

SB

318

## SENATE COMMITTEE REPORT First Committee of Referral

DATE: 2/11/04

FURTHER: Judiciary

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4-8-04

Resources Committee considered      SENATE BILL NO. 318

### SB 318 CONSUMPTIVE USE OF FISH AND GAME

"An Act relating to the individual right of Alaska residents in the consumptive use of fish and game."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 318 (RES)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**  
 Same Title  
 New Title

**House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
F+G	2/2/04			✓	

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>				✓
<i>[Signature]</i>		✓	✓	
<i>[Signature]</i>		✓		
<i>[Signature]</i> Ben Stevens	✓			
CHAIR: <i>[Signature]</i>	✓			

*Scott Ogan is the chairman + he votes do pass!*

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: S.B. 318  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title Consumptive Use of Fish and Game RDU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor Senator Seekins Component No. \_\_\_\_\_  
 Requester Senate Resources \_\_\_\_\_

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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, Legislative Liaison Phone 465-6137  
 Division: Alaska Department of Fish & Game Date/Time 2/27/04 4:36 PM  
 Approved by: Commissioner Kevin Duffy Date 2/27/2004  
 Agency: Alaska Department of Fish & Game



**SENATOR SCOTT OGAN**

23<sup>RD</sup> Alaska State Legislature

Senate District H Lazy Mountain \* Butte \* Chugiak \* Peters Creek \* Fairview Loop

Knik-Goose Bay \* Big Lake \* Houston \* Willow \* Talkeetna \* Trapper Creek

State Capitol, Room 103, Juneau Alaska 99801 \* (907) 465-3878 \* 1 (800) 862-3878 \* Fax (907) 465-3265

Senator\_Scott\_Ogan@legis.state.ak.us

Http://www.akrepublicans.org/ogan

FACSIMILE TRANSMITTAL SHEET

TO: leg legal FROM: Linda Hay - Sen. Res.  
 COMPANY: DATE: 4-8-04  
 FAX NUMBER: TOTAL NO. OF PAGES INCLUDING COVER: 2  
 PHONE NUMBER: RE: CS for SB 318

- URGENT
- FOR REVIEW
- PLEASE COMMENT
- PLEASE REPLY
- PLEASE RECYCLE

NOTES/COMMENTS:

Please prepare a Senate Resources  
 Committee CS for SB 318  
 Amendment + title change  
 language is attached.

Call if there are questions

Linda Hay  
 #4907

— moved by Ogan  
— objection  
— amend adopted  
44 20

23-LS1675\Q.1  
Utermohle  
4/7/04

AMENDMENT #1

OFFERED IN THE SENATE

TO: CSSB 318( ), Draft Version "Q"

- 1 Page 1, line 1:
- 2 Delete "the right of Alaska residents in"
- 3 Insert "a preference for"
- 4
- 5 Page 1, line 7:
- 6 Delete "important and fundamental right"
- 7 Insert "high preference"

Lincoln N  
Dyson Y  
Wag Y  
Elton N  
Seekins Y  
Ogan Y

*needs to adopt CS*  
Adopted on 3/24/04

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-LS1675\Q  
Utermohle  
3/22/04

CS FOR SENATE BILL NO. 318( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS SEEKINS, Green, Cowdery

*inalienable  
fundamental  
high preference*

A BILL

FOR AN ACT ENTITLED

*Title Change*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

"An Act relating to *(the right of Alaska residents in)* the consumptive uses of fish and game." *( a preference for )*

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

\* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.005. Policy. It is the policy of the state that the consumptive uses of wild fish and game resources by Alaska residents for their sustenance is a very *(important and fundamental right)* when considering the management and allocation of those resources. Nothing in this policy exempts a person from compliance with state law. In this section, "sustenance" means that which is used for personal and family consumption as food or nourishment, or to sustain life.

*high preference*

# ALASKA STATE SENATE



Session:  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-2327  
(907) 465-5241 Fax

Interim:  
119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
(907) 456-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## MEMORANDUM

Date: March 23, 2004

To: Office of Senator Ogan

*AS for R.S.*

From: Senator Ralph Seekins

Re: Senate Bill 318 version "Q" replacing version "D"

---

The Committee Substitute for Senate Bill 318, denoted as version "Q", makes a number of minor revisions to the bill detailed as follows: (1) changes the word "use" to "uses" in line five; (2) removes the word "individual" from lines six and seven; (3) adds the phrase "...for their sustenance..." to line six; (4) adds the two new sentences starting on line eight and continuing to line ten.

The bill, with added language bolded/underlined and deleted language bracketed, now reads:

5                   Sec. 16.05.005. Policy. It is the policy of the state that the consumptive [use] uses  
6 of wild fish and game resources by [individual] Alaska residents for their sustenance is a very  
7 important and fundamental [individual] right when considering the management and allocation of  
8 those resources. Nothing in this policy exempts a person from compliance with state  
9 law. In this section, "sustenance" means that which is used for personal and family  
10 consumption as food or nourishment, or to sustain life.

23-LS1675\Q  
Utermohle  
3/22/04

CS FOR SENATE BILL NO. 318( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS SEEKINS, Green, Cowdery

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to the right of Alaska residents in the consumptive uses of fish and  
2 game."

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

4 \* Section 1. AS 16.05 is amended by adding a new section to read:

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Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## MEMORANDUM

Date: March 19, 2004

To: Office of Senator Ogan

From: Senator Ralph Seekins

*A for R.S.*

Re: Senate Bill 318 version "I" replacing version "D"

---

The Committee Substitute for Senate Bill 318, denoted as version "I", makes a number of small revisions to the bill detailed as follows: (1) changes the word "use" to "uses" in line five; (2) removes the word "individual" from lines six and seven; (3) adds the phrase "...for their sustenance..." to line six, and; (4) adds the sentence starting with "Nothing..." in line eight and continuing on line nine.

The bill, with added language bolded/underlined and deleted language bracketed, now reads:

5                   Sec. 16.05.005. Policy. It is the policy of the state that the consumptive [use] uses  
6 of wild fish and game resources by [individual] Alaska residents for their sustenance is a very  
7 important and fundamental [individual] right when considering the management and allocation of  
8 those resources. Nothing in this policy exempts a person from compliance with state  
9 law.

23-LS1675M  
Utermohle  
3/19/04

**CS FOR SENATE BILL NO. 318( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): SENATORS SEEKINS, Green, Cowdery**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the right of Alaska residents in the consumptive uses of fish and**  
2 **game."**

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

4 **\* Section 1. AS 16.05 is amended by adding a new section to read:**

5 **Sec. 16.05.005. Policy.** It is the policy of the state that the consumptive uses  
6 of wild fish and game resources by Alaska residents for their sustenance is a very  
7 important and fundamental right when considering the management and allocation of  
8 those resources. Nothing in this policy exempts a person from compliance with state  
9 law.

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Senator\_Ralph\_Seekins@legis.state.ak.us

Senator Ralph Seekins  
District D

## MEMORANDUM

Date: March 11, 2004

To: Office of Senator Ogan

From: Senator Ralph Seekins

Re: Senate Bill 318 version "H"

*Ag for R.S.*

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The Committee Substitute for Senate Bill 318, denoted as version "H", adds three words to line six of the bill. The bill, with added language bolded and underlined, now reads:

5           Sec. 1605.005. Policy. It is the policy of the state that the consumptive use of  
6 wild fish and game resources by individual Alaska residents **for their sustenance** is a  
7 very important and fundamental individual right when considering the management  
8 and allocation of those resources.

23-LS1675\H  
Utermohle  
3/4/04

**CS FOR SENATE BILL NO. 318( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): SENATORS SEEKINS, Green, Cowdery**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the individual right of Alaska residents in the consumptive use of**  
2 **fish and game."**

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

4 **\* Section 1.** AS 16.05 is amended by adding a new section to read:

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6 wild fish and game resources by individual Alaska residents for their sustenance is a  
7 very important and fundamental individual right when considering the management  
8 and allocation of those resources.

# ALASKA STATE SENATE



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**Senator Ralph Seekins**  
District D

## MEMORANDUM

Date: February 18, 2004  
To: Office of Senator Ogan  
From: Senator Ralph Seekins  
Re: Request for Hearing of SB 318

*30 for R.S.*

---

Attached please find Senate Bill 318. A Sponsor Statement <sup>*is attached.*</sup> ~~will follow shortly.~~

Senate Bill 318 prefaces the Fish and Game statutes with clarifying language regarding the use of consumptive use of the state's fish and game resources.

I respectfully request a hearing before your committee on this Bill at your earliest convenience. May I suggest, if possible, a hearing date coinciding with the hearing of SB 298. Thank you.

# ALASKA STATE SENATE

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Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## Senate Bill 318 Sponsor Statement

**“An Act relating to the individual right of Alaska residents in the consumptive use of fish and game.”**

Article VIII, Section 3 of the Alaska Constitution provides that, “Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.”

Article VIII, Section 4 of the Alaska Constitution provides that, “Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.”

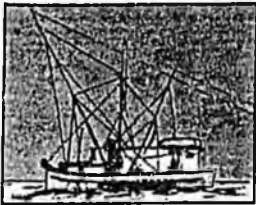
The qualifying phrase “subject to preferences among beneficial uses” signals recognition by the constitutional delegates that not all the demands made upon resources can be satisfied, and that prudent resource management based on modern conservation principles necessarily involves prioritizing competing uses.

Alaska’s natural resources are “public trust” assets. They are held by the state in trust for the benefit of all its people. In Alaska, the Legislature serves as the “Trustee” of these assets. As such, it has delegated some of its trust powers and duties to the Board of Fish, the Board of Game and the Department of Fish and Game.

Senate Bill 318 gives direction from the Trustees (the Legislature) to the Boards and the Department that, when making decisions regarding the management and/or allocation of these commonly owned resources, they should recognize that the consumptive use of wild fish and game resources by Alaskans to feed themselves and their families is a very important and fundamental individual right.

*from Sec Stevens*

**It is the policy of the state that the consumptive use of wild fish and game resources by individual Alaska residents for their sustenance is a very important and fundamental individual right when considering the management and allocation of those resources.**



# Alaska Trollers Association

130 Seward St., No. 211  
Juneau, Alaska 99801  
(907) 586-9400  
(907) 586-4473 Fax

April 7, 2004

Senator Scott Ogan, Chairman  
Senate Resources Committee  
Alaska State Legislature  
Juneau, AK 99811

Dear Senator Ogan:

The Alaska Trollers Association strongly opposes SB 318.

It is ATA's belief, and the opinion of many knowledgeable state attorneys and employees, that this bill has the potential to drastically alter the way Alaska manages its resources. Both the Board of Fisheries and the Commissioner of Fish and Game could be hamstrung in their ability to balance the needs of Alaska residents who rely on fish and game for sustenance and their livelihood.

The strength of our resource management program lies in the ability of Boards of Fisheries and Game to allocate amongst user groups based on solid biological information and public comment regarding the impact of proposed regulations. In addition, the Board utilizes allocation criteria that have stood the test of time and court challenge. The Board may allocate more, or less, to specific users and purposes, as this bill attempts to do. Further, the Commissioner makes many decisions inseason and often modifies regulations through emergency order, in order to ensure the Board's goals. Unfortunately, if SB 318 were to pass, it is likely the courts would be the forum where allocative decisions would be made. This is not in the best interest of Alaskans or our state government.

The Southeast troll fleet is 85% resident - about 40% of our permit holders reside in rural communities. Nearly one in 30 people in this region work on a troll boat and many small communities and businesses benefit from our fleets presence. SB 318 puts at risk the fishermen I represent, as well as numerous other fishing operations and businesses in the Southeast region and around the state.

Even Alaska consumers could feel the pinch of this bill. Say, a resident that enjoys eating Alaska fish, but prefers not to catch it. What about them?

Our Constitution provides for utilization of the public resource to the benefit of ALL its citizens. We urge you not to compromise this noble mandate. Please, vote no on SB 318.

Thank you for your consideration of ATA's point of view. Please contact me if I can be of help.

Best regards,

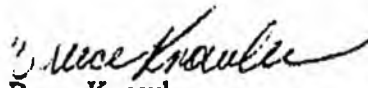
Executive Director

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From: Bruce Knowles  
6490 Ptarmigan Circle  
Wasilla, Alaska 99654

Dear Senator Organ;

This fax is to inform you that I will have a letter of support for S.B 318 sent off to you tomorrow from the Cook Inlet Spot Fish Caucus. The Cook Inlet Sports Fish Caucus believes that the highest and best use of our fish and game resources is on the dinner plates of Alaskans.



Bruce Knowles  
907-373-4965  
akbigfish@pci.net



**FAX TRANSMISSION**

**OFFICE OF THE ATTORNEY GENERAL  
NATURAL RESOURCES SECTION--ANCHORAGE**

1031 W. 4TH AVE., SUITE 200  
ANCHORAGE, ALASKA 99501  
(907) 269-5232, 269-5234, 269-5251  
Fax: (907) 278-4607, 279-2834

TO: Sen. Scott Ogan FAX # (907) 465-3265  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

FROM: AAG Lance Nelson DATE: 3-29-04  
 PAGES: 6, including cover SUBJECT: SB 318  
Comments

Urgent  For Review  Please Comment  Please Reply

• COMMENTS: As requested by Senate Resources Committee.

IF YOU DO NOT RECEIVE ALL THE PAGES OR HAVE ANY PROBLEMS, PLEASE CALL \_\_\_\_\_ AT (907) \_\_\_\_\_.

The information contained in this FAX is Confidential and/or Privileged. This fax is intended to be reviewed initially by only the individual named above. If the reader of this transmittal page is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this fax or the information contained herein is prohibited. If you have received this fax in error, please immediately notify the sender by telephone and return this fax to the sender at the above address.

**COMMENTS ON SENATE BILL NO. 318****Senate Resources Committee****AAG Lance Nelson, March 29, 2004****I. Introduction.**

First of all Mr. Chairman I apologize for not being present at the conclusion of the last hearing on this bill. I regret if my absence and failure to give testimony unduly delayed the committee's consideration of this bill. I would like to raise three issues for your consideration on SB 318. First, is it the proper role of the legislature to classify the status of rights as "fundamental." Second, whether consumptive uses of fish and wildlife for sustenance may properly be considered a "fundamental" right. And finally, what will be the likely impact from those uses being deemed a "fundamental" right.

**II. Discussion.****A. Legislative Authority Question**

The intention of the bill is to establish consumptive uses of fish and game by Alaska residents for their sustenance as a very important and fundamental right. Most Alaskans may likely agree with that policy; hunting and fishing for food in Alaska is like motherhood and apple pie to most of us. However, a possible problem is that terms like "important right" and "fundamental right" are legal terms of art that have may or may not have legal consequences. It appears that a possible goal of the bill is to have these uses be considered fundamental rights under the state constitution.

If the goal of the bill is to establish constitutional rights, it's not clear that the legislature has the ability to do this by statute, without seeking an amendment of the constitution itself. The legislature implements the constitution and acts as authorized by the constitution, but can't change the constitution by statute. I don't know of any precedent for legislative establishment of a right as being constitutionally "fundamental."

Further, the main impact of effective establishment of a "fundamental" right occurs in the judicial process. When the government regulates a "fundamental" right, as opposed to a lower-status right, it is held, by the courts, to a much higher standard for justification of any restriction on "fundamental" rights. Historically, the courts have been the only branch of government that have found rights to be constitutionally "fundamental," and have applied appropriate judicial standards. It is unclear what the impact of a legislative declaration of a fundamental right would be.

One possible reason for this is that court rulings interpreting the constitution are governed by rules of stare decisis, the rule of following precedent. Previous legal rulings are not lightly overturned. The legislature, on the other hand, may amend or repeal

statutes as it sees fit, with almost unlimited discretion. It would seem that if a right is truly "fundamental," its status should not be easily reclassified. If a right is truly "fundamental," can it be repealed the next legislative session? There is no legal impediment to that kind of reversal in the legislative rules. So this raises the question whether the courts will be required to adopt, or even consider, the legislative declaration?

If the goal of the legislature is not to establish a constitutional right, but only a statutory one, then that raises the issue of what the legal impact of SB 318 would be. The legislature has broad authority to establish a clear preference among consumptive uses and nonconsumptive uses of fish and wildlife. The legislature has already gone a long way to protect consumptive uses for food by creating and directing a statutory preference for subsistence uses of fish and wildlife. There are many other existing statutes that would appear to be in tension with the bill, in that they authorize the Boards of Fisheries and Game and the Department of Fish and game to manage and regulate without necessarily paying special deference to all of the uses identified in SB 318. Without more direction, it would appear that this bill may create controversy and unnecessarily encourage litigation.

**B. Are consumptive uses of fish and game for sustenance really "fundamental" rights?**

Consumptive uses of fish and wildlife for food and sustenance have, so far, not been considered fundamental rights by our state supreme court.

The courts have generally ruled that, with very limited exceptions, only rights enumerated in the constitution are fundamental rights. The right to hunt and fish for food is not expressed in the constitution. Recently, the Alaska Supreme Court catalogued its decisions on fundamental rights, and explained the standards for identifying such rights. *Sampson v. State*, 31 P.3d 88 (Alaska 2001). The Court listed only four fundamental rights not explicit in the Alaska Constitution that have been identified to date, none of which are related to use of natural resources. *Id.* at 92. Those were (1) the right to reproductive privacy, (2) the right to control personal appearance, (3) the right to privacy within the home, and (4) the right of self-representation in a post-conviction hearing. *Id.* All of these cases involve personal autonomy to control our appearance or to direct the course of our lives. They do not involve the use of natural resources. *Id.* at 94. The opinion clarifies that other fundamental rights might be recognized, stating:

[W]e are under a duty ... to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intention and spirit of [Alaska's] constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage.

*Id.* at 92. The consumptive use of fish and game, while extremely important to Alaskans, may not meet this test. Hunting and fishing for food is, while important culturally and in other ways (as is commercial fishing, trapping, and sport fishing), at its most basic level, an economic endeavor. See *Alaska Survival v. State, Dep't of Natural Resources*, 723 P.2d 1281 at 1292 (Alaska 1986) (where the Court recognized that litigants raising subsistence concerns are addressing economic concerns, although not the type of economic concerns which would preclude public interest litigant status). Nevertheless, economic endeavors of this type are not accorded fundamental right status by the courts. *Commercial Fisheries Entry Commission v. Apokedak* 606 P.2d 1255, 1262-63 (Alaska 1980).

The Alaska Supreme Court has to date not recognized any fundamental right to use Alaska's natural resources. Instead, current authority is to the contrary. Thus, in the *Apokedak* case, the Court stated that the right to fish commercially, for example, is not a fundamental right. *Accord., Gilbert v. State*, 803 P.2d 391, 400 n.11 (Alaska 1990) and *Deubeleiss, supra*, 689 P.2d 489 n. 3 (the right to a limited entry permit does not implicate a fundamental right). In *Herscher v. State*, the Court said that "[t]he State's power over natural resources is such that it could entirely eliminate the role of hunting guides, and no problem of due process would arise." 568 P.2d 996 at 1003 (Alaska 1977). Assuming the power to eliminate other uses is coequal, this case implies that uses of natural resources do not rise to the level of fundamental rights.

In the *McDowell* case, the appellants argued at great length that the right to subsistence hunt and fish was a fundamental right. *McDowell v. State*, S-2732, Reply Brief of Appellants, pp. 12-22. Nevertheless, in the *McDowell* opinion, the Court carefully avoided using "fundamental rights" language or the fundamental rights strict scrutiny standard. Instead, the Court continued to refer to the natural resource access right in question as a "highly important interest running to each person within the state." 785 P.2d at 10, quoting *Owsichek v. State*, 763 P.2d 488, 492 n. 10 (Alaska 1983) and *State v. Ostrosky*, 667 P.2d 1189, 1196 (Alaska 1983). A "highly important interest" is not the same as a fundamental right.

Moreover, the Court developed a new, less-than-strict scrutiny but, nevertheless, heightened standard to be applied in such instances: the demanding scrutiny standard. Under *McDowell*, while subsistence hunting and fishing implicate highly important individual interests, they do not rise to the level of fundamental rights. Moreover, the interest identified was an interest in equal access, not an absolute, enforceable individual right to hunt or fish for food. Alaska Const., Art. VIII, §§ 3 and 17, and *McDowell, supra*. It can be argued that the court declined to classify subsistence hunting and fishing as a fundamental right.

While access to Alaska's natural resources was, undoubtedly, of paramount concern to the framers of our constitution and remains so, it is also equally clear that the framers intended such activities as hunting and fishing to be extensively regulated. For example, Article VIII, § 17 expressly refers to "regulations" governing the use or disposal of natural resources. Virtually every other section in Article VIII is expressly or implicitly based on the underlying premise that the Legislature will heavily regulate the use and disposal of natural resources. Yet, fundamental rights, such as the right to privacy, may be burdened by legislative fiat only to serve a compelling state interest. *Gray v. State*, 525 P.2d 524, 527-28 (Alaska 1974). Requiring a compelling state interest for regulating hunting and fishing seasons, bag limits, means and methods, and the myriad of other activities routinely regulated by the Board of Game or Board of Fisheries may not be within the intent of Article VIII's provisions.

**C. Assuming the legislature may establish constitutionally fundamental rights, what would be the impact of a fundamental right to fish and hunt for food?**

The current legal standards for hunting and fishing regulations are well settled. In the case of non-uniform classifications, the state must demonstrate an important legitimate state purpose that balances against the "highly important interest running to each person within the state," and a means to further the state's purpose carefully designed for the "least possible infringement on article VIII's open access values." *Gilbert v. State, Dep't of Fish and Game*, 803 P.2d 391, 399 (Alaska 1990). And for other fish and game regulations, the state need only show any legitimate interest and a close and substantial relationship between its interest and the chosen means of advancing that interest. *Sampson*, at 91. Rather than these relatively clear-cut standards, if fishing and hunting for food are classified as a "fundamental" right, then the standards for a valid restriction will likely get much more difficult to achieve, as I've already noted.

The courts would impose "strict scrutiny" of any regulation of fundamental rights. This is the same standard applied to justify unequal treatment based on race and gender. When the state imposes restrictions on fundamental rights, it would be required to demonstrate (1) a compelling governmental interest, not just a legitimate or important interest, and (2) the absence of a less restrictive means to advance that interest. *Sampson v. State*, 31 P.3d 88, 91 (Alaska 2001). Since we have never had a court require a "compelling" state interest for fish and game regulations, we're not sure what we would have to show to meet that standard, but it may well be that only serious conservation reasons like sustained yield concerns would meet the test. Moreover, many of the current regulations may not pass muster. To cite just a few examples:

1. Fair chase hunting measures of any kind: These could be insufficient as a compelling state governmental interest.

2. Same-day airborne hunting bans could be questionable where other less restrictive measures might address any conservation concerns.
3. Any kind of methods and means restrictions such as hunting from or with airplanes, helicopters, boats, snowmachines, or other vehicles may be difficult to justify.
4. Any kind of gear restriction, type of weapon or fishing gear, could be suspect.
5. Any kind of bag or season limits based on needs to meet the current or historical allocations to other non-preferred users could be deficient, since those uses would not be fundamental rights. So as the hunting or fishing for food by residents expanded, commercial fishing, commercial trapping, charter fishing by non-residents would automatically give way, regardless of the perceived relative values of the uses.

There are probably many other regulatory restrictions that would be vulnerable to a challenge under the fundamental rights/strict scrutiny standard.

---

Subject: [Fwd: SB 318]  
Date: Mon, 08 Mar 2004 10:29:56 -0900  
From: Sarah Gilbertson <sarah\_gilbertson@fishgame.state.ak.us>  
To: Linda Hay <Linda\_Hay@Legis.state.ak.us>, brian\_hove <brian\_hove@legis.state.ak.us>

Linda & Brian,

As promised, please find attached Deputy Commissioner Regelin's testimony on S.B. 318 delivered on Monday, March 1 before the Senate Resources Committee.

Please let me know if you have any questions or need anything further.


With best regards,

Sarah A. Gilbertson  
Legislative Liaison/Special Assistant  
Office of the Commissioner  
Alaska Department of Fish & Game  
Phone: (907) 465-6137  
Fax: (907) 465-2332

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

Subject: SB 318  
Date: Mon, 08 Mar 2004 10:21:30 -0900  
From: Wayne Regelin <wayne\_regelin@fishgame.state.ak.us>  
To: Sarah A Gilbertson <sarah\_gilbertson@fishgame.state.ak.us>

my comments on SB 318 are attached, please forward to the people that requested them.

 SB 318.doc	Name: SB 318.doc Type: WINWORD File (application/msword) Encoding: base64 Download Status: Not downloaded with message
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## SB 318

Comments by Wayne Regelin on SB 318, March 1, 2004

The Administration and the Alaska Department of Fish and Game strongly support the long-term continuation of hunting and fishing in Alaska and elsewhere in the United States. Many people in the department work to promote hunting and recreational fishing in Alaska on a daily basis.

A few years ago many state legislatures considered legislation or constitutional amendments that affirmed that hunting and fishing was an important and legitimate use of their wildlife resources. They did this in response to attacks on hunting by various anti-hunting groups. At that time the Alaska legislature considered a constitutional amendment on this subject, but did not pass any legislation.

Only a few states did pass legislation and they were very careful in how they worded their law. Hunting is a regulated activity that requires a license in every state. If the law says it is a fundamental right, it could have ramifications on a states ability to regulate hunting and fishing activities and to require hunting or fishing licenses. It could also affect trespass laws.

If an activity is a fundamental right a state agency must meet a higher standard in order to regulate that activity.

Making consumptive use of fish and wildlife by individual Alaskans a fundamental right could have a significant impact on the ability of the Board of Fish to make allocations between commercial fishermen and others. This language appears to give sport fishing a priority over commercial fishing.

The Administration has concerns about making hunting and fishing a fundamental right. Current statutes already make consumptive use of wildlife a high priority. That said, if you wish, we will be happy to work with the bill's sponsor and the Department of Law to prepare language for the committee to consider.

**Fund in court.** As used in the rule providing for allowance of costs out of a "fund in court," this is a term of art and is applied where the plaintiffs' actions have created, preserved or increased property to the benefit of a class of which the plaintiff is not a member. *Sarner v. Sarner*, 38 N.J. 463, 185 A.2d 851, 853.

**Funding system.** The practice of borrowing money to defray the expenses of government, and creating a "sinking fund," designed to keep down interest, and to effect the gradual reduction of the principal debt. See *Sinking fund*, below.

**General fund.** This phrase, in many states, is a collective designation of all the assets of the state which furnish the means for the support of government and for defraying the discretionary appropriations of the legislature. Such are distinguished from assets of a special character, such as the school fund. See also *General fund*.

**General revenue fund.** As used in connection with municipal finances, term refers to the fund out of which the usual, ordinary, running, and incidental expenses of a municipality are paid.

**No funds.** This term denotes a lack of assets or money for a specific use. It is the return made by a bank to a check drawn upon it by a person who has no deposit to his credit there; also by an executor, trustee, etc., who has no assets for the specific purpose.

**Public funds.** An untechnical name for (1) the revenue or money of a government, state, or municipal corporation; (2) the bonds, stocks, or other securities of a national or state government. Money, warrants, or bonds, or other paper having a money value, and belonging to the state, or to any county, city, incorporated town or school district. The term applies to funds of every political subdivision of state wherein taxes are levied for public purposes. *Aetna Casualty & Surety Co. v. Bramwell*, D.C.Or., 12 F.2d 307, 309.

**Revolving fund.** Usually, a renewable credit over a defined period. In simple parlance it relates usually to a situation where a banker or merchant extends credit for a certain amount which can be paid off from time to time and then credit is again given not to exceed the same amount. It may also mean a fund, which, when reduced, is replenished by new funds from specified sources. Term may refer to a revolving charge account.

**Sinking fund.** The aggregate of sums of money (as those arising from particular taxes or sources of revenue) set apart and invested, usually at fixed intervals, for the extinguishment of the debt of a government or corporation, by the accumulation of interest. A fund arising from particular taxes, imposts, or duties, which is appropriated towards the payment of the interest due on a public loan and for the gradual payment of the principal. A fund created for extinguishing or paying a funded debt.

**Sinking fund tax.** A tax raised to be applied to the payment of interest on, and principal of public loan.

**Fundamental error.** See *Error*; *Plain error* rule.

**Fundamental fairness doctrine.** Due process of law as applied to judicial procedure. See *Due process of law*.

**Fundamental law.** The law which determines the constitution of government in a nation or state, and prescribes and regulates the manner of its exercise. The organic law of a nation or state; its constitution.

**Fundamental rights.** Those rights which have their source, and are explicitly or implicitly guaranteed, in the federal Constitution, *Price v. Cohen*, C.A.Pa., 715 F.2d 87, 93, and state constitutions, *Sidle v. Majors*, 264 Ind. 206, 341 N.E.2d 763. See e.g., *Bill of rights*.

Challenged legislation that significantly burdens a "fundamental right" (examples include First Amendment rights, (privacy, and the right to travel interstate)) will be reviewed under a stricter standard of review. A law will be held violative of the due process clause if it is not closely tailored to promote a compelling or overriding interest of government. A similar principle applies under Equal Protection law.

**Fundamus** /fʌndəˈmʌs/. We found. One of the words by which a corporation may be created in England. 1 Bl.Comm. 473.

**Fundatio** /fʌndəˈtʃi(ə)ʊ/. Lat. A founding or foundation. Particularly applied to the creation and endowment of corporations. As applied to eleemosynary corporations such as colleges and hospitals, it is said that "fundatio incipiens" is the incorporation or grant of corporate powers, while "fundatio perficiens" is the endowment or grant or gift of funds or revenues. *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 4 L.Ed. 629. See also *Foundation*.

**Fundator** /fʌndəˈtɔːr/. A founder (*q.v.*).

**Funded.** Said of a pension plan or other obligation when funds have been set aside for meeting the obligation when it becomes due. See also *Fund* (*Funded debt*).

**Funded pension plan.** One containing sufficient funds as contributed by a corporation to meet current and future retirement benefit obligations. The Employee Retirement Income Security Act (ERISA) regulates funding of pension plans.

**Funding.** Process of financing capital expenditures by issuing long term debt obligations or by converting short term obligations into long term obligations to finance current expenses. Allocation of money to investments or other type of reserve fund to meet future expenses for pension, welfare, or other benefits. ERISA specifies the requirements for funding of qualified retirement plans. See also *Fund*; *Funded*.

**Fundi patrimoniales** /fʌndəɪ pəˈtrɒməniyɛlyzi/. Lands of inheritance.

**Fundi publici** /fʌndəɪ pʌblɪsəɪ/. Public lands.

**Fundus** /fʌndəs/. In the civil and old English law, land; land or ground generally; land, without considering its specific use; land, including buildings generally; a farm.

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**Response to Senate Resources Committee Questions Regarding Senate Bill 318**  
**Alaska Department of Fish and Game**  
April 7, 2004

**Attachments:**

1. Regulations governing subsistence and personal use fisheries in Cook Inlet and Copper River.
2. Sockeye and Chinook Harvests in Cook Inlet and Copper River Personal Use, Sport, and Subsistence Fisheries.
3. Comparison of non-commercial and commercial sockeye harvests in Upper Cook Inlet from 1990-2002.
4. Comparison of Chitina Personal Use Dipnet and Copper River commercial fishery sockeye harvests from 1985 to 2003.

## **Subsistence Salmon Fisheries in Upper Cook Inlet**

A. Tyonek Subdistrict (in the waters from a point one mile south of the southern edge of the Chuitna River south to the easternmost tip of Granite Point

- 1) May 15 to June 15 from 4:00 p.m. through 8:00 p.m. on Tuesdays, Thursdays, and Fridays
- 2) June 16 through October 15 from 6:00 a.m. through 6:00 p.m. on Saturdays
- 3) The season closes by EO if 4,200 kings have been taken
- 4) Lawful gear are 10 fathom gillnets

Yentna River (in waters outside the Anchorage Mat-Su-Kenai nonsubsistence area described in 5 AAC 99.015(a)(3).

- 1) Limit is 2,500 sockeye salmon
- 2) Lawful gear is a fishwheel

## **Personal Use Salmon Fisheries in Upper Cook Inlet**

A. General Provisions

1. Residents only and must have a valid sport fish license and free PU permit

B. Kasilof Gillnet Fishery

1. Season is from June 15 through June 24
2. fishing occurs from 6:00 a.m. to 11:00 p.m.
3. lawful gear is 10 fathom gillnets
4. annual limits are specified in 5 AAC 77.525 (25 salmon per head of household with 10 additional per dependent)
5. all king salmon are allowed to be retained in this fishery

C. Kasilof Dipnet Fishery

1. Season is June 25 through Aug 7, 24 hours per day
2. annual limit is 25 per head of household, 10 per dependent
3. ALL king salmon must be released immediately

D. Kenai Dipnet Fishery

1. Season is July 10 through July 31
2. fishing occurs from 6:00 a.m. to 11:00 p.m. on Kenai sockeye salmon runs < 2 million
3. on Kenai runs > 2 million commissioner may EO the fishery to 24 hours per day
4. annual limit is 25 per head of household, 10 per dependent
5. annual limit on king salmon is one per household

E. Fish Creek Dipnet Fishery

1. commissioner will open by EO from July 10 through July 31 if the department projects the escapement of sockeye salmon into Fish Creek will be above the upper end of the escapement goal of 70,000 fish
2. annual limit is 25 per head of household, 10 per dependent
3. ALL king salmon must be released immediately

## **Subsistence and Personal Use Salmon Fisheries in the Upper Copper/Upper Susitna Rivers**

**Batzulnetas:** Those waters of the Copper River between ADF&G regulatory markers located near the mouth of Tanada Cr. to approximately ½ mile downstream from the mouth (5 AAC 01.647).

- 1) Season: June 1 through September 1.
- 2) Fishing periods established by E.O. and are either 2d/wk or 3.5d/wk after June.
- 3) A permit is required.
- 4) Fishwheels with livebox or dipnets may be used in the Copper River; dipnets or spears may be used in Tanada Cr.
- 5) Only salmon other than king salmon may be taken.
- 6) Limits are for a household of one 30 salmon, and for a household of 2 the limit is 60 salmon. Upon request permits may be issued for additional salmon.

**Glennallen Subdistrict:** (All waters of the Copper River upstream from the Chitina-McCarthy Bridge to Slana (5 AAC 01.605).

- 1) June 1 through September 30, Continuous season.
- 2) Fishwheels or dipnets.
- 3) Limits are for a household of 1 person 30 salmon, no more than 5 king salmon if taken with a dipnet; for a household of 2 persons, 60 salmon of which no more than 5 king salmon if taken by dipnet; permits for additional salmon will be issued up to 500 salmon for a household of more than 2 persons.
- 4) A permit is required.

**Personal Use Salmon Fisheries-Copper River** (All waters of the Copper River downstream from the Chitina McCarthy bridge to an east-west line crossing the Copper River about 200yds upstream of Haley Creek as designated by ADF&G regulatory markers (5 AAC 01.605).

- 1) June 1 through September 30; opening date and fishing periods established by E.O.
- 2) Dipnets only legal gear type.
- 3) A permit is required.
- 4) Limits for household of 1 are 15 salmon only one of which can be a king salmon; for household of 2 or more persons limit is 30 salmon only one of which can be a king salmon.

Upper Cook Inlet Commercial, Sport, and Personal Use Chinook and Sockeye Salmon Annual Harvest

UCI Commercial Fishery		
Year	Chinook	Sockeye
1990	16,105	3,604,259
1991	13,542	2,178,331
1992	17,171	9,108,353
1993	18,871	4,755,329
1994	19,941	3,565,586
1995	17,893	2,951,827
1996	14,306	3,888,922
1997	13,292	4,176,738
1998	8,124	1,219,242
1999	14,383	2,680,510
2000	7,350	1,322,482
2001	9,295	1,826,833
2002	12,714	2,773,118
2003	18,486	3,472,741
MEAN	14,391	3,394,591

Recreational Fishery				
Year	Kenai River		All other UCI	
	Chinook	Sockeye	Chinook	Sockeye
1990	7,684	120,788	35,091	76,122
1991	9,174	161,602	42,817	119,524
1992	9,753	242,492	65,076	81,664
1993	30,312	137,180	72,865	79,021
1994	27,708	93,616	59,576	94,083
1995	23,168	125,425	44,495	55,566
1996	15,740	186,291	42,853	75,715
1997	15,177	177,133	49,404	74,174
1998	7,450	164,536	40,728	92,249
1999	17,145	200,574	52,012	93,298
2000	16,613	230,983	65,038	106,701
2001	15,189	200,762	47,243	84,320
2002	10,353	225,917	5,342	98,363
2003				
MEAN				

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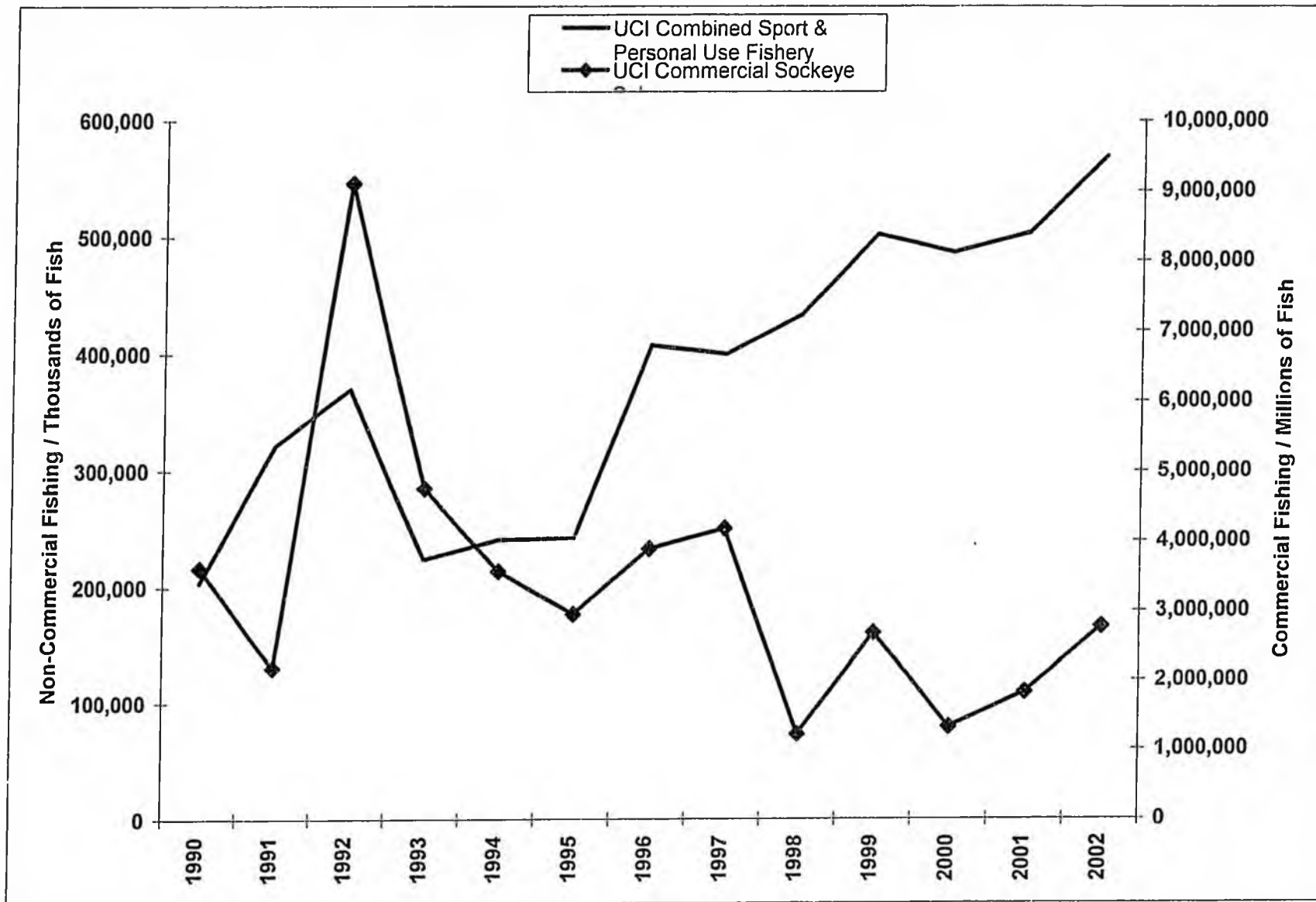
UCI Personal Use Fishery		
Year	Chinook	Sockeye
1990	133	7,123
1991	584	40,610
1992	1,139	46,419
1993	47	7,942
1994	1,501	53,333
1995	1,415	61,602
1996	452	145,545
1997	464	148,940
1998	549	176,581
1999	1,108	208,589
2000	1,102	149,267
2001	1,138	218,688
2002	997	249,864
2003		

Tyonek Subsistence		
Year	Chinook	Sockeye
1990	781	66
1991	902	26
1992	907	75
1993	1370	57
1994	770	85
1995	1317	45
1996	1,039	68
1997	639	101
1998	978	163
1999	1,230	144
2000	1,157	63
2001	976	172
2002	898	76
2003	973	89

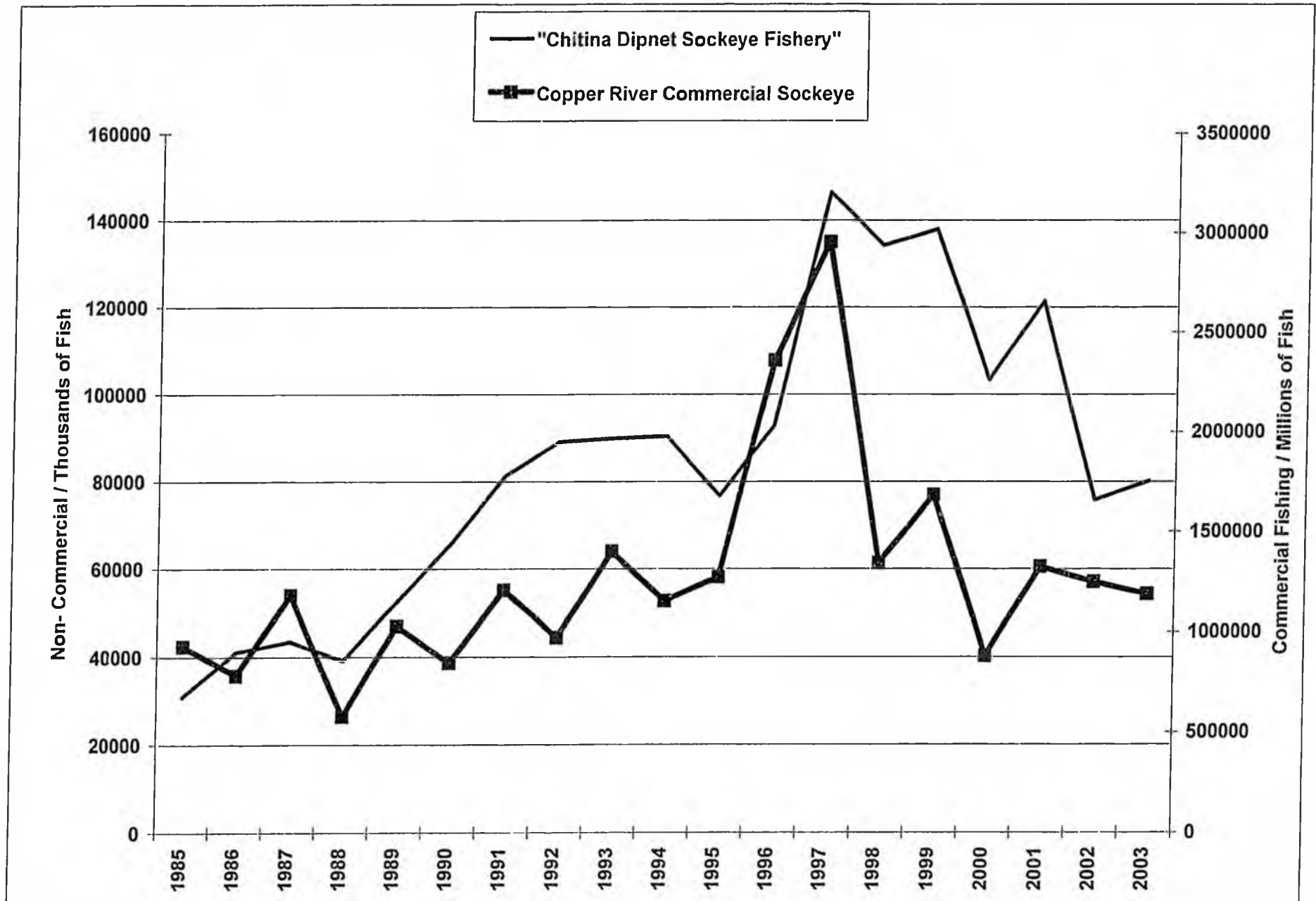
Percentage of annual harvest by user group (does not include Tyonek Subsistence)

Year	Chinook Salmon			Sockeye Salmon		
	Commercial	Sport	PU	Commercial	Sport	PU
1990	27%	72%	0%	95%	5%	0%
1991	20%	79%	1%	87%	11%	2%
1992	18%	80%	1%	96%	3%	0%
1993	15%	85%	0%	95%	4%	0%
1994	18%	80%	1%	94%	5%	1%
1995	21%	78%	2%	92%	6%	2%
1996	20%	80%	1%	91%	6%	3%
1997	17%	82%	1%	91%	5%	3%
1998	14%	85%	1%	74%	16%	11%
1999	17%	82%	1%	84%	9%	7%
2000	8%	91%	1%	73%	19%	8%
2001	13%	86%	2%	78%	12%	9%
2002	43%	53%	3%	83%	10%	7%
2003	100%	0%	0	100%	0%	0%

Combined	
1990	204,033
1991	321,736
1992	370,075
1993	224,143
1994	241,032
1995	242,593
1996	407,551
1997	400,247
1998	433,366
1999	502,461
2000	486,951
2001	503,770
2002	569,144



Source: ADF&G



**Michael A. D. Stanley**

**Attorney at Law**

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Telephone: (907) 586-6077  
Facsimile: (907) 463-2511

Date: April 1, 2004

To: Jerry McCune  
United Fishermen of Alaska

From: Mike Stanley

Subj: CSSB 318 -- "An Act relating to the right of Alaska residents in the consumptive uses of fish and game."

You have asked me to provide an opinion on the subject legislation, which would declare it to be the policy of the State of Alaska "that the consumptive uses of wild fish and game resources by Alaska residents for their sustenance is a very important and fundamental right when considering the management and allocation of those resources." In particular, you are interested in understanding what it may mean to declare consumptive uses a "fundamental right" and what impact this policy declaration might have on decision-making by the Alaska Board of Fisheries or the Alaska Board of Game.

I reviewed the comments submitted by Assistant Attorney General Lance Nelson, dated March 29, 2004. In general, I agree with the views expressed by other attorneys and will not reiterate the points they made. I would, however, offer some additional thoughts.

The proposed legislation raises a number of significant questions. First, it is far from clear what the intent of this provision is and how it would be applied if enacted. Most provisions of the Fish and Game Code, AS 16.05, define the respective authorities of the commissioner of the Alaska Department of Fish and Game (ADF&G) or the boards and impose certain duties upon them. The proposed AS 16.05.005 does neither, but instead is a general statement of policy. But there is no clear guidance as to when the policy applies. For instance, when the commissioner exercises his emergency order (E.O.) authority, he is engaged in "management" of the resource. Is the policy intended to limit the commissioner's E.O. authority or otherwise constrain inseason management? The commissioner routinely opens commercial fisheries by E.O., and someone can always argue that it adversely impacts their use of fish for personal and family consumption. Is such an E.O. invalid, or subject to challenge, because the commissioner allegedly failed to consider consumptive uses by Alaska residents for their sustenance? This is an open question under the bill.

Second, the legislation has constitutional implications. As Utermohle and Nelson discuss, the existence of fundamental rights is a matter of constitutional law, either as set out explicitly in a constitution or as interpreted by a court. If a fundamental right exists, then courts must closely scrutinize regulations impinging on the right, and the state must generally demonstrate a compelling interest before constraining the exercise of that right. The Alaska Supreme Court has not declared that consumptive uses of fish and wildlife in Alaska is a fundamental right and, in my view, is unlikely to do so. Instead, the court generally views management and allocation of fish and wildlife as a form of economic regulation, and will not interfere in the exercise of the commissioner's or the boards' discretion as long as they can demonstrate that their actions have a rational basis and were the product of reasoned decision-making.

The question, however, is whether the proposed legislation would change this analytical framework. That is, instead of the relatively deferential standard of review currently employed by the courts in reviewing decisions affecting fish and game, the declaration of a fundamental right to consumptive uses for sustenance could trigger heightened scrutiny by the courts and lead to a significantly greater role for the judiciary in fish and game management. Increased judicial oversight of fish and game management might be good for natural resource lawyers, but I doubt most managers or users would welcome the change.

I also think there is a question whether CSSB 318, as currently worded, is constitutional. Article VIII, Section 1 states: "It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest." The proposed legislation articulates a different policy, one that is much narrower. I have some doubt whether the proposed legislation would stand in the face of Section 1. At the very least, it raises the question – discussed by Nelson – whether declaring fundamental rights is within the ambit of legislative authority.

Similarly, Article VIII, Section 15 prohibits creation of an "exclusive right or special privilege of fishery." The proposed AS 16.05.005 may also be found in conflict with this clause, at least as it applies to fisheries, since it declares that consumptive uses for sustenance have a privileged status as "very important" and as a "fundamental right." This is not a case of the legislature creating a preference for one beneficial use, as it did with subsistence. Article VIII, Section 4, clearly authorizes such preferences, and the boards are routinely called upon to make allocations among different user groups. If the sponsors want consumptive use for sustenance to have a preference over other consumptive or non-consumptive uses, then they should draft a bill to that effect and prescribe the procedures for implementing it. Instead, the bill as drafted declares that consumptive use for sustenance have special status as a fundamental right, and thus brings Section 15 into the analysis. Again, how the courts would resolve this issue is speculative at this point.

Finally, depending on how the courts interpreted the proposed legislation – which cannot be readily predicted at this stage – there could be a substantial limitation on the discretion of both ADF&G and the two boards when it comes to managing and allocating fish and game resources. The courts have generally held that the commissioner and the boards have broad authority to conserve and develop Alaska's fisheries resources. The Alaska Supreme Court has stressed the need for flexibility in fish and game management. *See, e.g., Native Village of Elim v. State*, 990 P.2d 1, 7-8 (Alaska 1990) (the "primary emphasis of the framers' discussions and the glossary's definition of sustained yield is on the flexibility of the sustained yield requirement and its status as a guiding principle rather than a concrete, predefined process.") As discussed above, courts employ a deferential standard of review and do not substitute their judgment for that of the agencies. In other words, actions by the commissioner and the boards are presumed valid, and a person challenging a particular action faces a rather steep hurdle in convincing a court that it was arbitrary and unreasonable.

However, if consumptive use for sustenance is deemed a "fundamental right," and close judicial scrutiny is required, then the burden will effectively have been reversed, with the state having to demonstrate a compelling interest *before* taking any action that impinges on the fundamental right. One can imagine dozens of regulations on the harvest of fish and wildlife that, while clearly consistent with sound management and sustained yield, may be found not to serve a compelling state interest and thus could be struck down as inconsistent with the policy articulated in CSSB 318. At the very least, one would expect a significant increase in the number of challenges to regulations that, in one way or another, arguably affect consumptive use for sustenance.

In sum, there are many unknowns concerning how the proposed legislation would be interpreted and applied, and I believe there is a considerable risk that the proposed AS 16.05.005 would result in substantial changes in how fish and game management and allocations decisions are made and, especially, how such decisions are reviewed in the courts.

Please let me know if you have any questions or comments on the foregoing analysis.

**United Southeast Alaska Gillnetters**

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

April 7, 2004

The Honorable Scott Ogan, Chair  
Senate Resources Committee  
State Capitol-Room 103  
Juneau, Alaska 99801

Send Via Fax To: 465-3263

Dear Senator Ogan,

The committee substitute for SB 318 would establish a policy for the management of Alaska's fish and game that personal consumption is a "fundamental right when considering the management and allocation of those resources". At face value, this seems a very reasonable policy. When viewed in the context of current management programs and issues, it raises many questions, however. Some examples of these are:

- If the number of applicants for a specific game tag in a specific management area were greater than the number of tags available, would ALL Alaskans applying for the tag need to be accommodated before non-residents could draw for tags? If this were true, the big game guiding business could be severely restricted or eliminated.
- It is currently the policy of the Department of Fish and Game in Ketchikan to issue personal use permits for individuals and families who want to get some fish for their own use. The Department usually requires the fish be taken from a system with adequate escapements to withstand the pressure this personal use creates. Most of the time these systems are remote from Ketchikan and require a boat or plane to access them. Would the policy in CS SB 318 require the Department to allow folks in Ketchikan who do not have a boat to catch their "sustenance" fish from Ketchikan Creek or Ward Creek regardless of whether the fish stocks in these systems could tolerate that much pressure? Would then, the commercial fisheries in the adjoining management areas be restricted to allow more fish to reach these systems? Why do we need this new policy when the personal use needs of Alaskans are being satisfied by the current policies of the Department?
- How does this proposed policy fit with the Federal subsistence regulations that are currently being forced on Alaskans? Is this another attempt to circumvent the rural preference for subsistence that is currently required for Alaska by Federal legislation?

These are just a few of the questions that come to mind with respect to this proposed new policy. The current Federal takeover of fish and game subsistence management has caused significant controversy in Alaska and will probably continue to do so until a procedure is found that will return all fish and game management to the State. This controversy aside, is the management of our fish and game resources being conducted in such a manner that a policy such as this is required to protect the right of our citizens to access these resources? The United Southeast Alaska Gillnetters do not believe this policy is necessary at this time or that it is in the best interest of the State of Alaska. We therefore urge the Senate Resources Committee to vote no on CS SB 318. We thank you for your support of sound resource management and appreciate your consideration of our opposition to CS SB 318.

Yours truly,



Kenneth Duckett  
Executive Director

# STATE OF ALASKA

## Matanuska/Susitna Valley Fish & Game Advisory Committee

Frank H Murkowski, Governor

Wayne Kubat, Chair  
PO Box 874867  
Wasilla, Alaska 99687  
ph. & fax: 376-9568  
email: args@mtaonline.net

March 25<sup>th</sup>, 2004

Senator Lyda Green, Fax: 465-3805  
Senator Scott Ogan, Fax: 465-3265  
Representative Carl Gatto, Fax: 465-2381  
Representative Vic Kohring, Fax: 465-3818  
Representative Beverly Masek, Fax: 465-4822  
Representative Bill Stoltze, Fax: 465-4928

Dear Valley Legislators,

The Mat-Su Fish and Game advisory committee would like to weigh in on the following bills, which we discussed and voted on at our March 24<sup>th</sup>, 2004 advisory committee meeting.

- We **support** Senate Bill 318: An Act relating to the individual right of Alaska residents in the consumptive use of fish and game. "BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA: \* **Section 1.** AS 16.05 is amended by adding a new section to read: **Sec. 16.05.005. Policy.** It is the policy of the state that the consumptive use of wild fish and game resources by individual Alaska residents is a very important and fundamental individual right when considering the management and allocation of those resources. This bill would give Alaskans first priority for our fish and game resources as required by the State Constitution, at a time when an increasing number of groups are trying to stop Alaskans from harvesting our own food supplies and trapping our own furs.
- We **oppose** Senate Bill 69. The purpose of this Act is to preserve and enhance the ability of the Board of Fisheries to act as a lay board. To accomplish this goal, this Act requires members of the board to participate in the issues that come before the board even though the members have a personal or financial interest in the matter by virtue of their participation in a fishery. We think it would be difficult for members of the Boards to vote impartially on matters that directly effect their livelihood or that of family members.
- We **oppose** House Bill 396: An Act relating to management of salmon and other fish stocks and salmon fisheries and to the use of funds received by an enhancement facility from the sale of fish." The **bill states** "the state shall be managed consistent with **maximum sustained yield of important and dominant salmon stocks and with** sustained yield of **other** wild fish stocks and may be managed consistent with sustained yield of enhanced fish stocks." This bill is written in such a way as to allow one species of salmon to take priority over all other stocks. For example in Cook Inlet, this bill will allow for the maximum harvest of red salmon at the expense of other salmon stocks. Our stock in upper Cook Inlet would suffer drastically under this management style and other areas of Alaska at the tail end of salmon runs will suffer too!

Thank you for your support on these and other wildlife matters!

Sincerely,

Wayne Kubat - Chairman

# URGENT!! 04/07/04 MEETING!!

## Public Opinion Message

Please contact your local Legislative Information Office (LIO) to send POMs.  
A listing of LIOs can be found at <http://www.legis.state.ak.us/legaff/lolist.htm>

This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.

**From:** Please PRINT the information below. This form must be signed by the sender.

<small>Mr./Ms./Mrs.</small>	<small>First name</small> Cecilia	<small>Initial</small> A	<small>Last name</small> Wiese	<small>J./Sr./III</small>
<small>Group affiliation (if applicable)</small>				<small>Daytime telephone number</small> 907 424 8200
<small>Mailing address</small> Box 1708, Cordova, AK				<small>Zip code</small> 99574
<small>Residence (street) address if different from mailing address</small> 400 Railroad Row, Cordova, AK				<small>Zip code</small> 99574
<small>Email address</small> wiesefam@ctcok.net			<small>Signature</small> <i>Cecilia Wiese</i>	<small>Date</small> 7 April 2004

**To:** Put a ✓ in the appropriate box(es).

Committees	House members	Senate members																																																																																																						
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**Subject:** Fill out the boxes below OR enter a Subject.

<small>HB or SB</small>	<small>Bill number</small>	<small>and check one:</small>	<input checked="" type="checkbox"/> Support	<input type="checkbox"/> Oppose	<input type="checkbox"/> Amend	<small>OR enter a general Subject (LIO staff may modify):</small>
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**Message** Your PRINTED message cannot exceed 50 words or contain any vulgar language.

I	urge	your	opposition	to
CSSB 318.	As proposed,	this	legislation	clearly
conflicts	with the	established	authorities	of the
ADF & G	and the	Boards	of Fisheries	and
Game	to manage	and allocate	Alaska's	fish and
game.	The legislature	does not	have the	authority
to establish	a	"fundamental	right"	through
statute.				

## Public Opinion Message

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A listing of LIOs can be found at <http://www.legis.state.ak.us/legaff/llolist.htm>

This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.

**From:** Please PRINT the information below. This form must be signed by the sender.

Mr. / Mrs. / Mrs.	First name	M.I.	Last name	Z./Sr./In
MR	HENRY <del>WIESE</del>	M	WIESE	
Group affiliation (if applicable)				Daytime telephone number
C.D.F.U.				907-424-3667
Mailing address				Zip code
PO Box 1708 Cordova, Alaska				99574
Residence (street) address if different from mailing address				Zip code
400 Railroad Row Cordova, Alaska				99574
Email address			Signature	Date
WIESEFAM@CTEAK.net			Henry M. Wiese	4/7/04

**To:** Put a  in the appropriate box(es).

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**Subject:** Fill out the boxes below OR enter a Subject.

HB or SB	Bill number		and check one:	<input checked="" type="checkbox"/> Support	OR	enter a general Subject (LIO staff may modify):
				<input type="checkbox"/> Oppose		
				<input type="checkbox"/> Amend		

**Message** Your PRINTED message cannot exceed 50 words or contain any vulgar language.

I	urge	your	opposition	5
CSSB 318.	As proposed,	this	legislation	10
conflicts	with the	established	authorities	15
ADF&G	and the	Boards	of Fisheries	20
and	to manage	and allocate	Alaska's fish and	25
game.	The legislature	does not	have the authority	30
to establish a	"fundamental	right"	through	35
statute.				40
				45
				50

## Public Opinion Message

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*This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.*

**From:** Please **PRINT** the information below. This form must be signed by the sender.

<input checked="" type="checkbox"/> Mr. / Mrs.	First name <b>Dennis</b>	<input checked="" type="checkbox"/> M.	Last name <b>Zadra</b>		Jr. / Sr. / III
Group affiliation (if applicable)				Daytime telephone number <b>907 424-3718</b>	
Mailing address <b>PO Box 2348, Cordova AK 99574</b>				Zip code	
Residence (street) address if different from mailing address <b>Glaser Trailer Court #13, Cordova AK</b>				Zip code <b>99574</b>	
Email address			Signature <b>Dennis M. Zadra</b>		Date <b>4/07/04</b>

**To:** Put a  in the appropriate box(es).

	House members	Senate members
<b>Committees</b>		
<input type="checkbox"/> H or S	<input type="checkbox"/> Anderson (ade)	<input type="checkbox"/> Kertula (ker)
<input type="checkbox"/> Community & Regional Affairs	<input type="checkbox"/> Berkowitz (ber)	<input type="checkbox"/> Kohring (koh)
<input type="checkbox"/> Finance (fin)	<input type="checkbox"/> Chenault (che)	<input type="checkbox"/> Kookesh (kos)
<input type="checkbox"/> Health, Ed., & Social Services	<input type="checkbox"/> Cissna (cis)	<input type="checkbox"/> Koll (kol)
<input type="checkbox"/> Judiciary (jud)	<input type="checkbox"/> Coghill (cog)	<input type="checkbox"/> Lynn (lyn)
<input type="checkbox"/> Labor & Commerce (l&c)	<input type="checkbox"/> Crawford (crf)	<input type="checkbox"/> Masek (mas)
<input type="checkbox"/> Resources (res)	<input type="checkbox"/> Croft (cro)	<input type="checkbox"/> McGuire (mcg)
<input type="checkbox"/> Rules (rls)	<input type="checkbox"/> Dahstrom (dal)	<input type="checkbox"/> Meyer (mey)
<input type="checkbox"/> State Affairs (sta)	<input type="checkbox"/> Fate (fht)	<input type="checkbox"/> Morgan (mor)
<input type="checkbox"/> Transportation (tra)	<input type="checkbox"/> Foster (fos)	<input type="checkbox"/> Moses (mos)
<input type="checkbox"/> Other:	<input type="checkbox"/> Gara (gar)	<input type="checkbox"/> Ogg (ogg)
<input type="checkbox"/> Other:	<input type="checkbox"/> Gal'lo (gal)	<input type="checkbox"/> Rokeberg (rok)
	<input type="checkbox"/> Gruenberg (grn)	<input type="checkbox"/> Samuels (sal)
	<input type="checkbox"/> Guttenberg (gtt)	<input type="checkbox"/> Seaton (san)
	<input type="checkbox"/> Harris (har)	<input type="checkbox"/> Stepovich (stp)
	<input type="checkbox"/> Hawker (haw)	<input type="checkbox"/> Stoltze (stz)
	<input type="checkbox"/> Heinze (hez)	<input type="checkbox"/> Weyhrauch (weh)
	<input type="checkbox"/> Holm (hol)	<input type="checkbox"/> Williams (wil)
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	<input type="checkbox"/> Kapsner (kap)	<input type="checkbox"/> Wolf (wol)
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		<input type="checkbox"/> Cowdery (coy)
		<input type="checkbox"/> Davis (dab)
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		<input type="checkbox"/> Stedman (smn)
		<input type="checkbox"/> B. Stevens (ste)
		<input type="checkbox"/> G. Stevens (stv)
		<input type="checkbox"/> Theriault (thr)
		<input type="checkbox"/> Wagoner (wag)
		<input type="checkbox"/> Wilken (wlk)

**Subject** Fill out the boxes below **OR** enter a Subject.

HB or SB	Bill number		and check one:	<input checked="" type="checkbox"/> Support	
<b>SB</b>	<b>318</b>			<input type="checkbox"/> Oppose	<b>OR</b> enter a general Subject
				<input type="checkbox"/> Amend	(LIO staff may modify):

**Message** Your **PRINTED** message cannot exceed 50 words or contain any vulgar language.

I	urge	opposition	to	CSSB 318 <sup>5</sup>
As	proposed	this	legislation	clearly <sup>10</sup>
conflicts	with	the	established	authorities <sup>15</sup>
of	the	ADF+G	and	Boards <sup>20</sup>
of	Fish	and	Game	to <sup>25</sup>
manage	and	allocate	Alaska's	fish <sup>30</sup>
and	game.	The	Legislature	does <sup>35</sup>
not	have	the	authority	to <sup>40</sup>
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statute.				<sup>50</sup>

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**From:** Please **PP'NT** the information below. This form must be signed by the sender.

<input checked="" type="radio"/> Mr. / Mrs.	First name <b>Gerald</b>	M.I.	Last name <b>Kompkoff</b>	Jr. / Sr. / III
Group affiliation (if applicable) <b>CDFU</b>				Daytime telephone number
Mailing address <b>P.O. Box 2256</b>				Zip code <b>99574</b>
Residence (if not) address if different from mailing address				Zip code
Email address <b>Kompkoff@ctcak.net</b>		Signature <i>Gerald Kompkoff</i>		Date <b>4/7/04</b>

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	House members	Senate members																																																																																																																		
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**Subject:** Fill out the boxes below **CR** enter a Subject.

HB or SS	Bill number	and check one:	<input checked="" type="checkbox"/> Support	OR	<input type="checkbox"/> Amend	OR	<input type="checkbox"/> enter a general Subject (LIO staff may modify):
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**Message** Your **PRINTED** message cannot exceed 50 words or contain any vulgar language.

I	urge	your	opposition	5
CSSB 31R.	As proposed,	this	legislation	10
conflicts	with the	established	authorities	15
ADF&G	and the	Boards	of Fisheries	20
Game to	manage	and allocate	Alaska's fish and	25
game.	The legislature	does not	have the authority	30
to establish	a	"fundamental	right" through	35
statute				40
				45
				50



# UNITED FISHERMEN OF ALASKA

April 7, 2004

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

Senator Scott Ogan, Chair  
Senate Resources Committee  
Alaska State Legislature  
State Capitol (Mail Stop 3100)  
Juneau, AK 99801-1182

Dear Senator Ogan,

United Fishermen of Alaska vigorously opposes the current Committee Substitute for Senate Bill 318 or any other form or version of the content of this legislation in Senate Resources or any other committee of either body of the legislature.

Although UFA recognizes the importance of fisheries resource use and consumption by all Alaska residents, including UFA members, to hunt and gather salmon for sustenance, this legislation far exceeds this mandate and causes potentially far-reaching consequences that threaten to cripple the basic economy and social structure of coastal Alaska.

The concept of management of fish and game for the sustenance of Alaska residents is alive and working today, through regulation by the ADFG, the Board of Fisheries and the Board of Game. Certainly there is a balance in the wants and needs regarding sustenance between personal use, subsistence, commercial, sport charter, fishing lodges and big game guiding. The idea of placing personal use into its own statute as a fundamental right raises serious concerns regarding how this would be implemented statewide and the impact it could have on accomplishing the basic needs that sustain life in coastal Alaska. These needs include food, shelter, medical care and education for families reliant upon commercial fishing, guided sport fishing and hunting for sustaining their basic necessities.

With the language of CS SB318 instituted, almost any action in management of fish and game could be called into question and brought to court. UFA has long held the opinion that courts of law are a very poor forum in which to decide management of fishery issues.

#### 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 Fisherman'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

United Fishermen of Alaska represents 32 Alaska commercial fishing organizations, and hundreds of individual fishermen and related businesses, altogether representing over 10,000 Alaska commercial fishermen.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Thorstenson, Jr.", with a stylized flourish at the end.

Bob Thorstenson, Jr.  
President

COMMENTS ON Senate Bill 318

By

Department of Fish and Game

April 2, 2004

At the Senate Resources committee meeting on March 26, the Department of Fish and Game was asked to evaluate how SB 318 would impact guided sport fishing, big game guiding and non-resident hunting; if SB 318 would make management more difficult; and finally, if SB 318 might change the allocation schemes, using the Cook Inlet and Prince William Sound/Copper River fisheries as examples when answering this question. We will do our best to answer your questions. I will provide some general comments and then Doug Mecum, Director of the Division of Commercial Fisheries will provide more specific information.

Alaska Statute 16.05.258 directs the Board of Game to provide the highest priority to subsistence use. Alaska Statute 16.05.255 (d) requires that the taking of moose, deer, elk, and caribou by residents for personal or family consumption, has preference over taking by nonresidents.

It is more complex on the fishery side because of the large commercial fisheries in many areas and the importance of personal use fisheries as well as recreational and subsistence use fisheries. The subsistence statute, AS 16.05.258, directs the Board of Fisheries, as well as the Board of Game, to provide a priority for subsistence use, but no statute establishes a priority among the other uses of fishery resources.

However, AS 16.05.251 gives the Board of Fisheries authority to "allocate fishery resources among personal use, sport, guided sport, and commercial fisheries." This statute also establishes seven criteria the Board may use to make allocation decisions:

- (1) history of each personal use, sport, guided sport, and commercial fishery;
- (2) number of residents and nonresidents who have participated in each fishery in the past, and the number of residents and nonresidents who can reasonably be expected to participate in the future;
- (3) importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption;**

- (4) availability of alternative fisheries resources;
- (5) importance of each fishery to the economy of the state;
- (6) importance of each fishery to the economy of the region and local area in which the fishery is located;
- (7) importance of each fishery in providing recreational opportunities for residents and nonresidents.

The third criterion relates directly to the use of fish for sustenance; it says the Board should consider "the importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption." Consequently, the Board of Fisheries adopted regulation 5 AAC 39.205 that requires these seven criteria be considered when making allocation decisions.

Since the Board of Game already has direction from the legislature on this issue, and the Board of Fisheries already considers and evaluates the importance of each fishery for personal and family consumption, SB 318 does not seem to be necessary.

It is difficult to predict the impact that passage of SB 318 would have on the management of game and fish populations and allocation decisions made by the Boards. I think the biggest impact on both fisheries and wildlife management will be brought about over time, through litigation over use of the words "fundamental right." At this time, we cannot give specific examples of changes to expect or provide a thorough risk analysis of adverse court rulings. This is because no case law exists on this subject -- no state has risked making hunting and fishing a fundamental right, thereby jeopardizing their ability to then regulate hunting and fishing.

I recommend caution when considering this bill because attorneys from the Department of Law, the Legislature, and Paul Lenzini, long-time, eminent, council to the International Association of Fish and Wildlife Agencies, all give similar advice. They urge that hunting and fishing not be called a "fundamental right" because it could jeopardize a states' ability to effectively regulate hunting and fishing.

While Mr. Lenzini has not seen nor commented on SB 318, several years ago when various states were considering amending their constitutions to make hunting and fishing a fundamental right, he urged all states to not use the words "fundamental right" because it could then jeopardize their ability to regulate hunting and fishing.

I understand the desire to ensure that the use of fish and game for food by Alaskans be given more consideration by the Board of Fisheries, and acknowledge that the Legislature has the authority to provide specific direction to the Boards to accomplish this. However, the current process seems to serve the state well.

That concludes my comments and I will let Doug Mecum answer the questions you had about allocations of our fishery resources.

# Alaska State Legislature

## Legislative Affairs Agency

Information and Teleconferencing

716 W. 4<sup>th</sup> Avenue, Suite 200 Anchorage, AK 99501-2133

Phone (907) 269-0111 Fax (907) 269-0229

Email: Anchorage\_LIO@legis.state.ak.us



To: Sen. Ogen, SPES Chair

Fax: 465-3265

Comments: Written (T) from Paul Jeshin (5 pgs)

Pages: (inc. cover sheet): 6

Date: 4/7/04

Time: \_\_\_\_\_

Transmitted By: J. HAYS

or "high preference" or  
"holier than thou" standing

SENATE RESOURCES COMMITTEE HEARING - April 7, 2004

TESTIMONY CONCERNING SB 318

Mr. Chairman, members of the committee, the Alaska constitution does not grant special "individual rights" to hunters over non-hunters, and therefore this bill shouldn't either. I see this legislation as a form of prejudicial bigotry aimed at the 75 percent of Alaskans who are non-hunters. Too much power already is concentrated in the hands of hunters. All wildlife regulatory decisions on state land are made by the Board of Game which is composed solely of people with a hunting background. Non-hunters need not apply.

When it comes to the management of our wildlife hunters and non-hunters should be working together as equals. The Constitution of Alaska states that wildlife is intended for the "common use" of all Alaskans. Non-hunters care about how our wildlife is managed just as much as hunters. I would recommend that the Senate Resources Committee reject SB 318 as discriminatory and prejudicial, and consider instead SB 343, the bill that would create a Board of Wildlife. It says that, "The membership of the board, taken as a whole, shall directly reflect all of the citizen's various uses of game for sport and subsistence hunting, trapping, nonconsumptive uses, tourism, and scientific study in a comprehensive and fair manner."

Unlike SB 318, SB 343 would create a level playing field, whereby the diversity of wildlife interests and values held by most Alaskans would be reflected within the Board's composition. According to a state wide survey carried out by Dittman Research Corporation, 83 percent of voters favor a Board of Wildlife composed of hunters and non-consumptive users over an all hunter-trapper board. Seventy percent of hunters also indicated during the survey that they wanted a Board of Wildlife, which tells us that fairness in decision making is very much a core value of all Alaskans.

Mr. Chairman, members of the committee, by supporting SB 343 you would go a long ways toward improving the ability of hunters and non-hunters to work together in resolving complex wildlife issues for the benefit of all Alaskans. SB 318 does just the opposite.

Paul Joslin, PhD.  
Wildlife Director  
Alaska Wildlife Alliance  
907-277-9816 Phone  
907-250-5944 Cell  
907-277-7423 Fax  
<http://www.akwildlife.org>

## Bill Text

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**BILL ID: SB 318**

00 SENATE BILL NO. 318  
01 "An Act relating to the individual right of Alaska  
02 residents in the consumptive use of  
03 fish and game."  
04 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
05 \* Section 1. AS 16.05 is amended by adding a new  
06 section to read:  
07 Sec. 16.05.005. Policy. It is the policy of  
08 the state that the consumptive use of  
09 wild fish and game resources by individual Alaska  
10 residents is a very important and  
11 fundamental individual right when considering the  
12 management and allocation of  
13 those resources.

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## Bill Text

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**BILL ID: SB 343**

00 SENATE BILL NO. 343  
01 "An Act changing the name of the Board of Game to the Board of  
02 Wildlife and relating  
03 to the purposes and membership of the Board of Wildlife; and  
04 providing for an effective  
05 date."  
06 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
07 \* Section 1. AS 16.05.221(b) is amended to read:  
08 (b) For purposes of the multiple use, conservation, and  
09 development of all  
10 [THE] game resources of the state, there is created a Board of  
11 Wildlife [GAME]  
12 composed of nine [SEVEN] members appointed by the governor,  
13 subject to  
14 confirmation by a majority of the members of the legislature  
15 in joint session. The  
16 membership of the board, taken as a whole, shall directly  
17 reflect all of the

11 citizens' various uses of game for sport and subsistence  
12 hunting, trapping,  
13 nonconsumptive uses, tourism, and scientific study in a  
14 comprehensive and fair  
15 manner. The governor shall appoint each member on the basis  
16 of [INTEREST IN  
17 PUBLIC AFFAIRS,] good judgment, interest in game, and  
18 predominant  
19 involvement with an aspect of game resources, to ensure that  
20 each of the specified  
21 diverse interests is represented [KNOWLEDGE, AND ABILITY IN  
22 THE FIELD  
23 OF ACTION OF THE BOARD, AND WITH A VIEW TO PROVIDING  
24 DIVERSITY OF INTEREST AND POINTS OF VIEW] in the membership.  
25 The  
26 appointed members shall be residents of the state and shall be  
27 appointed without  
28 regard to political affiliation or geographical location of  
29 residence. The commissioner  
30 is not a member of the Board of Wildlife [GAME], but shall be  
31 ex officio secretary.  
32 \* Sec. 2. AS 16.05.221(c) is amended to read:  
33 (c) Members of the Board of Wildlife [GAME] serve  
34 staggered terms of three  
35 years and, except as provided in AS 39.05.080(4), each member  
36 serves until a  
37 successor is appointed. An appointment to fill a vacancy in  
38 the membership of the  
39 Board of Wildlife [GAME] shall be made in the same manner as  
40 the original  
41 appointment; and, except as provided in AS 39.05.080(4), an  
42 appointment to fill a  
43 vacancy is for the balance of the unexpired term.  
44 \* Sec. 3. AS 16.05.320 is amended to read:  
45 Sec. 16.05.320. Quorum. A majority of the members of a  
46 board constitutes a  
47 quorum for the transaction of business, for the performance of  
48 any duty, and for the  
49 exercise of any power. However, a majority of the full board  
50 membership is required  
51 to carry all motions, regulations, and resolutions. A  
52 majority of the members of the  
53 boards of fisheries and wildlife [GAME] constitute a quorum  
54 for the transaction of  
55 business in a joint board meeting. A majority of the  
56 membership of the boards is  
57 required to carry all joint motions, regulations, and  
58 resolutions of the boards.  
59 \* Sec. 4. AS 16.05.940(11) is amended to read:  
60 (11) "domicile" means the true and permanent home  
61 of a person from  
62 which the person has no present intention of moving and to  
63 which the person intends  
64 to return whenever the person is away; domicile may be proved  
65 by presenting  
66 evidence acceptable to the boards of fisheries and wildlife  
67 [GAME];

28 \* Sec. 5. The uncodified law of the State of Alaska is amended  
by adding a new section to

29 read:

30 REGULATIONS. The Department of Fish and Game and the Board of  
Game may

31 proceed to adopt regulations to implement this Act. The regulations  
take effect under

01 AS 44.62 (Administrative Procedure Act) but not before the effective  
date of the

02 corresponding enabling statute.

03 \* Sec. 6. The uncodified law of the State of Alaska is amended  
by adding a new section to

04 read:

05 INSTRUCTION REGARDING BOARD OF GAME. Wherever in the Alaska  
06 Statutes and the Alaska Administrative Code the term "Board of Game"  
is used it shall be

07 read as "Board of Wildlife" when to do so would be consistent with  
the changes made by this

08 Act.

09 \* Sec. 7. The uncodified law of the State of Alaska is amended  
by adding a new section to

10 read:

11 SPECIFIC INSTRUCTIONS TO REVISOR OF STATUTES CONCERNING

12 SPECIFIC REFERENCES. (a) The revisor of statutes shall change  
references to "Board of

13 Game" to read "Board of Wildlife" in the following statutes:

14 (1) AS 08.54.790(6);

15 (2) AS 16.05.050(b), 16.05.094, 16.05.255, 16.05.256,

16.05.258(a),

16 16.05.260, 16.05.305, 16.05.315, 16.05.330(c), 16.05.340,

16.05.346(a), 16.05.405,

17 16.05.408(a), 16.05.783, 16.05.930(d), 16.05.940;

18 (3) AS 16.20.033(f), 16.20.041(c), 16.20.080, 16.20.510,

16.20.610(c);

19 (4) AS 39.50.200(b)(41);

20 (5) AS 39.52.120(c);

21 (6) AS 41.21.022, 41.21.174(b), 41.21.176(c),

41.21.183(b), 41.21.187,

22 41.21.188(c), 41.21.302(d), 41.21.492(b), 41.21.504(b), 41.21.616;

23 (7) AS 41.23.030(c), 41.23.110, 41.23.120(c),

41.23.160(c), 41.23.420(d);

24 (8) AS 41.99.010;

25 (9) AS 44.39.030, 44.39.050;

26 (10) AS 44.62.330(a)(41).

27 (b) The revisor of statutes shall change the reference to  
"game" to read "wildlife" in

28 the catch line of AS 16.05.221.

29 (c) The revisor of statutes shall change the reference to  
"Board of Game" to read

30 "Board of Wildlife" in the catch line of AS 16.05.255.

31 (d) The revisor of statutes shall change the reference to  
"game board" to read "Board

01 of Wildlife" in AS 16.05.780(b).

02 \* Sec. 8. The uncodified law of the State of Alaska is amended  
by adding a new section to

03 read:

04           IMPLEMENTATION OF SECTIONS 6 and 7 OF THIS ACT.   Under AS  
05 01.05.031,  
06 the revisor of statutes shall implement secs. 6 and 7 of this Act in  
07 the Alaska Statutes, and,  
08 under AS 44.62.125(b)(6), the regulations attorney shall implement  
09 sec. 6 of this Act in the  
10 administrative code.

08   \* Sec. 9. The uncodified law of the State of Alaska is amended  
09 by adding a new section to  
10 read:

10           APPOINTMENT OF MEMBERS OF THE BOARD OF WILDLIFE. (a) The  
11 governor shall appoint two additional members to the Board of  
12 Wildlife to fill the two  
13 positions added to the board by sec. 1 of this Act. Subject to AS  
14 39.05.080, the governor  
15 shall appoint one member to an initial term that expires March 1,  
16 2007, and one member to an  
17 initial term that expires March 1, 2006.

15           (b) Each member of the Board of Game who is serving on the  
16 effective date of sec. 1  
17 of this Act shall continue to serve on the Board of Wildlife for the  
18 term to which the member  
19 was appointed, if the member has been confirmed by the legislature  
20 or is subject to  
21 confirmation by the legislature in accordance with AS 39.05.080.

19   \* Sec. 10. Section 5 of this Act takes effect immediately under  
20 AS 01.10.070(c).

20   \* Sec. 11. Except as provided in sec. 10 of this Act, this Act  
21 takes effect July 1, 2004.

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FAX TO: 907-665-3265

DEAR SEWATE RESOURCE COMMITTEE:

I WOULD LIKE TO ADDRESS SB 318.

I WOULD LIKE TO KNOW IF THE CONSUMPTIVE  
WORDING WITHIN SB 318 IS WITH REGARD  
TO FAMILY OR PERSONAL USE, WHY NOT USE  
THAT WORDING INSTEAD OF CONSUMPTIVE USE?

WHATEVER THE MEANING OF CONSUMPTIVE USE  
IS, PLEASE CLEARLY DEFINE IT.

THANK YOU

DON JOHNSON  
P.O. BOX 876  
SOLDOTNA, ALASKA 99669

AUTOMATIC COVER SHEET

DATE : APR-07-04 05:27 PM

TO :

FAX #: 19074653265

FROM : JOHNSON BROS

FAX #: 9072625357

2 PAGES WERE SENT

(INCLUDING THIS COVER SHEET)

## Public Opinion Message

Please contact your local Legislative Information Office (LIO) to send POMs.  
A listing of LIOs can be found at <http://www.legis.state.ak.us/legaff/1iolist.htm>

*This form must be completely filled out. You may phone, fax, or deliver your POM to any LIO.*

**From:** Please PRINT the information below. This form must be signed by the sender.

Mr./Ms./Mrs.	KENNETH	M.I.	Last name	ADAMS	Jr./Sr./III
Group affiliation (if applicable)				Daytime telephone number	
Mailing address				Zip code	
Residence (show) address if different from mailing address				Zip code	
Email address		Signature		Date	
KADAMS@GCI.NET		Kenneth Adams			

**To:** Put a ✓ in the appropriate box(es).

	Committees	House members	Senate members
<b>H or S</b>			
<input type="checkbox"/>	Community & Regional Affairs	<input type="checkbox"/> Anderson (ade)	<input type="checkbox"/> Bunde (bun)
<input type="checkbox"/>	Finance (fin)	<input type="checkbox"/> Berkowitz (ber)	<input type="checkbox"/> Cowdery (coy)
<input type="checkbox"/>	Health, Ed., & Social Services	<input type="checkbox"/> Chenault (che)	<input type="checkbox"/> Davis (dab)
<input type="checkbox"/>	Judiciary (jud)	<input type="checkbox"/> Cisena (cie)	<input checked="" type="checkbox"/> Dyson (dys)
<input type="checkbox"/>	Labor & Commerce (l&c)	<input type="checkbox"/> Coghill (cog)	<input type="checkbox"/> EBS (ebs)
<input checked="" type="checkbox"/>	Resources (res)	<input type="checkbox"/> Crawford (crf)	<input checked="" type="checkbox"/> Etkin (ekt)
<input type="checkbox"/>	Rules (ris)	<input type="checkbox"/> Croft (cro)	<input type="checkbox"/> French (fre)
<input type="checkbox"/>	State Affairs (sta)	<input type="checkbox"/> Dahlstrom (dal)	<input type="checkbox"/> Green (gre)
<input type="checkbox"/>	Transportation (tra)	<input type="checkbox"/> Fate (fat)	<input type="checkbox"/> Guess (gue)
<input type="checkbox"/>	Other:	<input type="checkbox"/> Foster (fos)	<input type="checkbox"/> Hoffman (hof)
<input type="checkbox"/>	Other:	<input type="checkbox"/> Gara (gar)	<input checked="" type="checkbox"/> Lincoln (lin)
		<input type="checkbox"/> Gatto (gat)	<input checked="" type="checkbox"/> Ogan (oga)
		<input type="checkbox"/> Gruenberg (gm)	<input type="checkbox"/> Olson (ols)
		<input type="checkbox"/> Gutenberg (gtb)	<input checked="" type="checkbox"/> Seakins (sek)
		<input type="checkbox"/> Harris (har)	<input type="checkbox"/> Stedman (smn)
		<input type="checkbox"/> Hawker (haw)	<input checked="" type="checkbox"/> B. Stevens (ste)
		<input type="checkbox"/> Heinze (hez)	<input type="checkbox"/> G. Stevens (stv)
		<input type="checkbox"/> Holm (hol)	<input type="checkbox"/> Therault (thr)
		<input type="checkbox"/> Joule (jou)	<input checked="" type="checkbox"/> Wagoner (wag)
		<input type="checkbox"/> Kapsner (kap)	<input type="checkbox"/> Wilken (wik)
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		<input type="checkbox"/> Lynn (lyn)	
		<input type="checkbox"/> Masek (mas)	
		<input type="checkbox"/> McGuire (mcg)	
		<input type="checkbox"/> Mayer (mey)	
		<input type="checkbox"/> Morgan (mor)	
		<input type="checkbox"/> Moses (mos)	
		<input type="checkbox"/> Ogg (ogg)	
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		<input type="checkbox"/> Seaton (san)	
		<input type="checkbox"/> Stepovich (stp)	
		<input type="checkbox"/> Stoitze (stz)	
		<input type="checkbox"/> Weyhrauch (weh)	
		<input type="checkbox"/> Williams (wil)	
		<input type="checkbox"/> Wilson (wis)	
		<input type="checkbox"/> Wolf (wol)	

**Subject** Fill out the boxes below OR enter a Subject.

HB or SB	Bill number		and check one:	<input checked="" type="checkbox"/> Support		<input type="checkbox"/> Oppose		<input type="checkbox"/> Amend	
SB	318								

OR enter a general Subject (LIO staff may modify):

**Message** Your PRINTED message cannot exceed 50 words or contain any vulgar language.

I	UNGE	YOUR	OPPOSITION	TO THIS	BILL.
IT	IS	YET	ANOTHER	END RUN	ATTEMPT
AROUND	THE	EXISTING	AND	EFFECTIVE	
REGULATION	BY THE	BOARD'S	OF FISH	AND GAME	
AND	MANAGEMENT	BY	ADF+G	OF	
ALASKA'S	NATURAL	RESOURCES.	I DON'T	LIKE	
THE	ALLOCATIONS	UNDER	TONE OF	THIS	
BILL.	THIS	SHOULD	NOT BE	THE	
DOMAIN	OF THE	LEGISLATURE			





## Cordova District Fishermen United

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

4/16

April 11, 2004

Dear Senator,

Cordova District Fishermen United represents the commercial fishing fleets of Area E – Copper River and the Prince William Sound. We are writing in opposition to the CS for SB 318. We believe the passage of this bill could be devastating to us as commercial fishermen and residents of a small coastal community.

We fail to see the problem that this bill seeks to solve. Under current subsistence, personal use, and sport regulations any resident applying a reasonable effort has ample access to our state's abundant resources with few exceptions. If we seek to guarantee excessive harvest opportunity with minimal effort for all residents, the viability of Alaska's fishing dependant coastal communities will be threatened.

The best way to ensure continued access for our residents to Alaska's wild resources is through sound management. The Alaska Boards of Fish and Game and the Department of Fish and Game are highly developed tools in which we have invested for equitable allocation and sustainable management of our resources. The proper place to advocate for a particular user group is through this established process.

To circumvent this public process with irresponsible legislation is a waste of time and money and a disservice to all Alaskans. Please vote in opposition to the CS for SB 318.

Sincerely,

Curt Herschleb  
Vice President

new bill  
after bill  
moved out  
of committee