

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2984 SCOMM 131: HOUSE SPECIAL COMMITTEE ON FISHERIES, 2003-04

HB118: TRANSPORTATION OF COMMERCIAL FISH

Amendment # 2 Representative Gatto
Offered in (H) RES 3-10-2003

*from [Signature]
Dist 13*

Page 2 line 30:

Following commissioner, strike may, and insert shall.
Item (f) should now read:

(f) The commissioner ~~may~~ shall adopt regulations.

Rationale:

- The legislature currently enjoys a friendly relationship with our administration.
- This has not always been the case, and may not always be the case.
- There have been instances in the past where commissioners have not adopted regulations at the at the encouragement of the legislature.
- In this instance, if the regulations are not adopted, it will be legal to obtain a transporter's permit, but there may be no permit in place to obtain.
- This amendment will direct the department to develop regulations in accordance with this statute.

*I looked the
house to report
amendment 2.*

3) Heard in Resource Committee and ~~not adopted~~ ^{failed} 1-5

*1) The issuance of ^{these} permits ~~page 1~~ section 1 is a
permissive may issue, allowing but not requiring
the issuance of transporter permits.*

*2) ~~Section F~~ ^{This amendment.} - the subject of this amendment refers
to a number of regulation criteria for limiting the
issuance of these permits for certain fisheries or
circumstances listed on page 3 lines 2 through 16
These may develop over time and during the course of fisheries*

Mr. Speaker & move amendment #1

Amendment #

To: HB 118(RES)

Sponsored by Representative Seaton

Page 3, line 20,

Delete all material and replace (h) with the following:

(h) in this section, "fish" means fish legally harvested and retained in salmon, herring, or pacific cod fisheries.

HB 118-Talking Points

HB 118 is one tool to help fisherman

In the last few years, processors, buyers of fish, have gone out of business,

quit operating in certain areas of the state or cut tender service for fisherman. Tender's are vessels that work for processors to gather fish from fishermen.

HB 118 bill allows fisherman to consolidate their catch and transport their fish to market.

It also allows fishermen to hire their own tenders, another option not currently available.

The bill sets out the framework for which transporters will operate and allows ADF&G to permit transporters.

Without this bill some fishermen may have no other avenue to get fish to market, especially fisherman operating far from any community.

Allowing fisherman to pool their resources for transporting,

- provides greater flexibility during fishery openings by allowing fishermen to stay on the grounds and keep fishing,
- provides greater accessibility to new and fresh markets
- provides a reduction in operating costs, Fuel, time etc.
- and may provide the only alternative for any market.

The bill is supported by all fishing groups and fishermen.

The Dept of Public Safety and Dept of Fish & Game worked with us extensively to address in legal, statistical, or enforcement concerns during the drafting process.

The bill is one of 14 recommended to the Legislature by the Joint Legislative Salmon Industry Task Force.

The bill carries zero fiscal notes from the Departments of Law, Public Safety and Fish & Game.

Committee Changes

The Resources Committee substitute, which is before you, encompasses a technical change made in the fisheries committee. and...

The resources committee also made an amendment that included Child Support Enforcement Division to deny a transporter permit if a person is late on their child payments.

Amendment

To: HB 118(RES)

Sponsored by Representative Seaton

Page 3, line 20,

Delete all material and replace (h) with the following:

(h) in this section, "fish" means fish legally harvested and retained in salmon, herring, or pacific cod fisheries.

Alaska State Legislature

State Capitol, Room 428
Juneau, AK 99802
Phone: 465-2689
Fax: 465-3472
Toll Free (800) 665-2689
Representative_Paul_Seaton@legis.state.ak.us



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

REPRESENTATIVE Paul Seaton

District 35

Recommended by the Joint Legislative
Salmon Industry Task Force

Sponsor Statement

CS HB 118 (Fish)

"An Act relating to the transportation and sale of certain commercially caught fish by an agent of a commercial fishing permit holder and to the sale of fish; and providing for an effective date."

In 1988, the value of Alaska's salmon was worth \$800 million. This year salmon fisherman took home significantly less money, totaling \$150 million. Municipal revenues have dwindled, jobs have been lost, and fishermen are going broke. The economic effects of a failing salmon industry on the rest of the state could be detrimental. The Joint Legislative Salmon Industry Task Force has recognized the plight of Alaska's Salmon fisherman by forwarding to the legislature fourteen different bills and resolutions; House Bill 118 is one of those bills. HB 118 is a tool to help the industry by adding an alternative to cut costs for fisherman. It also creates new possibilities for accessing fresh markets.

HB 118 allows commercial fisherman to transport fish caught by associates to market. Under current law, transporting another person's fish is illegal unless you are a licensed processor or act as a contractor for a licensed processor. HB 118 creates an opportunity for fisherman to work together and consolidate their product for shipment. This simple option may cut down on additional fuel costs and give fisherman the ability to get their fish to market when processors no longer provide tender services.

As aforementioned, current laws limit fishermen's marketing flexibility. Currently, processors buy fish at the dock or send tenders out to the fishing fleet in order to bring fish to market. These special arrangements between fisherman and processors can be costly. HB 118 changes the statute by allowing fisherman to hire their own tender or pool their resources on one boat and transport the fish to market. Under the bill, a person transporting fish would need to have a transporter permit in addition to the currently required fish ticket. Only the fish ticket is used for the final sale of the fish. This arrangement would allow for the fisherman to retain ownership of the fish, while authorizing his/her associate or another vessel to transport and sell his or her fish. In some areas of the state, processors are non-existent. In that case, the transporter flexibility created in this bill may be the only avenue to get fish to market.

HB 118 simply provides an additional tool for fishermen to cut costs and increase quality while creating efficient and productive businesses.

While hearing the bill, the Fisheries Committee made one technical amendment at the request of the Dept of Fish & Game. The technical amendment removed two words, which were deemed unnecessary and only reflected wording left in the bill from previous drafts. The bill moved without objection.

E-Mail: Representative_Paul_Seaton@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 118 (RES)
(H) Publish Date: 3/12/03

Revision Date/Time: _____ Dept. Affected: Law
Title: "An Act relating to the transportation and sale
of certain commercially caught fish by an agent of a . . ." BRU: Criminal Division
Sponsor: Representative Seaton by Request Component: Criminal Appeals/Special Litigation
Requester: House Resources Committee Component No.: 2203

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill establishes a fish transporter permit system that authorizes a permittee to transport and sell commercially taken fish as the agent of the commercial fisherman who caught the fish. Permits would be issued by the Department of Fish and Game. Purchasing fish from a person who does not hold the permits specified in AS 16.05.680 or a fish transporter permit is an unlawful act. Under AS 16.05.723, unlawful acts can be misdemeanors.

The Department of Law does not anticipate many new cases will result from passage of this bill, and does not expect a fiscal impact.

Prepared by: Joan M. Kasson Phone: (907) 465-5370
Division: Attorney General's Office Date/Time: 3/7/03 5:18 PM
Approved by: Joan M. Kasson for Gregg D. Renkes, Attorney General Date: 3/7/2003
Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 118(FSH)
 (H) Publish Date: 3/3/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to the transportation and sale
of certain commercially caught fish by an agent of a . . ." BRU Criminal Division
 Sponsor Representative Seaton by Request Component Criminal Appeals/Special Litigation
 Requester House Fisheries Committee Component No. 2203

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill establishes a fish transporter permit system that authorizes a permittee to transport and sell commercially taken fish as the agent of the commercial fisherman who caught the fish. Permits would be issued by the Department of Fish and Game. Purchasing fish from a person who does not hold the permits specified in AS 16.05.680 or a fish transporter permit is an unlawful act. Under AS 16.05.723, unlawful acts can be misdemeanors.

Whether passage of this legislation will have a fiscal impact on the Criminal Division depends on the number of new prosecutions that result. Without additional experience, however, we have no way of estimating how many new cases there will be, and must state an indeterminate fiscal impact.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 2/26/03 4:36 PM
 Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General Date 2/26/2003
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number 1
Bill Version: C SHB 118(FSH)
(H) Publish Date: 3/3/03

Revision Date/Time (Note if correction):

Dept. Affected: Fish and Game

Title Relating to the transportation and
sale of commercially caught fish

BRU Commercial Fisheries

Component Headquarters - Fisheries Managemen

Sponsor Representative Seaton

Requester House Fisheries

Component No. 2171

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Robert D. Mecum, Director
Division Commercial Fisheries Division
Approved by: Kevin C. Duffy, Acting Commissioner
Agency Department of Fish and Game

Phone 465-4210
Date/Time 2/26/03 5:52 PM
Date 2/26/2003

Alaska State Legislature

State Capitol, Room 428
Juneau, AK 99802
Phone: 465-2689
Fax: 465-3472
Toll Free (800) 665-2689
Representative_Paul_Seaton@legis.state.ak.us



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

REPRESENTATIVE Paul Seaton

District 35

Recommended by the Joint Legislative
Salmon Industry Task Force

Sponsor Statement

CS HB 118 (RES)

"An Act relating to the transportation and sale of certain commercially caught fish by an agent of a commercial fishing permit holder and to the sale of fish; and providing for an effective date."

In 1988, the value of Alaska's salmon was worth \$800 million. This year salmon fisherman took home significantly less money, totaling \$150 million. Municipal revenues have dwindled, jobs have been lost, and fishermen are going broke. The economic effects of a failing salmon industry on the rest of the state could be detrimental. The Joint Legislative Salmon Industry Task Force has recognized the plight of Alaska's Salmon fisherman by forwarding to the legislature fourteen different bills and resolutions; House Bill 118 is one of those bills. HB 118 is a tool to help the industry by adding an alternative to cut costs for fisherman. It also creates new possibilities for accessing fresh markets.

HB 118 allows commercial fisherman to transport fish caught by associates to market. Under current law, transporting another person's fish is illegal unless you are a licensed processor or act as a contractor for a licensed processor. HB 118 creates an opportunity for fisherman to work together and consolidate their product for shipment. This simple option may cut down on additional fuel costs and give fisherman the ability to get their fish to market when processors no longer provide tender services.

As aforementioned, current laws limit fishermen's marketing flexibility. Currently, processors buy fish at the dock or send tenders out to the fishing fleet in order to bring fish to market. These special arrangements between fisherman and processors can be costly. HB 118 changes the statute by allowing fisherman to hire their own tender or pool their resources on one boat and transport the fish to market. Under the bill, a person transporting fish would need to have a transporter permit in addition to the currently required fish ticket. Only the fish ticket is used for the final sale of the fish. This arrangement would allow for the fisherman to retain ownership of the fish, while authorizing his/her associate or another vessel to transport and sell his or her fish. In some areas of the state, processors are non-existent. In that case, the transporter flexibility created in this bill may be the only avenue to get fish to market.

HB 118 simply provides an additional tool for fishermen to cut costs and increase quality while creating efficient and productive businesses.

While hearing the bill, the Fisheries Committee made one technical amendment at the request of the Dept of Fish & Game. The technical amendment removed two words, which were deemed unnecessary and only reflected wording left in the bill from previous drafts. The bill moved without objection. The Resources Committee added a provision to the bill that listed a transporter permit under Child Support Enforcement Division's (CSED) list of occupations.

Recommended by the Joint Legislative
Salmon Industry Task Force

Sectional Analysis

HB 118

"An Act relating to the transportation and sale of certain commercially caught fish by an agent of a commercial fishing permit holder and to the sale of fish; and providing for an effective date."

***Section 1.**

- (a) Amends Alaska Statute (AS) 16.05 by adding a new section, AS 16.05.671, which allows for the transportation and sale of a fish as an agent of a commercial fisherman. Under this new section, the agent/transporter must be permitted to be a transporter by the commissioner of ADF&G.
- (b) Authorizes the commissioner to officially permit a person to conduct the activity of transporting another fisherman's fish.
- (c) Describes the process in which a transporter must acquire and maintain proper documentation to act as a transporter.
- (d) Describes the process in which a commercial fisherman shall provide a fish ticket to the transporter.
- (e) Allows a commercial fisherman to act as a fish transporter with proper documentation and continue to operate, selling his/her own fish as a commercial fisherman.
- (f) Allows the commissioner to adopt regulations relating to the permitting of transporters and to the act of transporters.
- (g) Defines ownership of the fish being transferred to the transporter, which are still the property of the fisherman who caught the fish until sold to a buyer.

(h) Defines the term "fish" as it relates to this bill.

***Section 2.**

Amends AS 16.675(a) by allowing a permitted transporter to deliver fish in the state.

***Section 3.**

Amends AS 16.05.680 by adding a fish transporter to one of the exemptions for unlawful practices with regards to purchasing of fish.

***Section 4.**

Adds the definition of a "fish transporter" by amending AS 16.05.940, fish & game code.

***Section 5.**

Amends AS 16.10.265(a) by including a fish transporter as a person from whom fish can be purchased.

***Section 6.**

Includes a fish transporter under AS 16.10.267(b) as a person required to show identification if asked to do so by a peace officer.

***Section 7.**

As it relates to examples of identification, a fish transporter is included under AS 16.10.267(c) as referenced in Section 6.

***Section 8.**

Amends AS 16.10.267 by adding a new subsection (e), which requires the fish transporter to carry a transporter permit, a completed fish ticket for the fish being transported, and a personal piece of identification.

***Section 9.**

Amends AS 25.27.244(s)(2)(A) under the Child Support Enforcement Statutes by listing a fish transporter permit as a permit that could be denied if person is in arrears with CSED.

***Section 10.**

(The Effective Date) This act takes effect immediately under AS 01.10.070(c).

SCOMM

131:16

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

April 7, 2003

SUBJECT: CSHB 130(FSH) relating to damages in certain actions
(Work Order No. 23-LS0484\Q)

TO: Representative Paul Seaton
Attn: Cameron
JB

FROM: Theresa L. Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above. The comments in this memo are not caused by the amendments made by the committee.

Equal protection. Limiting the application of the bill to seafood processors raises an equal protection issue. To be successful, limiting the bill to this classification (seafood processors) must bear a fair and substantial relation to a legitimate governmental objective, and depending on the importance of the interests involved, a greater or lesser burden will be placed on the state to show this relationship. See Wilson v. Municipality of Anchorage, 669 P.2d 569 (Alaska 1983). The rationale and reasons behind this bill may be adequate to satisfy this test, but I wanted to alert you to the issue so that you realize that you need to meet these requirements.

Other constitutional issues. Although Evans v. State, 56 P.3d 1046 (Alaska 2002) held that a statute providing for the payment of a portion of the damages to the state was facially constitutional,¹ that case was a declaratory judgment and there was a dissent relevant to this bill. For your information, as a declaratory judgment, it is possible for the court to reach a different result in a later case when presented with a challenge to the law as applied in a particular case. See Evans at 1049. The dissent disagreed with the part of the opinion that upheld the punitive damages forfeiture provision; it viewed the forfeiture provision as violating substantive due process and the takings clause. See Evans at 1070. Under these circumstances, it is difficult to predict what the court would do with this bill.

If I may be of further assistance, please advise.

TLB:lmb
03-135.lmb

Enclosure

¹ Evans at 1057.

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

HB 130

Unfair Trade Practices: Anti-Trust

This bill requires any party that brings a case an individual under Alaska's unfair trade practice statutes (AS 45.50) to pay 15% or \$40 million of any damage award, whichever is less, to the State of Alaska. This bill is based upon the legislature's 1997 tort reform statute that requires any person who receives an award of punitive damages to pay 50 percent of the award be deposited into the general fund of the state.

This bill bases its 15% or \$40 million figure on that precedent. The bill includes intent language calling for the legislature to appropriate the amount of funds received under this bill to the Alaska Seafood Marketing Institute for the purposes of marketing wild Alaska salmon. A companion bill, HB 131, would carry that intent by making an appropriation of \$40 to ASMI.

Under Alaska's unfair trade practice statutes (AS 45.50.576), a person allegedly injured by wrongful conduct may bring a civil action, and seek for damages. If the court finds that the person was injured and the defendant's conduct was willful, the plaintiff is automatically awarded treble damages plus costs and reasonable attorney fees. The intent of this bill is to have the state receive 15% of the judgment before costs and attorney's fees out of any judgment by a plaintiff's attorneys.

A zero fiscal note and sectional analysis of this bill is attached.

Contact: Rep. Bruce Weyhrauch
465-3744

Released: April 2, 2003

SPONSOR STATEMENT
Representative_Bruce_Weyhrauch@legis.state.ak.us
www.akrepublicans.org/weyhrauch/

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

Analysis

(907) 465-3744
FAX (907) 465-2273

If a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover punitive damages.

§ 45.50.576. Suits by persons injured; treble damages

(a) A person who is injured in business or property by a violation of AS 45.50.562 - 45.50.570, or a person so injured because the person refuses to accede to a proposal for an arrangement that, if consummated, would be a violation of AS 45.50.562 - 45.50.570, may bring a civil action

(1) for damages sustained by the person, and if the judgment is for the plaintiff and the trier of fact finds that the defendant's conduct was willful, the plaintiff shall be awarded threefold the amount of damages sustained by the person, plus the costs of the suit, including reasonable attorney fees; and

(2) to enjoin the unlawful practice, and if judgment is for the plaintiff, the plaintiff may be awarded the costs of the suit, including reasonable attorney fees.

(b) When the state, a home rule or general law city or borough, or other governmental entity is injured by reason of a violation of > AS

SECTIONAL ANALYSIS

Representative _Bruce_Weyhrauch@legis.state.ak.us
www.akrepublicans.org/weyhrauch/

Subject: Fw: Did you sponsor HB130?

Date: Thu, 27 Feb 2003 17:41:38 -0900

From: "JOE MACINKO" <jgmac@ptialaska.net>

To: <Undisclosed-Recipient:@ptialaska.net;>

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

From: Stephen Taufen

To: Representative Bruce Weyhrauch@legis.state.ak.us

Sent: Thursday, February 27, 2003 5:54 PM

Subject: Did you sponsor HB130?

Alaska State Representative Bruce Weyhrauch (R-Juneau)

RE: HB130

Dear Bruce:

Did you sponsor the bill to take 15% of any legal settlement from the Alakayak case and give it to ASMI, or rather to the general funds?

ASMI has failed for a decade or longer due to the intrusions of the defendant-processors into its affairs. Other USDA commodity groups have had success in bringing back high prices to the harvester, despite the Asian financial crises etc. I know, I worked on those programs, and for one season on ASMI export strategy, as a consultant, too. ASMI squandered a budget multiple times that which other commodity group prospered upon. Its money had long been awarded not on performance, but on Stevens' Berkshire clout. That harmed a lot of other agricultural folks.

I also know from being a corporate insider whistle-blower about the billions that the defendant companies have taken from Alaska. They are indefensible, but we'll all know that by summer.

I'd have rather seen a bill forming a board for resource transparency and accountability... dealing with the "product laundering" tax evasion of illicit bookkeeping (abusive transfer pricing techniques). For if the legislature does not protect Alaska's wealth, then whom?

The State of Alaska failed to prosecute antitrust, failed to cooperate with evidence on the Alakayak case, and has failed in many other ways -- all reflective of what's wrong in America today when multinationals have more power than Peoples, and a form of elitism, plutocracy, or more accurately - small-f fascism develops.

To ask now for a share of the award is disingenuous, as it forgets the cost to the fishers from the state's recalcitrance. It is a shame to ask for any of it unless an apology is made in the public press to fishers harmed by the state's role. The state has also failed to help Bristol Bay harvesters deal with the Russian zone interceptions of migrating salmon. It should have filed an international lawsuit for compensation due. Instead, more complicity has resulted, as the State backpeddles on even discussing the issue openly with all the facts it knows.

The State has failed repeatedly to represent capitalism and democracy in the pollock allocations, and is doing so now in crab rationalization. The results of both lower grounds prices upon which ASMI taxes are computed. This makes no sense save for corporate greed. And campaign coffers.

What is your role in this? What will you do to represent fishers instead of corporate interests? The People instead of foreign investors who have long had their way with Alaska's resources (exports of both fish and timber at prices that can only be described as corruptly 'on the cheap', Banana Republic style)?

Sincerely,

Stephen Taufen, founder
Groundswell Fisheries Movement

LETTERS TO FISHERIES COMMITTEE

HB 130

Subject: Bristol Bay lawsuit

Date: Mon, 3 Mar 2003 12:41:16 -0500

From: "rod perry" <rperry@mtaonline.net>

To: <Representative_Carl_Moses@legis.state.ak.us>,
<Representative_Bob_Lynn@legis.state.ak.us>,
<Representative_Richard_Foster@legis.state.ak.us>,
<Representative_Mary_Kapsner@legis.state.ak.us>,
<Representative_Kelly_Wolf@legis.state.ak.us>,
<Representative_Bill_Stoltze@legis.state.ak.us>,
<Representative_Carl_Morgan@legis.state.ak.us>,
<Representative_Reggie_Joule@legis.state.ak.us>,
<Representative_David_Guttenberg@legis.state.ak.us>,
<Representative_Hugh_Fate@legis.state.ak.us>,
<Representative_Sharon_Cissna@legis.state.ak.us>,
<Representative_Peggy_Wilson@legis.state.ak.us>,
<Representative_Paul_Seaton@legis.state.ak.us>,
<Representative_Kevin_Meyer@legis.state.ak.us>,
<Representative_Albert_Kookesh@legis.state.ak.us>,
<Representative_Jim_Holm@legis.state.ak.us>,
<Representative_Ralph_Samuels@legis.state.ak.us>,
<Representative_Lesil_McGuire@legis.state.ak.us>,
<Representative_Eric_Croft@legis.state.ak.us>,
<Representative_Ethan_Berkowitz@legis.state.ak.us>,
<Representative_Jim_Whitaker@legis.state.ak.us>,
<Representative_Norman_Rokeberg@legis.state.ak.us>,
<Representative_Beth_Kerttula@legis.state.ak.us>,
<Representative_Mike_Hawker@legis.state.ak.us>,
<Representative_Les_Gara@legis.state.ak.us>,
<Representative_Harry_Crawford@legis.state.ak.us>,
<Representative_Tom_Anderson@legis.state.ak.us>, <wloy@adn.com>

Hi,

I have to say I am VERY concerned about this bill being introduced by Weyrauch and Harris. (see article below) They seem to think that if the courts award any money to these fishermen, ASMI is entitled to much of it. I do not think it is appropriate to be so opportunistic to the point of basically taxing one portion of Alaska's population, with these families having their money (if awarded) stolen from them to support an industry that our family is are NOT even involved with anymore.

What about all of the other fishermen in the state benefitting from ASMI's efforts solely on one group of fishermen forced to give up money that was rightfully theirs in the first place? If ALL fishermen profit from ASMI, then ALL fishermen should contribute equally. Will we as fishermen now have to hire another set of lawyers to sue the State of Alaska?

If and when the courts award this money to the Bristol Bay fishermen, it is because there is proof that there were illegal practices occurring, and we should not have that money that we earned STOLEN from us (AGAIN)!! I STRONGLY encourage you to DEFEAT this or any other such similar bill and also STRONGLY suggest that you investigate as to how much influence Sen. Ben Stevens has on these two individuals. He wanted to take the stand against the fishermen, but the judge would not allow it. Is this his recourse?

Thank you very much for your time on this issue and I look forward to any input from you and your colleagues.

Sincerely,

Karen Perry 688-2153

This is the excerpt from the Anchorage Daily News on Friday Feb. 28, 2003 :

The Bristol Bay trial is expected to last until the end of April. So far, lawyers have far outnumbered fishermen in the courtroom.

- A bill introduced in Juneau on Wednesday would, in effect, tax judgments commercial fishermen win in unfair trade practice lawsuits against seafood processors.

The bill specifies that 15 percent of an award or \$40 million, whichever is less, shall be deposited in the state's general fund. The intent of the bill is that the Legislature would then appropriate the money to the Alaska Seafood Marketing Institute to promote wild salmon.

If the measure became law, it would be retroactive to Jan. 1 of this year, the bill says.

The sponsors are Reps. Bruce Weyhrauch, R-Juneau, and John Harris, R-Valdez.

The figure cited in the bill, \$40 million, is the same amount that lawyers for fishermen in the Bristol Bay case already have collected in settlements from processors and importers. Bristol Bay trial is expected to last until the end of April. So far, lawyers have far outnumbered fishermen in the courtroom.

The Bristol Bay trial is expected to last until the end of April. So far, lawyers have far outnumbered fishermen in the courtroom.

POMS Main Menu

POMS Unviewed Message Summary for Representative Seaton

Main Menu	Extract	as	Comma Separated Format	v
-----------	---------	----	------------------------	----------------------------------

Kathleen M Lange
259 Mountain View Dr
259 Mountain View Dr
Homer AK, 99603

Email: silverdove@alaska.net

Constituent

BILL#:

SUBJECT: TAXATION

MESSAGE: The bill to levy 15% tax on fishermen's judgement wins against processors is not right. You cannot divy up what is not yours. Thats socialism. Remember we are Americans. Stop scrabbling over a piece of pie that isn't yours to begin with. Money is tight but don't steal from fishermen.

DISTRIBUTION: 61

Therese R Dirks
Po Box 1132

Homer AK, 99603

Email:

Constituent

BILL#:

SUBJECT: TAXATION

MESSAGE: I OPPOSE THE INCREASE IN FUEL TAX. THIS INCREASE WILL LEAD TO INCREASE IN OTHER COMMODOTIES DUE TO HAVING TO ABSORB THEIR TRANSPORTATION COSTS. SO THE CONSUMER PAYS MORE AT THE PUMP AND MORE AT THE GROCER. MANY WILL HAVE TO WALK.

DISTRIBUTION: 13

Robert-p P Valdatta
Po Box 1267
Po Box 1267
Seward AK, 99664-1267

Email:

Constituent

BILL#:

(7)

FURTHER REFERRALS: Judiciary
Finance

The HOUSE SPECIAL COMMITTEE ON FISHERIES Committee considered:

HB 130

UNFAIR TRADE PRACTICES: ANTITURST

Recommends it be replaced with ☐ HCS or ☒ CS for HB 130 (FSH)
For Senate Bills with new title: ☐ Technical Title ☐ New Title: HCR ☐ Same Title ☒ New Title

- ☐ attach amendments
☐ add new referral to _____ Committee
☐ Letter of Intent _____ Committee

NEW FISCAL NOTES

*Assigned by Chief Clerk's Office

[illegible]

PREVIOUS FISCAL NOTES

[illegible]

Printed Last Name

DP

DN

NR

AM

Chair:

Chair:

SEATON

40

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 130
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to the award of damages, costs, BRU Civil Division
and attorney fees in an action against a seafood processor . . ." Component Fair Business Practices
 Sponsor Representative Weyhrauch
 Requester House Special Committee on Fisheries Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Under this bill, if a person wins an award of damages, costs, or attorney fees under state laws that prohibit unfair trade practices, monopolies, and restraints of trade against a seafood processor, the court must require 15 percent of the award or \$40,000,000, whichever is less, be deposited in the state general fund.

Passage of this legislation is not anticipated to have a fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division Attorney General's Office Date/Time 4/2/03 10:37 AM
 Approved by: Kathryn Daughetee for Gregg D. Renkes, Attorney General Date 4/2/2003
 Agency Department of Law

23-LS0484I
Bannister
4/3/03

CS FOR HOUSE BILL NO. 130()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES WEYHRAUCH, Harris

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the award of damages, costs, and attorney fees in an action against a
2 person under certain state laws that prohibit unfair trade practices, monopolies, and
3 restraints of trade; stating legislative intent regarding the appropriation and use of
4 money obtained by the state from the operation of this Act; amending Rules 54, 58, and
5 82, Alaska Rules of Civil Procedure; and providing for an effective date."

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

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 LEGISLATIVE INTENT. It is the intent of the legislature that the money obtained
10 from the operation of the provisions of this Act be appropriated to the Alaska Seafood
11 Marketing Institute to market wild salmon of the state.

12 * **Sec. 2.** AS 45.50 is amended by adding a new section to read:

13 **Sec. 45.50.539. Portion paid to state.** Notwithstanding any other provision

1 of AS 45.50.471 - 45.50.561, if a person receives an award of damages, costs, or
2 attorney fees under AS 45.50.471 - 45.50.561, the court shall require that 15 percent or
3 \$40,000,000, whichever is less, of the award be deposited into the general fund of the
4 state.

5 * **Sec. 3.** AS 45.50.576 is amended by adding a new subsection to read:

6 (c) Notwithstanding any other provision of this section, if a person receives an
7 award of damages, costs, or attorney fees under AS 45.50.562 - 45.50.596, the court
8 shall require that 15 percent or \$40,000,000, whichever is less, of the award be
9 deposited into the general fund of the state.

10 * **Sec. 4.** The uncoded law of the State of Alaska is amended by adding a new section to
11 read:

12 **INDIRECT COURT RULE CHANGES.** AS 45.50.539, enacted by sec. 2 of this Act,
13 and AS 45.50.576(c), enacted by sec. 3 of this Act, have the effect of amending

14 (1) Rule 54, Alaska Rules of Civil Procedure, by requiring the court to require
15 that a certain amount of an award of costs be paid to the state and deposited into the general
16 fund;

17 (2) Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require
18 that a certain amount of an award of damages be paid to the state and deposited into the
19 general fund;

20 (3) Rule 82, Alaska Rules of Civil Procedure, by requiring the court to require
21 that a certain amount of an award of attorney fees be paid to the state and deposited into the
22 general fund.

23 * **Sec. 5.** The uncoded law of the State of Alaska is amended by adding a new section to
24 read:

25 **APPLICABILITY.** This Act applies to an action under AS 45.50.471 - 45.50.561 or
26 AS 45.50.562 - 45.50.596 filed

27 (1) on or after the effective date of this Act; or

28 (2) before the effective date of this Act, if a final judgment has not been
29 entered in the action before the effective date of this Act.

30 * **Sec. 6.** The uncoded law of the State of Alaska is amended by adding a new section to
31 read:

1 RETROACTIVITY. To the extent permitted by the state and federal constitutions,
2 this Act is retroactive to January 1, 2003. 

3 * **Sec. 7.** The uncoded law of the State of Alaska is amended by adding a new section to
4 read:

5 CONDITIONAL EFFECT. This Act takes effect only if sec. 4 of this Act receives the
6 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
7 Alaska.

8 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).

HB 130

Unfair Trade Practices: Anti-Trust

This bill requires any party that brings a case under Alaska's unfair trade practice statutes (AS 45.50) to pay 15%, or \$40 million of any damage award, whichever is less, to the State of Alaska. This bill is based upon the legislature's 1997 tort reform statute that requires any person who receives an award of punitive damages to pay 50 percent of the award into the general fund of the state.

This bill bases its 15%, or \$40 million figure on that precedent. The bill includes intent language calling for the legislature to appropriate the amount of funds received under this bill to the Alaska Seafood Marketing Institute for the purposes of marketing wild Alaska salmon. A companion bill, HB 131, continues that intent by making an appropriation of \$40 to ASMI.

Under Alaska's unfair trade practice statutes (AS 45.50.576), a person allegedly injured by wrongful conduct may bring a civil action, and seek damages. If the court finds that the person was injured and the defendant's conduct was willful, the plaintiff is automatically awarded treble damages plus costs and reasonable attorney fees. The intent of this bill is to have the state receive 15% of the judgment before costs and attorney's fees from any judgment.

A zero fiscal note and sectional analysis of this bill is attached.

Contact: Rep. Bruce Weyhrauch
465-3744

Released: April 2, 2003

If a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover punitive damages.

§ 45.50.576. Suits by persons injured; treble damages

(a) A person who is injured in business or property by a violation of AS 45.50.562 - 45.50.570, or a person so injured because the person refuses to accede to a proposal for an arrangement that, if consummated, would be a violation of AS 45.50.562 - 45.50.570, may bring a civil action

(1) for damages sustained by the person, and if the judgment is for the plaintiff and the trier of fact finds that the defendant's conduct was willful, the plaintiff shall be awarded threefold the amount of damages sustained by the person, plus the costs of the suit, including reasonable attorney fees; and

(2) to enjoin the unlawful practice, and if judgment is for the plaintiff, the plaintiff may be awarded the costs of the suit, including reasonable attorney fees.

(b) When the state, a home rule or general law city or borough, or other governmental entity is injured by reason of a violation of > AS

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

HB 130

Unfair Trade Practices: Anti-Trust

This bill requires any party that brings a case an individual under Alaska's unfair trade practice statutes (AS 45.50) to pay 15% or \$40 million of any damage award, whichever is less, to the State of Alaska. This bill is based upon the legislature's 1997 tort reform statute that requires any person who receives an award of punitive damages to pay 50 percent of the award be deposited into the general fund of the state.

This bill bases its 15% or \$40 million figure on that precedent. The bill includes intent language calling for the legislature to appropriate the amount of funds received under this bill to the Alaska Seafood Marketing Institute for the purposes of marketing wild Alaska salmon. A companion bill, HB 131, would carry that intent by making an appropriation of \$40 to ASMI.

Under Alaska's unfair trade practice statutes (AS 45.50.576), a person allegedly injured by wrongful conduct may bring a civil action, and seek for damages. If the court finds that the person was injured and the defendant's conduct was willful, the plaintiff is automatically awarded treble damages plus costs and reasonable attorney fees. The intent of this bill is to have the state receive 15% of the judgment before costs and attorney's fees out of any judgment by a plaintiff's attorneys.

A zero fiscal note and sectional analysis of this bill is attached.

Contact: Rep. Bruce Weyhrauch
465-3744

Released: April 2, 2003

SPONSOR STATEMENT
Representative _Bruce_Weyhrauch@legis.state.ak.us
www.akrepublicans.org/weyhrauch/

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

Analysis

(907) 465-3744
FAX (907) 465-2273

If a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover punitive damages.

§ 45.50.576. Suits by persons injured; treble damages

(a) A person who is injured in business or property by a violation of AS 45.50.562 - 45.50.570, or a person so injured because the person refuses to accede to a proposal for an arrangement that, if consummated, would be a violation of AS 45.50.562 - 45.50.570, may bring a civil action

(1) for damages sustained by the person, and if the judgment is for the plaintiff and the trier of fact finds that the defendant's conduct was willful, the plaintiff shall be awarded threefold the amount of damages sustained by the person, plus the costs of the suit, including reasonable attorney fees; and

(2) to enjoin the unlawful practice, and if judgment is for the plaintiff, the plaintiff may be awarded the costs of the suit, including reasonable attorney fees.

(b) When the state, a home rule or general law city or borough, or other governmental entity is injured by reason of a violation of > AS

SECTIONAL ANALYSIS

Representative_Bruce_Weyhrauch@legis.state.ak.us
www.akrepublicans.org/weyhrauch/

Subject: Fw: Did you sponsor HB130?

Date: Thu, 27 Feb 2003 17:41:38 -0900

From: "JOE MACINKO" <jgmac@ptialaska.net>

To: <Undisclosed-Recipient:@ptialaska.net;>

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

From: Stephen Taufen

To: Representative Bruce Weyhrauch@legis.state.ak.us

Sent: Thursday, February 27, 2003 5:54 PM

Subject: Did you sponsor HB130?

Alaska State Representative Bruce Weyhrauch (R-Juneau)

RE: HB130

Dear Bruce:

Did you sponsor the bill to take 15% of any legal settlement from the Alakayak case and give it to ASMI, or rather to the general funds?

ASMI has failed for a decade or longer due to the intrusions of the defendant-processors into its affairs. Other USDA commodity groups have had success in bringing back high prices to the harvester, despite the Asian financial crises etc. I know, I worked on those programs, and for one season on ASMI export strategy, as a consultant, too. ASMI squandered a budget multiple times that which other commodity group prospered upon. Its money had long been awarded not on performance, but on Stevens' Berkshire clout. That harmed a lot of other agricultural folks.

I also know from being a corporate insider whistle-blower about the billions that the defendant companies have taken from Alaska. They are indefensible, but we'll all know that by summer.

I'd have rather seen a bill forming a board for resource transparency and accountability... dealing with the "product laundering" tax evasion of illicit bookkeeping (abusive transfer pricing techniques). For if the legislature does not protect Alaska's wealth, then whom?

The State of Alaska failed to prosecute antitrust, failed to cooperate with evidence on the Alakayak case, and has failed in many other ways -- all reflective of what's wrong in America today when multinationals have more power than Peoples, and a form of elitism, plutocracy, or more accurately - small-f fascism develops.

To ask now for a share of the award is disingenuous, as it forgets the cost to the fishers from the state's recalcitrance. It is a shame to ask for any of it unless an apology is made in the public press to fishers harmed by the state's role. The state has also failed to help Bristol Bay harvesters deal with the Russian zone interceptions of migrating salmon. It should have filed an international lawsuit for compensation due. Instead, more complicity has resulted, as the State backpeddles on even discussing the issue openly with all the facts it knows.

The State has failed repeatedly to represent capitalism and democracy in the pollock allocations, and is doing so now in crab rationalization. The results of both lower grounds prices upon which ASMI taxes are computed. This makes no sense save for corporate greed. And campaign coffers.

What is your role in this? What will you do to represent fishers instead of corporate interests? The People instead of foreign investors who have long had their way with Alaska's resources (exports of both fish and timber at prices that can only be described as corruptly 'on the cheap', Banana Republic style)?

Sincerely,

Stephen Taufen, founder
Groundswell Fisheries Movement

LETTERS TO FISHERIES COMMITTEE

HB 130

Subject: Bristol Bay lawsuit**Date:** Mon, 3 Mar 2003 12:41:16 -0500**From:** "rod perry" <rperry@mtaonline.net>

To: <Representative_Carl_Moses@legis.state.ak.us>,
 <Representative_Bob_Lynn@legis.state.ak.us>,
 <Representative_Richard_Foster@legis.state.ak.us>,
 <Representative_Mary_Kapsner@legis.state.ak.us>,
 <Representative_Kelly_Wolf@legis.state.ak.us>,
 <Representative_Bill_Stoltze@legis.state.ak.us>,
 <Representative_Carl_Morgan@legis.state.ak.us>,
 <Representative_Reggie_Joule@legis.state.ak.us>,
 <Representative_David_Guttenberg@legis.state.ak.us>,
 <Representative_Hugh_Fate@legis.state.ak.us>,
 <Representative_Sharon_Cissna@legis.state.ak.us>,
 <Representative_Peggy_Wilson@legis.state.ak.us>,
 <Representative_Paul_Seaton@legis.state.ak.us>,
 <Representative_Kevin_Meyer@legis.state.ak.us>,
 <Representative_Albert_Kookesh@legis.state.ak.us>,
 <Representative_Jim_Holm@legis.state.ak.us>,
 <Representative_Ralph_Samuels@legis.state.ak.us>,
 <Representative_Lesil_McGuire@legis.state.ak.us>,
 <Representative_Eric_Croft@legis.state.ak.us>,
 <Representative_Ethan_Berkowitz@legis.state.ak.us>,
 <Representative_Jim_Whitaker@legis.state.ak.us>,
 <Representative_Norman_Rokeberg@legis.state.ak.us>,
 <Representative_Beth_Kerttula@legis.state.ak.us>,
 <Representative_Mike_Hawker@legis.state.ak.us>,
 <Representative_Les_Gara@legis.state.ak.us>,
 <Representative_Harry_Crawford@legis.state.ak.us>,
 <Representative_Tom_Anderson@legis.state.ak.us>, <wloy@adn.com>

Hi,

I have to say I am VERY concerned about this bill being introduced by Weyrauch and Harris. (see article below) They seem to think that if the courts award any money to these fishermen, ASMI is entitled to much of it. I do not think it is appropriate to be so opportunistic to the point of basically taxing one portion of Alaska's population, with these families having their money (if awarded) stolen from them to support an industry that our family is NOT even involved with anymore.

What about all of the other fishermen in the state benefitting from ASMI's efforts solely on one group of fishermen forced to give up money that was rightfully theirs in the first place? If ALL fishermen profit from ASMI, then ALL fishermen should contribute equally. Will we as fishermen now have to hire another set of lawyers to sue the State of Alaska?

If and when the courts award this money to the Bristol Bay fishermen, it is because there is proof that there were illegal practices occurring, and we should not have that money that we earned STOLEN from us (AGAIN)!! I STRONGLY encourage you to DEFEAT this or any other such similar bill and also STRONGLY suggest that you investigate as to how much influence Sen. Ben Stevens has on these two individuals. He wanted to take the stand against the fishermen, but the judge would not allow it. Is this his recourse?

Thank you very much for your time on this issue and I look forward to any input from you and your colleagues.

Sincerely,

Karen Perry 688-2153

This is the excerpt from the Anchorage Daily News on Friday Feb. 28, 2003 :

The Bristol Bay trial is expected to last until the end of April. So far, lawyers have far outnumbered fishermen in the courtroom.

- A bill introduced in Juneau on Wednesday would, in effect, tax judgments commercial fishermen win in unfair trade practice lawsuits against seafood processors.

The bill specifies that 15 percent of an award or \$40 million, whichever is less, shall be deposited in the state's general fund. The intent of the bill is that the Legislature would then appropriate the money to the Alaska Seafood Marketing Institute to promote wild salmon.

If the measure became law, it would be retroactive to Jan. 1 of this year, the bill says.

The sponsors are Reps. Bruce Weyhrauch, R-Juneau, and John Harris, R-Valdez.

The figure cited in the bill, \$40 million, is the same amount that lawyers for fishermen in the Bristol Bay case already have collected in settlements from processors and importers. Bristol Bay trial is expected to last until the end of April. So far, lawyers have far outnumbered fishermen in the courtroom.

The Bristol Bay trial is expected to last until the end of April. So far, lawyers have far outnumbered fishermen in the courtroom.

POMS Main Menu

POMS Unviewed Message Summary for Representative Seaton

☐ Main Menu ☐ Extract as ☐ Comma Separated Format ☐

Kathleen M Lange
259 Mountain View Dr
259 Mountain View Dr
Homer AK, 99603

Email: silverdove@alaska.net

Constituent

BILL#:

SUBJECT: TAXATION

MESSAGE: The bill to levy 15% tax on fishermen's judgement wins against processors is not right. You cannot divy up what is not yours. Thats socialism. Remember we are Americans. Stop scrabbling over a piece of pie that isn't yours to begin with. Money is tight but don't steal from fishermen.

DISTRIBUTION: 61

Therese R Dirks
Po Box 1132

Homer AK, 99603

Email:

Constituent

BILL#:

SUBJECT: TAXATION

MESSAGE: I OPPOSE THE INCREASE IN FUEL TAX. THIS INCREASE WILL LEAD TO INCREASE IN OTHER COMMODOTIES DUE TO HAVING TO ABSORB THEIR TRANSPORTATION COSTS. SO THE CONSUMER PAYS MORE AT THE PUMP AND MORE AT THE GROCER. MANY WILL HAVE TO WALK.

DISTRIBUTION: 13

Robert-p P Valdatta
Po Box 1267
Po Box 1267
Seward AK, 99664-1267

Email:

Constituent

BILL#:

SCOMM

131:17

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

December 4, 1995

SUBJECT: "Open access" provisions of the Alaska Constitution and restrictions on sport fish guides (Work Order No. 9-LS1353)

TO: Representative Joseph Green

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum briefly discusses the implications that the "open access" provisions of article VIII of the Alaska Constitution would have for any proposal to limit the number of sport fish guides.

Any proposal to limit the number of sport fish guides would infringe on the "open access" provisions of the Alaska Constitution, because it would have the effect of restricting free entry into the fishery. See, McDowell v. State, 785 P.2d 1 (Alaska 1989); Owsichuk v. State, 763 P.2d 488 (Alaska 1988); Bozanich v. Noerenberg, Alaska Superior Court, First Judicial District, Juneau, Case No. 70-389, March 15, 1971. Even though they are not actually engaged in sport fishing while providing guide services, the Alaska Constitution protects the open access rights of sport fish guides to use fishery resources for professional purposes. "The common use clause makes no distinction between use for personal purposes and use for professional purposes." Owsichuk, 763 P.2d at 497; see also, Tongass Sport Fishing Association, 866 P.2d 1314 (Alaska 1994); Alaska Fish Spotters Association, 838 P.2d 798 (Alaska 1992).

The "open access" provisions of article VIII of the Alaska Constitution are the "common use" section¹, "no exclusive right of fishery" clause², and the "uniform application" section³.

¹ Article VIII, sec. 3 states:

Common Use. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

² Article VIII, sec. 15 states (emphasis added):

No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or
(continued...)

These provisions provide that all persons shall have an equal opportunity to participate in the use of fish and game resources.

The current limited entry system for commercial fisheries (AS 16.43) would violate the open access provisions of the Alaska Constitution, unless the constitution had been amended to allow limited entry. State v. Ostrosky, 667 P.2d 1343 (Alaska 1983), appeal dismissed sub nom. Ostrosky v. Alaska, 467 U.S. 1201, 81 L.Ed.2d 339 (1984). In 1972, article VIII, section 15 was amended to create a limited entry exception to the "no exclusive right of fishery" clause. The limited entry exception provides that "[t]his section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State." Article VIII, sec. 15, in relevant part.

In order to place a limit on the number of sport fish guides, it would be necessary for such limitations to fall under the limited entry exception. Though the limited entry exception was largely adopted in the context of commercial fisheries, the exception does not expressly limit itself to only commercial fisheries. The courts may construe "any fishery" to include sport fisheries as well as commercial fisheries. Thus there is a possibility that the limited entry exception would authorize some form of limitation on the number of sport fish guides.

Assuming that the limited entry exception is construed broadly to include limited entry for sport fish guides, the next obstacle to be overcome is to establish that limitations or restrictions on who may become sport fish guides achieves the three purposes of the limited entry exception: resource conservation, prevention of economic distress among fishermen and others, and promotion of aquaculture. When the Alaska Supreme Court approved the commercial fisheries limited entry program, the court did not examine in any detail whether the program satisfied all of the purposes that the limited entry exception was to achieve. Ostrosky, 667 P.2d at 1190-95. In other cases where the court had occasion to review commercial fisheries limited entry, the court did not rigorously examine whether the program achieved all three of the purposes, but instead seemed to accept a challenged provision if it furthered one or two of the purposes of the limited entry exception. Johns v. Commercial

^{2/}(...continued)

authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

^{3/} Article VIII, sec. 17 states:

Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Representative Joseph Green
December 4, 1995
Page 3

Fisheries Entry Commission, 758 P.2d 1256, 1263-64 (Alaska 1988); Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255, 1265 (Alaska 1980). The burden would fall upon the legislature to establish a substantial record in the legislative history that any legislation limiting the number of sport fish guides achieves those purposes.

If the limited entry exception cannot be construed to authorize a limitation on the number of sport fish guides, then the only remaining option is to amend the Alaska Constitution accordingly.

Please contact me, if I can provide additional information on the open access provisions of the Alaska Constitution or other issues relating to sport fish guides.

GU:glc
95-452.glc

LEGAL SERVICES

Division of Legal and Research Services
Legislative Affairs Agency
State Capitol, Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

CAP 428

(907) 465-2450 or
465-3867

FAX: (907) 465-2029
Mail Stop 3101

ROUTING SLIP

TO: REP SEATON ATTN: CAMERON

REMARKS:

AS PER YOUR REQUEST OPINION RELATING
TO SPORT FISH CHARTER FISHERIES

FROM: LAA-LEGAL G LUTERMOHLE DATE: 4/29/03

TONGASS SPORT FISHING ASSOCIATION; Ketchikan Marine Charters Association; Southeastern Lodge & Resort Owners Association; Sitka Charter Boat Owners Association; Petersburg Charter Boat Association; Sitka Sportsman's Association; Juneau Charter Boat Operator's Association; Alaska State Council of Trout Unlimited; and Alaska Sport Fishing Federation, Appellants,

v.

STATE of Alaska; Alaska Board of Fisheries; Alaska Department of Fish & Game; and Carl L. Rosier, Commissioner of Fish & Game, Appellees.

Alaska Trollers Association,
Appellee/Intervenor.

No. S-5202.

Supreme Court of Alaska.

Jan. 14, 1994.

Sport fishing groups challenged Board of Fisheries regulation allocating number of chinook salmon harvested by commercial and sport fishers in southeast portion of state. The Superior Court, First Judicial District, Juneau, Walter L. Carpeneti, J., entered summary judgment for Board. Sport fishing groups appealed. The Supreme Court, Rabnowitz, J., held that: (1) allocational regulation did not violate "common use," "no exclusive right of fishery," or "uniform application" clauses of state constitutional article limiting laws and regulations governing natural resources; (2) Board considered relevant statutory criteria in adopting regulation; and (3) Board was not required to publish decisional document in support of regulation.

Affirmed.

1. Administrative Law and Procedure ⊞797

Fish ⊞12

Whether Board of Fisheries regulation is consistent with State Constitution is question of law which is reviewed de novo.

2. Fish ⊞12

State constitutional limitations on state's power to restrict access to natural resource user groups do not apply to state's authority to allocate fishery resources among sport, commercial, and subsistence users. Const. Art. 8, § 1 et seq.

3. Fish ⊞12

Board of Fisheries possessed authority to allocate chinook salmon subject to Pacific Salmon Treaty between sport and commercial users, and its regulation allocating number of chinook that could be harvested by commercial seiners and gillnetters, commercial trollers, and sport fishers in southeast portion of state did not violate "common use" or "no exclusive right of fishery" clauses of State Constitution, since Board's allocation decision was not limitation on admission to particular user group. Const. Art. 8, §§ 3, 15; Pacific Salmon Treaty Act of 1985, §§ 2-15, 16 U.S.C.A. §§ 3631-3644.

4. Fish ⊞12

"Uniform application" clause of State Constitution, limiting laws and regulations governing use or disposal of natural resources, was not violated by Board of Fisheries regulation allocating number of chinook salmon that could be harvested by commercial seiners and gillnetters, commercial trollers, and sport fishers in southeast portion of state, since sport and commercial users were not similarly situated. Const. Art. 8, § 17; Pacific Salmon Treaty Act of 1985, §§ 2-15, 16 U.S.C.A. §§ 3631-3644.

5. Fish ⊞12

Board of Fisheries considered relevant statutory criteria in adopting regulation allocating chinook salmon subject to Pacific Salmon Treaty between sport and commercial users in southeast portion of state, since Board took hard look at salient problems affecting southeast Treaty chinook harvests and engaged in reasoned decisionmaking, during full day of deliberations following hearings, in reaching its allocation decision, and there was no evidence that Board's allocation was unreasonable or arbitrary. AS 16.05.251(e); Pacific Salmon Treaty Act of 1985, §§ 2-15, 16 U.S.C.A. §§ 3631-3644.

6. Fish $\S$ 12

In making decision regarding allocation of fish between commercial and sport fishers, Board of Fisheries is required to take hard look at salient problems and to engage in reasoned decisionmaking. AS 16.05.-251(a)(12), (e).

7. Administrative Law and Procedure $\S$ 797Fish $\S$ 12

It is not function of Supreme Court to examine wisdom of Board of Fisheries regulation allocating fish between commercial and sport fishers.

8. Administrative Law and Procedure $\S$ 797

Effective judicial review requires that agency adequately discuss basis of regulation.

9. Administrative Law and Procedure $\S$ 408Fish $\S$ 12

Board of Fisheries was not required to publish decisional document in support of Board's regulation allocating number of chinook salmon that could be harvested by commercial and sport fishers in southeast portion of state, since record reflected that Board considered relevant salient factors in making its allocation decision, its decision showed reasoned decisionmaking, and adoption of decisional document requirement was unnecessary and would impose significant burdens upon Board and its lay members. AS 16.05.-251(a)(12), (e).

James R. Blair, Bliss Riordan, Fairbanks, for appellants.

John P. Griffin, Asst. Atty. Gen., Charles E. Cole, Atty. Gen., Juneau, for appellees.

Bruce B. Weyhrauch, Faulkner, Banfield, Doogan & Holmes, Juneau, for appellee/intervenor.

1. See generally Thomas C. Jensen, *The United States-Canada Pacific Salmon Interception Treaty: An Historical and Legal Overview*, 16 *Env'tl. L.* 363, 366 n. 1 (1986).

Before MCORE, C.J., and RABINOWITZ, BURKE, MATTHEWS and COMPTON, JJ.

OPINION

RABINOWITZ, Justice.

This appeal concerns a regulation promulgated by the Alaska Board of Fisheries (the Board) allocating the number of chinook (king) salmon that may be harvested by commercial seiners and gillnetters, commercial trollers, and sport fishers in southeast Alaska. This appeal presents three questions. First, does the allocative regulation promulgated by the Board violate the policies expressed in Article VIII of the Alaska Constitution? Second, in promulgating this regulation, did the Board consider the relevant criteria and take a "hard look" at the salient problems involved? Third, is a decisional document supporting the regulation required, and if not, is the record sufficient to support the Board's adoption of the regulation? We determine that the superior court answered all three of these questions correctly, and affirm its grant of summary judgment to the Board.

I. BACKGROUND

The Pacific Salmon Treaty took effect in 1985. See Fisheries: Pacific Salmon, Treaty Between the United States of America and Canada, Jan. 28, 1985; 16 U.S.C. §§ 3631-3644. Since its enactment the number of chinook salmon that can be harvested in southeast Alaska by commercial net fishers (seiners and gillnetters), commercial trollers, and sport fishers, has been determined by the Pacific Salmon Commission under the terms of the treaty. For 1991 and 1992 the Commission set a harvest ceiling of 273,000 and 263,000 chinooks respectively for all user groups. Alaska Dep't of Fish and Game, *Regional Information Report No. 1J92-01, Chinook Salmon Fisheries and Harvests in Southeast Alaska* 2-3 (1992).²

2. Alaska hatchery chinook may be taken in addition to these base ceilings. Cumulative deviations from the harvest ceilings are limited to 7.5% of the ceiling or approximately 20,000 fish. When cumulative deviations exceed this management range, chinook harvests must be reduced

The Alaska Board of Fisheries determines allocations among the user groups under the chinook harvest ceilings set by the Pacific Salmon Commission. Twenty thousand chinook a season are allocated to the commercial net fishers. 5 Alaska Administrative Code (AAC) 33.365(b)(10). Prior to 1992 sport fishers were able to harvest chinook subject only to bag and size limitations. The remaining chinook, under the provisions of the Pacific Salmon Treaty, were available for harvest by commercial trollers.³

Alaska Department of Fish and Game data show that the sport fishers' catch of chinook gradually increased until the Board imposed ceilings.⁴ This increased sport harvest in combination with lower Treaty limits reduced the number of chinook available to southeast commercial trollers. From 1975 to 1979 the average harvest of Treaty chinook by commercial trollers was approximately 300,000 fish. From 1985 to 1991, it was less than 225,000 fish.⁵

In November 1991, the Alaska Trollers Association requested that the Board amend 5 AAC 33.365 (the Southeast Alaska-Yakutat Chinook and Coho Salmon Troll Fisheries Management Plan) to allocate a percentage of the Treaty chinook salmon quota to commercial trollers. After four days of public hearings and lengthy deliberations, the Board voted to allocate Treaty chinook between the commercial troll and sport fisheries. After deducting the 20,000 chinook allocated to the commercial net fishers, 83 percent of the remainder was allocated to the troll fishery and 17 percent to the sport fishery. Subsequently the Board adopted regulations implementing the allocation decision:

the following year to bring the cumulative deviation back within the management range. *Id.*

3. The commercial trollers were limited each year to what was left after subtracting from the Treaty's annual harvest ceiling the following: (1) the allocation to the net fishermen; (2) a pre-season projection of what sport fishermen would catch that year; and (3) the amount, if any, by which the previous year's harvest of chinook by all user groups exceeded that year's Treaty ceiling
4. The sport fishers' harvest of Treaty chinook—chinook not raised in hatcheries—grew steadily

(a) The department shall manage the Southeast Alaska Area and Yakutat Area chinook salmon sport fisheries in marine waters so that these fisheries together harvest not more than 17 percent of the annual harvest ceiling, specified by the Pacific Salmon Commission, after the commercial net harvest specified in 5 AAC 33.365(b)(10) is subtracted from the total ceiling. The management plan in this section provides the department with guidelines for pre-season and in-season adjustment of sport fishery harvest levels in order to not exceed the 17 percent ceiling.

(b) The objects of the management plan in this section are to allow uninterrupted sport fishing in marine waters for chinook salmon, while not exceeding the 17 percent ceiling established in (a) of this section, and to minimize regulatory restrictions on anglers not fishing from a charter vessel, who harvest chinook salmon at a lower catch-per-unit of effort than do anglers fishing from a charter vessel.

5 AAC 46.055(a)-(b).

Thereafter, the Tongass Sport Fishing Association, together with other sport fishing organizations, associations of charter-boat operators, and an association of lodge and resort owners (collectively Tongass) brought suit challenging the Board's regulation.⁶ On cross-motions for summary judgment the superior court ruled that (1) the Board did not violate the Administrative Procedure Act in adopting the questioned regulation; (2) the Board acted within its statutory powers regarding conservation, development, and utilization of fishery resources; (3) the Board took a hard look at all relevant factors in making the allocation; (4) the allocation regulation does not violate article VIII of the

during this time. In 1969, it was 14,000. Between 1973 and 1979, it hovered between 16,000 and 17,000. For most years from 1980 to 1988, it was approximately 20,000. Thereafter, it increased more rapidly. It was 24,720 in 1989, 34,588 in 1990, and 41,700 in 1991.

5. Trollers harvested 88-90% of the total Treaty chinook catch prior to 1980. The trollers' harvest from 1989 through 1992 was less than 80% of the total catch
6. The Alaska Trollers Association intervened in support of the Board's regulation

ument was not necessary because the administrative record adequately set forth the basis of the Board's allocation decision. Tongass appeals, challenging the last three of those rulings.

II. DOES THE BOARD'S ALLOCATION REGULATION VIOLATE THE POLICIES EXPRESSED IN ARTICLE VIII OF THE ALASKA CONSTITUTION?

[1] Tongass argues that article VIII of the Alaska Constitution, particularly the "common use" clause of section 3 and the "no exclusive right of fishery" clause of section 15, embodies a clear policy in favor of general public access to the natural resources of the state, with no special privilege accorded to any individual group.⁸ Tongass further argues that under the public trust doctrine the state has a fiduciary duty to manage the resources of Alaska for the benefit of all of the people.⁹ Given these constitutional policies, Tongass takes the position that allocating a fixed quota of chinook to the trollers creates an unconstitutional "special privi-

7. Whether a regulation is consistent with the Alaska Constitution is a question of law, which we review *de novo*. See, e.g., *Sonneman v. Knight*, 790 P.2d 702, 704 (Alaska 1990). "[S]ummary judgment may be granted only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Thus, we review *de novo* an order granting summary judgment." *Gilbert v. State, Dep't of Fish & Game*, 803 P.2d 391, 394 (Alaska 1990) (citation omitted).

8. Article VIII, section 1 of the Alaska Constitution provides:

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

Article VIII, section 2 provides:

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Article VIII, section 3 provides:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Article VIII, section 4 provides:

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 Board of Fisheries was created for the purposes of conservation and development of the state's fishery resources. AS 16.05-.221(a). In *Kenai Peninsula Fisherman's Cooperative Ass'n v. State*, 628 P.2d 897, 903 (Alaska 1981), we held that concepts of "conserving" and "developing" fishery resources necessarily include the concepts of managed utilization and thus allocation of these resources. See also *Alaska Fish Spotters v. State, Dep't of Fish & Game*, 838 P.2d 755, 800 (Alaska 1992). In *Meier v. State, Board of Fisheries*, 739 P.2d 172, 174 (Alaska 1987), we stated that the Board's "duty to conserve and develop fishery resources implies a concomitant power to allocate fishery resources among competing users." We also held that the Board's authority encompasses the power to allocate a fishery resource between two competing subgroups of commercial users. *Id.* at 174 (upholding Board allocation of

State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Article VIII, section 15 provides:

No exclusive right or special privilege of fishery shall be created or extended in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Article VIII, section 17 provides:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

9. See *Ovrichuk v. State, Guide Licensing & Control Bd.*, 763 P.2d 488, 495 (Alaska 1988). *CWC Fisheries, Inc. v. Bunker*, 755 P.2d 1115, 1117-18 (Alaska 1988).

10. Troll fleet participation is controlled through the limited entry program. AS 16.43.010-800, see *Rutter v. State*, 668 P.2d 1343 (Alaska 1983). *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983). appeal dismissed sub nom. *Ostrosky v. Alaska*, 467 U.S. 1201, 104 S.Ct. 2379, 81 L.Ed.2d 339 (1984).

salmon between setnet and driftnet fishers). Subsequently, in *Gilbert v. State, Department of Fish & Game*, 803 P.2d 391, 399 (Alaska 1990), we recognized that the Board possessed authority to allocate among different fisheries.

[2] We have held that the "common use" clause of article VIII, section 3, the "no exclusive right of fishery" clause of section 15, and the "uniform application" clause of section 17 are not implicated unless limits are placed on the admission to resource user groups. *McDowell v. State*, 785 P.2d 1, 8 & n. 14 (Alaska 1989); see also *Owsiechek v. State, Guide Licensing & Control Bd.*, 763 P.2d 488, 492 (Alaska 1988). Article VIII limitations on the state's power to restrict access to natural resource user groups do not apply to the state's authority to allocate fishery resources among sport, commercial, and subsistence users.¹¹ In *Kenai Peninsula*, we said:

While section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sports, and subsistence fishermen. To conclude that, because a certain species is made available for sport fishing in a given area, commercial fishing of the same species in the same area must also be allowed, would be to go far beyond the purpose of the section.

628 P.2d at 904.

[3] On the basis of these authorities we conclude that the Board possessed the authority to allocate Treaty chinook between sport and commercial users. The Board's allocation decision was not a limitation on admission to a particular user group. Therefore, we hold that the regulation is not violative of the "common use" or "no exclusive right of fishery" clauses of article VIII of the Alaska Constitution.

11. In *McDowell* we said, "The state may, indeed must, make allocation decisions between sport, commercial, and subsistence users. That authority, however, does not imply a power to limit admission to a user group." 785 P.2d at 8.

12. Alaska Statute 16.05.251(e) provides in part:

[4] Furthermore, the regulation does not conflict with the "uniform application" clause of article VIII. Since sport and commercial users are not similarly situated, the uniform application clause is not implicated. *Gilbert*, 803 P.2d at 399.

III. IN PROMULGATING THE REGULATION, DID THE BOARD CONSIDER RELEVANT CRITERIA AND TAKE A "HARD LOOK" AT THE CONFLICTING FACTORS IN MAKING ITS ALLOCATION DECISION?

The legislature has authorized the Board to adopt regulations that the Board considers advisable for "regulating commercial, sport, guided sport, subsistence, and personal use fishing as needed for the conservation, development, and utilization of fisheries." AS 16.05.251(a)(12). The legislature also directed the Board to establish criteria for the allocation of fishery resources among personal use, sport, and commercial fishing. AS 16.05.251(e).¹² The legislature further provided that such criteria may include factors such as

- (1) the history of each personal use, sport, guided sport, and commercial fishery;
- (2) the 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) the importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption;
- (4) the availability of alternative fisheries resources;
- (5) the importance of each fishery to the economy of the state;
- (6) the importance of each fishery to the economy of the region and local area in which the fishery is located;

The Board of Fisheries may allocate fishery resources among personal use, sport, guided sport, and commercial fisheries. The board shall adopt criteria for the allocation of fishery resources and shall use the criteria as appropriate to particular allocational decisions.

- (7) the importance of each fishery in providing recreational opportunities for residents and nonresidents.

Id. In response to this legislation the Board adopted 5 AAC 75.017:

Before adopting regulations that allocate fish among personal use, sport, and commercial fisheries, the board will, as appropriate to particular allocation decisions, consider factors such as those set out in AS 16.05.251(e).

(Emphasis added).

Tongass asserts that the Board failed to follow the criteria set out in AS 16.05.251(e) and 5 AAC 75.017 in adopting its allocational regulation. The essence of Tongass's argument is that although the Board members were aware of the relevant criteria, and some members did mention criteria from time to time, there is no indication in the record that the Board ever weighed the criteria in making its allocation decision. As Tongass notes, an agency must at least consider all relevant criteria. See *State, Dep't of Transp. & Pub. Facilities v. 0.644 Acres, More or Less*, 613 P.2d 829, 833 n. 13 (Alaska 1980).

[5] Upon its review of the transcript of the four-day hearing and the Board's deliberations, the superior court found that the Board had considered the relevant statutory criteria. Review of the record leads us to the same conclusion. The record shows that during a full day of deliberations following the hearings the Board did consider the relevant criteria before reaching its allocation decision.

[6,7] In making its allocation decision the Board was required to take a "hard look" at the salient problems and to engage in reasoned decisionmaking. *Gilbert*, 803 P.2d at 398; *Trustees for Alaska v. State, Dep't of Natural Resources*, 795 P.2d 806, 809 (Alaska 1990); *Alaska Survival v. State, Dep't of Natural Resources*, 723 P.2d 1281, 1287 (Alaska 1986). Our review of the record persuades us that the Board did take a hard look at the salient problems affecting the southeast Treaty chinook harvests and en-

gaged in reasoned decisionmaking in reaching its allocation decision. There is no evidence that the Board's allocation was unreasonable or arbitrary. It is not our function to examine the wisdom of the allocation regulation. *Gilbert*, 803 P.2d at 397; *Meier*, 739 P.2d at 174.

IV. IS A DECISIONAL DOCUMENT REQUIRED? IF NOT, IS THE RECORD SUFFICIENT TO SUPPORT THE BOARD'S ALLOCATION DECISION?

[8,9] Tongass asks us to invalidate the Board's allocation regulation because the Board did not publish a decisional document in its support. Effective judicial review requires that an agency adequately discuss the basis of a regulation:

For a court to determine that an agency acted within its authority in adopting a regulation, it is vital that the agency clearly voice the grounds upon which the regulation was based in its discussions of the regulations or in a document articulating its decision.

Alaska Fish Spotters Ass'n v. State, Dep't of Fish & Game, 838 P.2d 798, 801 (Alaska 1992).

We have expressly held that decisional documents are not required in the circumstances where an agency exercises its rulemaking powers. *Johns v. Commercial Fisheries Entry Comm'n*, 758 P.2d 1256, 1260-61 (Alaska 1988); see also *State v. Hebert*, 743 P.2d 392, 396-97 (Alaska App.1987). We are not persuaded by Tongass's arguments that we should modify *Johns* to require a decisional document from an administrative agency when it exercises its (quasi-legislative) rulemaking authority. As noted in the previous section, the record in this case indicates that the Board took a hard look at the relevant and often competing salient factors in making its allocation decision and that its decision reflects reasoned decisionmaking. Adoption of a decisional document requirement is unnecessary and would impose significant burdens upon the Board.¹³

13. As the state notes:

These Boards are citizen boards, whose members generally pursue full-time careers in addi-

The superior court's grant of summary judgment to the state is **AFFIRMED**.



James C. LOWE, Appellant,

v.

STATE of Alaska, Appellee.

No. A-5008.

Court of Appeals of Alaska.

May 14, 1991.

Defendant was convicted in the Superior Court, Third Judicial District, Anchorage, Karl S. Johnstone, J., of manslaughter, and he appealed. The Court of Appeals, Coats, J., held that three-judge panel properly considered and rejected claim that defendant's extraordinary potential for rehabilitation rendered imposition of presumptive five-year sentencing term manifestly unjust.

Affirmed.

1. Criminal Law ⇨996(4)

A three-judge panel properly considered and rejected claim that manslaughter defendant's extraordinary potential for rehabilitation rendered imposition of presumptive five-year sentencing term manifestly unjust; in anger and frustration, defendant had emptied revolver at fleeing persons who presented no danger to him, and consequences of his reckless actions were entirely foreseeable. AS 12.55.175(b).

tion to their agency obligations; the number of meetings they can hold and proposals they can consider are limited. Nevertheless, in its 1990-91 meeting cycle, the Board of Fisheries met for 58 days and considered approximately 393 proposals to change or adopt new regula-

2. Criminal Law ⇨1263

Courts may deviate from presumptive sentences only when there are good reasons to do so.

William P. Bryson and Shelley K. Chaffin, Law Office of William P. Bryson, Anchorage, for appellant.

James L. Hanley, Asst. Atty. Gen., Office of Special Prosecutions and Appeals, Anchorage, and Charles E. Cole, Atty. Gen., Juneau, for appellee.

Before COATS and MANNHEIMER, JJ., and WOLVERTON, District Court Judge.

OPINION

COATS, Judge.

On the evening of May 9, 1992, eighteen-year-old Clyde Thompson and several friends were participating in a scavenger hunt organized by students at Service High School. One item on their list was a promotional balloon tethered to the roof of the Lo-Mark Furniture Store on Gambell Street. The youths obtained a pair of scissors and a knife to cut the balloon free and drove to the Lo-Mark Furniture Store parking lot. Several students scaled the roof of the store while others waited below.

At that time, the owner of the Lo-Mark Store, James C. Lowe, and his wife drove their motor home into the parking lot of the furniture store. They noticed two people on the roof who appeared to be stealing the balloon. Lowe yelled at the individuals and retrieved a six-shot .38 caliber revolver from his motor home. Lowe told his wife, "I'm gonna scare 'em to death this time." Lowe ran around the building, saw the individuals running toward a car, and fired six shots in their general direction.

One of Lowe's shots struck Clyde Thompson in the back. Thompson's companions realized that he had been seriously wounded

tions. Current limitations in staff, in agency budgets, and in the time commitments of lay Board members make it impossible to reduce every one of these hundreds of decisions to a written "findings and conclusions" document.

and drove him to the Alaska Medical Center for help. The bullet had pierced Thompson's heart, and he died at the hospital.

When the police investigated the incident, they found that three other shots which Lowe fired had struck rooms in the Samovar Inn. Two bullets had entered room number 40, striking a television set and mirror. This room was occupied by a man and his wife who fortunately were out to dinner when the bullets struck. Another bullet entered an unoccupied room.

Following the investigation, the state charged Lowe with murder in the second degree. Following a trial, a jury convicted Lowe of manslaughter.

Manslaughter is a class A felony with a maximum sentence of twenty years' imprisonment. AS 11.41.120 and AS 12.55.125. There is a presumptive sentence of five years' imprisonment for a first-felony offender, ten years for a second-felony offender, and fifteen years for a third-felony offender. AS 12.55.125(c). At the time of sentencing, Lowe was forty-eight years old and had no prior convictions.

Superior Court Judge Karl S. Johnstone found that two aggravating factors applied to Lowe's offense: that "the defendant employed a dangerous instrument in furtherance of the offense" and that "the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices[.]" AS 12.55.155(c)(4) and (6). Judge Johnstone found that no mitigating factors were applicable. Lowe does not contest these findings.

In the absence of mitigating factors, Judge Johnstone was required by law to impose at least the five-year presumptive sentence. Lowe contended that sentencing him to five years' imprisonment was manifestly unjust, and urged Judge Johnstone to refer the case to a three-judge panel pursuant to AS 12.55.165.

Alaska Statute 12.55.165 provides:

If the defendant is subject to sentencing [under presumptive sentencing] and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating

or mitigating factors not specifically included in AS 12.55.155 or from imposition of the presumptive term, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175.

A three-judge panel must adjust a defendant's sentence if it finds "that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of the presumptive term." AS 12.55.175(b).

Lowe requested that Judge Johnstone refer his case to a three-judge panel on two grounds: (1) that manifest injustice would result from failure to consider Lowe's exceptional prospects for rehabilitation, and (2) that manifest injustice would result from imposition of the presumptive five-year term.

Judge Johnstone concluded that Lowe's case was appropriate for referral to a three-judge panel. In making this referral, Judge Johnstone found that although Lowe acted out of anger and frustration, he had not intended to shoot anyone. Judge Johnstone also found that while Lowe had acted recklessly in firing the shots, he had generally been a productive citizen who was extremely and genuinely remorseful. Judge Johnstone concluded that Lowe had excellent prospects for rehabilitation. He noted that this court has encouraged referral of debatable cases to a three-judge panel. *Bossie v. State*, 835 P.2d 1257, 1259 (Alaska App.1992); *Lloyd v. State*, 672 P.2d 152, 155 (Alaska App.1983).

A three-judge panel concluded that it would not be manifestly unjust to impose the presumptive five-year term and remanded the case back to Judge Johnstone. Judge Johnstone imposed the five-year presumptive sentence.

[1] On appeal, Lowe contends that the three-judge panel failed to consider the issue of whether it was manifestly unjust to sentence him without considering his exceptional potential for rehabilitation. Having carefully reviewed the findings of the three-judge panel, we believe that the panel properly consid-

result of combining those two i.e. extra delay and extra cost to a new judge that is trying to relitigate issues prior judge—requires an extra 42(c). Its arguments, however, convince us that a straightforward rule yields so extreme or it in this case as to require us in language of the rule.

DISCUSSION

USE the superior court's order change judges and REMAND is consistent with this opinion.



Ashbrook v. Northwest Explor., Inc., J. No. 776 at 5-6 (Alaska, May 10, 1994) (original party Ashbrook's allocation issues).

Sigurd RUTTER, Appellant,

v.

STATE of Alaska, Alaska Board of Fisheries, Alaska Department of Fish and Game, and Frank Rue, Commissioner, Department of Fish and Game, Appellees.

No. S-7729.

Supreme Court of Alaska.

Aug. 7, 1998.

Commercial troll fisherman challenged Board of Fisheries regulation reallocating from commercial troll fisheries to sports fisheries 3% of the chinook (king) salmon harvestable in southeast Alaska. The Superior Court, First Judicial District, Sitka, Larry C. Zervos, J., granted summary judgment for state and Board. Fisherman appealed. The Supreme Court held that the Board was not required to treat sport fishing and guided sport fishing as separate categories for purposes of allocating fishery resources.

Affirmed.

Fish 12

Board of Fisheries, in promulgating regulation reallocating from commercial troll fisheries to sports fisheries 3% of the chinook (king) salmon harvestable in southeast Alaska, was not required to treat sport fishing and guided sport fishing as separate categories for allocation purposes; statute providing that Board "may allocate fishery resources among personal use, sport, guided sport, and commercial fisheries" and that Board "may" apply the statute's allocation criteria was discretionary rather than mandatory. AS 16.05.251(e); Alaska Admin. Code title 5, § 47.055(a).

1. Under the Pacific Salmon Treaty, the Pacific Salmon Commission determines the maximum number of chinook salmon that may be harvested in southeast Alaska. See *Tongass Sport Fishing Ass'n v. State*, 866 P.2d 1314, 1315 (Alaska 1994). The Commission set the harvest ceiling for all user groups in southeast at 273,000 in 1991 and

RUTTER v. STATE

Cite as 963 P.2d 1007 (Alaska 1998)

Alaska 1007

Sheila Bacchus, Sitka, for Appellant.

Steven A. Daugherty, Assistant Attorney General, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

Before MATTHEWS, C.J., and COMPTON, EASTAUGH, FABE and BRYNER, JJ.

OPINION

PER CURIAM.

In 1992 the Alaska Board of Fisheries (Board) allocated to the sports fishery 17% of the treaty chinook (king) salmon harvestable in southeast Alaska; the Board allocated 83% to the commercial troll fishery.¹ See 5 Alaska Administrative Code (AAC) 46.055(a) (repealed 1994). This court subsequently upheld the allocation, finding it neither unreasonable nor arbitrary. See *Tongass Sport Fishing Ass'n v. State*, 866 P.2d 1314, 1319 (Alaska 1994). In January 1994, after three days of public testimony and a full day of deliberations, the Board adopted a new regulation, 5 AAC 47.055(a) (am.5/2/97). That regulation reallocated from the commercial troll fishery to the sport fishery—over a three-year period—3% of the harvestable treaty salmon, thereby giving the sport fishery 20% and the commercial fishery 80%. The sport fishery category includes guided and unguided sport fishing. See AS 16.05.940(5), (29).

Sigurd Rutter, a commercial troll fisherman in Sitka, filed suit in June 1994, challenging the newly adopted regulation.² The State filed a motion for summary judgment; Rutter filed a cross-motion. On March 21, 1996, Superior Court Judge Larry C. Zervos issued a decision addressing the opposing motions, concluding that the reallocation regulation was reasonable and valid, and granting summary judgment in favor of the State.

at 263,000 in 1992. Alaska currently uses the 1992 ceiling as its harvest guideline.

2. Rutter also challenged the validity of 5 AAC 39.270(h)(4) (defining "downrigger"). On appeal, Rutter has abandoned his challenge to that regulation.

Rutter appeals. Although the particulars of Rutter's arguments differ somewhat from the arguments he raised below, the core of his complaint remains the same: "This is a little case with a big issue: . . . how can the State redistribute scarce chinook resources between commercial and non-commercial groups when the non-commercial group includes resource users with commercial interests?"

For the reasons stated in Judge Zervos's thorough and thoughtful summary judgment decision, relevant portions of which we set out in Appendix A, we affirm the superior court's order upholding the validity of 5 AAC 47.055(a). We add the following with respect to points specifically raised on appeal:

1. We reject Rutter's contention that the superior court erred in granting summary judgment because genuine issues of material fact had been raised concerning the Board's failure to determine "the extent of the commercial interest" of the guided sport fishery. Below, Rutter repeatedly acknowledged that there were no disputed facts for trial and that the case could be disposed of on summary judgment. He pointed to no information that the Board had refused to consider. Although Rutter mentioned certain 1994-95 registration statistics that he thought relevant, there is no indication that these statistics, standing alone, would have raised genuine issues of material fact. Rutter made no specific offer of additional admissible evidence concerning the extent of the commercial interest of the guided sport fishery. Our review of the record discloses no genuine issue of material fact for trial. Summary judgment was appropriate under these cir-

3. To the extent that Rutter suggests that the reasonableness of the Board's decisions always presents an issue of fact that is immune from summary judgment, he is incorrect. The role of the court in deciding whether the Board's decision was reasonable is limited to determining whether the Board "[took] a 'hard look' at salient problems and . . . engage[d] in reasoned decisionmaking." *Tongass*, 866 P.2d at 1319 (citing *Gilbert v. State, Dep't of Fish & Game*, 803 P.2d 391, 398 (Alaska 1990)). "It is not our function to examine the wisdom of the allocation regulation." *Id.* Under this standard, when no facts material to the Board's decision are disputed, the ultimate issue of reasonableness presents a ques-

cumstances. See *Trigg v. City of Nome*, 929 P.2d 1273, 1274 n. 1 (Alaska 1996).

2. For similar reasons, we reject Rutter's claim that the reasonableness of the Board's decision to classify guided sport fishing as a form of sport fishing rather than as a form of commercial fishing presented a question of disputed legislative fact for trial. No disputed facts bore on this determination.³

3. We find no merit in Rutter's contention that the Board was required to consider the criteria listed in AS 16.05.251(e) separately as they related to the guided and unguided sport fisheries. The Board must consider the criteria listed when it decides to allocate fish among fisheries. See *Peninsula Mktg. Ass'n v. State*, 817 P.2d 917, 921 (Alaska 1991); 5 AAC 39.205, 75.017 (1996). The Board "may" allocate the resources "among personal use, sport, guided sport, and commercial" fisheries. AS 16.05.251(e). But it need not; the provision's use of the permissive word "may," indicates that the Board has discretion to treat sport and guided sport fishing as separate categories for allocation purposes. Here, after taking a "hard look" at the subject, the Board decided against separate allocations for sport fishing, on the one hand, and guided sport fishing, on the other. Instead, it elected to treat guided and unguided sport fishing as a single category and to make a separate allocation to the commercial trolling fishery. See 5 AAC 47.055(a), (n). The Board fully considered the statutory criteria in relation to the two categories adopted in the allocation—sport and commercial; in so doing, it fully discharged its obligations under AS 16.05.251(e).

The judgment entered by the superior court is AFFIRMED.

tion of law capable of summary adjudication. Cf. *Holloway v. Pigman*, 884 F.2d 365, 366 (8th Cir. 1989) ("The mere existence of a factual dispute is insufficient alone to bar summary judgment; rather, the dispute must be outcome determinative under prevailing law."); *Center for Auto Safety v. Bowers*, 466 F.Supp. 829, 835 (D.D.C. 1979) (holding that, where sufficient evidence is before an agency, a court may find a regulation reasonable as a matter of law on summary judgment). We decline Rutter's invitation to adopt a more stringent standard of review in cases involving the allocation of scarce environmental resources, since Rutter raises this issue for the first time in his reply brief.

APPENDIX A *

ORDER GRANTING SUMMARY
JUDGMENT

The State of Alaska, Department of Fish and Game ("the State") moves for summary judgment on all issues raised in Mr. Rutter's complaint. Mr. Rutter opposes and cross-moves for summary judgment.

III. VALIDITY OF THE
REGULATIONS¹

In deciding the validity of the regulations, this court must give substantial deference to the actions of the Board. See *Stepovak-Shumagin Set Net Ass'n v. State, Bd. of Fisheries*, 886 P.2d 632, 636 (Alaska 1994); see also *State v. Kenaitze Indian Tribe*, 894 P.2d 632, 641 (Alaska 1995).

[W]here an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, we will review the regulation in the following manner: First, we will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, we will determine whether the regulation is reasonable and not arbitrary.

Stepovak-Shumagin, 886 P.2d at 636-37 (quoting *Kelly v. Zamarelli*, 486 P.2d 906, 911 (Alaska 1971)). The court must not sub-

stitute its judgment for the Board's determination because "highly specialized agency expertise is involved." *Id.* at 637 (quoting *Meier v. State, Bd. of Fisheries*, 739 P.2d 172, 174 (Alaska 1987)). The court should not question the wisdom of the regulations, but rather must "ensure only that the agency has taken a 'hard look' at the salient problems and has 'genuinely engaged in reasoned decision making.'" *Id.* (quoting *Gilbert v. State Dep't of Fish & Game*, 803 P.2d 391, 398 (Alaska 1990)).

The legislature created the Board "[f]or the purposes of the conservation and development of the fishery resources of the state." AS 16.05.221(a). The Supreme Court has held that the Board, in serving the purposes of conservation and development, is necessarily going to have to make decisions regarding the utilization of the fishery resources. See *Kenai Peninsula Fisherman's Coop. Ass'n v. State*, 628 P.2d 897, 903 (Alaska 1981).

Thus, in determining the validity of a regulation adopted by the Board, the court must first determine whether the regulation is reasonably necessary to conserve and develop the fisheries resource. If the regulation is reasonably necessary for these purposes, then the court must determine whether the regulation, as adopted, is reasonable and not arbitrary.

A. The 3% Reallocation Regulation

The legislature has granted the Board the power to adopt regulations that it deems advisable for "regulating commercial, sport, guided sport, subsistence, and personal use fishing as needed for the conservation, development, and utilization of fisheries." *Tongass Sport Fishing Ass'n v. State*, 866 P.2d 1314, 1318 (Alaska 1994) (quoting AS 16.05.251(a)(12)). This rule-making power

that, in adopting the regulations, the Board followed the proper procedure. See AS 44.62.100 ("The filing of a certified copy of a regulation ... raises the rebuttable presumption[] that ... all requirements of [the Administrative Procedure Act] and the regulations relative to the regulation have been complied with."); *Gilbert v. State, Dep't of Fish & Game*, 803 P.2d 391, 394 (Alaska 1990) ("A regulation ... is considered procedurally presumptively valid once a certified copy has been filed.")

¹As reprinted in this Appendix, the superior court's summary judgment order has been redacted to delete extraneous discussion. The original labeling of the section headings of the superior court order has been retained, but footnotes and pages have been renumbered. The order has also been technically edited in accordance with this court's Manual of Technical Rules for publication.

²Mr. Rutter does not argue that the regulations were adopted in violation of the Administrative Procedure Act. Therefore, this court presumes

APPENDIX A—Continued

includes the authority to allocate fishery resources between sport, subsistence, and commercial users. See *Peninsula Mfg. Ass'n v. State*, 817 P.2d 917, 921 (Alaska 1991). It also includes the power to allocate resources between users in the same group. See *id.* at 920-21.

In this case, the 3% allocation regulation is an allocative decision between the sport fishery and the commercial troll fishery. Allocative decisions are reasonably necessary to conserve and develop the resource. See *Meier v. State, Bd. of Fisheries*, 739 P.2d 172, 174-75 (Alaska 1987). Therefore, the question presented is whether the 3% reallocation regulation was reasonable and not arbitrary.

As already noted, the court's role is not to question the wisdom of a particular regulation, but rather to ensure that the Board has taken a "hard look" at the relevant problems and has actually engaged in reasoned decision making. *Stepovak-Shumagin*, 886 P.2d at 637. In making allocative decisions, however, the Board must consider criteria such as the following:

- (1) the history of each personal use, sport, guided sport, and commercial fishery;
- (2) the 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) the importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption;
- (4) the availability of alternative fisheries resources;
- (5) the importance of each fishery to the economy of the state;
- (6) the importance of each fishery to the economy of the region and local area in which the fishery is located;
- (7) the importance of each fishery in providing recreational opportunities for residents and nonresidents.

2. The issue of whether Alaska has violated the Pacific Salmon Treaty by failing to reduce its total king salmon harvest in Southeast below the 263,000 ceiling is being litigated in the federal

AS 16.05.251(e); see 5 AAC 75.017 (1996) ("Before adopting regulations that allocate fish among personal use, sport, and commercial fisheries, the board will, as appropriate to particular allocation decisions, consider factors such as those set out in AS 16.05.251(e).").

In order to evaluate whether the Board's actions in adopting the 3% reallocation regulation were reasonable and not arbitrary, the court must briefly discuss the Pacific Salmon Treaty and the Board's initial decision to allocate king salmon between the commercial troll and sport fisheries. The Pacific Salmon Treaty between the United States and Canada, which took effect in 1985, limited the number of king salmon that may be taken by all users in Southeast Alaska. See *Tongass Sport Fishing Ass'n*, 866 P.2d at 1315. The treaty set the harvest ceiling of king salmon in Southeast in 1991 at 273,000 and in 1992 at 263,000. Treaty Between the Government of Canada and the Government of the United States of America Concerning Pacific Salmon, Jan. 25, 1985, U.S.-Can., annex 4, ch.3, § 1(c), T.I.A.S. No. 11091 [hereinafter *Pacific Salmon Treaty*]; *Tongass Sport Fishing Ass'n*, 866 P.2d at 1315. Subsequent harvest ceilings are to be set based on the recommendations of the Pacific Salmon Commission, the implementing body for the Pacific Salmon Treaty. Alaska has been using the 1992 ceiling of 263,000 king salmon as its harvest guideline.²

Prior to 1992, the Board did not allocate the treaty salmon between the commercial troll fishery and the sport fishery on a percentage basis. See *Tongass Sport Fishing Ass'n*, 866 P.2d at 1316. Instead, sport fishers were able to harvest treaty salmon subject only to bag limits and size restrictions. See *id.* Commercial troll fishers were able to harvest the number of fish left each year after subtracting from the annual harvest ceiling the following: (1) 20,000 fish for the commercial net fishermen; (2) the pre-season projection of the number of fish the sport fishers would take that year; and (3) the number of fish, if any, by which the previous

courts. See *Confederated Tribes & Bands of the Yakama Nation v. Baldrige*, 898 F Supp. 1471 (W.D.Wash.1995).

APPENDIX A—Continued

APPENDIX A—Continued

year's king harvest by all user groups exceeded that year's harvest ceiling. See *id.* at 1316 n. 3. In 1992, the Board changed this procedure by allocating 17% of the treaty salmon to the sport fishery and 83% to the commercial troll fishery, after first subtracting 20,000 fish for the commercial net fishers. See *id.* at 1316.

In making the 1992 allocation, the Board hoped to stabilize the commercial troll and sport fisheries. Some Board members, however, stressed that they did not want or intend to prohibit the majority of the public—those categorized as sport fishers as opposed to commercial troll fishers—to be denied access to the resource, particularly personal use sport fishers. Additionally, several members of the Board indicated their belief that the 17% allocation for sport fishing would likely have to be adjusted in the future because it may not be the right percentage needed to accommodate both the expectations of commercial troll fishers and the increasing demand in the sport fishery.

Various sport fishing associations, charter-boat organizations, and associations of lodge owners brought suit challenging the 1992 allocation regulation. See *id.* In addition to ruling that the regulation did not violate the "common use"² and "no exclusive right of fishery"⁴ clauses of the Alaska Constitution, the Supreme Court ruled that

the Board did take a hard look at the salient problems affecting the southeast

Treaty [king] harvests and engaged in reasoned decisionmaking in reaching its allocation decision. There is no evidence that the Board's allocation was unreasonable or arbitrary.

Id. at 1318–19.

Neither the sport fishers, nor all commercial troll fishers, were satisfied with the 1992 allocation. Eight different proposals to amend or repeal the 1992 allocation were submitted to the Board for the 1993/1994 session. The proposals submitted by the sport fishery interests ranged from repealing the 17% allocation so that sport fishers were again able to take treaty salmon subject only to bag and size limits, to allocating 50% of the treaty salmon to the sport fishery. Mr. Rutter, as a commercial troll fisher, submitted a proposal to reduce the sport fishery allocation to a level consistent with the ten year average during the years 1980 to 1990.

A review of the partial transcript of the Board's discussion that led to the adoption of the 3% reallocation regulation⁵ indicates that many of the Board members believed that the 17% allocation to the sport fishery needed to be adjusted, as they had predicted, because it had proven to be too restrictive on the public's access to the resource.⁶ For example, Board member Edfelt noted that some of the goals of the 1992 regulation were to allow uninterrupted sport fishing, to minimize regulatory restrictions on sport fishers not fishing from charter vessels, and to im-

plement; it has not imposed such an obligation on the Board. See *Tungass Sport Fishing Ass'n*, 866 P.2d at 1319. A transcript of the meeting at which a particular regulation is discussed and adopted is sufficient. See *id.* Further, even in cases that involve a decisional document, judicial review is not limited to that document; a court may consider other evidence of the Board's decision making process, including a transcript of the Board's meeting. See *Stepovak-Shumagin*, 886 P.2d at 644–47.

6. The vote to adopt the 3% reallocation regulation was four in favor, two against, and one absent. The two board members who voted against adopting the regulation did so primarily because they believed reallocation thwarted the goal of stability of the fisheries, which was the main reason for the Board adopting the 1992 allocation scheme.

3. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Alaska Const. art. VIII, § 3.

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Alaska Const. art. VIII, § 15.

5. The Supreme Court has stressed that it is important for the Board to make an adequate record so that its regulations can be subject to judicial review. See *Alaska Fish Spotters Ass'n v. State, Dep't of Fish & Game*, 838 P.2d 798, 801 (Alaska 1992). While the Court has recommended that the Board prepare a decisional doc-

APPENDIX A—Continued

pose the fewest restrictions on residents harvesting for personal use. He concluded that these goals had not been achieved by the 17% allocation because immediately after the regulation went into effect in 1992, the opportunity for residents to harvest king salmon was restricted, and was more severely restricted in 1993 when, in addition to bag limitations, the use of downriggers was temporarily prohibited.⁷ He also noted that although the commercial troll fishers had stability in that they knew what quantity of fish they could harvest, the sport fishers—the largest group of users—did not have stability because of the impossibility of forecasting when the in-season restrictions would be put into place.⁸

Ultimately, the Board decided that to allow uninterrupted sport fishing with limited restrictions, at least until the next Board cycle, a 3% increase in the sport fishery allocation was needed. As required by AS 16.05.251(e) and 5 AAC 75.017, the Board considered the statutory allocation criteria in deciding to reallocate the 3%.⁹ Board member Carlisle specifically listed each criteria, discussed how he applied the information presented to the Board to those criteria, and concluded that the criteria favored an increased sport fishing allocation because, under his analysis,

7. In both 1992 and 1993, ADF & G imposed regulatory restrictions to limit sport harvests as specified in the [king] management plan. These restrictions included a one [king] salmon bag limit, a ban on take by charter operators and crew, and, in 1993, a ban on the use of downriggers.

Paul Suchanek, Alaska Dep't of Fish & Game, *Overview of the Sport Fishery for Chinook Salmon in Southeast Alaska*, 1994 Report to the Alaska Bd. of Fisheries 1.

8. Board member Carlisle also noted that the goals of uninterrupted access and limited restrictions for recreational fishers had not been achieved as evidenced by the fact that restrictions had been imposed on sport fishers but not on commercial fishers. He indicated, however, that failure to satisfy these goals was not alone sufficient to indicate that an adjustment to the allocation was necessary. Instead, he analyzed the historical catches of the fisheries, considered the improved efficiency and methodology of taking fish, and noted that he believed the major problem was commercial prices which the Board could not control, rather than the increased

APPENDIX A—Continued

four of the factors favored the sport fishery, two were neutral, and one favored the commercial fishery. Board member Jacobson stated that he had gone through the allocation criteria along with Mr. Carlisle, but noted that he did not agree with all of Mr. Carlisle's conclusions. In contrast to Mr. Carlisle, he believed that commercial fishers do not always have other fishery resources available because of the restrictions placed on a person's ability to participate in the various commercial fisheries. The Chairperson agreed with most of Mr. Carlisle's conclusions, but noted that his two main concerns were the importance of each fishery to the economy of the state and the importance of each fishery to the economy of the region. He believed that both the commercial troll fishery and the sport fishery are of equal economic importance in different ways and in different areas.

Board member Edfelt adopted Mr. Carlisle's analysis of the allocation criteria. He also stated that his view of the criteria was the same as it was for the Board's deliberations for the 1992 decision to allocate 83% of the king treaty salmon to the commercial troll fishery and 17% to the sport fishery.¹⁰

Because the Supreme Court has already held that the initial 1992 allocative decision by the Board was valid, there is firm legal

charter industry. Ultimately, he concluded that all things considered, reallocation was appropriate.

9. In his complaint, Mr. Rutter alleges that "[t]he Board failed to consider all relevant criteria." In making his argument in his cross motion for summary judgment, however, Mr. Rutter does not argue that the Board failed to consider the statutory criteria. Rather, he argues that the Board failed to consider certain information relevant to those criteria and that it failed to consider certain nonstatutory factors. While this may be true, the Board is not obligated to consider every possible factor. See *Gilbert v. State, Dep't of Fish & Game*, 803 P.2d 391, 398 (Alaska 1990) ("The fact that every possible factor may not have been debated does not vitiate the reasonableness of the regulation as a whole.")

10. This fact is particularly important because, as already noted, the Supreme Court has ruled that "[t]here is no evidence that the Board's [1992] allocation was unreasonable or arbitrary." *Tongass Sport Fishing Ass'n*, 866 P.2d at 1319.

APPENDIX A—Continued

APPENDIX A—Continued

standing for this second decision to adjust the percentages between the fisheries. This fact and the fact that the Board's deliberations on the reallocation issue included analysis of the statutory factors, provides ample support for the conclusion that the 3% reallocation regulation is reasonable and not arbitrary. The regulation is valid.

IV. EQUAL PROTECTION UNDER THE UNITED STATES AND ALASKA CONSTITUTIONS

Amendment XIV, section 1 of the United States Constitution¹¹ and Article I, section 1 of the Alaska Constitution¹² guarantee people equal protection under the law. These clauses, however, require "equal treatment only for those who are similarly situated." *Shepherd v. State, Dep't of Fish & Game*, 897 P.2d 33, 43, 44 (Alaska 1995); see also *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985) ("The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike."). Commercial fishers and sport fishers are not similarly situated. See *Tongass Sport Fishing Ass'n*, 866 P.2d at 1318.

Thus, treating Mr. Rutter, as a commercial fisherman, differently than sport fishers does not implicate equal protection concerns. The regulations impose the same gear limitations and allocation percentages on all commercial troll fishers. Further, there is nothing in either the 3% reallocation regulation or in the downrigger regulation, nor in any other statute or regulation, that prohibits Mr. Rutter from engaging in the sport fisheries. If Mr. Rutter chose to engage in the sport fisheries, the regulations would apply equally to him.

V. THE LIMITED ENTRY ACT (AS 16.43.140) and ARTICLE VIII, SECTION 16 OF THE ALASKA CONSTITUTION

A. The Limited Entry Act (AS 16.43.140)

Mr. Rutter's argument with regard to the Limited Entry Act is not clear. He demands the equal protection of AS 16.43.140, but does not indicate how this statute provides him with equal protection guarantees. It appears that Mr. Rutter's argument is that he is denied equal protection of the laws because charter vessel operators are not required to obtain an entry permit under AS 16.43.140 while he is required to have a permit to participate in the commercial troll fishery.

Alaska Statute 16.43.140 provides, in relevant part:

[A] person may not operate gear in the commercial taking of fishery resources without a valid entry permit or a valid interim-use permit. . . .

AS 16.43.140(a) (emphasis added). Thus, the plain language of AS 16.43.140 requires a person to obtain a limited entry permit only if that person is involved in the "commercial taking" of fishery resources. Mr. Rutter argues that the fact that sport fishers on charter vessels are allowed to use downriggers, the same type of gear used by commercial fishers, means the charter industry is engaged in the commercial use of the king salmon resource and therefore should be subject to the entry restrictions of AS 16.43.140.

The legislature has drawn a distinction between commercial users, sport users, and guided sport users of the fishery resources. See AS 16.05.251(a)(6) (granting the Board the authority to adopt regulations "classifying as commercial fish, sport fish, guided sport fish, personal use fish, subsistence fish, or predators or other categories essential for regulatory purposes"); AS 16.05.251(a)(12) (granting the Board the authority to adopt regulations "regulating commercial, sport, guided sport, subsistence, and personal use fishing as needed for the conservation, devel-

11. "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

12. "[A]ll persons are equal and entitled to equal rights, opportunities, and protection under the law." Alaska Const. art. I, § 1.

APPENDIX A—Continued

opment, and utilization of fisheries"). The legislature has also drawn a clear distinction between the commercial taking of fish and the sport taking of fish. Alaska Statute 16.05.940(5) defines commercial fishing as "the taking . . . of fish . . . with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels." Alaska Statute 16.05.940(29) defines sport fishing as the "taking of or attempting to take for personal use, and not for sale or barter, any . . . fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries."¹³

While charter vessel operators may be engaged in a commercial activity—that of guiding sport fishers—they are not involved in the "commercial taking" of fishery resources because they are not taking fish with the intent of disposing of them for profit. Instead, it is the customers of the charter vessel operators who are taking the fish and are doing so as sport fishers—taking fish for personal use, and not for sale or barter. As the law now stands, charter vessel operators acting as guides for sport fishers are involved in the sport taking of fish, not in the commercial taking of fish. Therefore, the provisions of AS 16.43.140 in specific, and the Limited Entry Act in general, are not implicated.¹⁴

B. Article VIII, Section 16 of the Alaska Constitution

Mr. Rutter argues that the 3% reallocation regulation violates Article VIII, section 16 of the Alaska Constitution, which provides:

13. The fact that the legislature specifically provided that the Board could define other means of engaging in sport fishing refutes Mr. Rutter's argument that use of downriggers somehow brings sport fishing under the auspices of the Limited Entry Act. As noted above, the key inquiry for the Limited Entry act is whether a person is involved in the "commercial taking" of fish, not what gear is being used in the taking.

14. To the extent that Mr. Rutter's argument deals with the differential requirements for sport fishers and commercial fishers, it has already been addressed above. Differential treatment of sport fishers and commercial fishers does not raise

APPENDIX A—Continued

No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

Mr. Rutter argues that by taking away 3% of the commercial troll fishery harvest of king salmon, he and other commercial troll fishers are being divested of their right to use the waters without compensation.

The Supreme Court has clarified that the phrase "use of water" in Article VIII, section 16 is coterminous with riparian rights. *Classen v. State, Dep't of Highways*, 621 P.2d 15, 17 n. 4 (Alaska 1980). "Riparian rights" are defined as

[t]he rights of the owners of land on the banks of watercourses, relating to the water, its use, ownership of soil under the stream, accretions, etc.

Black's Law Dictionary 1327 (6th ed.1990). Mr. Rutter's claim here is not based on his ownership of land adjacent to a watercourse. That is, Mr. Rutter's claim is not for divestment of his riparian rights. Therefore, the 3% reallocation regulation simply does not implicate Article VIII, section 16.¹⁵

VI. PACIFIC SALMON TREATY

Mr. Rutter argues that the 3% reallocation regulation violates Annex IV, chapter 7 of the Pacific Salmon Treaty. This section of the treaty provides:

[w]ith respect to intercepting fisheries not dealt with elsewhere in this Annex, unless otherwise agreed, neither Party shall initiate new intercepting fisheries, nor conduct or redirect fisheries in a manner that intentionally increases interceptions.

equal protection concerns because the groups are not similarly situated.

15. Even assuming the court should consider Mr. Rutter's argument that the regulation is a divestment of his water rights, his argument fails. Mr. Rutter has not been divested of his right to use the water; he may still use the water for the purpose of commercial fishing. See *Classen v. State, Dep't of Highways*, 621 P.2d 15, 17 (Alaska 1980) (holding that a person has not been divested of his riparian rights if he is still able to use the water for the purpose he intended).

Pacific Salmon Treaty, annex IV, ch. 7 (emphasis added). The intercepting of king salmon in Southeast Alaska is dealt with elsewhere in the Annex:

[I]n 1991, the all-gear catch in Southeast Alaska shall not exceed the base ceiling of 263,000 [king] salmon plus 10,000; in 1992, the all-gear catch in Southeast Alaska shall not exceed 263,000 [king] salmon; these catches exclude the Alaska hatchery add-on as described in the letter of transmittal; in 1991 and 1992 Alaska shall open its general summer troll fishery on July 1; the June fishery shall not exceed 40,000 [king] salmon (excluding the Alaska hatchery add-on) taken in a manner similar to 1989 and 1990; and areas of high [king] abundance shall be closed during [king] non-retention periods to reduce incidental mortalities.¹⁶

Pacific Salmon Treaty, annex IV, ch. 3(1)(c).

Because the Southeast Alaska king intercepting fishery is dealt with elsewhere in the treaty annex, the general provisions of chapter 7 do not apply. Therefore, Mr. Rutter's argument that the 3% allocation regulation violates this chapter must fail.

Further, if properly enforced, the 3% reallocation regulation would not violate the relevant provisions of chapter 3. The regulation reallocates a fixed number of salmon between the commercial troll fishery and the sport fishery of Southeast. While this regulation has increased the number of salmon the sport fishery may take, it has decreased proportionately the number of salmon the commercial troll fishery may take. Therefore, the total number of fish taken should not exceed the treaty limits.

VII. CONCLUSION

For all the above reasons, the court grants summary judgment in favor of the State on all of Mr. Rutter's claims.



Gretchen GANZ, Bruce Graham, Virginia L. Horn, Rita F. Neary, and Candida A. Szabo, individually and as class representatives, Appellants,

v.

ALASKA AIRLINES, INC., Appellee.

No. S-8050.

Supreme Court of Alaska.

Aug. 14, 1998.

Employees brought action against employer, alleging that pursuant to Alaska Wage and Hour Act's (AWHA's) overtime provision they were entitled to overtime payments for work in excess of forty hours a week or ten hours a day. The Superior Court, Third Judicial District, Reese, J., granted employer's summary judgment motion, and employees appealed. The Supreme Court, Fabe, J., held that employees' work schedule under collective bargaining agreement of 14 consecutive 12 hour days followed by 14 days off was exempt from AWHA's overtime provision.

Affirmed.

1. Labor Relations §1281.1

Employees' work schedule under collective bargaining agreement of 14 consecutive 12 hour days followed by 14 days off constituted "flexible work hour plan," within meaning of exemption from Alaska Wage and Hour Act's (AWHA's) overtime provision for work performed under flexible work hour plan included as part of collective bargaining agreement. AS 23.10.060(d)(13).

See publication Words and Phrases for other judicial constructions and definitions.

2. Labor Relations §1281.1

Exemption from Alaska Wage and Hour Act's (AWHA's) overtime provision for work performed by an employee under a flexible work hour plan if the plan is included as part

¹⁶ The treaty uses "chinook" instead of "king."

CFEC ; MARY McDOWELL

HB281 - Issues to consider addressing in amendments

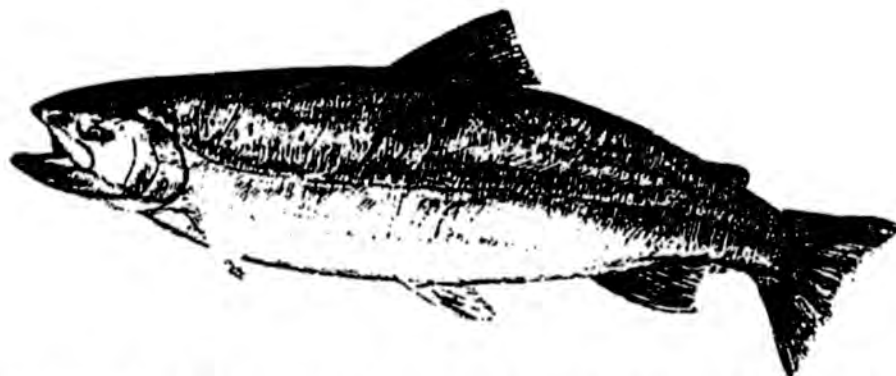
- Clarify (in title and text) that moratorium only pertains to participation in SALTWATER. Without tab eligibility, vessels can continue to license and be used in fresh water. Bill calls tabs "saltwater tabs" but says vessel may not be used for charter in SE without tab, and can only get tab if 2002 participation is documented in a log book. Freshwater charters weren't required to use logbooks, so won't qualify for tabs.
- Make clear that tabs are renewed annually rather than issued just once for whole moratorium (bill hints at that on p.2, line 13, relating to tabs for replacement vessels, but should say it in general provisions)
- Add provisions to spell out an appeals process
Some applicants will claim eligibility when state's records don't support the claim. Spell out right to request a hearing after initial denial by licensing staff, then appeal decision of hearing officer to commissioners, then judicial appeal?
- Issue "Interim Use Tabs" to applicants in adjudication process?
That is, provide that if an application for a charter tab is initially denied and is under appeal, the vessel may be issued an "interim use" tab so that it may continue participating in the fishery throughout the time the application is under appeal, until there is a final decision.
(Interim use tabs would need to be nontransferable because the application may ultimately be denied.)
- Make clear that tabs are to be issued only to actual OWNER of a vessel?
Bill says only owner of vessel can subsequently transfer tab to new vessel or sell vessel with charter rights - but says CFEC issues tab initially "to the vessel"
Currently many non-owners license vessels they are using or leasing - but now issuing a transferable use privilege with value - so seems it should go only to owner

Note this will be administratively cumbersome as CFEC has no info on owners. Will need process for verifying ownership
Will need to require proof of ownership such as copy of vessel registration, Coast Guard vessel documentation, bill of sale, etc
- Page 2, line 8 - after "affixed to" insert "the vessel in an easily visible location within 6 inches of" - so tab is near, but not stuck onto, the vessel license
ADF&G number and triangle vessel plate stays with a vessel forever. So if owner substitutes new vessel to use tab, don't want tab stuck onto it.
- Also, triangles are small so tab could only be about 3/4 inch wide if has to go onto triangle. Better to have bigger tab, more visible for enforcement purposes, and which does not ruin permanent vessel plate.

- Subsection (h) creates very difficult adjudications
 - Subjective words "substantial and continuing" and "substantial and nonrefundable"
 - Burden of establishing "intent."
 - Provides no timeframe for intended charter use (may have intended to use it for personal use for next 5 years and then to use it for chartering after retirement)
- No area of intended use specified--- must intent to have been to use it in the area covered by this moratorium?
- Could simplify by deleting (h) entirely. Otherwise, suggest:
 - Amending both (h)(1) and (h)(2) to specify exception is only if constructing or purchasing the vessel "with intent to use the vessel in charter service in Southeast Alaska in 2003 or 2004";
 - And, deleting p.3 lines 1 and 2 and 6 and 7 about applying for the tab by Dec. 31, 2003 -- confusing and seems unnecessary. (Don't want to imply that if person had fully purchased or completed the vessel, as opposed to not completing it until after effective date of the Act but not yet having used it for charter service, they couldn't qualify for tab.)
- Add to (i) so better duplicates the section in CFEC statutes providing that CFEC may "do all things necessary" to carry out these provisions -- rather just that we may adopt regs. May discover procedural or other issues that need to be addressed that are not anticipated going into program.
- Add specific authority to make clear that CFEC may charge fees for applications, transfers, duplicates, and annual fees for charter tabs
 - May be best to spell out specific fees in bill, rather than leave to CFEC regs.
 - In commercial fisheries, annual fees are determined according to gross earnings or permit value in the specific fishery -- but no data upon which to base parallel fee structure for charter.
- Bill creates moratorium on charters for "fish and shellfish" and requires that eligibility be established by logbooks, but logbooks don't seem to cover shellfish -- is this a problem needing clarification?
- Define "person" for purposes of this moratorium. General state law says unless another definition is provided, person means a person or entity (company, etc). Under limited entry law, a person is specifically defined as only a living human individual, and NOT an entity, partnership, etc. While HB281 is placed in uncodified law rather than under AS16.43 (CFEC statutes), it requires CFEC to run the program, issue the tabs, etc. Therefore, probably should add clarification that for the purpose of the moratorium established under HB281 (which calls for issuing tabs to entities), CFEC is to use the general definition that includes entities.

- Page2 line 4 "used in charter service" -- suggest clarifying by spelling out: "lawfully used."
(that is, qualifying participation had to have been in full compliance with state laws and regs,
logbooks filled out and timely submitted, etc)
(That is requirement in commercial fishery moratoria and limitations)

DIVISION OF SPORT FISH



**OVERVIEW OF THE SPORT FISHERY
FOR CHINOOK SALMON IN
SOUTHEAST ALASKA
THROUGH 2002**



REPORT TO THE ALASKA BOARD OF FISHERIES

*Ketchikan, Alaska
February 2003*

Information in this report was partially financed under the Federal Aid in Sport Fish Restoration Act (16 U.S.C 777-777K)

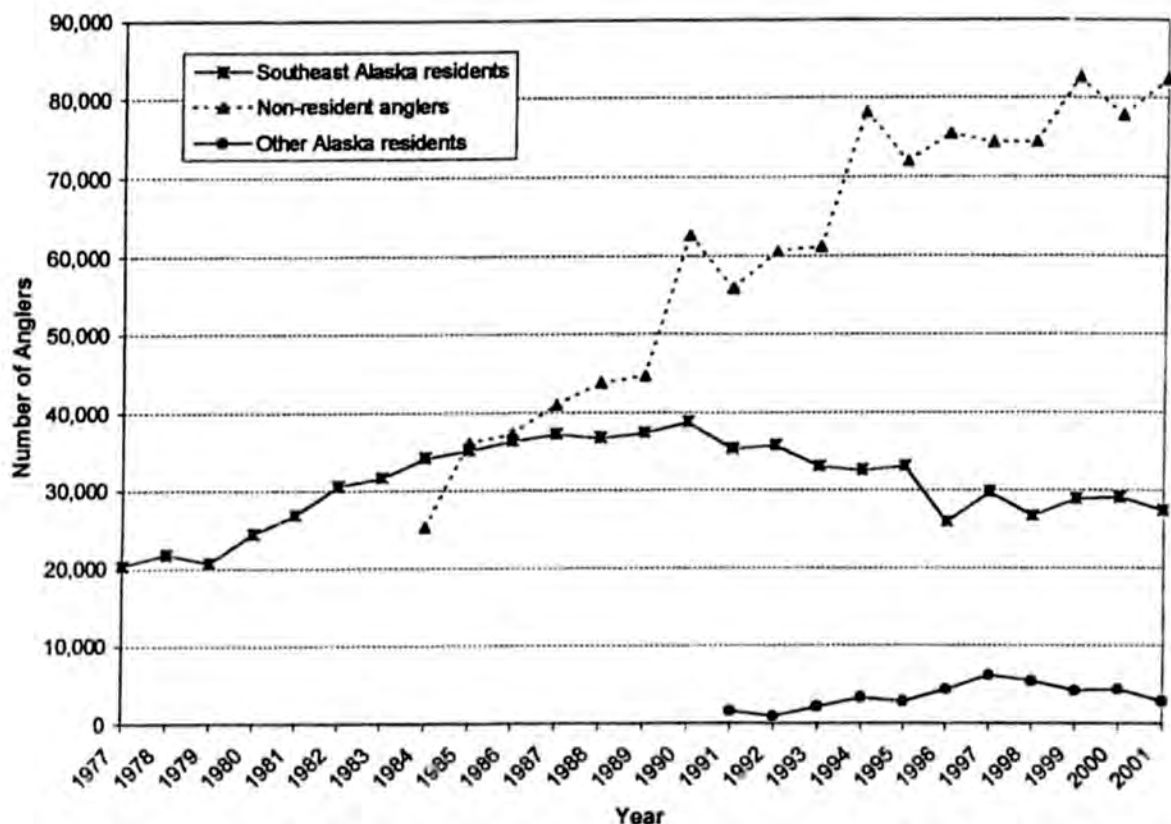


Figure 2. Number of Southeast Alaska resident, nonresident, and other Alaska resident anglers fishing within Southeast Alaska. Data are not available for some angler groups for some years.

(Table 6 and Figure 3). Resident tag purchases remained relatively constant averaging 16,200 with a peak of 17,000 occurring in 1997 when chinook returns to the region were outstanding. Nonresident tag purchases more than doubled during the same time period and averaged 33,100 over the 9-year period. Increased tag prices and the availability of more options could explain the slight drop in nonresident tag purchases between 1997 and 1998 (Table 7). Sales of annual nonresident tags declined dramatically in 1998 due to the large increase in cost (\$35 to \$100) and the availability of 7-day tags. In 2001, net revenue from king salmon tag sales in Southeast Alaska totaled \$918,000, with revenue from resident tags totaling \$150,000 and revenue from nonresident tags totaling \$768,000.

Resident and nonresident tag sales are not distributed evenly over the region (Table 8). About 45% of resident tags are sold in the Juneau area with 17% sold in the Ketchikan area and 15%

sold in the Sitka area. About 80% of regional sales of nonresident tags are split fairly evenly among the Ketchikan, Sitka, and Juneau areas. Sales of 1-day nonresident tags are concentrated in the Ketchikan (37%) and Juneau (33%) areas while nonresident tags of 3-day duration or more are sold in the highest numbers in the Sitka (36%) area with Ketchikan (20%) and Juneau (18%) also having relatively large sales.

Charter Vessel Registrations and Logbook Program

Since 1982, when charter vessel registration was first required by ADF&G, the number of registered charter vessels within Southeast Alaska has increased (Table 9 and Figure 4). In 1986, the number of charter vessel registrations decreased due to a regulation change that eliminated registration requirements for vessels that did not have an operator for hire (dry rentals) or were used in freshwater. From 1986 through 1997,

Table 9. Number of registered (or licensed) charter vessels in Southeast Alaska by port from 1983 to 2002 (2002 data are preliminary). Registration requirements were changed in 1998 to include vessels used in fresh water as well as those used only to transport anglers.

Area/port	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Angoon	--	--	0	0	1	4	4	12	4	22	23	23	29	35	37	27	42	37	37	29
Elfin Cove	--	--	0	9	7	9	8	9	7	18	15	20	19	31	34	37	36	39	39	39
Gustavus	--	--	0	8	9	9	13	11	15	17	17	24	22	21	25	35	37	35	36	31
Haines	--	3	4	2	5	7	6	9	6	7	9	11	9	13	11	25	26	26	27	32
Hoonah	--	--	0	3	3	7	4	5	6	7	7	12	11	14	13	22	19	16	18	16
Juneau	22	60	43	47	47	47	40	54	52	80	71	115	112	147	154	207	191	199	181	160
Ketchikan	52	76	76	65	69	64	67	102	137	199	176	164	195	155	191	188	204	199	224	220
Pelican	--	--	--	1	5	7	5	4	5	7	3	5	6	9	12	19	22	25	24	21
Petersburg	69	97	72	5	4	8	11	13	22	28	40	35	45	59	49	62	62	64	64	59
PWI	--	--	--	32	34	34	40	44	45	67	73	94	101	143	167	210	221	226	216	199
Sitka	13	81	30	27	38	37	52	56	67	109	135	162	194	195	198	240	255	269	270	279
Wrangell	21	*	15	21	12	27	24	20	19	19	17	35	31	37	46	57	54	51	48	49
Yakutat	0	0	1	5	7	3	9	11	8	12	9	15	17	33	16	50	57	54	58	63
Other	20	0	31	0	0	1	2	1	8	8	10	12	12	11	26	61	50	59	60	54
TOTAL	197	317	272	225	241	264	285	351	401	600	605	727	803	903	979	1,240	1,276	1,299	1,302	1,251

* Wrangell included with Petersburg.

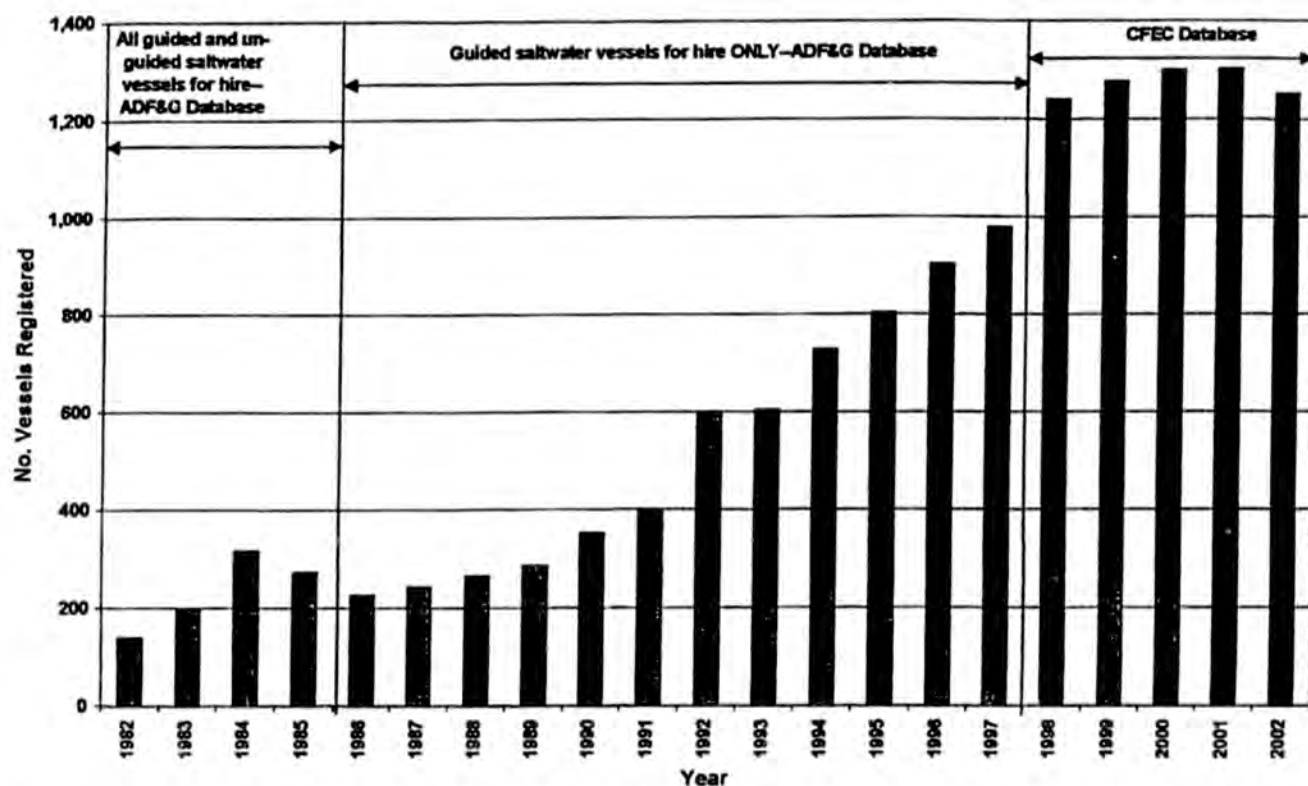


Figure 4. Number of charter vessels registered in Southeast Alaska, 1982–2002.

however, the number of charter vessels increased annually to a peak in 1997 of 979 charter vessels. It is unknown how many of these vessels were actually used in sport charter operations.

In 1998, the ADF&G vessel registration process was replaced with the licensing process conducted by the Commercial Fisheries Entry Commission (CFEC). Since CFEC also requires freshwater vessels for hire to be licensed as well as vessels used only for transporting guided anglers to shore, some of the increase in vessel registrations since 1998 is due to these changes. Another part of the increase during the last few years may be due to operators registering or licensing their vessel under the perception that charter vessels might be subject to a future limited entry program or moratorium.

Also in 1998, a saltwater charter vessel logbook program was implemented which required all

charter vessels operating in salt water with a guide to obtain and complete a logbook. Summary data from the logbook program show that slightly more than 50% of the licensed vessels reported taking clients on charter fishing trips (Table 10). Since 1999, the number of active permits has remained stable at about 670. On average, about 34% of the active vessels reported their port was in the Sitka area, 23% in the Prince of Wales Island (PWI) area, and 18% in the Juneau area (Table 10 and Figure 5).

From 1998 to 2001, an average of 601 vessels in Southeast Alaska reported harvesting or releasing one or more chinook salmon during their charter activities (Table 11). The number of vessels reporting chinook catches increased from 598 in 1998 to 631 in 2001. About 33% of the vessels reported chinook catches on 6–25 trips, while 29% reported chinook catches on 26–50 trips.

Table 10. Overall number of active charter vessels in Southeast Alaska by Statewide Harvest Survey area determined from logbook data collected in 1998–2002 (2002 data are preliminary). Active vessels are those that turned in logbook forms reporting at least 1 trip with clients.

SWHS area	Year					Average	Percent of total
	1998	1999	2000	2001	2002		
Ketchikan	102	110	118	136	130	119	18%
Prince of Wales Island	123	165	172	157	152	154	23%
Petersburg/Wrangell	52	72	80	79	58	68	10%
Sitka ^a	231	242	218	216	216	225	34%
Juneau	119	126	146	114	114	128	19%
Haines/Skagway	15	20	21	16	15	17	3%
Glacier Bay ^a	37	36	97	88	80	68	10%
Yakutat	17	12	14	15	13	14	2%
Total^b	618	653	699	676	651	667	
Percent of licensed vessels active	50%	52%	54%	52%	51%		

^a Beginning in 2000, the northern section of Chichagof Island (including Pelican, Elfin Cove, Hoonah, and the southern half of Icy Strait and Cross Sound) was re-assigned to SWHS Area G (Glacier Bay) and removed from SWHS Area D (Sitka). This was the primary reason for the dramatic increase in active vessels for Glacier Bay area and decrease in active vessels for the Sitka area between 1999 and 2000.

^b Total values for Southeast Alaska charter vessels are lower than the actual column total because a unique vessel may have operated or offloaded fish and/or clients in more than one SWHS area during a given year.

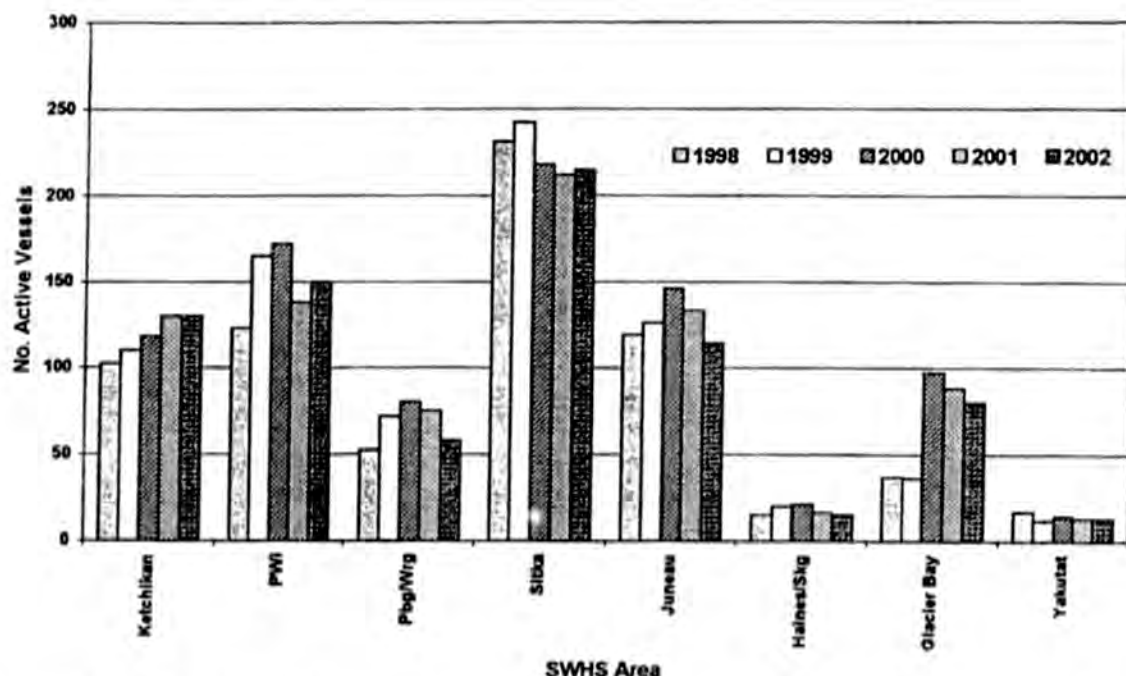


Figure 5. Number of active marine charter vessels in Southeast Alaska as reported from logbook data during 1998–2002. Data from 2002 should be considered preliminary. Active vessels are those that turned in logbook forms with at least 1 trip with clients reported.

Table 11. Number of charter vessels in Southeast Alaska classified by frequency of trips reporting either harvesting or releasing one or more chinook salmon as determined from logbook data, 1998–2002. Data for 2002 are preliminary and likely to change.

No. of vessels reporting catches of chinook salmon on:	Year				1998–2001 average	2002 ^a	Percent of total vessels ^b
	1998	1999	2000	2001			
1–5 trips	118	119	136	123	124	107	20%
6–25 trips	193	194	219	200	202	197	33%
26–50 trips	180	180	171	169	175	159	29%
51–100 trips	105	105	95	138	111	131	18%
100+ trips	2	2	1	1	2	0	0%
Total vessels	598	600	622	631	613	594	

^a Totals are as of October 28, 2002; final numbers will be larger.

^b 2002 data are not included.

HARVEST

Regionwide Harvest

Annual sport harvests of chinook salmon in Southeast Alaska from 1977 to 1987 were relatively stable, however, they began increasing rapidly in 1989 (Table 12). From 1977 to 1990, the average harvest was 24,500 while the 1991–1995 average was 48,900 and the 1996–2000 average was 63,900. The harvest in 2001 (72,300 chinook salmon) was the largest on record and the preliminary estimate for 2002 (85,200) is higher yet.

Distribution of chinook harvest by area in Southeast Alaska has changed substantially since the 1980s (Figure 6 and Table 12). Average harvests in the Ketchikan and Haines-Skagway remained stable from 1977–1990 to 1996–2000, while during the same time period, average harvests in the Prince of Wales Island, Sitka, Glacier Bay, and Yakutat areas increased 5 to 11 fold. During 1977–1990, 60% of the harvest was taken in Juneau (34%) and Ketchikan (26%), while a total of only 30% was taken in these two areas from 1996–2000. The Sitka fishery, on the other hand, increased from an average of 11% of harvest in 1977–1990 to 38% during 1996–2000.

Harvests by Residents and Nonresidents

Harvests of chinook salmon by both Alaska resident and nonresident anglers have been estimated since 1987 (Table 13 and Figure 7).

The proportion of fish taken by nonresident anglers increased from 28% in 1987 to 57% of the harvest in 2001 with a peak of 68% in 1994. Sport harvests of chinook salmon for resident anglers peaked in 1999 at 33,900 fish. The nonresident harvest of 41,400 fish taken in 2001 was the highest on record.

By dividing the total annual harvest for residents and nonresidents by the number of king salmon tags sold, the average harvest of chinook salmon per tag sold can be estimated (Table 13). On average, about 1.17 chinook salmon per year were taken per king salmon tag sold during 1993–2000, with harvest rates averaging higher for residents (1.53) than for nonresidents (0.99). Angler success per tag for nonresidents declined from an average of 1.15 during 1993–1996 to 0.95 during 1997–2000 after implementation of the annual bag limit of 4 chinook salmon in 1997. Since the number of nonresident 1-day tags has increased dramatically (10,200 in 1995 to 18,300 in 2000), it is not surprising that the average harvest per nonresident angler has declined. Angler success for residents was much more variable (range of 0.80 to 2.21 per year). The overall average of chinook harvested per king salmon tag sold in 2001 was about 9% above the previous 8-year average at 1.27. The increase was primarily in the resident fishery.

Distribution of harvests by resident and nonresident anglers by area was also compiled from 1987 to 2001 (Table 14). Average harvests

**ALASKA BOARD OF FISHERIES
RESOLUTION 2000-FB-202**

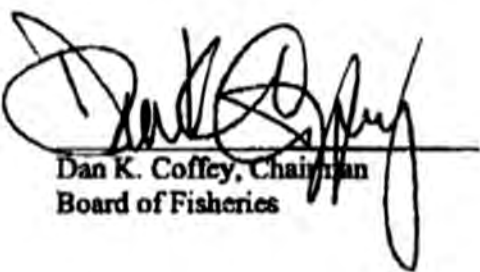
Supporting a Constitutional Amendment to allow the State of Alaska to Limit Entry in to the
Guided Sport Fishing Industry in Alaska

- WHEREAS, long term stability in the guided sport fishing industry in Alaska is a common goal of guides, resident sport anglers and commercial fishermen; and,
- WHEREAS, unmanaged growth in any user group sector on fully utilized fishery resources threatens stability of the resource, the users and local communities; and,
- WHEREAS, limited entry into the guided sport fishing industry in Alaska has been identified by all user groups as a necessary tool to accomplish predictable management and long-term stability for guided and commercial fishing interests; and,
- WHEREAS, effective management and conservation of Alaska fishery resources would be greatly facilitated by the ability to implement limited entry programs for guided sport fisheries around the state; and,
- WHEREAS, fishermen across the state have repeatedly testified before the Board of Fisheries regarding significant conflicts resulting from the currently unlimited growth of the guided sport fishing industry; and,
- WHEREAS, fishermen from all user groups, including the guided sport fishing industry, have requested that the Board of Fisheries take a proactive stance to secure limited entry as a tool to regulate the guided sport fishing industry;

NOW, THEREFORE, BE IT RESOLVED, that the Alaska State Board of Fisheries urges the Alaska Legislature to place a Constitutional Amendment on the ballot to allow implementation of limited entry programs for guided sport fisheries in Alaska

Dated on this 27th day of March, 2000
Anchorage, Alaska

Vote: 7/0/0


Dan K. Coffey, Chairman
Board of Fisheries

Recommending Amending HB 281

My name is Gordon Jackson. I am the Chairman of the Board, Kake Tribal Corporation. I am also the Director, Business and Economic Development, Central Council, Tlingit and Haida Indians of Alaska. We serve over 26,000 members throughout the Pacific Northwest.

One of our many activities over the past year with the Central Council was the hosting of Economic conferences in Hoonah, Angoon, Kake, and Prince of Wales Island. In each of these communities, the economy has been pretty tough the last several years. The Logging has come to an end and processors have been leaving while the prices have been falling like a rock over the last decade. The result is they are looking to a number of different economic activities to take its place. One of these activities is to get into the Charter business. Many of them have just now invested in this kind of business. Many are now in the process of taking six pack license tests.

All of these communities once had proud fishing fleets and was the envy of everyone throughout SE Alaska. Today, these fleets are a fraction of what they used to be. Let me give some instances. When Limited Entry was first introduced for purse seiner fishing, the Community of Angoon had 27 permits, today they have one active permit. In Hoonah, they once had over 50, they now have only 4 active permits. In Kake, they began with 27, they now have only 8 active permits. Add the loss of logging jobs you should not be surprised to find a very bad economy in these communities.

Many of us in the past remember cut-off dates or moratoriums before a major policy was adopted like Limited Entry. This one you are proposing goes to the extreme by not allowing the Commercial Fisheries Entry Commission to issue vessel licenses for recreational charter boats for 2004 unless the vessel was licensed in 2002 or before the bill was passed and also recorded charter operations in a state required logbook in SE waters in 2002 or 2003. I can tell you this provision will close the door on any smaller community entrepreneur who wanted to get into this business. Add on the log books, additional hoops to jump over, and loss of equal access and you are looking at no charter boats in rural SE Alaska. This concept of equal access is one you folks use to stop any Subsistence vote over the last decade. In this case, I think you should be consistent and do the same thing.

We at KTC just finished our final land selection under the ANCSA and selected a beautiful spot on the Keku Islands outside of Kake. It was our plan to build a fishing lodge there and diversify our holdings. With this moratorium, it will be impossible to build it without charter boat licenses. No bank will touch us. Our dream will have vanished.

I believe this bill needs work. I understand your concern. Too many boats taking too much fish and crowding us out. I have run through these fellas, cussed at them, and seen the boxes and boxes leaving the airports all over SE Alaska. There are a lot of them! However, the numbers only occur in the so called urban areas around Juneau, Sitka, and Ketchikan. You need to address the economics of how you will secure employment opportunities for rural SE. You need to address the semantics used in this bill. After I read the bill, I came to only one conclusion-it is a limited entry bill and no

group of word said after this would convince me otherwise. You need to address the equity question. As many of you say-it is in the state Constitution; it should not be ignored. If you don't address these items, I suggest you should do what the SE villagers would do for something like this-"take it down the beach and bury it!"

Thank you.



CENTRAL COUNCIL
tlingit and haida indian tribes of alaska
ANDREW P. HOPE BUILDING
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801-9983

House Fisheries
Capitol 124, 8:30 a.m.

Special Committee Hearing on HB 281

Recommendations supporting No passage of HB 281

By Don Bremner, Staff
CCTHITA

Representative Seaton and Representative Wilson:

Members of the House Fisheries Special Committee thank you for the opportunity to present our views and analysis of HB 281.

There are a number of important reasons that we recommend not passing HB 281 or similar Bills into legislation;

1. This Bill will have negative impacts to rural residents similar to the 1973 Limited Entry Law that has caused serious socio-economic harm to the rural villages of Alaska.
2. Prior to even considering passage of such legislation the State should conduct professional socio-economic impact studies to help guide these type decisions.
3. HB 281 flies in the face of the Alaska State Constitution, Article VIII, Section 15. No Exclusive Right of Fishery, "No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. Does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State." (<http://www.gov.state.ak.us/lrgov/akcon/art08.html>)
4. The State of Alaska has given the direct responsibility of managing fish & game in Alaska to the Department of Fish and Game. They have a tried and true Mission of managing our fish & game resources, with clear principles;

ADF&G Mission Statement

(<http://www.state.ak.us/adfg/geninfo/overview/mission.htm>)

The Alaska Department of Fish and Game's mission is to manage, protect, maintain, and improve the fish, game and aquatic plant resources of Alaska. The primary goals are to ensure that Alaska's renewable fish and wildlife resources and their habitats are conserved and managed on the sustained yield principle, and the use and development of these resources are in the best interest of the economy and well-being of the people of the State.

Guiding Principles

Seeking excellence in carrying out its responsibilities under state and federal law, the department will:

- Provide for the greatest long-term opportunities for people to use and enjoy Alaska's fish, wildlife and habitat resources.
- Improve public accessibility to, and encourage active involvement by the public in, the department's decision making processes.
- Build a working environment based on mutual trust and respect between the department and the public, and among department staff.
- Maintain the highest standards of scientific integrity and provide the most accurate and current information possible.
- Foster professionalism in department staff, promotes innovative and creative resource management, and provides ongoing training and education for career development.

We believe that the Department of Fish & Game has the knowledge and information to determine the need for such limited entry management schemes and should be allowed to carry out their Mission and Guiding Principles without legislative mandates, political pressure or influence.

5. If this Bill moves forward we would ask Governor Murkowski to adhere to his Oct 24, 2002 campaign commitment and belief that the Board of Fish and Department of Fish and Game be free of "political extensions" such as his office or legislative influence, and allow these two agencies to be independent decision-makers regarding the management and implementation of Article VIII, Section 15 of our State Constitution.
6. We have reviewed the Alaska Sport Fish Department information (<http://www.sf.adfg.state.ak.us/statewide/participationandharvest/html/index.cfm?frame=yes&r1=yes>) regarding sport fishing in S.E. Alaska and no-where is there information or evidence that any of the targeted species of salmon or halibut in the areas from Yakutat-Ketchikan is facing declining numbers. We have reviewed the numbers from 1987-2001.

7. We have reviewed the Alaska sport fishing up-dates (<http://www.state.ak.us/adfg/sportf/region1/geninfo/fishrpt/fishrpt.htm>) for Southeast Alaska and no-where in any of the reports from Yakutat-Ketchikan is there any indication of declining numbers in any of the targeted salmon or halibut species.
8. Sports fishing contributes money and jobs to Alaska. "The National Survey of fishing, hunting, and wildlife estimated that US residents spent \$537 million on fishing trips and equipment in Alaska in 2001. (<http://www.sf.adfg.state.ak.us/statewide/html/SFeconomics.stm>) That's a lot of money and jobs to turn over to private ownership without first accessing the socio-economic impacts to Alaska. Money and jobs to a yet undetermined amount of people who may not be year-round Alaska residents.
9. With this background we encourage you not to pass HB 281 or any similar legislation.

Thank You,

Don Bremner, Staff,
Central Council Tlingit & Haida Indian Tribes of Alaska
463-7341
dbremner@ccthita.org

cc/ Representative Heinze
Representative Ogg
Representative Samuels
Representative Berkowitz
Representative Guttentberg
Representative Kookesh

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB281
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish & Game
 Title Moratorium On Charter Vessel Licenses BRU Comm Fish Entry Commission
 Component Comm Fish Entry Commission
 Sponsor Rep. Weyhrauch
 Requester House Fisheries Component No. 471

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	104.2	53.3	14.6	14.6		
Travel	3.1	1.7				
Contractual	3.8	2.9	2.3	2.3		
Supplies	17.4	3.0	3.0	3.0		
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	128.5	60.9	19.9	19.9	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	*	*				
-------------------------------	---	---	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	128.5	60.9	19.9	19.9		
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	128.5	60.9	19.9	19.9	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal: ☐

POSITIONS

Full-time	1					
Part-time	2	2	1	1		
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See page two

Prepared by: Shirley Penrose Phone 790-6960
 Division Commercial Fisheries Entry Commission Date/Time 4/29/03 11:54 AM
 Approved by: Mary McDowell, Commissioner Date 4/29/2003
 Agency Commercial Fisheries Entry Commissioner

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. HB 281

ANALYSIS CONTINUATION

Operating Expenditures

HB281 creates a new program that differs in many ways from the other programs administered by CFEC, so many variables are unknown and estimating costs is difficult. This fiscal note assumes passage during the first session of the 23rd Legislature. Adoption of this fiscal note would provide funding for:

- ☐ A half-time seasonal licensing clerk (and associated office expenses), from November, 2003 through June of 2007 to handle the additional licensing and transfer responsibilities;
- ☐ A half-time hearing officer (and associated office expenses) for the last 8 months of FY04 and through FY05. After that time, remaining appeals would be handled by current hearing officer staffing level. This position will assist with adjudications of appeals by denied applicants for charter tabs and appeals of transfer cases;
- ☐ An Analyst-Programmer IV position for FY04 (and associated office expenses) to develop and implement computer programming necessary to handle new charter tab licensing system, renewals, and transfers. The programs will then be maintained by existing Data Processing staffing;
- ☐ Travel costs for public hearings on regulations package to implement program (one trip to Sitka, Ketchikan, Prince of Wales Island), and for the hearing officer to conduct appeals hearings (one trip to Sitka, Ketchikan, and Prince of Wales Island);
- ☐ Costs of tabs; application, renewal and transfer forms; and postage for mailings.

The bill is expected to significantly impact CFEC staff time and resources beyond what is reflected in this fiscal note because the work of drafting regulations, implementing the new program, designing new forms, establishing an appeals process, and adjudicating the more complex cases will have to be done by existing, experienced staff and the commissioners. While this additional load will be "absorbed" under the terms of the fiscal note, the added responsibilities created by the bill will likely impair or slow the commission's ability to perform its core duties (limitations of commercial fisheries, timely annual renewals of permits and licenses, adjudication of limited entry cases under appeal, etc).

Change in Revenues

* Explanation of "indeterminate" amount of change in revenue:

If the commission has authority to charge fees under the moratorium created by this legislation (as it does in commercial fisheries) for initial application, annual renewal, transfers, and duplicates of the tabs, some revenue will be generated by the bill.

Fiscal Note Analysis HB281

Fiscal Note Analysis HB281								Fiscal Year						
								2004	2005	2006	2007	2008	2009	
Personal Services								104.2	53.3	14.6	14.6	0.0	0.0	
	Type	Mos	Start	Thru	Yearly Cost									
HO II	22A	Half-Time	12	Nov-03	Jun-05	38.7		25.8	38.7	0.0	0.0	0.0	0.0	
Permit Clerk II	10A	Seas-PT	9	Nov-03	Jun-07	14.6		9.7	14.6	14.6	14.6	0.0	0	
AP IV	20A	Full-time	12	Jul-03	Jun-04	68.7		68.7	0.0	0.0	0.0	0.0	0.0	
Travel								3.1	1.7	0.0	0.0	0.0	0.0	
	# Staff	Days	Airfare	Per Diem	Hotel	Rental Car	Total							
Ketchikan Regulatory Hearing	2	2	1000	168	400	120	1688	1.7	0.0	0.0	0.0	0.0	0.0	
Sitka Regulatory Hearing	2	2		168	400	120	688	0.7	0.0	0.0	0.0	0.0	0.0	
Craig Regulatory Hearing	2	2		168	400	120	688	0.7	0.0	0.0	0.0	0.0	0.0	
Ketchikan HO	1	2	500	84	200	120	904		0.9	0.0	0.0	0.0	0.0	
Sitka HO	1	2		84	200	120	404		0.4	0.0	0.0	0.0	0.0	
Craig HO	1	2		84	200	120	404		0.4	0.0	0.0	0.0	0.0	
Contractual Services								3.8	2.9	2.3	2.3	0.0	0.0	
Postage		2.0						2.0	2.0	2.0	2.0	0.0	0.0	
Telephone	3	0.3						0.9	0.9	0.3	0.3	0.0	0.0	
Telephone Install	3	0.3						0.9	0.0	0.0	0.0	0.0	0.0	
Commodities								17.4	3.0	3.0	3.0	0.0	0.0	
	#	Cost	Total											
Computer setup	3	3.6	10.8					10.8		0.0	0.0	0.0	0.0	
Desk	3	1.2	3.6					3.6	0.0	0.0	0.0	0.0	0.0	
Tabs & Forms Supplies		3.0						3.0	3.0	3.0	3.0	0.0	0.0	
Total								128.5	60.9	19.9	19.9	0.0	0.0	

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH
HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

Sponsor Statement

HB 281

Moratorium on Charter Vessels in SE Alaska

HB 281 is introduced by the request of a broad-based group of fishers, including the guided sport fishing industry, who have long advocated for a proactive approach to achieve long-term stability in the industry. An expression of this desire was also articulated in 2000 when the Board of Fish passed a resolution supporting a limitation program on charter operations. The resolution came by request of the charter industry itself.

Two years later, 2002, a task force formed by the Board of Fish to look at the SE Alaska King Salmon Management Plan. This group was comprised of charter industry and sport fishing advocates, also recommended a moratorium on charter vessels in SE Alaska.

The 2003, ADF&G King Salmon report for SE Alaska shows that the number of licensed vessels and actual operators, as indicated by logbook activity, has stabilized over the last few years. This indicates that now is the time for a moratorium as the industry is relatively stable rather than in times of extreme growth or decline.

A vessel license moratorium for the sport fish charter fisher that does not limit entry into the fisheries by persons may be held to be constitutional and a valid exercise of legislative power under art. VIII, sec. 2 of the Constitution of the State of Alaska to provide for utilization, development, and conservation of natural resources belonging to the state.

Contact: Linda Sylvester
465-3744

Released: April 10, 2003

SPONSOR STATEMENT

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

Sectional Analysis

(907) 465-3744
FAX (907) 465-2273

HB 281

Moratorium on Charter Vessels in SE Alaska

Section 1. The uncodified law of Alaska is amended by adding a new section:

Moratorium on Vessels Used in Charter Service for the Recreational Taking of Fish and Shellfish.

Paragraph 1 - Charter Vessel Tabs Issued

(a) After December 31, 2003 a person may not use a vessel in charter service for recreational fishing in SE Alaska east of Cape Suckling unless the vessel has been issued:

- a current vessel license under AS 16.05.490, and
- a current SE Alaska saltwater charter vessel tab under (b) of this section.

(b) For 2004 and subsequent years, the Alaska Commercial Fisheries Entry Commission shall issue an annual SE Alaska saltwater charter vessel tab for a vessel to be used in charter service if the vessel was:

- (1) issued a vessel license under AS 16.05.490 for 2002, or before the effective date of this Act was issued a vessel license for 2003; and
- (2) used in charter service for the recreational taking of fish and shellfish in SE Alaska in 2002 or 2003, as documented by ADF&G saltwater charter vessel logbooks.

(c) The SE Alaska saltwater charter vessel tab must be affixed to the number plate attached to the vessel under AS 16.05.520.

Paragraph 2 - Transferability

(d) A person who owns a vessel for which a tab has been issued may request CFEC to transfer the tab to another vessel if the other vessel is a temporary or permanent replacement of the original vessel issued a tab under (b) of this section.

SECTIONAL ANALYSIS

Representative_Bruce_Weyhrauch@legis.state.ak.us
www.akrepublicans.org/wevhrauch/

The transferred tab may be renewed annually and may be transferred again to another vessel. The replaced vessel is not eligible for a new tab unless it is subsequently used to replace another tabbed vessel.

(e) If the vessel for which the tab is issued is sold, the owner may request for CFEC to transfer the tab to the new owner of the vessel.

(f) The transfer of a tab under (d) or (e) of this subsection may not have the effect of increasing the total number of tabs issued for chartered vessels.

Paragraph 3 - Value

(g) A tab issued under this section may not be sold or otherwise transferred for value. A transfer for value doesn't include the enhanced value of a vessel that is attributable to the vessel ownership transfer that accompanied the transfer of the tab.

Paragraph 4 - Other Circumstances for CFEC Issuance

(h) CFEC may also issue a tab under (b) of this section if:

- (1) a substantial continuing effort toward the construction of the vessel for use in charter service was begun on or before the effective date of the Act but the vessel wasn't completed until after the effective date; and application for the tab has been made to CFEC by December 31, 2003.
- (2) Substantial and nonrefundable payment toward the purchase of the vessel for use in charter service was made on or before the effective date of the Act but the transfer of ownership did not occur until after the effective date, and the application for the tab has been made to CFEC by December 31, 2003.

Paragraph 5 - CFEC Regulations

(i) CFEC may adopt regulations to carry out the functions of this section.

(j) A person who violates this subsection is guilty of a class A misdemeanor.

ALASKA BOARD OF FISHERIES
RESOLUTION 2000-FB-202

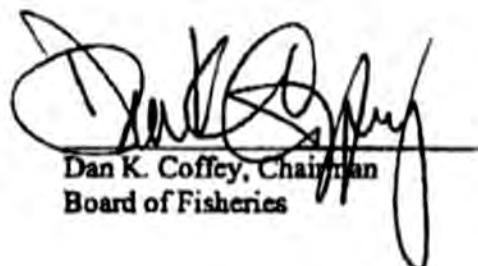
Supporting a Constitutional Amendment to allow the State of Alaska to Limit Entry in to the
Guided Sport Fishing Industry in Alaska

- WHEREAS, long term stability in the guided sport fishing industry in Alaska is a common goal of guides, resident sport anglers and commercial fishermen; and,
- WHEREAS, unmanaged growth in any user group sector on fully utilized fishery resources threatens stability of the resource, the users and local communities; and,
- WHEREAS, limited entry into the guided sport fishing industry in Alaska has been identified by all user groups as a necessary tool to accomplish predictable management and long-term stability for guided and commercial fishing interests; and,
- WHEREAS, effective management and conservation of Alaska fishery resources would be greatly facilitated by the ability to implement limited entry programs for guided sport fisheries around the state; and,
- WHEREAS, fishermen across the state have repeatedly testified before the Board of Fisheries regarding significant conflicts resulting from the currently unlimited growth of the guided sport fishing industry; and,
- WHEREAS, fishermen from all user groups, including the guided sport fishing industry, have requested that the Board of Fisheries take a proactive stance to secure limited entry as a tool to regulate the guided sport fishing industry;

NOW, THEREFORE, BE IT RESOLVED, that the Alaska State Board of Fisheries urges the Alaska Legislature to place a Constitutional Amendment on the ballot to allow implementation of limited entry programs for guided sport fisheries in Alaska

Dated on this 27th day of March, 2000
Anchorage, Alaska

Vote: 7/0/0


Dan K. Coffey, Chairman
Board of Fisheries

BOARD OF FISH RESOLUTION/SUPPORT

BIG JIM'S CHARTERS
PO Box 210328
Auke Bay, AK 99821
bigjim@acsalaska.net
www.bigjimscharters.com
1-866-BIGJIMS (Toll Free)
907 789-0088 (local)
907 789-2992 (FAX)

April 25, 2003

RE: HB 281

I am writing in support of HB 281, a moratorium on entry of vessels into the Southeast Alaska sport fish charter fishery.

Many charter operators have been trying for years to do something to regulate the charter industry in Southeast Alaska. One of the compelling reasons is the continual battle for allocation of king salmon. A legitimate argument from the commercial sector is that the charter sector is, basically, unregulated and, as such, can increase in size without bounds. This proposal would not limit the number of charter operators, but would, instead, limit the number of vessels allowed to operate in the saltwater fishery in Southeast Alaska.

In March 2000 the Board of Fish passed a resolution supporting a limitation program on charter operations. This resolution was a result of request from the charter industry.

In 2002 a task force was formed by the Board of Fish to look at the Southeast Alaska King Salmon Management Plan. This group was comprised of charter industry and sport fishing advocates. Among other findings, the Task Force recommended a moratorium on charter vessels in Southeast Alaska (p3, section 4e).

This legislation, as proposed, is limited to Southeast Alaska where there is overwhelming support from sport fishing and charter industry individuals and groups throughout the entire area, from Ketchikan to Juneau.

This legislation is limited to saltwater operations. It does not include any freshwater guiding operations, nor is it intended to include them.

The 2003 ADF&G King Salmon report for Southeast Alaska shows that the number of licensed vessels and actual operators, as indicated by logbook activity, has stabilized over the last few years. This indicates that now is the perfect time for a moratorium – when the industry is relatively stable rather than in times of extreme growth or decline.

I urge your support of HB 281 and request that you help move it on to final passage.

Jim Preston



LETTERS OF SUPPORT



The Whale's Eye Lodge

PO Box 210166

Auke Bay, Alaska

99821

(907)723-2920

E-mail whaleseye@starband.net

www.juneaualaskafishing.com

3/6/2003

Dear Representative Weyhrauch,

I own and operate a small family run sport fishing lodge on Shelter Island. We operate one boat and cater to only 4 to 6 guests. I have received a copy of your bill to put a moratorium on charter fishing boats in Southeast. I agree with your position in principle. I need a stable fishery to keep bread on the table. I think that your bill could help in stabilizing not only my industry but fishing allocation issues in general. A predictable number on vessels is good for management and business.

My concern is this; unlike most commercial fishing boats, which are heavily build and powered by large diesels, charter boats on the whole are lighter duty, faster, more hi performance, and much more subject to in-season failure. Outboard engines last only a season or two, inboard/outboards need constant maintenance as do high speed diesels. It has occurred in every season that I have fished that boats break down and charter operators and lodges need to borrow or lease a boat or keep one in reserve so we can keep our guests fishing while repairs are made.

A lengthy process of transferring a boat permit to a new boat and decommissioning an old one needs to be avoided in order for me to have stability in my business. If I have an breakdown I need to be able to make a phone call to Fish and Game, and take my paperwork to another boat and keep working in order to keep my clients happy. Now, if a part gets back ordered that puts my boat down I can get another boat that has numbers on it and keep going.



Where fishing is a way of life

Currently a breakdown is not a shutdown for a small operator. There are always extra boats to lease. *Without the ability to quickly make an emergency transfer I would be out of business not because of the breakdown but because of this bill.* Also Captains might be forced to run an unsafe vessel rather than find a suitable temporary replacement.

Unlike commercial fishing, my industry involves another party besides me and the fish. My clients plan months and years in advance to visit. By the time they get here they have arranged their vacations, purchased airline tickets and sent me a large deposit. If I can't locate and lease a boat quickly in an emergence they (and I) loose it all. This is not good for them, Alaska tourism or me. A clause in your bill that allows me a quick emergence transfer to another vessel would bring stability to this issue. This will not increase the number of boats. It will only insure that those of us who are legally entitled to conduct the business of charter fishing can do so.

Please place a provision in your bill that will address this need. As it stands this bill would give my ability to make a living to my boat. My boat doesn't run my business I do. My boat is a tool. I need it to work. I need the flexibility as a business owner to meet the challenges of my business. I know it is not going to be easy to find the right words to do this but it needs to be done.

Thank you for your consideration in this matter.

Rick Bierman



Professional Sportfish Guiding

Silver King Marine

Mike Bethers
P.O. Box 210003
Auke Bay, Alaska 99821
(907) 789-0165 (Ph. & Fax)



Marine Wildlife Viewing

March 6, 2003

Linda S.

FAX TO:

Representative Bruce Weyhrauch
Linda Sylvester

Subject: Charter Boat Moratorium

Dear Representative Weyhrauch and Assistant

Sorry for this hurried response but I'm leaving town right away and wanted to make a comment on your draft charter boat limitation legislation.

First of all you need to know that I have been a life long sport fisherman and a fishing guide for about 12 years. I spend as much time sport fishing on my own as anyone I know in Juneau does and since 1995, I have operated a charter boat business in the summer in Juneau. I worked as a crew member on troll and crab boats on the Oregon coast as a kid and participated in troll and/or long line fisheries in Alaska for over 20 years. I am an independent operator, book my own trips, and don't work with any trip brokers in Juneau. I run from late May till the end of August and make both half and full day charters

I support your efforts to put a moratorium on charter vessels, (not only in Southeast, but also statewide), and move toward a limited permit system as soon as possible. I am writing on my own behalf and not for any other charter operators.

You should issue vessel permits to individuals rather than vessels. This way an operator that has three boats can continue to operate three boats if one of his regulars breaks down in season. If my one boat poops out in season and I don't have time or resources to fix it immediately, I would be able to lease an another boat which was legal to operate but inactive, from another operator and continue my season until my boat was repaired. Trust me, chartering is the ONLY fishery that most charter boats have and it is absolutely necessary to keep going during the short summer season. The profit margin in this fishery is thin and a down time of only a few days would drag most operators into the red for the season.

If you want 600 charter boats in SE or 1200 State wide, or what ever the number, just issue that many vessel permits to the currently active operators, ie, if a guy has one active boat he gets one permit and if he has 10 active boats, he gets 10 permits. That way, the number of boats in the industry would effectively be limited and vessel permits could be

transferred to some operator wanting to expand, or to someone wanting to get into the fishery (just like to commercial limited entry permit system). And if a guy's boat had a serious break down in season, he could quickly lease/rent a permitted, but available vessel to continue his season.

I would urge you to rewrite your draft of 2/24/03 to reflect the above comments. The decommissioning Etc, your legislation currently includes is not a feasible in season alternative for serious charter boat operators.

I could discuss the pros and cons of such legislation for a long time and would jump at the chance to do so with you. Once again, I support the basic concept of developing a moratorium and ultimate limitation of charter boat permits in Alaska, and would like to assist in any way that I can. It is very critical that you get real active charter operators involved in the process of such legislation, especially since they are the effected party. I would have rather received a copy of the draft from you for comment rather than being notified in a round about fashion a few minutes ago.

I would look forward to the opportunity to assist you on this project and will be available after March 16, 2003. Hope to hear from you.

Respectfully,



Mike Bethers



March 21, 2003

Representative Bruce Weyhrauch
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Weyhrauch,

I understand you recently drafted a charter boat moratorium bill. I have operated a charter boat business in Sitka, since 1986, and would like to offer the following comments.

I reluctantly support the concept of a moratorium. My reluctance is because I feel sport anglers have not received a fair and reasonable allocation of the public fishery resources. The state Board of Fisheries and the North Pacific Fisheries Management Council (NPFMC) have always been skewed towards commercial fisheries, where historical use implies ownership. The current allocation for king salmon in southeast Alaska, is 80% commercial and 20% sport. Furthermore, the NPFMC is pursuing a 90% commercial and 10% sport allocation, under a GHL or IFQ program.

The most common reason cited for a moratorium or limited entry for charter boats, is *explosive growth*. Those of us who make our livelihoods from chartering know the numbers are misleading, primarily due to speculators.

Attachment 1 was prepared for the recent Board of Fisheries meeting, relating to southeast king salmon allocation. It shows the number of boats, since 1998, with logbook records of at least one charter where a king salmon was harvested or released. The number of vessels increased slightly from 1998 through 2001, then declined in 2002.

Attachment 2 further breaks down actual activity levels. It categorizes the number of vessels by how many trips were taken for king salmon. Almost half the vessels completed only one to 25 charters per year, a level considered insufficient to make a living off of. The number of vessels completing 50 or more charters per year, is relatively stable. These are considered full time operators making up the actual charter fleet.

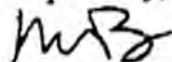
transferred to some operator wanting to expand, or to someone wanting to get into the fishery (just like to commercial limited entry permit system). And if a guy's boat had a serious break down in season, he could quickly lease/rent a permitted, but available vessel to continue his season.

I would urge you to rewrite your draft of 2/24/03 to reflect the above comments. The decommissioning Etc, your legislation currently includes is not a feasible in season alternative for serious charter boat operators.

I could discuss the pros and cons of such legislation for a long time and would jump at the chance to do so with you. Once again, I support the basic concept of developing a moratorium and ultimate limitation of charter boat permits in Alaska, and would like to assist in any way that I can. It is very critical that you get real active charter operators involved in the process of such legislation, especially since they are the effected party. I would have rather received a copy of the draft from you for comment rather than being notified in a round about fashion a few minutes ago.

I would look forward to the opportunity to assist you on this project and will be available after March 16, 2003. Hope to hear from you.

Respectfully,



Mike Bethers

These charts relate only to king salmon. However, because king salmon is the most sought after sport fish, I'm confident the numbers would change little if halibut or other salmon were counted.

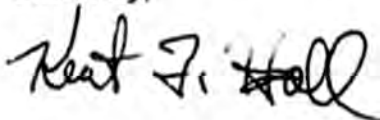
I am fascinated by the list of requests presented by the Salmon Industry Task Force, to deal with competition from farmed salmon. All of the items require grants, low interest loans or deregulation from the government. The charter/lodge industry has not asked for, nor received, nor been offered any government subsidies.

An economic comparison seems appropriate. According to ADF&G's fish tickets, the *total* ex-vessel value of *all* SE troll caught king salmon in 2002, was just over \$6 million. The total gross reported retail sales for charter/lodge operators in Sitka, alone, in 2002, was just over \$12 million! Why should businesses apparently thriving on their own be restricted at this time? This resource use is based more on political allocation (without fair and balanced representation) than on conservation concerns.

Should you still feel the need to pursue a moratorium, I hope your bill is as liberal as possible and requires recipients to have been *legal* operators in the past. I am comfortable with the 2002 and/or 2003 logbook requirement, or vessel construction proof. But the operators logbooks should document at least one charter conducted. More importantly, an operator should have proof of being in legal operation for the qualifying year(s). This should include 1) U.S. Coast Guard license, 2) Alaska State Business license, 3) ADF&G Business and Guide registration, 4) enrollment in a US Coast Guard random drug testing program, and 5) where applicable, payment of appropriate city sales tax, for any charters recorded in their logbook.

Thank you for your consideration.

Sincerely,

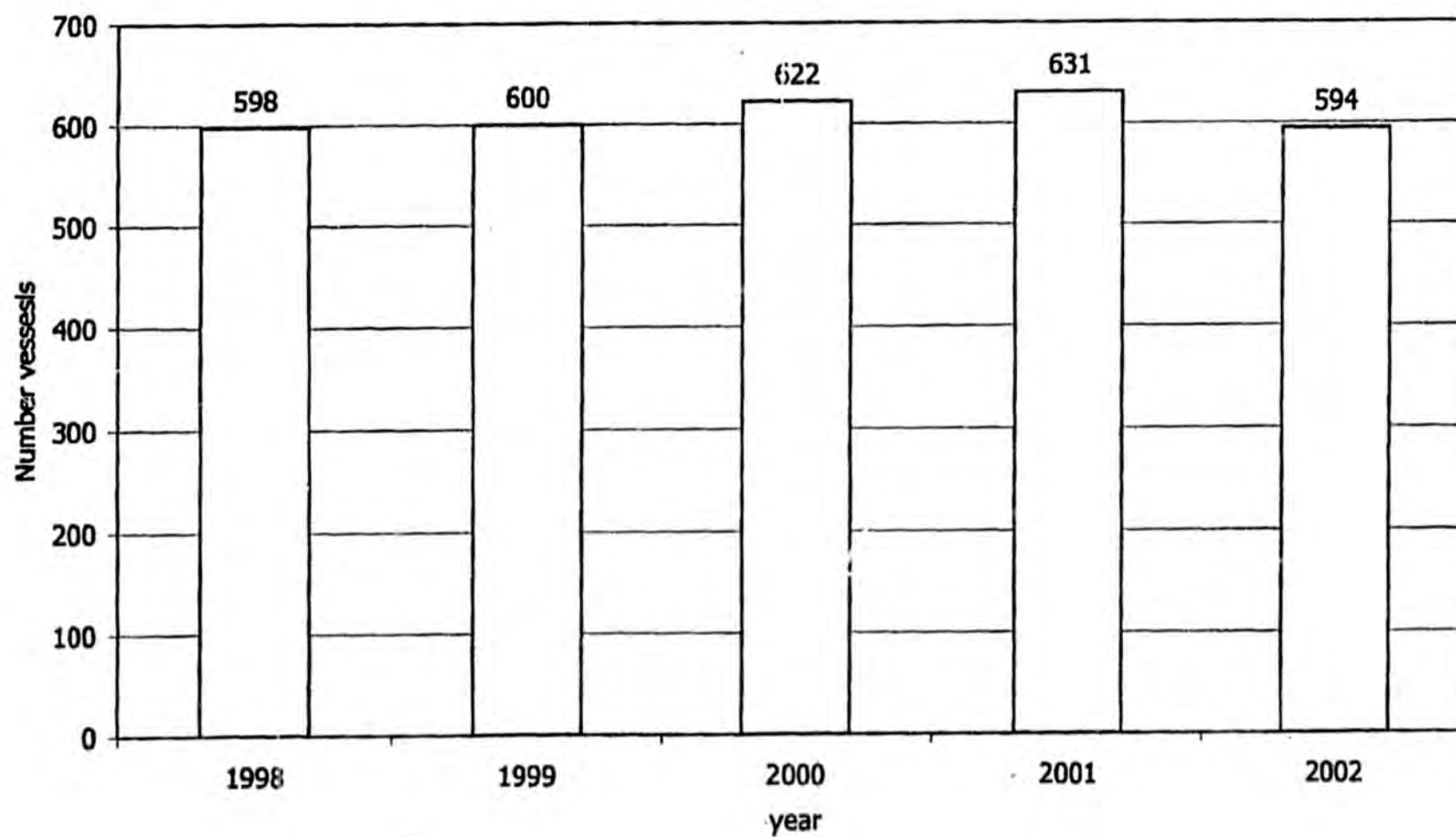


Kent F Hall

cc: Representative Peggy Wilson
Senator Robin Taylor

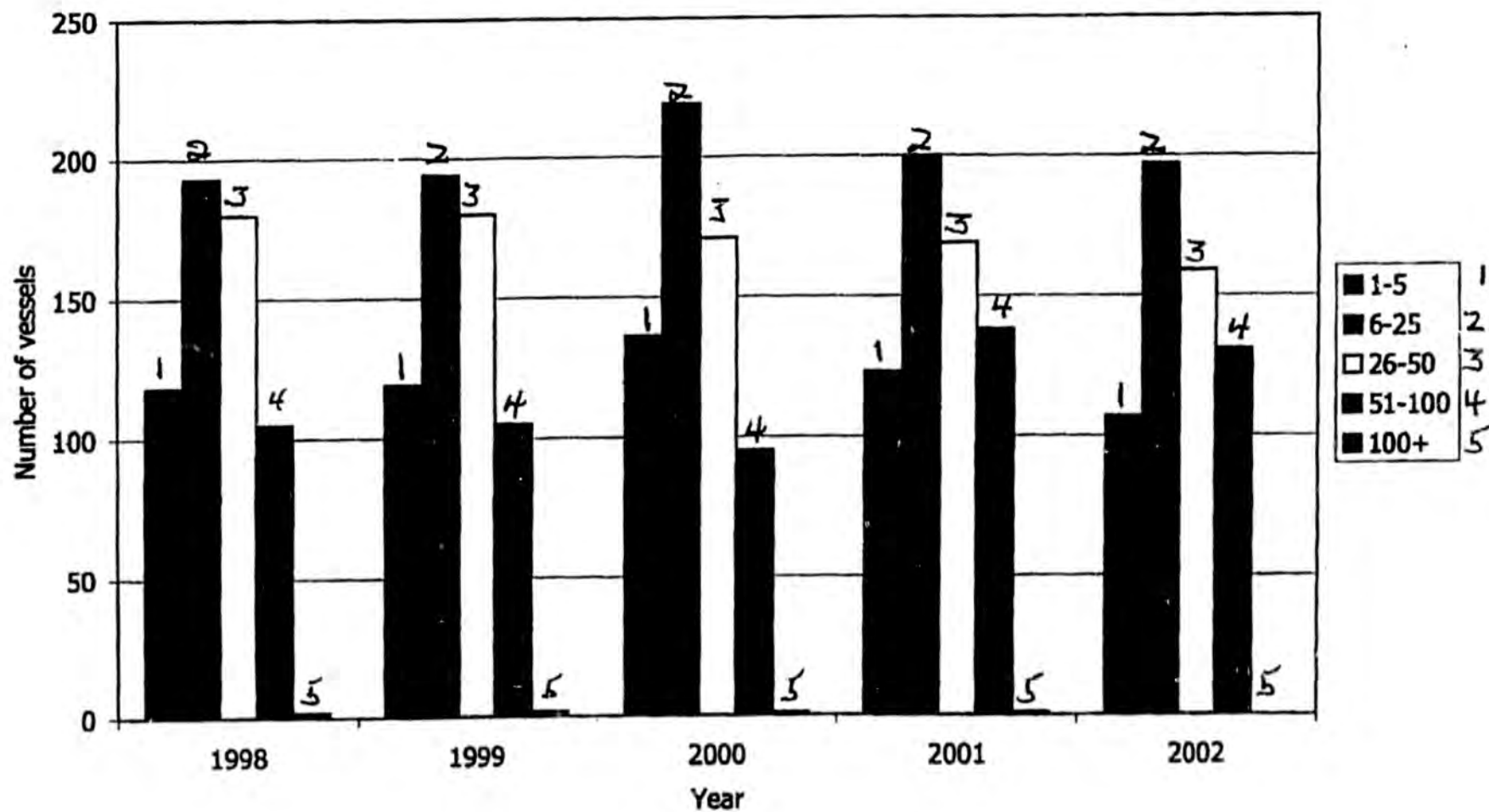
ATTACHMENT 1

Total number of active (reporting at least one trip) SE Alaska salmon charter vessels



ATTACHMENT 2

Number of charter vessels in SE Alaska, classified by frequency of king salmon trips



THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES