

SCOMM

138:3

HOUSE SPECIAL COMMITTEE ON FISHERIES
JANUARY 19, 2005

Gavel In

I call this first meeting of the House Special Committee on Fisheries to order

The time is:

I am Representative Gabrielle LeDoux, Co-Chair
(Personal background if you wish!)

To my left is Representative Bill Thomas, the other co-chair.

Rep. Thomas is from Haines, and has been a life-long fisherman in the gillnet and halibut fisheries. He recently entered the Southeast spot prawn fishery, and has a diverse background in the industry. He is also a leader of his Native village corporation (Klukwan).

Also present are: Rep. Harris, Rep. Wilson, Rep. Elkins, Rep. Kapsner & Rep. Salmon

.....
Staff to the Committee are Kimberly Wallace of my office, and Ian Fisk of Rep. Thomas' office.

Before we turn the meeting over to the Department of Fish and Game, I'd like to go over a few simple rules of the committee:

- Requests for hearing of bills should be addressed to the offices of both co-chairs. They must be received no later than 12 PM on the Tuesday of the week preceding the week during which you wish to hear the bill.
- When coming forth to testify, please state your name and affiliation for the record.
- Please turn off cell phones when in the room.
- Speak clearly into the microphones when speaking & turn them off when you do not want your comments recorded.

Turn over to Fish & Game:

At this time I'd like to ask Doug Mecum, Director of the Division of Commerical Fisheries, to come forward and start the overview. Welcome.

**Questions for ADF&G
House Fisheries Committee
January 19, 2005**

- 1) What is the overall FY 06 budget for ADF&G, and specifically the Commercial Fisheries Division? How is the Comm Fish Division budget broken down?
- 2) In regards to shellfish fisheries, especially in Southeast Alaska, does the department have adequate knowledge of stock strength and distribution to properly manage the fishery for the "maximum benefit of the people?" What would it take to put together a more accurate survey and research program for crab and shrimp?
- 3) How far into the future do ADF&G scientists try to predict overall strength of salmon runs? Are there identifiable cycles in abundance of salmon?
- 4) Has ADFG done any analysis of the Open Ocean Aquaculture proposal by NMFS?
- 5) Kodiak Tanner Crab update: Does the Dept. expect that stock to continue to grow? Is there any ongoing research within the Dept. regarding regime shifts in the Gulf of Alaska? How long can we expect the dominance of cod and Pollock to persist?
- 6) Does the Department have any estimates of the potential value of fish resources within Glacier Bay, or a way of quantifying the economic loss to the State caused by the Glacier Bay closure?
- 7) Is the department still involved in the dispute between geoduck farmers and divers?
- 8) At the recent board of fisheries meeting in Anchorage there was discussion of a proposal regarding fish traps. Can you summarize that proposal and the position of ADF&G in regards to it?
- 9) What is the long-term plan in the Division of Sport Fish for spending the increased revenue from the proposed sport fishing license fee increase?
- 10) Please provide the legal definitions of personal use, sport and subsistence fisheries, and explain the differences in practical terms.

Fact Sheet
Reserved Water Rights Lawsuit

- **WHAT:** The State of Alaska will sue the U.S. Departments of the Interior and Agriculture challenging regulations implementing the Katie John decision in so far as those regulations assert federal jurisdiction over certain State waters. The suit will be filed in U.S. District Court for the District of Columbia on Thursday.
- **WHAT THIS SUIT IS NOT:** This suit does not challenge the Katie John decision or the federal responsibility to assure a subsistence priority. The suit is only a challenge to how the law is applied through the regulations.
- **WHY THE TIMING:** The statute of limitations requires that a suit be filed before January 9, 2005. If the State does not sue, the regulations become immune to legal challenge.
- **BACKGROUND:** In 1995, the Ninth Circuit Court of Appeals decided in the Katie John case that the federal subsistence priority provided in ANILCA applies not just to land but also to certain navigable waters. The Court found that the federal government had jurisdiction over certain waters only when there was a "federal reserve water right." The court further stated that a federal reserve water right only exists in waters adjacent to or within federal lands where the United States needs those waters "to accomplish the purpose of the reservation."
- **WHY THE STATE IS SUING:** The Departments of Interior and Agriculture adopted federal regulations in 1999 to implement the Katie John decision, as required by that decision. The State alleges that the federal agencies, through these regulations, granted themselves authority over waters without following the required process set forth in Katie John and the relevant Supreme Court decisions. Furthermore, the State objects to these regulations because it believes that the regulations extend federal authority over waters in which the United States can have no federal reserve water right under ANILCA, the Katie John decision, and the relevant Supreme Court decisions. As the Ninth Circuit recognized, it "imposed an extraordinary administrative burden

on federal agencies..." in developing these regulations. The State simply believes that the federal agencies failed to meet this burden.

- **WHAT, SPECIFICALLY, THE SUIT OBJECTS TO:** The suit challenges the regulations on three grounds. First, the regulations expand federal jurisdiction to include waters that are adjacent to and even downstream from federal lands in ways not authorized by Katie John or the Supreme Court. Second, the regulations purport to apply to marine waters beyond the mean high tide mark; this application is contrary to ANILCA and the doctrine of reserved water rights. Third, the regulations claim jurisdiction over State and private lands and waters despite the fact that Title VIII is limited to public lands. None of these applications of federal authority was contemplated in Katie John, ANILCA, or the Supreme Court cases on federal reserved water rights.

EXAMPLES:

- The federal government claims reserved water rights on rivers that are not adjacent to a conservation system unit, to the point of even claiming waters downstream from such units. **Example:** The Nushagak River running into Bristol Bay is 50 miles from the nearest conservation system unit.
- The federal government improperly claims reserved water rights in marine waters and tidelands. **Example:** Tuxedni Bay in Cook Inlet, Situk River in Yakutat.

Fish. Mtg.

(passed out by ADF&G)

1/19/05



Overview of the Division of Commercial Fisheries

Doug Mecum, Director
Division of Commercial Fisheries,
ADF&G

Authority

ADF&G: Primary State Fishery Management Authority

NMFS: Primary Marine Federal Fisheries Management Agency

USFWS – OSM: Subsistence Fisheries Management on Applicable Federal Waters

State Regulatory Regime

BOF

- Fishery Management Plans
- Allocation Decisions
- Promulgating Regulations

CFEC

- Authority to establish moratoria or limited entry systems for state-managed fisheries

DPS-FWP

- Enforcement of Fish and Game regulations

Federal Regulatory Regime

MFCMA (1976)

- Exclusive Economic Zone within 200 miles of U.S. Coasts
- NPFMC – Presidentially appointed 11-member committee develops FMP's for 3-200 miles
 - BSAI Crab and Groundfish, GOA Groundfish, Salmon, Scallops

IPHC (1953)

- Canada and U.S. jointly regulate harvest and conduct research on halibut. Within nation allocations through NPFMC

PST (1985)

- Rebuilding stocks, harvest regimes, equity

Mission

The mission of the Division of Commercial Fisheries is to manage, protect, rehabilitate, enhance, and develop the fisheries and aquatic plant resources in the interest of the economy and general well being of the state, consistent with the sustained yield principle and subject to allocations established through public regulatory processes.

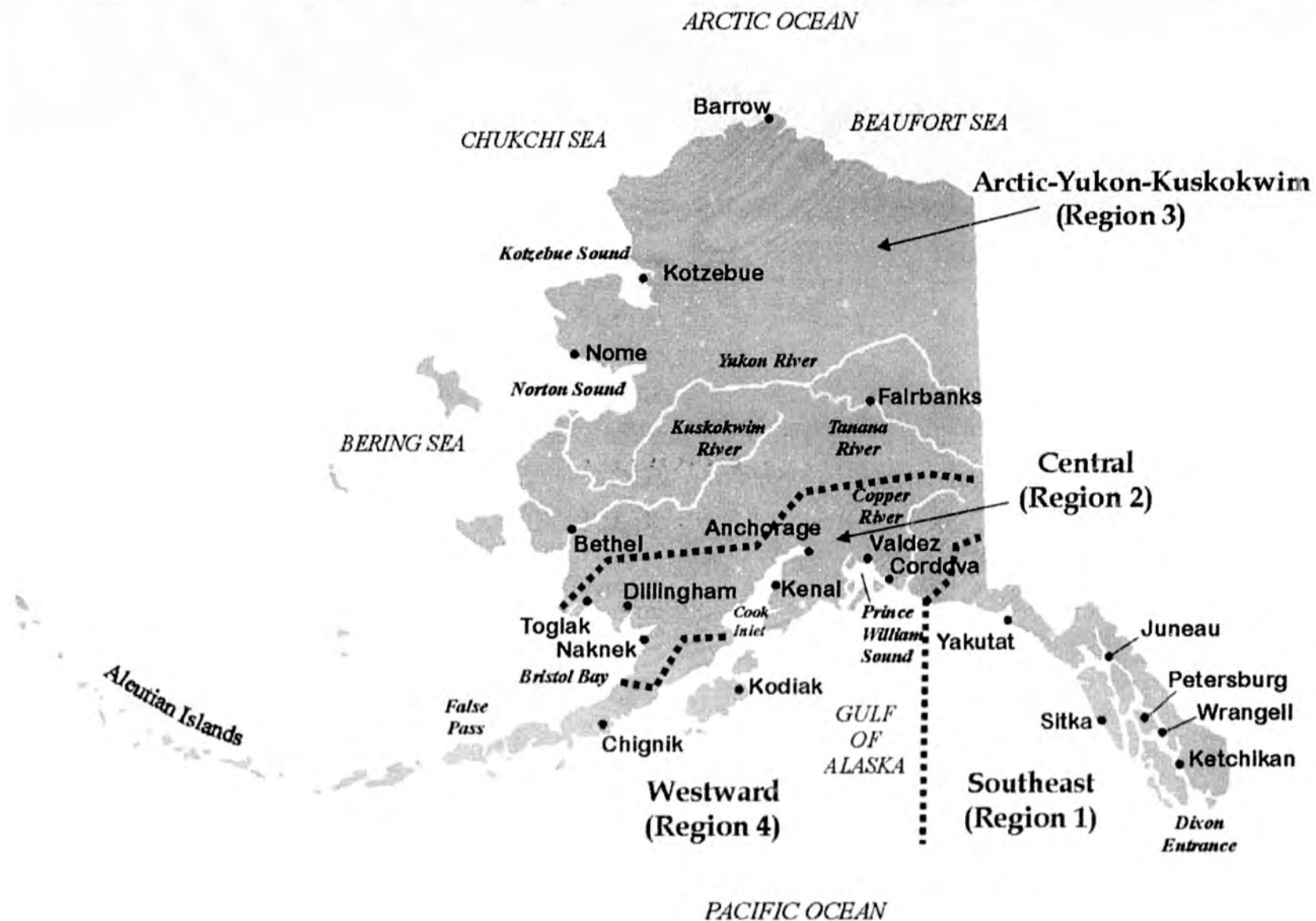
Responsibilities

- **Commercial, Personal Use, and Subsistence Fisheries Management and Research**
- **Planning and Permitting of Fish Hatcheries and Mariculture operations**
- **Board of Fisheries**
- **Pacific Salmon Treaty and Alaska/Yukon Treaty Negotiations**
- **North Pacific Fishery Management Council**

Organizational Structure

- Currently about 300 Fulltime and 520 Seasonal employees.
- Organized into a Headquarters Office in Juneau and 4 Regional Offices:
 - The Southeast Region (SEAK and Yakutat).
 - Central Region (Cook Inlet, Prince William Sound and Bristol Bay).
 - AYK Region (Western Alaska, Interior and North Slope).
 - Westward Region (Kodiak area, Bering Sea and Alaska Peninsula).
- Roughly 40 area offices around the state.

Commercial Fishery Management

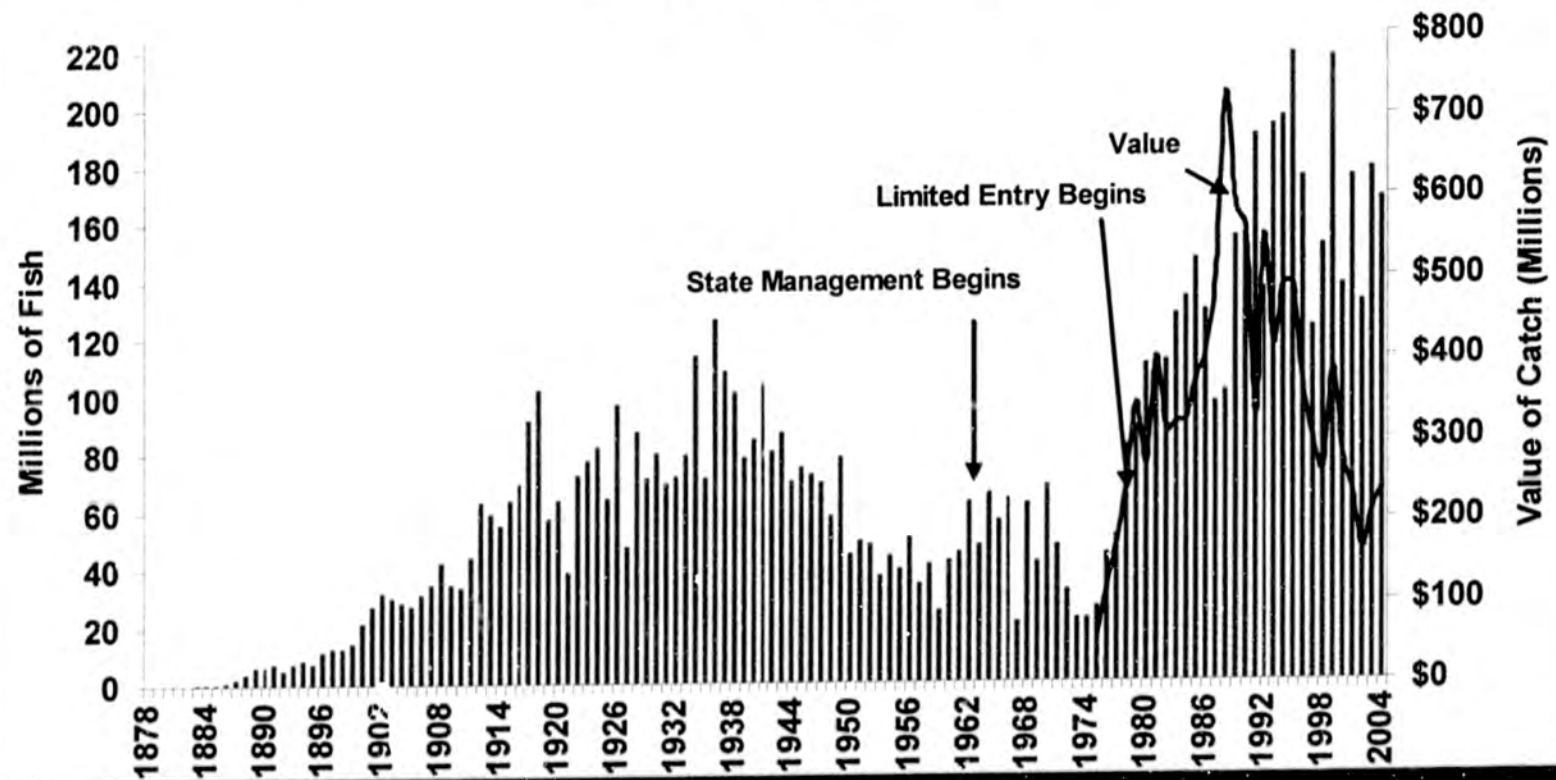


Division of Commercial Fisheries FY 2006 Budget Request

Division funding and staffing	(in thousands \$)	FY 2006 Governor	FY 2005 Management
	General Fund	\$23,910.7	\$22,469.5
	Statutory Program Receipts	\$1,676.4	\$1,648.7
	Test Fish Receipts	\$2,500.9	\$2,500.9
	Federal Receipts	\$14,858.1	\$14,301.7
	Fish and Game Fund	\$1,540.5	\$1,523.0
	CF Loan Fund	\$1,865.9	\$1,865.9
	Interagency Receipts	\$1,669.3	\$1,669.3
	CIP Position Costs	\$2,994.5	\$2,396.7
	Exxon Valdez Settlement	\$381.1	\$204.4
	Receipt Services	\$590.3	\$588.1
	Totals	\$51,987.7	\$49,168.2
Personnel			
	Full Time	300	305
	Seasonal	512	519
	Temporary	0	0

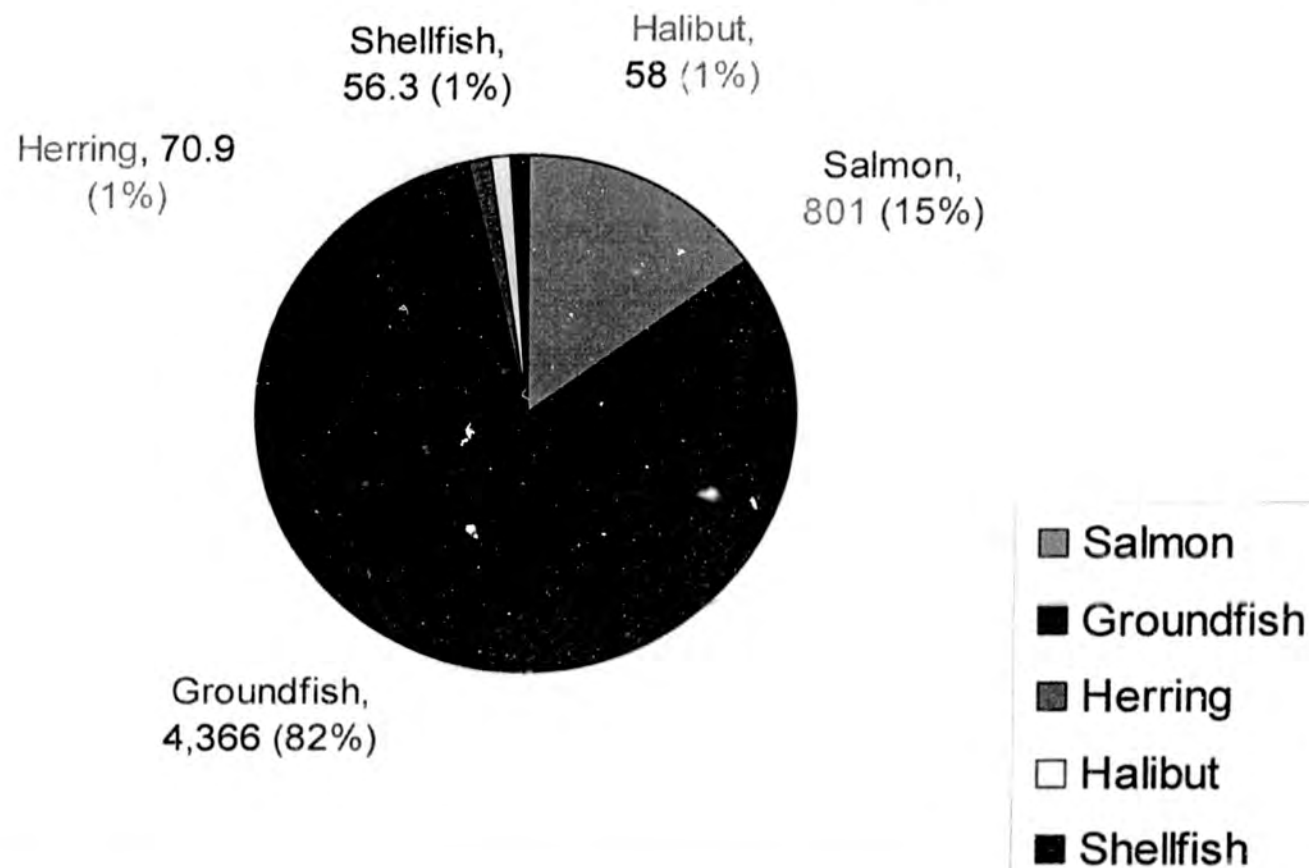
Statewide Fisheries

Alaska Commercial Salmon Catches & Exvessel Value 1878-2004
(All species combined)



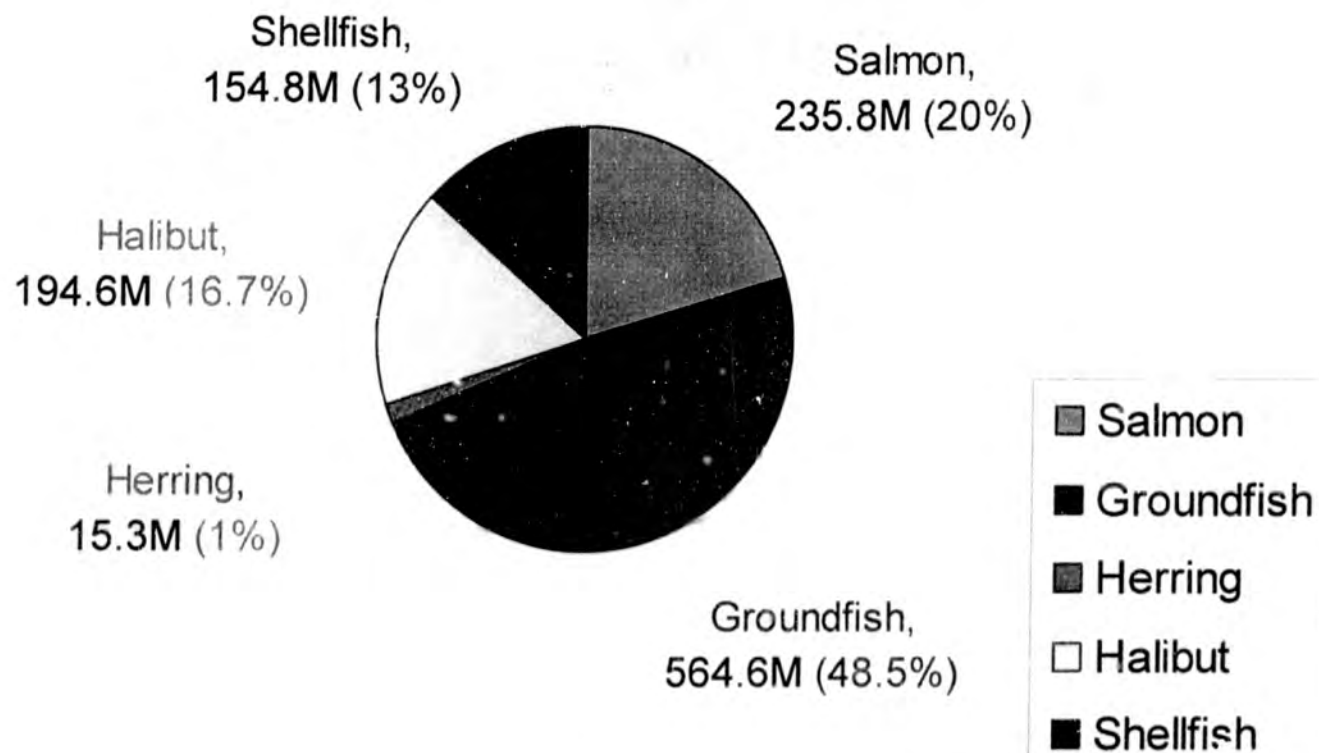
Statewide Fisheries

2004 Alaska Commercial Fisheries Harvest
(millions of pounds & percentage of total)



Statewide Fisheries

2004 Alaska Commercial Fisheries Exvessel Values
(M=millions of dollars & percentage of total)



**Alaska Department of Fish and Game
Division of Commercial Fisheries**

Doug Mecum, Director

Online: www.cf.adfg.state.ak.us

Information: cf_info@fishgame.state.ak.us