seaton,

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Respectfully,

A handwritten signature in cursive script, appearing to read 'John Paul Wiese'.

John Paul Wiese
Chair, Seine Division
Cordova District Fishermen United

FISCAL NOTE**STATE OF ALASKA
2004 LEGISLATIVE SESSION**

Fiscal Note Number:

Bill Version:

H.B. 409

() Publish Date:

Revision Date/Time (Note if correction):

Dept. Affected:

Fish and Game

Title Relating to the Maximum Length of

RDU

Commercial Fisheries

Salmon Seine Vessels

Component

Sponsor

Representative Williams

Requester

House Fisheries

Component No.

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost:

0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson

Division: Legislative Liaison

Approved by: Commissioner Kevin Duffy

Agency: Alaska Department of Fish & Game

Phone 465-6137

Date/Time 2/5/04 1:26 PM

Date 2/5/2004

Alaska State Legislature

Co-Chair
House Finance Committee
Subcommittee Chair
Environmental Conservation
Courts

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Representative William K. Williams

MEMORANDUM

To: Representative Paul Seaton, Chair
House Special Committee on Fisheries

From: Representative Bill Williams

Date: February 3rd, 2004

Subject: Request for Hearing

I respectfully request that HB 409, "An Act relating to the maximum length of salmon seine vessels; and providing for an effective date", be scheduled for a hearing in the House Special Committee on Fisheries.

I attach a copy of the bill as filed.

Thank you for your attention to this matter. Feel free to contact me or my Aide, Tim Barry, if you have questions.