

SCOMM

131:23

Alaska State Legislature

Co-Chair
House Finance Committee
Subcommittee Chair
Environmental Conservation
Courts

During Session:
State Capitol
Juneau, AK 99801-1182
(907) 465-3424
Fax (907) 465-3793

In Ketchikan:
50 Front Street, Suite 203
Ketchikan, AK 99901
(907) 247-4672
Fax (907) 225-8546

Representative William K. Williams

MEMORANDUM

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

From: Representative Bill Williams *Bill*

Date: February 9th, 2004

Subject: Request for Hearing

I respectfully request that HB 415, "An Act authorizing a commercial fisherman to fish in each fishery for which the commercial fisherman holds a commercial fishing entry permit; relating to the power of the Alaska Commercial Fisheries Entry Commission and the Board of Fisheries to limit the number of fisheries in which a person may hold an entry permit and operate gear during a fishing season or a year; 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.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB0415a
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title Authorizing commercial fishermen to fish in RDU Comm. Fish Entry Commission
each fishery for which he holds a permit Component Commercial Fisheries Entry
 Sponsor Rep. Williams Commission
 Requester Rep. Williams by request Component No. 471

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	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
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	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Shirley Perrose, Administrative Officer Phone 907-790-6960
 Division: Commercial Fisheries Entry Commission Date/Time 2/12/04 7:29 AM
 Approved by: Mary McDowell, Commissioner Date 2/12/2004
 Agency: Commercial Fisheries Entry Commission

23-LS1416H
Utermohle
2/13/04

CS FOR HOUSE BILL NO. 415()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE WILLIAMS BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing a commercial fisherman to fish in each salmon net gear fishery for
2 which the commercial fisherman holds a commercial fishing entry permit; relating to
3 the power of the Alaska Commercial Fisheries Entry Commission and the Board of
4 Fisheries to limit the number of salmon net gear fisheries in which a person may hold an
5 entry permit and operate gear during a fishing season or a year; and providing for an
6 effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * **Section 1.** AS 16.43.150(a) is amended to read:

9 (a) Except as may be otherwise provided under AS 16.43.270(d), an entry
10 permit authorizes the permittee to operate a unit of gear within a specified fishery. A
11 permittee may operate gear within each salmon net gear fishery for which the
12 permittee holds an entry permit. Neither the commission nor the Board of
13 Fisheries may limit the number of salmon net gear fisheries in which a person

- 1 may hold an entry permit or operate gear during a fishing season or a year.
- 2 * Sec. 2. This Act takes effect January 1, 2005.

Alaska State Legislature

Co-Chair

House Finance Committee

Subcommittee Chair

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Representative William K. Williams

SPONSOR STATEMENT

House Bill 415

"An Act authorizing a commercial fisherman to fish in each fishery for which the commercial fisherman holds a commercial fishing entry permit; relating to the power of the Alaska Commercial Fisheries Entry Commission and the Board of Fisheries to limit the number of fisheries in which a person may hold an entry permit and operate gear during a fishing season or a year; and providing for an effective date."

House Bill 415 would allow commercial fishermen to fish in more than one State-managed salmon fishery in different areas in which they hold permits. For example, if a person has a Southeast gillnet permit and a Bristol Bay permit, he or she could fish both in the same year. Under the current law, a permit holder can only participate in different fisheries inside **the same** administrative area in a single year. HB 415 would not change the requirement that fishermen must use a different boat in each administrative area, and different gear in each of the specified fisheries. It would allow resident fishermen to diversify their businesses and increase their revenue.

This legislation was introduced at the request of the United Fishermen of Alaska. The UFA supports the concept because it is a progressive approach to revitalizing the seafood industry.

SPONSOR STATEMENT

Coffman Cove • Hollis • Ketchikan • Meyers Chuck • Saxman • Thorne Bay
Representative_Bill_Williams@legis.state.ak.us



UNITED FISHERMEN OF ALASKA

February 11, 2004

211 Fourth Street, Suite 110
Juneau, Alaska 99801-1172
(907) 586-2820
(907) 463-2545 Fax
E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

Representative Paul Seaton, Chair
Representative Peggy Wilson, Vice Chair
House Special Committee on Fisheries
Alaska State Legislature
State Capitol (Mail Stop 3100)
Juneau, AK 99801-1182

Dear Representatives Seaton and Wilson,

United Fishermen of Alaska supports HB415 allowing fishermen (not vessels) to fish in more than one area in which they hold permits. We believe this bill is a major step forward in possibilities for the diversification of professional resident fishermen. The Technical Assistance Workshops presented to participants in the USDA Trade Adjustment Assistance specifically include the recommendation "to buy a second salmon permit, one that allows them to fish the peak of two different runs that do not coincide with one another" (See attachment).

This will not disrupt the balance of our fisheries, for fishermen still have to use different vessels, with different gear, and incur various other expenses such as harbor fees and storage. Obtaining a market is an obstacle all in itself for a fisherman that seeks to harvest in another area. With continually changing fish population cycles and constant fluctuation in markets, HB415 is a progressive approach to revitalizing the seafood industry.

United Fishermen of Alaska represents 33 Alaska Commercial fishing organizations and hundreds of individual fishermen and fishing related businesses, altogether representing over 10,000 Alaska fishermen. We support HB 415 and thank you for your consideration on this matter.

Sincerely,

Mark Vinsel
Executive Director

CC: Representative Bill Williams
Attachment

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Longline Fishermen's Association • Alaska Trollers Association • Armstrong Keta • At-sea Processors Association
Bristol Bay Reserve • Chignik Regional Aquaculture Association • Chignik Seiners Association • Concerned Area "M" Fishermen • Cordova District Fishermen United
Crab Rationalization and Buyback Group • Douglas Island Pink and Chum • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
Kodiak Seiners Association • North Pacific Fisheries Association • Northern Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association
Seafood Producers Cooperative • Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Catcher Boats • United Salmon Association • United Southeast Alaska Gillnetters • Valdez Fisheries Development Association • Western Gulf of Alaska Fishermen

LETTERS OF SUPPORT

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Chapter 2: Diversification Options

Farmers can diversify by planting a different crop. Fishermen have a different set of options, described below.

Species Diversification

Second Salmon Permit

Over the years, many salmon fishermen have diversified their way to prosperity. One way has been to buy a second salmon permit, one that allows them to fish the peak of two different runs that do not coincide with one another. For example, a Southeast seiner may buy into Bristol Bay because the Bay fishery is over by the time the action really heats up back home. However, a single individual cannot fish as a permit-holder in more than one salmon registration area in a single season. What some people do is put a second permit in the name of a family or crewmember. Likewise, a vessel cannot fish in more than one salmon registration area in a season; it is necessary to use two different boats to fish in two areas.

IFQ System

Another way to diversify is to take advantage of the IFQ system and buy into profitable fisheries for halibut and blackcod (sablefish). IFQs provide predictable long-term access to fish resources of known value and with well established markets. IFQs foster stability and certainty in a risky and uncertain industry.

Although IFQs guarantee access to resources, they carry their own forms of risk. Quota share prices are high and it normally takes several seasons to pay them off, during which time the stocks or prices could fall below current levels. The potential of farmed halibut and sablefish flooding the market adds an element of risk to IFQ purchase. For a discussion of calculating IFQ values, see *Appendix A: Is Direct Marketing for Me?* in this booklet.

Non-IFQ Fisheries

Others have gone into non-IFQ fisheries like herring, crab, and shrimp. During the roe herring boom of the 1980's and early 1990's, many fishermen made as much during a few days of the springtime herring season as they made all summer on salmon. Unfortunately, herring prices also have plummeted, and some districts have not opened due to diminished stocks or a lack of buyers. The herring fishery no longer represents the opportunity it once did.

Underutilized Commercial Species

Some salmon fishermen have diversified into underutilized commercial species like cod, rockfish, scallops, sharks, skates, bottomfish, sea urchins and sea cucumbers. Underutilized species, where they exist at all, are underutilized for a reason; the stocks are sparse or hard to find in commercial quantities, the market is weak, or no management plan is in place. Biologists and fisheries experts

We, the undersigned limited entry permit holders, support HB 415 which would allow a commercial fisherman to fish in each fishery for which he holds a limited entry fishing permit.

NAME	ADDRESS	VESSEL
Jessie Nelson	Box 130 Homer	Cape Prince
Erin "Beaver" Nelson	Box 130 Homer	Nuka Point
ERIK Fellows W. J. Fellows	PO Box 1065 Homer	VALKYRIE
Thomas W. Nelson	PO Box 1392 Homer	Crescent Moon
Kenneth M. Jones D. Jones	Box 1044 Homer	Agave
Ken Halpin	Box 1022 Homer	Shiloh
Jeff Cabana	PO Box 26 Homer	Inlet Sunrise
Ken Spearman	PO Box 1019 HOMER	TORQUE
Tim Moore	PO Box 1646 Homer	Marandah
JIM NIEMELA James R. Niemi	P.O. Box 2382	" JULIE M.
MERLIN L. CORDS Merlin L. Cordes	146 E. Fairview Ave Homer AK	Lady L.
Steve Carroll	PO 551 Homer Homer AK	Hadassah
Calm McLean	PO 2191 Homer AK	Boulder Bay
Wesley J. Hamblin Wesley J. Hamblin	PO Box 8191 HOMER AK	HOMER AK 99603 MARIN ID Juli-300

We, the undersigned limited entry permit holders, support HB 415 which would allow a commercial fisherman to fish in each fishery for which he holds a limited entry fishing permit.

NAME	ADDRESS	VESSEL
TOM JAMES	PO BOX 915 HOMER AK 99603	SEA POWER
TOM STAFFORD	P.O. Box 3403 Homer, AK 99603	INFINITE GLORY
JAMIE ROSS	Box 3476 HOMER, AK 99603	SHADOW FA
Rob Nelson	Box 205 Kasilof AK 99610	sea Prince

Post-It™ brand fax transmittal memo 7671		# of pages = 2
To P. Seaton	From Jessie Nelson	
Co.	Co.	
Dept.	Phone #	
Fax # 465-3472	Fax #	



Cordova District Fishermen United

P.O. Box 939
Cordova, Alaska 99574
(907) 424-3447 FAX (907) 424-3430

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

Feb. 11th, 2004

Dear Representative Seaton and Members of the Committee,

Cordova District Fishermen United, representing the fishing fleet of Area E-Prince William Sound and the Copper River Flats- **supports HB 415.**

This bill will allow diversification for the professional fisherman and put an end to what one member of our fleet terms "the ridiculous hoops" someone who wants to fish more than one area has to go through in order to maximize their fishing season.

We recognize the wisdom behind the original regulation that only allows for fishing one administrative area, but times change and so have the conditions affecting the industry. Regulations must also reflect the new reality.

Thank you for the opportunity to voice our support for this long over due bill.

Respectfully,

Page Herring
Executive Director
Cordova District Fishermen United

Jerry McCune UFA

From: Schactler [schactler@alaska.com]

Sent: Thursday, February 05, 2004 1:07 PM

To: "representative paul_seaton"@legis.state.ak.us; senator_Bill_williams@legis.state.ak.us; Senator Ben Stevens

Cc: AKWAPSC@aol.com; Rob Zuanich; UFA Jerry McCune; Scooski@aol.com; Alan Austerman

Dear Representative Seaton,

HB 415 is a bill that I support and one that will supply opportunity, to Alaska's salmon Fishermen.

It will let those with the permits, realize some return on their investment and will begin what is essentially an industry funded

consolidation process, that is based on good business and profit/loss economics. This is one of the tools, that is needed and is available

to restructure the Salmon Industry to one that will no longer be designed around the economies and ideals of 30 years ago.

I do believe that this doesn't quite go far enough by not including the vessel. We should be totally encouraging consolidation, not requiring

overcapitalization. It works very well in the herring fisheries!

Sincerely,

Bruce Schactler
At-Large UFA board member

**United Southeast Alaska Gillnetters**

P.O. Box 23378, Ketchikan, AK 99901 Phone & Fax (907) 247-2471 Email: usa_gillnetters@att.net

February 12, 2004

The Honorable Paul Seaton, Chair
House Special Committee on Fisheries
State Capitol, Room 428
Juneau, AK 99801

Sent Via Fax to: 465-3472

Dear Representative Seaton,

The United Southeast Alaska Gillnetters (USAG) is an association of about 150 small business owners who catch salmon by drift gillnetting in Southeast Alaska. We are concerned about HB 415 which will change the historic area exclusivity concept that was implemented with the limited entry program. We believe that the passage of this bill will result in more fishing pressure in our southeast fishery and we therefore oppose its passage. The increased fishing pressure in our area that would result from passage of this legislation would come at a time when our fishery is only marginally economic for the local fishermen who are still making a living fishing this area. Increasing the fishing pressure in our area would make their situation more tenuous.

This legislation would favor the high volume fishermen with the capitol to expand at the expense of local fishermen who cannot afford to or have no desire to increase the capitalization of their fishing business. British Columbia made the mistake (among many others) of not having exclusive fishing areas for their salmon fishery. This allowed all their fishermen to concentrate on the hot fishery of the moment and had a detrimental effect on their ability to manage the resource and have an economic fishery for their local area fishermen. After they realized their mistake, they created exclusive areas and required their fishermen to choose one area in which to fish. Alaska got it right the first time with their exclusive area concept. We should not change it now.

It is also worth noting that the Joint Legislative Salmon Industry Taskforce considered this measure in depth during their deliberations and elected not to propose it to the legislature. We hope the House Fisheries Committee will follow the lead of the Taskforce and not approve HB 415. USAG appreciates your consideration of our perspective on this issue.

Yours truly,

Kenneth Duckett
Executive Director

cc: Bill Williams Via Fax: 465-3793

LETTERS OF CONCERN

Subject: Fw: HB415

Date: Fri, 6 Feb 2004 10:35:04 -0900

From: "Robin Blake" <rblake@ctcak.net>

To: <cameron_yourkowski@legis.state.ak.us>, <Lauren_radcliffe@legi.state.ak.us>, <chris_knight@legis.state.ak.us>

----- Original Message -----

From: Robin Blake

To: rep_paul_seaton@legis.state.ak.us

Cc: akwapsc@aol.com ; ufa1@ufa-fish.org ; windybay@ctcak.net ; ufa2@ufa-fish.org

Sent: Friday, February 06, 2004 10:27 AM

Subject: HB415

Chairman of Commercial Fishing: Paul Seaten

I have gillnetted the Copper River and purse seined Prince William Sound for 42 years. I am against HB415. I see this bill benefiting only a few fisherman and a detriment to the majority. I feel HB415 would maximize the pressure on the Copper River flats and Prince William Sound and other areas of Alaska during the peak of the seasons. Multiple permit holders will fish the peak times and move on to other areas for their peaks. The system we have in place works. What we need is better prices for wild salmon and more markets, which would benefit all fishers and commercial fishing communities. Thank you for hearing my concerns.

Peter Blake
Area E fisherman
Cordova Alaska

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

October 15, 2003

SUBJECT: Prohibition against fishing in more than one salmon net gear fishery; (Work Order No. 23-LS1329)

TO: Senator Ben Stevens
Attn: Cheryl Sutton

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether the Board of Fisheries and the Alaska Commercial Fisheries Entry Commission have authority to prohibit entry permit and interim-use permit holders (permit holders) who hold salmon net gear permits for more than one salmon net gear fishery¹ from fishing in more than one salmon net gear fishery in the same year.

At issue in your inquiry is a Board of Fisheries regulation which states:

A person who holds salmon net gear permits for more than one registration area listed in 5 AAC 39.120(d) shall designate upon a form provided by the Commercial Fisheries Entry Commission the single area in which he desires to salmon net fish in that year. The area so designated must be an area for which the person holds a valid salmon net permit.

5 AAC 39.115 (emphasis added).² The Alaska Commercial Fisheries Entry Commission has adopted similar and complementary regulations. See, 20 AAC 05.1940, 20 AAC 05.1942, and 20 AAC 05.1944.

¹ A fishery is a specific administrative area in which a specific fishery resource is taken with a specific type of gear; however, the Board of Fisheries or the Alaska Commercial Fisheries Entry Commission may designate a fishery to include more than one specific administrative area, type of gear, or fishery resource. AS 16.05.940(14); AS 16.43.990(4).

² An even more encompassing version of this provision is 5 AAC 15.359(b)(6), which applies to entry permit holders who participate in the Chignik cooperative purse seine salmon fishery, and which states:

(b) Chignik Area CFEC salmon purse seine permit holders may receive a permit issued by the commissioner, or the commissioner's

LEG LEGAL

The effect of these regulations is to require a person who holds more than one salmon net gear entry or interim-use permit to designate the single registration area³ in which that person will fish during a year. During that year the permit holder may not fish in other registration/administrative areas under the other salmon net gear permits that the person may hold.

ONE: The prohibition against participation in more than one salmon net gear fishery during a year seems to contradict statutory provisions of AS 16.43. Under AS 16.43.140(c)⁴, a person is expressly allowed to hold more than one entry permit or interim-use permit in order to fish more than one type of gear or in more than one administrative area. And, under AS 16.43.150(a)⁵, an entry permit authorizes the permit

designee, to form an annual cooperative fishery only under the following conditions:

...

(6) a CFEC permit holder who participates in the annual cooperative fishery

(A) in the Chignik Area may not participate in any other commercial salmon net registration area as either a permit holder or crew member from June 1 through August 31 of that year;

...

³ Registration areas established by the Board of Fisheries for defining and regulating commercial fisheries are virtually identical to the administrative areas established by the Alaska Commercial Fisheries Entry Commission for regulating entry into commercial fisheries.

⁴ AS 16.43.140(c) states, in relevant part (emphasis added):

(c) A person may hold more than one interim-use or entry permit issued or transferred under this chapter only for the following purposes:

(1) fishing more than one type of gear;

(2) fishing in more than one administrative area;

(3) harvesting particular species for which separate interim-use or entry permits are issued;

...

⁵ AS 16.43.150(a) states (emphasis added):

(a) Except as may be otherwise provided under AS 16.43.270(d), an entry permit authorizes the permittee to operate a unit of gear within a specified fishery.

holder to "operate a unit of gear within a specified fishery." These two statutes seem to clearly authorize a person to hold entry permits and interim-use permits for more than one salmon net gear fishery and to fish in each of those fisheries. These statutes do not make the ability of the permit holder to fish in more than one salmon net gear fishery subject to regulations of the Board of Fisheries.

The Board of Fisheries cites AS 16.05.251(a) as the source of its authority to limit participation in salmon net gear fisheries; however that statute does not give explicit authority to limit participation in salmon net gear fisheries. Any authority that the board might have to limit participation in salmon net gear fisheries must be implied from the language of AS 16.05.251(a). AS 16.05.251(a) grants powers to the board to manage fisheries in the state. The authority of the board to regulate commercial, sport, guided sport, subsistence and personal use fishing as needed for the conservation, development, and utilization of fisheries under AS 16.05.251(a)(6) is a particularly broad grant of authority for the board to do what the board determines is best for the fisheries of the state. The Alaska Supreme Court has shown a repeated willingness to broadly construe the authority of the Board of Fisheries (and the Board of Game and Department of Fish and Game) to do what is considered best for the fish and game resources of the state. Kenai Peninsula Fisherman's Cooperative Association v. State, 628 P.2d 897 (Alaska 1981); see, O'Callahan v. Rue, 996 P.2d 88 (Alaska 2000); and Interior Alaska Airboat Association v. State, Board of Game, 18 P.3d 686 (Alaska 2001).

In spite of the broad powers of the board and the willingness of the courts to construe those powers broadly, the powers of the board may not be exercised in a manner that is contrary to specific provisions of statute. The provisions of AS 16.43.140(c) and .150(a) are explicit in allowing a person to hold more than one entry permit or interim-use permit for the purpose of fishing in more than one administrative area and thereby authorizing a permittee to operate fishing gear in the area for which each permit is issued. In the absence of a provision specifically authorizing the board to supersede the provisions of AS 16.43.140(c) and .150(a), it is doubtful that the Alaska Supreme Court would interpret the general powers of the board to allow the board to limit the number of salmon net gear fisheries that a person may participate in if the person holds permits for more than one salmon net gear fishery.

The analogous regulations of the Alaska Commercial Fisheries Entry Commission that limit the number of salmon net gear fisheries in which a permit holder may participate also appear to be in conflict with the provisions of AS 16.43.140(c) and .150(a). An administrative agency such as the Alaska Commercial Fisheries Entry Commission is usually accorded some deference in the interpretation of its own statutes. An argument can be made that the commission has interpreted its authority under AS 16.43 to include

The reference to AS 16.43.270(d) relates to the issuance of entry permits that authorize permit holders to use only a specified portion of the maximum amount of gear permitted by the Board of Fisheries for a specified fishery.

the power to limit the number of fisheries in which a permit holder may participate and that the commission's interpretation of its powers should be accorded deference by the courts. However, in this case, such an interpretation of the commission's powers appears to be in clear conflict with the provisions of AS 16.43.140(c) and .150(a) and thus a court probably would not accept the commission's interpretation.

TWO: The prohibition against participation in more than one salmon net gear fishery during a year also seems to run counter to the constitutional principles of open and equal access to fisheries that are established under the common use, no exclusive right of fisheries, and uniform applications sections of art. VIII of the Constitution of the State of Alaska. The Alaska Supreme Court has upheld the power of the Board of Fisheries to allocate fishery resources and fishing opportunities among user groups (sport, commercial, subsistence fishermen)⁶, fisheries (set gill net, drift gill net, seine, etc.)⁷, and subgroups within a fishery⁸. However, the board's restriction on the ability of a permit holder to fish in more than one salmon net gear fishery goes beyond the allocation of fishery resources and seeks to control participation in (access to) other fisheries. The Alaska Supreme Court closely scrutinizes limitations on access to fish and game user groups and requires that such limitations have a legitimate purpose; the purpose must countervail the important individual interest in open access; and the limitation must employ the least possible infringement on open access to a user group. Gilbert v. State, 803 P.2d 391, 398-99 (Alaska 1990).

It is difficult to speculate as to how the regulation prohibiting permit holders from participation in more than one fishery would fare under the stringent scrutiny that is applied by the courts to laws and regulations that implicate the rights of open and equal access to resource user groups. The acceptance of limitations on access to certain fishing districts within a single herring fishery by the Alaska Supreme Court in the Hebert case suggests the court may find that limitations on participation in multiple fisheries do not violate the open access provisions of the Alaska Constitution. However, the Hebert case dealt specifically with the allocation of fishing opportunities among districts within a fishery; it did not involve limitations on the number of separate herring fisheries that an entry permit holder could participate in if the permit holder held permits for multiple herring fisheries. These distinctions between the allocation scheme approved in the Hebert case and the prohibition against fishing more than one salmon net gear fishery in a year may prevent the Hebert case from providing useful guidance as to whether the prohibition against participating in multiple salmon net gear fisheries is constitutional.

⁶ Kenai Peninsula Fisherman's Cooperative Association v. State, 628 P.2d 897 (Alaska 1981).

⁷ Meier v. State, Board of Fisheries, 739 P.2d 172 (Alaska 1987).

⁸ State v. Hebert, 803 P.2d 863 (Alaska 1990).

Senator Ben Stevens
October 15, 2003
Page 5

OPTIONS FOR LEGISLATIVE ACTION. The legislature has several options in regard to the regulatory prohibition against participation in multiple salmon net gear fisheries during one year.

If the legislature is comfortable with the status quo, the legislature can do nothing and let the regulations stand, or the legislature can amend the statutes governing the Board of Fisheries and the Alaska Commercial Fisheries Entry Commission to make clear that the board and commission have the power to prohibit permit holders from participating in more than one salmon net gear fishery during a year. I would recommend the latter option in order to remove any uncertainty as to the authority of the board and commission.

If the legislature is not comfortable with the status quo, then the legislature can annul the regulations⁹ of the Board of Fisheries and the Alaska Commercial Fisheries Entry Commission (with a statement of legislative findings that the regulations are being annulled because they are not consistent with existing statutes and are beyond the authority of the board and commission to adopt), the legislature can expressly amend the powers of the board and commission to provide that they cannot prohibit permit holders from participating in multiple salmon net gear fisheries during one year, or the legislature can enact legislation to both annul the regulations and restrict the powers of the board and commission. I would recommend that the legislature be careful, in whatever approach it takes, to avoid creating any inference that the regulations were within the power of the board and commission and thus retrospectively ratifying the authority of the board and commission to adopt the regulations.

On the other hand, the legislature may decline to address the issue for the present and wait for the courts to possibly address the issue in the future.

If I may be of further assistance, please advise.

GU:med
03-683.med

⁹ The regulations to be annulled would include, all or portions of, 5 AAC 15.359(b)(6), 5 AAC 39.115, 20 AAC 05.1940, 20 AAC 05.1942, and 20 AAC 05.1944.

MEMORANDUM

STATE OF ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION

TO: Senator Ben Stevens
Attn: Cheryl Sutton

DATE: October 24, 2003

PHONE: (907) 790-6944 VOICE
(907) 790-7044 FAX

FROM: Bruce Twomley, Chairman
 Commercial Fisheries Entry Commission

SUBJECT: Legislative counsel opinion
concerning regulatory prohibition
against fishing in more than one
salmon net area in a season.

Introduction

In response to your request, on October 15, 2003, legislative counsel offered an opinion¹ that the Board of Fisheries regulatory prohibition against salmon fishermen fishing in more than one net area during the same season conflicted with the limited entry statute and was likely vulnerable to a constitutional challenge.

I disagree. I believe the Board's regulatory provision is consistent with statutory authority, and the Alaska Supreme Court has solidly upheld the Board's authority to require superexclusive area registration.

Discussion and Analysis

Alaska salmon fishermen have been required to choose a single net area in which to fish since well before statehood.² The Alaska Board of Fisheries has continued this requirement.³ The Alaska Commercial Fisheries Entry Commission has adopted complementary regulations.⁴

As noted, the requirement on Alaska salmon fishermen preceded adoption of the Limited Entry Act in 1973.⁵ From the time of the legislature's enactment, the Limited Entry Act has included the following provision:

Sec. 16.43.950. Applications of regulations of Board of Fisheries.

Nothing in this chapter limits the powers of the Board of Fisheries, including the power to determine legal types of gear and the power to establish size limitations or other uniform restrictions applying to a certain type of gear. Holders of interim-use permits or entry permits issued under this chapter are subject to all regulations adopted by the Board of Fisheries.

¹ Work Order No. 23-25 1329.

² State v. Hebert, 803 P.2d 803, 866 (Alaska 1990).

³ 5 AAC 39.115.

⁴ 20 AAC 05.1940, 20 AAC 05.1942, and 20 AAC 05.1944.

⁵ 79 SLA 1973.

Legislative counsel's opinion did not take this statutory requirement into account. Instead, legislative counsel relied primarily on one section of the Limited Entry Act, AS 16.43.140(c) which authorizes a person to hold more than one interim-use or entry permit for the purpose of "fishing in more than one administrative area" This is not a very remarkable provision, because, categorically, an individual wishing to fish more than one salmon net area, of course, would need more than one interim-use or entry permit to do so. However, by its terms, the statute fails to authorize an individual holding more than one entry permit to fish in more than one administrative area in a single season. Thus, an individual holding more than one entry permit for more than one salmon net area, under AS 16.43.950, remains subject to regulations of the Board of Fisheries, including the salmon net area requirement.

Additionally, the Alaska Supreme Court in State v. Hebert, 803 P.2d 863 (Alaska 1990), made clear the Board of Fisheries' authority to require superexclusive area registration in the face of a broad challenge that included statutory and constitutional claims.

Legislative counsel attempted to distinguish Hebert on the premise the case dealt with "certain fishing districts within a single herring fishery" ⁶ This was not the case. Hebert addressed the Board's superexclusive area requirement with respect to a number of separate herring fisheries up and down the coast of Western Alaska. ⁷ CFEC limited entry to these fisheries in 1987. ⁸ The herring requirement so closely parallels the single salmon net area requirement, that the Alaska Supreme Court pointed to the salmon net area requirement with approval ⁹ as an analogy:

In our view the [superexclusive] regulation does not violate any of the article VIII clauses. The regulation does not limit one's ability to fish in a superexclusive district except in the sense that one may not fish in more than one district in any one year. Regulations of this sort were common in Alaska prior to statehood. When the framers of our constitution met in 1956, exclusive registration was used throughout the commercial salmon fishery. Thus, for example, no fisherman could fish in the Bristol Bay registration area and in any other registration district, such as the Yukon area, in any one year There is no suggestion in the debates of the delegates to Alaska's Constitutional Convention that this regulatory device was meant to be prohibited by the article VIII equal access clauses. In view of the importance of the salmon fishing industry in Alaska, especially in the 1950's, it is not possible to conclude that the constitutional framers intended to prohibit this method of regulation.

I believe the Alaska Supreme Court's upholding of the Board's superexclusive area registration requirements in Hebert makes clear the Board's authority to impose the salmon net area requirement under the governing statutes and the Alaska Constitution.

⁶ Legislative counsel opinion at 4.

⁷ Hebert at 864.

⁸ 20 AAC 05.310(d); 20 AAC 05.320(b).

⁹ Hebert at 866-867 (footnote omitted).

Conclusion

For the reasons stated, I believe the Board of Fisheries' single salmon net area requirement presents no conflict with statutes governing the Board and CFEC. Additionally, superexclusive area registration is one of the Board's regulatory tools that the Alaska Supreme Court has fully upheld.

Of course, I agree with legislative counsel's advice the legislature has the power, if it chooses, to modify the single salmon net area requirement. However, I would urge caution. The Alaska Supreme Court's discussion in Hebert highlights the importance of this kind of regulation to local Alaska fishermen, and we have further cautioned¹⁰ eliminating the single salmon net area requirement could create a greater market for unfished salmon permits in desirable areas and could create more fishing pressure in those areas at the peak of the salmon season.

¹⁰ Outline of Options for Fleet Consolidation in Alaska's Salmon Fisheries (CFEC 1998 at 21-23).

BRISTOL BAY NATIVE ASSOCIATION

P.O. BOX 310
DILLINGHAM, ALASKA 99576
PHONE (907) 842-5257

Tribal Councils
Served by BBNA:

Aleknagik

Chignik Bay

Chignik Lagoon

Chignik Lake

Clarks Point

Curyung

Egegik

Ekuk

Ekwak

Igluigig

Iliamna

Ivanof Bay

Kanatak

King Salmon

Kokhanok

Kotiganeh

Levelock

Manokotak

Naknek

New Stuyahok

Newhalen

Nondalton

Pedro Bay

Perryville

Pilot Point

Port Heiden

Portage Creek

South Naknek

Topik

Twin Hills

Ugashik

February 13, 2003

Gary Stevens, Co-Chair & Peggy Wilson, Co-Chair
House Special Committee on Fisheries
State Capitol Room 428
Juneau, AK 99801-1182

Dear Co-Chairs Gary Stevens & Peggy Wilson:

VIA FAX: (907) 465-3517

The Bristol Bay Native Association, a regional nonprofit corporation based in Southwest Alaska, is opposed to HB 415. If this particular bill passes, we feel it would result in an increase in the number of "permits fished" in Bristol Bay's commercial salmon fishery.

Per Alaska Department of Fish and Game records, Bristol Bay's commercial salmon fishery has a number of permits issued by the Alaska Commercial Fishery Entry Commission, however not all permits issued are fished (see following tables):

Bristol Bay Commercial Salmon Drift Permits:

Year:	Permits Issued:	Permits Fished:	Percent:
2001	1,885	1,566	83%
2002	1,879	1,183	63%
2003*	1,879	1,426	76%

Bristol Bay Commercial Salmon Setnet Permits:

Year:	Permits Issued:	Permits Fished:	Percent:
2001	1,001	834	83%
2002	1,006	680	68%
2003*	1,041	761	73%

Source: Alaska Department of Fish and Game (2003* are preliminary figures)

Back in the 1940's, salmon fishermen have been known to participate in the Copper River fishery (which begins in late May), then fish in Bristol Bay (which peaks in early July), then fish in Cook Inlet (which peaks after Bristol Bay's salmon fishery), and then fish in Southeast Alaska (after Cook Inlet peaks). The Alaska Board of Fisheries stopped this practice. We strongly feel that if

Page 2

Letter to House Special Committee on Fisheries

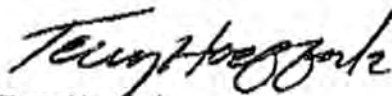
February 13, 2003

this legislation passes it would increase the number of active permits used in our salmon fishery by enabling permit holders to travel from one fishery to another.

Furthermore, this legislation would defeat one purpose of the current permit stacking regulation that was recently passed by the Alaska Board of Fisheries for Bristol Bay's salmon fishery. One purpose of permit stacking is to reduce fishing effort in our fishery, and if this legislation passes, it would defeat such a purpose.

Sincerely,

BRISTOL BAY NATIVE ASSOCIATION



Terry Hoeflerle,
Chief Executive Officer

cc Carl Moses
 Lyman Hoffman
 Mary Kapsner
 John Coghill
 Fred Dyson
 Drew Scälzi
 Beth Kerttula



Cordova District Fishermen United

P.O. Box 939

Cordova, Alaska 99574

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

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

Feb. 11th, 2004

Dear Representative Seaton and Members of the Committee,

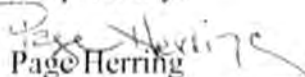
Cordova District Fishermen United, representing the fishing fleet of Area E-Prince William Sound and the Copper River Flats- **supports HB 415.**

This bill will allow diversification for the professional fisherman and put an end to what one member of our fleet terms "the ridiculous hoops" someone who wants to fish more than one area has to go through in order to maximize their fishing season.

We recognize the wisdom behind the original regulation that only allows for fishing one administrative area, but times change and so have the conditions affecting the industry. Regulations must also reflect the new reality.

Thank you for the opportunity to voice our support for this long over due bill.

Respectfully,


Page Herring

Executive Director
Cordova District Fishermen United

[Fwd: Fw:]

Subject: [Fwd: Fw:]

Date: Thu, 19 Feb 2004 13:29:35 -0900

From: Paul Seaton <Representative_Paul_Seaton@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Cameron Yourkowski <Cameron_Yourkowski@legis.state.ak.us>

Subject: Fw:

Date: Thu, 05 Feb 2004 13:46:36 -0900

From: Schactler <schactler@alaska.com>

To: representative_Paul_Seaton@legis.state.ak.us

----- Original Message -----

From: Schactler

To: representative paul seaton@legis.state.ak.us ; senator Bill williams@legis.state.ak.us ; Senator Ben Stevens

Cc: AKWAPSC@aol.com ; Rob Zuanich ; UFA Jerry McCune ; Scooski@aol.com ; Alan Austerman

Sent: Thursday, February 05, 2004 1:07 PM

Dear Representative Seaton,

HB 415 is a bill that I support and one that will supply opportunity, to Alaska's salmon Fishermen.

It will let those with the permits, realize some return on their investment and will begin what is essentially an industry funded

consolidation process, that is based on good business and profit/loss economics. This is one of the tools, that is needed and is available

to restructure the Salmon Industry to one that will no longer be designed around the economies and ideals of 30 years ago.

I do believe that this doesn't quite go far enough by not including the vessel. We should be totally encouraging consolidation, not requiring

overcapitalization. It works very well in the herring fisheries!

Sincerely,

Bruce Schactler
At-Large UFA board member

Subject: Concerning Bill 415

Date: Wed, 25 Feb 2004 22:52:10 -0900

From: Harvey Goodell <hegoodell@hotmail.com>

To: <Cameron_Yourkowski@legis.state.ak.us>,

Dan Ogg <Representative_Dan_Ogg@Legis.state.ak.us>, <rep_paul_seaton@legis.state.ak.us>

To:

The House Special Committee on Fisheries

Chair Rep. Seaton and members

House Bill 415 should die right away. This bill if past will undermine the board of fish process. It only benefits those with deep pockets and could lead to absentee owners. We need to keep fisheries in the hands of local people. Folks living in are coastal communities.

Harvey Goodell

Kodiak Island Salmon setnet fisherman



Alaska State Legislature

Please enter into the record my testimony to the

House Fisheries

committee name

Committee on

HB 415

, dated

2-27-04

bill # / subject

public hearing date

HB 415 would allow an individual fisherman in Alaska to fish two or more statistical salmon areas in a year; assuming he or she held permits for both areas.

I've got an axe to grind on this one: Since I fish both Cook Inlet and Bristol Bay I've run out of family permit holders, so the passage of this bill would greatly simplify my life. It would also simplify the lives of many other people in my situation, since it would essentially codify what's going on already. (What is going on now has the blessing of the CFEC, as long as there is no right of repossession or encumbrance of any kind on the permit).

But, it is very hard to keep coming up with permit holders, let alone deck hands, as they tend to be rather transient.

I find it ironic that the fishery that is in the most trouble in the state (salmon) is also the one most encumbered by "useless" regulation (in my opinion): Things like the 58-foot seine limit, 32-foot Bristol Bay gillnet limit, non-monofilament gear (which is much cheaper), etc.

Many solutions to the general salmon problem have been proposed that would cost the state money. In my opinion, many solutions such as the ones I've mentioned would cost the state nothing.

So, to summarize, HB 415 would simplify and streamline the lives of many Alaskan salmon fishers. I can't really think of any other fisheries in the state, (there may be one or two), that have this encumbrance (HB 415).

I can't make it on one salmon fishery anymore, so I would really appreciate your favorable consideration of this bill.

ps - My fishing history dates to the 1950's helping my father on setnet sites, to fishing my own boat since 1971.

Signed: Steve Webb
Testifier

A handwritten signature in black ink, appearing to read "Steve Webb", written over a horizontal line.

Representing (optional)

PO Box 1127

Kasilof, AK 99610

Address

262-5856

Phone number

MEMORANDUM

STATE OF ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION

TO: Chairman Paul Seaton
House Special Committee on Fisheries

DATE: February 25, 2004

PHONE: (907) 789-6944 VOICE
(907) 790-7044 FAX

FROM: Bruce Twomley, Chairman
Commercial Fisheries Entry Commission

SUBJECT: HB 415

INTRODUCTION

Mr. Chairman and members of the committee: I will be out of town on Friday, February 27, 2004, and, therefore, wish to submit the following written comments on HB 415.

By regulation, the Board of Fisheries requires Alaska salmon fishermen to choose a single net area in which to fish each season.¹ The Alaska Commercial Fisheries Entry Commission has adopted complementary regulations.²

HB 415 would nullify the Board of Fisheries' regulation as well as the Board's authority to adopt such a regulation (and provide similar treatment of CFEC's companion regulations and authority). Because the Board of Fisheries established this rule, the Alaska Commercial Fisheries Entry Commission is **NEUTRAL** on this proposed legislation.

At the same time, CFEC has published comments on this and various other proposals³ noting their potential benefits and downsides.⁴

Additionally, from my experience, I offer the following personal observations for your consideration.

¹ 5 AAC 39.115.

² 20 AAC 05.1940, 20 AAC 05.1942, and 20 AAC 05.1944.

³ Outline of Options for Fleet Consolidation in Alaska's Salmon Fisheries. (CFEC 1998 at 21-23) [hereinafter CFEC Options paper].

⁴ CFEC Options paper.

CONSIDERATIONS

1. BRIEF HISTORY AND PURPOSE OF THE RULE

Alaska salmon fishermen have been required to choose a single net area in which to fish since well before statehood.⁵ At the time we wrote our CFEC Options paper, I consulted with Mitch Kink who had represented the Alaska Independent Fishermen's Marketing Association in Bristol Bay for many years, and who is the only fisherman I knew who had fished in Alaska before and after this rule was put in place. Mr. Kink described for me the situation in the 1940's before the rule was in place, when he and other fishermen from Washington would come to Alaska in the early spring and fish their way up the coast hitting False Pass and, later, Bristol Bay at their peaks. These fishermen would then fish their way back down the coast ending their seasons during the fall in Southeast, before heading back to Washington. The rule was established to end this practice for the benefit of local Alaska fishermen. Mr. Kink volunteered his view that eliminating the rule would not serve local Alaska fishermen.

2. LEGAL STATUS OF THE RULE

In the face of a broad statutory and constitutional challenge, the Alaska Supreme Court in State v. Hebert, 803 P.2d 863 (Alaska 1990), upheld the Board of Fisheries' authority to require superexclusive area registration in various Western Alaska herring fisheries, while commenting with approval on the salmon net area requirement as an analogy.⁶ Hebert thus achieved something unusual: upholding a rule designed to help local Alaska fishermen. At nearly the same time, the Alaska Supreme Court struck down the Rural Alaska subsistence preference in McDowell v. State, 785 P.2d 1 (Alaska 1989). As is the case currently with the Chignik Salmon Cooperative, we are often left to wait for a ruling from the Alaska Supreme Court to determine the soundness of a remedy. In contrast, the kind of rule HB 415 would eliminate has already been reviewed and approved by our Alaska Supreme Court.

⁵ State v. Hebert, 803 P.2d 863, 866 (Alaska 1990).

⁶ Hebert at 866-867.

3. UNFISHED ENTRY PERMITS

This committee has already heard testimony about large numbers of unfished permits in salmon fisheries around the state. At a time of economic stress, unfished permits are a favorable development for those fishermen choosing to continue to participate. HB 415's authorization for fishermen to fish any net areas in which they hold an entry permit could create a new market for currently unfished entry permits. If those permits are purchased by fishermen who intend to fish them aggressively at the peaks of various seasons, there is a risk of creating more fishing pressure on the stocks and more competition for local Alaska salmon fishermen.

CONCLUSION

Again, the Alaska Commercial Fisheries Entry Commission is **NEUTRAL** on the subject of HB 415. However, since every remedy includes some risks, I offer these cautionary words for your consideration and would be happy to respond to any inquiries from the committee.

cc: Representative William Williams
Tim Barry, Legislative Assistant
Sarah Gilbertson, Legislative Liaison, ADF&G
Jerry McCune, UFA

OUTLINE OF OPTIONS FOR FLEET CONSOLIDATION IN ALASKA'S SALMON FISHERIES

**By the Commercial Fisheries Entry Commission
December 1998**

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4. Authorize an Alternative Gear Type

a. Description

As an example, some purse seiners have occasionally expressed the desire to fish gillnet gear. In the alternative, some gillnetters have discussed joining together to fish a single unit of gear with greater fishing capacity.

b. Potential Benefits

Individual cost saving. In some instances may improve efficiency or quality. Additionally, this proposal may serve to reduce overall effort provided alternative gear type represents less overall capacity.

c. Potential Drawbacks

In addition to seeking regulations from the Board of Fisheries, regulations may have to be requested from the Entry Commission. If a change of gear created a potential impact on another limited fishery operating on the same resource, CFEC would have to make an independent regulatory decision the change would be consistent with the purposes of the Limited Entry Act. Otherwise the change could not be given effect.

d. How to Undertake

Petition the Board of Fisheries and the Commercial Fisheries Entry Commission for a change of regulation.

5. Eliminate Exclusive Registration for some or all Salmon Net Areas

a. Description

Since well before statehood, Alaska has required salmon net fishermen each season to

select one salmon net area, exclusively, in which to fish. The requirement is currently embodied in a Board of Fisheries regulation, and CFEC has adopted complementary regulations. Some fishers have suggested eliminating this requirement thereby allowing an individual who holds entry permits in more than one salmon net area to fish more than one salmon net area in the same season. Some fishers have suggested such a proposal could be limited to affect only specified salmon net areas rather than attempt a statewide repeal of the requirement. Such a limited proposal could be adjusted to regional differences.¹⁴

b. Potential Benefits

Some individuals will find this an attractive opportunity (particularly those who now hold permits for more than one salmon net area). This action may encourage consolidation of fishing operations, which generally may reduce overhead costs in the salmon fisheries. While the number of operators and amount of effort at the peak of the season in a given area would not likely be reduced, the number of operators fishing at other times may fall.

This proposal does not require any permanent diminution in the overall number of use-privileges to achieve some reduction in costs, although it would provide an incentive for consolidation of use privileges among fewer individuals.

c. Potential Drawbacks

Consistent with the Salmon Forum's admonition "to safeguard Alaska's resident small boat fleet wherever possible," critics of the proposal argue fishing effort would increase at the peak of a fishery, and fisheries would become more intense and less civilized than they are today. Additionally, buyers of additional permits would increase demand for entry permits. Some individual Alaskans most dependent upon their local fisheries may sell their entry permits.

¹⁴ This proposal is similar to proposals in which a fishery in a single area is divided into multiple areas, permit holders are assigned to each area, and anyone who wants to fish all areas has to purchase a permit for each. As noted in an earlier footnote, the Canadians have done this in their British Columbia salmon fisheries. The Canadian arrangements are described in press releases and backgrounders in the Fisheries and Oceans Canada, Pacific Region, Communications Branch web site (#9). See especially the backgrounder, "The Pacific Salmon Revitalization Strategy" (#10).

Additionally, to the extent those pursuing the benefits of this proposal purchase unfished or only marginally fished permits, the net result could be an overall increase in effort.

We also note, exclusive area registration is one of the Board's long-standing regulatory tools that has been upheld by the Alaska Supreme Court.

d. How to Undertake

Petition Board of Fisheries for a change of regulation.

C. OPTIONS REQUIRING A CHANGE OF LAW FROM THE ALASKA LEGISLATURE¹⁵

1. Authorize a Single Individual to hold two or more Entry Permits in the same Fishery and Fish an Incremental amount of Additional Gear.

a. Description

Seek a change of law from the Legislature to authorize a permit holder in a given fishery to acquire a second permit in that fishery and, thereby, be further authorized to fish an incremental additional amount of gear.

b. Potential Benefits

If the additional amount of gear authorized were less than twice the unit of gear authorized by a single permit, there would be a net overall reduction in gear in the fishery. At the same time, the fishing power of the resulting operation would increase. We could anticipate

¹⁵A suggestion is gear groups in particular fisheries could exercise certain options by a vote. Conceivably, the Legislature might be willing to delegate some functions to gear groups. However, please note our warning about risks inherent in the legislative process in the introduction to this outline.

AGENDA CHANGE REQUEST FORM ALASKA BOARD OF FISHERIES

The Board of Fisheries will accept an agenda change request only:

- 1) for a fishery conservation purpose or reason; or
- 2) to correct an error in regulation; or
- 3) to correct an effect on a fishery that was unforeseen when a regulation was adopted.

The board will not accept an agenda change request that is predominantly allocative in nature in the absence of new information found by the board to be compelling (5 AAC 39.999).

NAME: WESLEY J. HUMBERG

ADDRESS: P.O. Box 1207 HOMER AK 99603
City State Zip

TELEPHONE: 907-235-7286 - SAME
Day Evening

EMAIL ADDRESS: _____

1) STATE IN DETAIL, THE NATURE OF THE PROBLEM. Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues.

COMMERCIAL SALMON FISHERMEN ARE RESTRICTED TO ONE SALMON FISHERY A YEAR UNDER LIMITED ENTRY. THERE ARE ONLY SO MANY SALMON PERMITS IN EACH AREA. FISHERMEN SHOULD BE ABLE TO OWN PERMITS IN MORE THAN ONE PLACE AND SHOULD BE ABLE TO FISH IN THE SAME YEAR. PEOPLE THAT ARE MARRIED OR HAVE CHILDREN HAVE PERMITS FOR DIFFERENT AREAS. I FEEL I'M BEING DISCRIMINATED AGAINST FOR BEING SINGLE PERSON

2) STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATE ABOVE. If any one or more of the three criteria set forth above is not applicable, state that it is not applicable.

- 1) Fishery conservation purpose or reason: *IT WOULD MOVE FISHERMEN TO AREAS WHERE THE RUNS WERE STRONGER AND TAKE PRESSURE OFF WEAKER RUN AREAS IN THE STATE*
- or 2) Correct an error in regulation:

or 3) Correct an unforeseen effect of a regulation: *WHEN THIS RULE WAS ADOPTED BY THE BOARD, THEY MIGHT NOT HAVE TAKEN IN TO CONSIDERATION THAT HAVING ONLY SO MANY PERMITS IN ANY AREA ALREADY HAS MANAGEMENT UNDER CONTROL SO THERE SHOULD BE NO REASON FISHERMEN SHOULDN'T BE ABLE TO FISH STATE WIDE*

3) STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE. *THE RESTRICTION THE BOARD OF FISH HAS PUT ON SALMON DRIFT FISHERMEN IN DIFFERENT AREAS OF ALASKA HAS FORCED OR WILL FORCE MANY OUT OF BUSINESS IF MY PROPOSAL WAS ACCEPTED IT WOULD LET FISHERMEN BE MORE DIVERSIFIED AND COULD MOVE FROM AREA TO AREA AND MAYBE MAKE END MEET & SURVIVE*

Alaska Board of Fisheries Agenda Change Request Form

- 4) IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE.

15 Not

5) CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD.
FISHERMEN IN THE SALMON FISHERY COULD OWN MORE THAN ONE SALMON PERMIT IN DIFFERENT AREAS AND BE ABLE TO FISH ALL THE AREA IN THE SAME YEAR IF THEY CHOSE TO THERE WOULD BE LESS PRESSURE ON LEAK FORECASTED AREAS FISHERMEN MOVE WHEN FISHING DROPPED OFF.

- 6) STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE.

BECAUSE IT IS A STATE WIDE ISSUE. AS POOR AS FISH PRICE DUE AND THE WAY THE BOARD OF FISH HAS RESTRICTED FISHING TIME IN SO MANY AREAS OF THE STATE. FISHERMEN CAN'T WAIT FOR THE NEXT CYCLE TO HAVE THIS PROBLEM HEARD THEY NEED HELP NOW NOT THREE YEARS FROM NOW

- 7) STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user, sport fisherman, etc.).

COMMERCIAL FISHING FOR SALMON IN COOK INLET WE ONLY GET 11 12HR PERIOD A YEAR AND ANY EXTRA TIME IS RESTRICTED IN 15 CORRIDOR ON THE EAST SIDE. FISHING HERE IS NOT PROFITABLE ANYMORE UNDER THIS BOARD REGULATION

- 8) STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING.

NO

DATE: 6-7-01

SIGNATURE:

Wesley J. Hurling

ON JULY 7TH 2001
I SUBMITTED BY FAX TO ART HUGHES
AT ~~THE~~ BOARD OF FISH IN JUNEAU
FAX#NO 907-465-6094 FROM
THE HOMER FISH & GAME OFFICE
SO I WAS SURE THEY RECEIVED
MY FAX. I SUBMITTED AGENDA
CHANGE REQUEST FORM. THE
RESPONSE I GOT BACK, I THINK
IT WAS ART HUGHES. SAYING
THAT IS WASNT THE BOARD OF FISH
RESPONSIBILITY TO CHANGE THE
LAW. HE TOLD ME IT WAS
LIMITED ENTRIES ON THE
LEGISLATORS

We Heard

Mr. Chairman

This is the Testimony as I gave it at our LIO office in Petersburg. I agree with the one gentleman that stated that house bill 415 does not go far enough.

The economics of our salmon fisherys have never been worse, and doing nothing, will not help us out of the crisis. There is a lot of people working very hard to find the solutions, and for that I am grateful. I respect Mr. Nelsons testimony out of Dillingham, but I think that he needs to realize that it is a two way street and that for some of us, one of those roads leads out of Bristol Bay. Those of us that go up there late, and leave early, do so because we have something else that we can make our living at. I do not think that it would be in his best interest if everyone up there put in a maximum effort. Thanks for your time



My name is Kurt Kvernvik and I live in Petersburg Alaska. I have been a commercial fisherman for the last 24 years and I am in favor of house bill 415.

I would first like to point out that many fisherman whom I know are in favor of house bill 415 cannot attend. They are currently brown crabbing in Southeast or preparing to depart for long lining. This is called diversification, which is the topic that I would like to talk about today.

I am a Bristol Bay salmon gillnet permit holder. I owe far more on my permit that it is currently worth. This financially prevents me from selling it to move on to a different salmon fishery. To help supplement my salmon income I would like to diversify into the Southeast Alaska seine fishery, which is a completely different gear type, a different area, a different vessel and more crew. Currently the only way that I can do this is to find a seine permit holder to come on board each season. While I would like to upgrade to a more competitive seiner, I have found it to be difficult when I can not have the fishing rights in my name. This method carries financial risks that are unacceptable to most lending institutions, whom might otherwise find me to be a good risk if I owned the permit.

The law as it is currently written, prevents me from making further capital investments in our states salmon fishery. The law prevents me from employing more people in the state.

I think that we should be able to choose which salmon fishery might best support our families depending on the market conditions for each season. It is clear to me that just fishing one salmon fishery will not support my family.

The salmon industry is going through some very hard times; there are many hundreds of permits that are not currently being fished for economic reasons. This in effect has resulted in lost jobs, less community revenue and lost fish taxes.

I think that if the state were to allow multiple registration that there are those of us that are willing to step up to the plate and invest in the permits, the boats, the gear and the crews that have been washed out of our salmon fisheries in the last decade

If I am allowed to own multiple permits, I will be able to decide which fishery that I will participate in and when. The state limited entry system has already addressed the issue of the maximum effort for each fishery, so I do not see increased effort or the lack of it, as being an issue. If the new studies lower the permit thresholds, my argument remains the same.

This law needs to be changed; the salmon fishermen of the state should be allowed to diversify for their own benefit and for the good of the state. For these reasons, I am strongly in favor of house bill 415.

Kurt Kvernvik
PO BOX 1081
Petersburg, AK 99833



FAX COVER SHEET

Homer Legislative Information Office
345 W. Sterling Hwy, #102A
Homer, AK 99603
(907) 235-7878 FAX: (907) 235-4008

faxed
2-27-04
10:20am
Arc

Date: 2-27-04

No. of pages including this one: 4

To: Rep Seaton (H) FSH

Fax No. 465-3472

Comments: per your request during Friday's
Fisheries meeting. Documents are from
Wes Humbyrd

Amber

AGENDA CHANGE REQUEST FORM
ALASKA BOARD OF FISHERIES

The Board of Fisheries will accept an agenda change request only:

- 1) for a fishery conservation purpose or reason; or
- 2) to correct an error in regulation; or
- 3) to correct an effect on a fishery that was unforeseen when a regulation was adopted.

The board will not accept an agenda change request that is predominantly allocative in nature in the absence of new information found by the board to be compelling (5 AAC 39.999).

NAME: WESLEY J HUMBOLD

ADDRESS: P.O. Box 1207 Homer AK 99603
City State Zip

TELEPHONE: 907-235-7286 - SAME
Day Evening

EMAIL ADDRESS: _____

1) STATE IN DETAIL THE NATURE OF THE PROBLEM. Address only one issue. State the problem clearly and concisely. The board will reject multiple or confusing issues.

COMMERCIAL SALMON FISHERMEN ARE RESTRICTED TO ONE SALMON FISHERY A YEAR. UNDER LIMITED ENTRY THERE ARE ONLY SO MANY SALMON PERMITS IN EACH AREA. FISHERMEN SHOULD BE ABLE TO OWN PERMITS IN MORE THAN ONE PLACE. AND SHOULD BE ABLE TO FISH IN THE SAME YEAR. PEOPLE THAT ARE MARRIED OR HAVE CHILDREN HAVE PERMITS FOR DIFFERENT AREAS. I FEEL IM BEING DISCRIMINATED AGAINST FOR BEING SINGLE PERSON

2) STATE IN DETAIL HOW YOUR AGENDA CHANGE REQUEST MEETS THE CRITERIA STATE ABOVE. If any one or more of the three criteria set forth above is not applicable, state that it is not applicable.

- 1) Fishery conservation purpose or reason: IT WOULD MOVE FISHERMEN TO AREAS WHERE THE RUNS WERE STRONGER AND TAKE PRESSURE OFF WEAKER RUN AREAS IN THE STATE
- or 2) Correct an error in regulation:

or 3) Correct an unforeseen effect of a regulation: WHEN THIS RULE WAS ADOPTED BY THE BOARD MIGHT NOT HAVE TAKEN IN TO CONSIDERATION THAT HAVING ONLY SO MANY PERMITS IN ANY AREA, ALREADY HAS MANAGEMENT UNDER CONTROL SO THERE SHOULD BE NO REASON FISHERMEN SHOULDN'T BE ABLE TO FISH STATE WIDE

3) STATE WHY YOUR AGENDA CHANGE REQUEST IS NOT PREDOMINANTLY ALLOCATIVE. THE RESTRICTION THE BOARD OF FISH HAS PUT ON SALMON DRIFT FISHERMEN IN DIFFERENT AREAS OF ALASKA HAS FORCED OR WILL FORCE MANY OUT OF BUSINESS IF MY PROPOSAL WAS EXCEPTED IT WOULD LET FISHERMEN BE MORE DIVERSIFIED AND COULD MOVE FROM AREA TO AREA AND MAYBE MAKE END MEET & SURVIVE

Alaska Board of Fisheries Agenda Change Request Form

- 4) IF YOUR REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE.

is not

- 5) CITE THE REGULATION(S) THAT WILL BE CHANGED IF THIS REQUEST IS HEARD.

FISHERMEN IN THE SALMON FISHERY COULD OWN MORE THAN ONE SALMON PERMIT IN DIFFERENT AREAS AND BE ABLE TO FISH ALL THE AREA IN THE SAME YEAR IF THEY CHOSE TO THERE WOULD BE LESS PRESSURE ON LEAK FORCATCH AREAS FISHERMEN MOVE WHEN FISHING DROPPED OFF.

- 6) STATE IN DETAIL THE REASON(S) WHY THIS MATTER CANNOT BE HEARD IN THE REGULAR CYCLE.

BECAUSE IT IS A STATE WIDE ISSUE. AS POOR AS FISH PRICE OUR AND THE WAY THE BOARD OF FISH HAS RESTRICTED FISHING TIME IN SO MANY AREAS OF THE STATE. FISHERMEN CANT WAIT FOR THE NEXT CYCLE TO HAVE THIS PROBLEM HEARD THEY NEED HELP NOW NOT THREE YEARS FROM NOW

- 7) STATE YOUR INVOLVEMENT IN THE FISHERY THAT IS THE SUBJECT OF YOUR AGENDA CHANGE REQUEST (e.g., commercial fisherman, subsistence user, sport fisherman, etc.).

COMMERCIAL FISHING FOR SALMON IN COOK INLET WE ONLY GET 11-12 HR PERIOD A YEAR AND ANY EXTRA TIME IS RESTRICTED IN 1.5 CORRIDOR ON THE EAST SIDE. FISHING HERE IS NOT PROFITABLE ANYMORE UNDER THIS BOARD REGULATION

- 8) STATE WHETHER THIS AGENDA CHANGE REQUEST HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AN AGENDA CHANGE REQUEST AND, IF SO, DURING WHICH BOARD OF FISHERIES MEETING.

NO

DATE: 6-7-01

SIGNATURE:

Wesley J. Humberg

ON JULY 7TH 2001
I SUBMITTED BY FAX TO ART HUGHES
AT ~~THE~~ BOARD OF FISH IN JUNCTA.
FAX# NO 907-465-6094 FROM
THE HOMER FISH & GAME OFFICE
SO I WAS SURE THEY RECEIVED
MY FAX. I SUBMITTED AGENDA
CHANGE REQUEST FORM. THE
RESPONSE I GOT BACK, I THINK
IT WAS ART HUGHES. SAYING
THAT IS WASNT THE BOARD OF FISH
RESPONSIBILITY TO CHANGE THE
LAW. HE TOLD ME IT WAS
LIMITED ENTRIES OR THE
LEGISLATORS

We Heard

Subject: [Fwd: HB 415]

Date: Wed, 03 Mar 2004 20:24:29 -0900

From: Paul Seaton <Representative_Paul_Seaton@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Cameron Yourkowski <Cameron_Yourkowski@legis.state.ak.us>

Subject: HB 415

Date: Tue, 02 Mar 2004 12:44:25 -0900

From: Dave Loutrel <dave@wildsalmondirect.com>

To: Representative_Paul_Seaton@legis.state.ak.us

Representative Seaton,

I am writing to you about HB 415 relating to the use of multiple entry permits. I was unable to participate in the last round of teleconferences, so I am writing you directly.

I am strongly opposed to this piece of legislation. I hold only one salmon limited entry permit -- a Kodiak Salmon Seine permit. I have fished every year for almost 15 years now as a permit owner.

I believe that this bill (HB415) if enacted could devastate an already difficult salmon fishery by virtually destroying our limited entry system.

The problem is that with permit values as low as they now are a person with a willingness to fish for low prices (the word scab comes to mind) and a few bucks in his/her pocket could purchase permits in different areas serviced by a major processor, agree to fish for pennies (since volume could make that profitable) and travel from area to area with a market displacing local fishers and driving the price paid to fishers down.

I know that currently the bill does would not allow a person to use the same vessel--but the word on the street from Thorstenson (an Icicle Seafoods stockholder) is that that will change--you will be able to use the same vessel. Even if it does not with the state of the fishing industry now, leasing a boat to use in a fishery is a small expense.

I would urge you to vote against this bill and take reasonable actions to prevent it's passage. I would suggest that former Governor Jay Hammond might have some important comments on this legislation as well.

Thanks for your time is considering my email.

David Loutrel
1430 Crescent Avenue
Anchorage, Alaska 99508
907-337-3131

Subject: HB 415

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To: Representative_Paul_Seaton@legis.state.ak.us

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David Loutrel
1430 Crescent Avenue
Anchorage, Alaska 99508
907-337-3131

ALASKA STATE LEGISLATURE

Chair
FISHERIES

Vice-Chair
EDUCATION

Member
HEALTH, EDUCATION AND SOCIAL SERVICES

Member
STATE AFFAIRS



REPRESENTATIVE PAUL SEATON
House District 35

Session:
State Capitol Building
Juneau, Alaska 99801
Phone 907-465-2689
Fax 907-465-3472
1-800-665-2689

Rep.Paul.Seaton@legis.state.ak.us

Interim:
345 W. Sterling Highway
Suite 102B
Homer, Alaska 99603
Phone 907-235-2921
Fax 907-235-4008

March 30th, 2004

Ed Dersham, Chairman
Alaska Board of Fisheries
P.O. Box 25526
Juneau, AK 99802-5526

Dear Mr. Dersham,

The House Special Committee on Fisheries held three hearings on HB 415, a bill that would repeal the Board of Fish's authority to maintain its exclusive salmon area registration regulation (5 AAC 39.115). Throughout these legislative hearings the committee heard much earnest testimony both in opposition and support of this change. However, the House Special Committee on Fisheries is unwilling to supercede the board's authority to alter this regulation. The committee believes that the board process is the appropriate forum in which to address this issue, and we encourage you to consider the issue at your earliest opportunity.

Please note the attached legal opinion from the Department of Law related to the board's authority on this matter.

Sincerely,


Representative Paul K. Seaton, Chair
House Special Committee on Fisheries

Cc. Representative Bill Williams



HB 415
To Committee

March 10, 2004

Paul Seaton, Chairman
House Special Committee on Fisheries
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

RE: House Bill 415

Dear Representative Seaton:

The undersigned wish to register their objections to House Bill 415. As we understand this bill, it would allow salmon permit holders to fish in more than one salmon registration area during a single year.

When the original nineteen salmon fisheries were brought under limited entry, the Commercial Fisheries Entry Commission (CFEC) established maximum numbers for each gear type and area. These numbers were calculated based on the highest number of participants in any of the four years preceding implementation of the limited act. Subsequent lawsuits resulted in even more permits being issued.

Once the permits had been issued, CFEC was supposed to establish optimum numbers of permits for each area and implement a buyback program. Had this second step been taken, we should have seen the number of permits reduced to a level, which would have made the salmon fisheries in each area economically viable.

For a variety of reasons that second step was never taken. We believe that there are excess permits in each salmon area. With the downturn in salmon prices, the number of permits being fished in each area has declined. This has allowed those remaining in the fishery an improved chance of making a living.

If people are allowed to fish multiple areas, they will have greater incentive to activate currently idle permits. Permit prices are relatively low now, so acquiring the opportunity to cherry pick the hottest portions of any area's runs would be tempting. We believe that non-local folks would find this incentive attractive. We do not need additional competition at this time. We believe that it would drive prices down even further and erode the earnings of local fishermen.

For these reasons, we urge you to vote against this bill

Respectfully,

Signature

Norman E. Larsen
Robin Larsen

Printed Name and address

NORMAN E. LARSEN - P.O. BOX 52 SAND POINT, AK 99861
ROBIN LARSEN - P.O. BOX 264 - SAND POINT, AK 99861