

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2985 SCOMM 131: HOUSE SPECIAL COMMITTEE ON FISHERIES, 2003-04

4/65-6000

Tom Dawson

From: "Tom Dawson" <tommyjca@alaska.com>
To: <Rep.Bruce.Weyhrauch@legis.state.ak.us>
Sent: Monday, April 07, 2003 14:18
Subject: Moratorium on charter vessel License

I am a lifetime Juneau resident. I am a retired state employee (Dept of Corrections and Glacier Fire Dept).

I am currently self employed as an independent charter owner/operator of "Three Eagle Charters" since 1992.

I do not support your proposed bill for a moratorium on charter vessel licenses for the recreational taking of fish and shellfish in Southeast Alaska.

Alaska promotes tourism all over the world, "to come and see our great wilderness and beauty, our wildlife and fishing". Now we are about to shoot ourselves in the foot (again) by limiting their access to the very things we promote! (ADFG has been doing it for a few years now by constantly increasing the restrictions on fishing for non-residents). Many of my clients have gotten fed up with ADFG and simply vacation and fish (and spend their dollars) where it is more tourist friendly. Statistics show that for every King salmon caught by a non-resident charter fishermen has brought over \$900 into our local economy! Compare this to a commercially caught fish. Now you want to limit the non-residents ability to access this resource once we get them to come here! Why?

Because of ADFG regulations, which has reduced my number of clients over the years, (thus ... income), I now do all my outfitting and purchasing of big ticket items out of Seattle. The ripple effect costs our local economy not only the tourist dollars but my spending of my disposable income here as well.

I do not support this bill.

Charter operators are not a commercial fishing venture. We do not operate under commercial fishing regulations, we operate under sportfishing regulations. Our clients follow the sportfishing regulations. We provide for the client (resident and non-resident alike) the experience they want to enjoy. Sometimes fishing, sometimes not. Can you imagine how ludicrous it would be to have to explain to a client who had booked a charter vessel to enjoy a day or two cruise only to find out that when they wanted to put a fishing pole in the water to fish it wouldn't be allowed! Every client would have to know to ask every charter service if they were allowed to fish or not before they booked! First put yourself in the shoes of the frustrated client. What would you do? I would go elsewhere to where it is more tourist friendly to spend my dollars! Now imagine yourself as the "limited" charter operator. What kind of business do you think you could attract? This bill is definitely not small business friendly.

Tourism is on the rise in Juneau and Southeast and yet your bill, and the one proposed by the Governor (HB 163) are a definite slap in the face for small charter business operators! There are not enough "qualified" charter operators now to handle the tourist business. Many operators do not provide a qualified or safe experience and should not be operating. I would think it would be wiser to address these concerns first, to insure our visitors are safe. Enforcing the current regulations would have a much more positive outcome than what you propose. Let free enterprise take care of the rest. Competition is good. Level the playing field by enforcing the current regulations that apply to charter operators.

Why not address non-resident charter operators, or out-of-state vessels if there is a need for reductions?

What I really suspect is that the push behind this is from Commercial Fishing. Reducing the numbers of charter operators reduces their opposition. ADFG already has the sport/commercial allocation out of balance, and it becomes more so every year. Commercial fishermen have overfished for years and

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continue to do so with the help of ADI-G. ADI-G is not protecting the public resource, they are regulating the user groups to the favor of who has the loudest voice, biggest war chest and most lobbyists. This is what really needs to be changed. Tackle this and your on the right track.

*Respectfully,
Tom Dawson 789-9124
www,ThreeEagleCharters.com
e-mail: tommyjoe@alaska.com*

4/7/2003

SUMMARY REPORT

SOUTHEAST ALASKA KING SALMON MANAGEMENT PLAN TASK FORCE

The Board of Fisheries last modified the Southeast Alaska King Salmon Management Plan in February 2000. The plan has four objectives, one of which is to manage the sport fishery to attain its allocation of king salmon. The plan directs the department to establish specific regulations in step-down progression based on abundance level, forecasted prior to the summer season under the Pacific Salmon Commission process. The plan is currently structured into four sections that are each tied to a range of abundance indices. The plan has been in effect in its current form now for the past three seasons.

In December 2001, Sport Fish Division hosted a meeting among stakeholders in the SE king salmon fisheries. We sponsored that meeting after harvests of king salmon in the sport fishery exceeded the fishery allocation in 2000 and 2001. Those years were the first two under the newly revised plan and both were considered to be years of low king salmon abundance. The outcome of the December meeting was a request to the Board to establish a task force to reduce sport harvests to stay within the fishery's allocation and to reduce impacts to resident anglers.

In January 2002, the Board approved the Southeast Alaska King Salmon Management Plan Task Force and developed its charge. The purpose of the task force is to recommend changes to the Southeast Alaska King Salmon Management Plan to minimize regulatory impacts on resident anglers, and develop management options to reduce harvest by nonresidents and guided anglers in years of low abundance to stay within the sport allocation.

The task force is composed of 11 members. It includes Board member Larry Engel, three lodge owners, three charter operators including representatives for the Sitka and Petersburg Charter Associations, three anglers, one of whom also represents Territorial Sportsman's Association, and a representative for Sitka Tribe of Alaska. The group's membership follows the make-up established by the Board, and represents inside versus outer coast and northern and southern geographic areas of Southeast Alaska as well as each user group. Sport Fish Division staff supported the task force by coordinating meeting schedules and logistics, including meeting facilitators, and providing fishery data.

Task Force Activity

The task force accomplished much during the spring, 2002. At an in-person meeting held March 12-13 in Sitka, the group identified a number of issues involving the sport fishery for king salmon, developed a set of consensus items to incorporate into the existing management plan, and agreed to submit a regulatory proposal to the Board to modify the management plan. A second meeting was held by teleconference in early April to finalize the regulatory proposal. At that meeting, the group agreed that the specific plan modifications should be included in the proposal with the understanding that the

ADFFA REPORT: SEE 4.(E)

proposed plan may be modified and finalized by the task force at a meeting after the 2002 season. The primary product of the spring meetings was the development of proposal 323, which the Board will consider at its February meeting in Ketchikan.

The task force met twice again in fall 2002. During a meeting held November 12-13 in Ketchikan, the task force reviewed and modified the proposed management plan, and developed draft findings to present to the Board with the plan. On November 27, after modifications to the plan and findings were incorporated, the task force met by teleconference and finalized both the plan and findings.

Together, the final draft management plan and findings represent the product of the task force. Both will be considered during the February 2003 meeting of the Board of Fisheries.

The draft plan and findings can be found on this web site. Both documents have been distributed to stakeholder groups and Advisory Committees in Southeast Alaska, and hard copies are available at local (Southeast) ADF&G offices. Any questions or comments can be directed to ...

TASK FORCE FINDINGS

After several meetings the SE King Salmon Task Force has developed a consensus management plan that will accomplish the Board of Fisheries charge to minimize regulatory restrictions to resident anglers and reduce harvest by nonresident and guided anglers in years of low abundance to stay within the sport allocation. The Task Force plan is based on the best available scientific information and is measurable, easily implementable, will sustain the resource, minimize impacts to residents, and allow continuation of the charter/guide industry. The following findings describe how the charge has been met and identifies additional issues for consideration.

1. Minimizing Restrictions to Resident Anglers

The task force recognizes that king salmon are an important source of food as well as an integral component of the lifestyle of the people of Southeast Alaska. As such, the task force management plan suggests no new restrictions to resident anglers and in some cases eases restrictions. Specific changes include:

- a. Allow a two fish bag limit for residents at abundance indices above 1.35 when there is no cumulative overage for the sport fishery.
- b. Allow retention of king salmon during the Golden North Salmon Derby at low abundance indices.
- c. Allow residents fishing from charter vessels to retain king salmon at times when nonresident anglers are subject to more restrictive limits.

2. Increased Restrictions for Nonresident Anglers

The task force recognizes that the charter and lodge industries are an important component of the economy of Southeast Alaska and that these industries are primarily dependent upon nonresident anglers. It is also recognized that king salmon are the primary target species in May and June. To maintain these industries it is imperative that non-residents retain a bag limit of 1 and annual limit of 3 fish during May and June; the importance diminishes later in the year when other species are available. To achieve the Board charge of reducing harvest by nonresidents, the task force recommends several changes including:

- a. Limit nonresident anglers to a maximum bag limit of 1 fish at all abundance index levels.
- b. Limit nonresident anglers to a maximum annual limit of 3 fish (except at very high abundance levels combined with a cumulative underage of 10,000 fish or greater).
- c. At moderate and lower abundance levels (1.2 and below), annual limits in July and August are reduced to 2 or 1 fish depending on the allocation.

3. Allocation

The task force modifications to the King Salmon Management Plan were designed to meet the Board's charge of keeping within the sport allocation. The Task Force recognizes the Board's role in setting allocations, and takes no position on the appropriate allocation for the sport fishery.

Because of the need for stability in the sport fishery, and recognizing the limited ability of the department to manage for a specific sport allocation, the task force recommends that management actions be taken at the lower abundance ranges (1.2 and below) to accomplish a 23% allocation (approximately 15 percent above the current 20% sport allocation) while at higher abundance (above 1.5) the sport fishery be limited to a 17% allocation (approximately 15 percent below the current sport allocation). The task force felt that explicitly stating these targets in regulation clarifies the concept agreed to at the 2000 Board meeting that sport harvests may exceed the 20% allocation at low abundance levels but would fall short of allocations at high levels.

The task force intent is that, over a 6-year period, the sport fishery will harvest 20% of the combined sport/troll allocation. The task force recommends a 6-year tracking period to allow years of high, low and moderate abundance to equalize overages with underages. This will provide enough time to evaluate the effectiveness of the plan, while ensuring that the plan could be modified during the normal 3-year Board cycle if changes are needed.

The task force also recommends that tracking of sport overages and underages begin in 2000, when the most recent plan went into effect.

4. Additional Findings

- a. The task force recognizes that the charter and lodge industries are dependant upon the opportunity to harvest king salmon during May and June. Implementing non-retention during May and June would cause economic disaster. The task force recommends that, if May and June closures are necessary, a separate disaster plan be developed. This contingency may require efforts outside the scope of ADF&G or the Board of Fisheries.
- b. Stable and predictable regulations are desirable for all anglers. It was the goal of the task force to establish more restrictive regulations for non-resident anglers than are contained in the current plan to ensure that more stable regulations result.
- c. The task force recommends that a 48-inch minimum size limit be established, rather than periods of complete non-retention. A 48-inch king salmon weighs approximately 50 pounds and less than 0.25 percent of the fish harvested in Southeast Alaska reach this size. The task force concluded that this regulation would not promote catch and release fishing because of the low probability of catching a 48-inch fish. However, it would allow a person the opportunity to retain the "fish of a lifetime".
- d. The task force recommended allowing resident anglers to retain king salmon while fishing from charter vessels at times when nonresident anglers are subject to more restrictive limits. It was recognized that this would potentially result in a minor increase in harvest. However, the task force concluded that this was consistent with the charge of minimizing restrictions on residents and it was felt that the current regulation unfairly penalized resident anglers who choose to fish from a charter vessel.

- e. The task force fully supports immediate legislation to implement a moratorium or limited entry to the charter industry.
- f. The task force plan provides more specific regulatory direction to the department than the current plan. It is felt that by reducing discretionary action, the plan would be less prone to conflicting interpretation and less likely to be challenged in court.
- g. The task force recommends that harvest reductions at low abundance (less than 1.0) be accomplished by closing specific times to retention of king salmon. It is further recommended that 80% of the reduction should be by nonresidents and 20% by residents. Under the draft plan, non-retention periods for nonresidents will be established on a regular basis as needed during the period July 16-31 before establishing periods prior to July 16. In this way, for example, if eight days of non-retention were needed to reduce the nonresident harvest, retention by nonresidents would be prohibited every second day from July 16-31. If it becomes necessary to prohibit retention for more than the entire July 16-31 period, then additional non-retention periods for nonresidents will be established on a regular basis as needed during the period July 1-15.
- h. There was consensus that nonresidents should be responsible for 80% of the harvest reduction required during July closures and that the remaining 20% should come from residents. ADF&G will determine how many non-retention days will be required by each group to achieve the desired reduction. There was also general agreement that periods of non-retention for residents should be scheduled for days when retention is also prohibited for nonresidents; not on days when harvest by nonresidents is allowed.

KEN DOLE, HB 281

Water Fall Resort

21 Charter Boats

now have daily closures

\$700-\$1000/day/fish

OFFSETS

Dated: 30 April 2003

From: George Houck
Good Time Charters
40 South Point Higgins Rd.
Ketchikan, AK 99901
Phone: 907 247 2393
E Mail: amgo@ptialaska.net

To: Representative William Williams,
Senator Robin Taylor

Subj.: Public Response to House Bill No. 281

RE: "An Act relating to a moratorium on entry of vessels into the Southeast Alaska sport fishing charter fishery; and providing for an effective date."

1. This house bill is NOT in the best interest of Southeast Alaska, in regards to future growth and development in southeast Alaska.

Reasoning:

A. At present the city of Ketchikan is planning for additional berthing of Tour Ships, since the industry has indicated that in is one of our fastest growing industries. It is projected that we will almost double our tourist trade in the next 10 years or so.

B. If we put a moratorium on charter boats, we had in effect, limited the services that will be available in the future to accommodate this increase in tourist business off the cruise ships, i.e., four hour charters.

C. If this moratorium goes into effect, we have also hampered any

future development of other lodges, marinas, or bed and breakfast that would also include guided fishing tours as part of the package.

D. Think about it a minute, if we had 650,000 tourist passing through our town last year and we are expecting a doubling of this industry in the coming years, should we limit the number of people that can take these tourist out on a fishing experience? The present number of Charter Skippers will NOT allow for expansion in this industry, let alone allow for future enlargement of marinas or new lodges.

Dumb idea!

2. Suggestion:

A. If this moratorium is enacted, we should at the same time do away with only six pack licenses and make available for these qualifying, the options of taking more than six people on fishing tours, i.e., party boats, such as those available on the west coast that takes more than six people fishing at a time.

Reasoning:

A. We all know that our fishing industries as a whole is declining, do in large part to pen-raised salmon and other species such as halibuts and clams. We can stomp our feet, beat our chest and run around in circles as we are doing now or we can get real, realize the inevitable, and do some planning for the use of our fishing resources.

B. As more of our seine boats are tied to the docks because of the lack of a buyer for their product or the price is so low that they are not paying for the crew and fuel we need to give them an opportunity to do something else. One way to utilize these people and offer employment would be to allow them to convert the seine boat into a party fishing boat. This especially true if we put a moratorium on A

Southeast Alaska sport fish charter fisheries. The addition to allowing more people on one boat to fish, it will help alleviate the sure to come short fall of charter boat skippers available for hire.

Also this will make for more competition, if a skipper can take more than six people out at one time he can lower his cost per person, and offer a lower price to the tour ship. Presently we are only selling fishing charter trips to the high end people on boats, early in the season and for King salmon and the good fishing periods, for Coho/Pink Salmon in July, August and September are not being sold, in part do to the clientele that travel during this period on tour ships. But if we can lower the cost for these people we can enlarge this period in the business.

2. In a recap, this bill appears to me as a way for the present Charter Boats to eliminate any future competition. I have a charter boat license and a 100-ton Masters license and it sounds great if I want to insure that I don't have to worry about any more businesses competing against me to sell my charters, but for the overall good of Southeast Alaska and our economic development this is NOT a good bill. I'm not afraid of competition and me personnel feel competition is good for business and the future of Southeast Alaska.

Sincerely,

George Houck

P.S.: Robin and Bill, you may not recognize my name as George Houck and Good Time Charters, but you should remember me as the Sears Repairman and the owner/operator of George's Appliance Repair here in Ketchikan. I have done work for both of you . . . smiles. Always looking for ways to develop more jobs for our community, by the way I have other ideas that we should talk about . . . if you're open for suggestions.

Subject: Moratorium on Charter Vessel Licenses

Date: Wed, 30 Apr 2003 15:14:55 -0800

From: Don <ccpwow@gei.net>

To: representative_paul_seaton@legis.state.ak.us

House Fisheries Committee

Rep. Paul Seaton

Committee Members

I would like to address HB 281 Moratorium on Charter Vessel Licenses.

I believe placing limited entry or a moratorium to entry restriction on charter vessels may be well intentioned

but also carries the ability to cause much harm to Alaska's common use fisheries.

This harm would result from users attempting to access a resource which may be taken away from them if they have not accessed it in the past and then the restriction is removed for constitutional conflict reasons.

The reason I believe this is because I believe that only a vote of the people of Alaska may implicate a current Alaskan common user into becoming implicated within the Limited Entry Act.

I also believe that any past, present or future (moratorium to entry) to any common trust user is unconstitutional under Article VIII Section 3. Common Use and Article VIII, Section 17, Equal Access.

The Alaska Constitution does not allow a small amount of time for a common user to be subjected to limited entry / moratorium actions. The only exception Alaska's Constitution grants is that which is located within "**commercial fisheries**".

The Alaska State legislature tested its ability to implicate another common user with its creation of Exclusive Guide Area's, EGA's back in the 1980's. The State attempted to implicate the guided hunting industry into the Alaska's Limited Entry Act merely because the industry was natural resource related and also

commercial like the "**commercial fishing industry**". This was a critical legal error on the part of the State because the Limited Entry Act was specifically designed to apply only to the "**commercial fishing industry**".

The cases which decided this issue were **Owsichuk v. State**, 763 P. 2d 488

[Alaska 1988], and **CWC Fisheries v. Bunker**, 755 P.2d 1115, 1121 n, 4 [Alaska 1998].

Alaska had assumed that its 1971 "**commercial fisheries**" constitutional amendment also applied to other economic activity within the State when in fact it specifically only applied to "the intent of disposing of fish for

profit, or by sale, barter, trade, or in commercial channels". This state error was defined by the result of **Owsichuk and CWC Fisheries**. **Owsichuk** is Alaska's Supreme Court ruling on the Alaska legislature applying limited entry anywhere

it saw a possible user resource or economic problem. **Owsichuk** was a hunting case but the same constitutional

principles apply with regard to fisheries. **Owsichuk** found that the State could not place limited entry on hunting

guides just because it saw some of the same problems within commercial hunting that it observed within commercial fisheries. The end result of **Owsichuk** was that the State cannot just (implicate at will) other industries into the Limited Entry Act.

Owsichuk is the Court's statement that Limited Entry may only be applied to "**commercial fisheries**". **Owsichuk** answers the question of the State just implicating other industries into limited entry but it really did not address what the legal definition of a "**commercial fishery**" is.

To define what a "**commercial fishery**" is we must refer to **Alaska Supreme Court Opinion - Rutter v. Alaska Board of Fisheries (8/7/98), 963 P 2d 1007**).

This is a very recent ruling by the Alaska Court and is simply stating that there is (a very large constitutional wall)

between exclusive entry users and non-exclusive common users. The reason for the constitutional wall is because the Alaska Constitution forbids the exclusive use of any public trust natural resource. The reason "**comercial fisheries**" can legally get around this constitutional provision is because in 1971 the people of Alaska

voted to amend their constitution and allow exclusive use by "**commercial fisheries**".

Article VIII, Sec. 15, amended the exclusive right of fisheries provision of the Constiution of the State of Alaska.

In **Owsichuk** the State of Alaska had attempted to assume that Alaska's limited entry constitutional amendment

generally applied to the term "**commercial**" as in "**general economic activity**", when it infact only applied to

"the intent of disposing of fish for profit, or by sale, barter, trade, or in commercial channels."

Once you have legally defined what "**commercial fishing**" is with regard to the Limited Entry Act, you have also defined a final answer as to who limited entry actions may (and may not) be applied to.

Within **Rutter** the Alaska Supreme Court defined the legal difference between "**commercial fishing**" and "**sport fishing**".

The Alaska Supreme Court stated the following within Rutter.

["**Alaska Statute 16.05.940(5) and 16.05.940(29)** help reveal this commercial limited entry intent and defines

sport fishing intent 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." 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 in Alaska, 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."]

Alaska Supreme Court Opinion - Rutter v. Alaska Board of Fisheries (8/7/98), 963 P 2d 1007).

Rutter is stating that Alaska's Limited Entry Act specifically applies to a single industry and that industry must

be involved in the commercial taking of fisheries resources. The definition of "**commercial taking**" is found within **Alaska Statute 16.05.940(5)** and comes down to "the intent of disposing of fish for profit, or by sale, barter, trade, or in commercial channels".

SUMMARY

Owsichek has specifically defined that with regard to Alaska trust issues, the Alaska legislature may not just implicate other industries into limited entry / moratorium type limitations beyond "**commercial fisheries**".

Rutter has specifically defined that 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 "**commercial**" provisions of **AS 16.43.140** in specific, and the Limited Entry Act in general, are not implicated.

Rutter and **Owsichek** informs all attempting to create (types of non-equal treatment on common use), that such attempts will also be found to be unconstitutional.

It does not matter if such non-equal treatment lasts for 10 minutes or 10 years, the Courts historically have not tolerated the unequal treatment of similarly situated common users therefore such treatment will not withstand judicial scrutiny.

Article VIII Section 3, Common Use.

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

Article VIII, Section 17, Equal Access

"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."

Alaska Statute 16.05.940(5) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels.

Don Johnson
P.O. Box 876
Soldotna, Alaska 99669
ccpwow@gci.net
907 262 7893

Subject: [Fwd: HB 281]

Date: Fri, 02 May 2003 17:08:05 -0800

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

Organization: Alaska State Legislature

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

Subject: HB 281

Date: Fri, 2 May 2003 15:32:36 -0800

From: "Myrna Gardner" <mgardner@ccthita.org>

To: "Representative Wilson" <Representative_Peggy_Wilson@legis.state.ak.us>,
"Representative Berkowitz" <Representative_Ethan_Berkowitz@legis.state.ak.us>,
"Representative Guttenberg" <Representative_David_Guttenberg@legis.state.ak.us>,
"Representative Heinze" <Representative_Cheryll_Heinze@legis.state.ak.us>,
"Representative Ogg" <Representative_Dan_Ogg@legis.state.ak.us>,
"Representative Samuels" <Representative_Ralph_Samuels@legis.state.ak.us>,
"Representative Seaton" <Representative_Paul_Seaton@legis.state.ak.us>

I am writing to voice my objection to HB 281 MORATORIUM ON CHARTER VESSEL LICENSES. This bill would create a disproportionate allocation of access and use of the Sports Fishing Charter industry. The proposed moratorium is based upon the vessels registered not operators (OUPV or other). There are no known economic or scientific studies identifying excess use of the catch related to this industry, nor that the participants in the industry cause an undue burden on the resource. There are no scientific reports identifying the need for implementation of laws to restrict access or protect the resource associated.

According the ADF&G, there are 449 registered fishing guides or guide businesses. 60 of these have non-resident permanent addresses. ADF&G does not require a guide business to have an operator license. Obviously with the enhanced value of the vessels with the proposed restriction and tag system many guide businesses have registered a substantial amount of vessels. The following are a list of examples of registered vessels in the S.E. Sport Fish Industry:

<u>Guide or Guide Business:</u>	<u>Vessels Registered:</u>
Waterfall resort	29
Salmon Bay Resort	29
Baranof Wilderness Lodge	22
Bristol Bay Lodge (Ellensburg, WA)	28
Dave Duncan & Sons (Ellensburg, WA)	23
Mission Lodge	29
Rainbow King Lodge, Inc. (Lake Oswego, OR)	17
Rapid Camp Lodge (Dallas, TX)	15
Sitka Super 8 Motel, Inc.	6
Captain Roger Charters (Craig Alaska/owner/operator)	1

Unlike the CFEC limited entry program, qualifying for restricted access and use is not based upon the fisher or the years involved in this industry it is based upon your ability to own and register as many boats as you can this year. In effect, this bill would create a substantially large inflated value for a boat.

Representative Bruce Weyhrauch identified in his statement that there appears to be a stabilization of active charter vessels over the last 5 years. But, he failed to mention that the moratorium is based upon vessels registered in 2003. In 2003, according to the CFEC, there are 1113 vessels registered. Thirteen new in the last week since this bill was introduced. According to the Division of Sport Fish Overview of the Sport Fishery for Chinook Salmon in S.E. Alaska through 2002 report dated February 2003 (Table 10) there were 667 active charter vessels. This year (since Weyhrauch's bill states this year is the qualifying year) there has been an increase of 67% or approximately 447 registered vessels.

This bill would restrict access and establishes an exclusive right of the fishery. These actions are in violation of Alaska Constitution.

I implore you to not allow this bill to be moved out of your committee. As it is presented it will create an unfair restricted access to the Sports Fishing Charter Industry. With the decline in the commercial salmon industry, I don't believe it is an appropriate time for the Legislative Body to impose restriction that would hurt Alaskans and future business development.

Myrna Gardner

PO Box 33391

Juneau, AK 99803



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

Memo To: Representative Paul Seaton, Representative Peggy Wilson
From: Don Bremner, Staff
Re: **HB 281 follow-up and recommendations**
Date: May 2, 2003

Dear Representative Seaton and Representative Wilson;

Thank you for your professional public hearings re/ HB 281. Your explanations for the public were very helpful to those in the audience. It is very helpful to hear and understand what to expect from our Legislators regarding the legislative process of addressing important pieces of legislation such as HB 281.

As follow-up to the hearings I wanted to share two attached articles with your offices that address fisheries issues published by the PEW Oceans Commission regarding "Managing Marine Fisheries in the United States." The first article, "Rights-Based Fishing is (5) pages, and the second article, The Economics of Fishery Management, is (5) pages. Both articles help define and describe issues we are facing in Alaska. After reading these type professional articles it only brings home the need to support a State Fisheries and Seafood Commission, and the adoption of a State Fisheries Business Plan before moving forward with proposals such as HB 281.

After reading these articles part of a future plan may be directing a \$15.00 head tax on each client taken out on these charter vessels, and charging a per pound fee or per fish fee when fish is kept by the client. There are many issues and options to consider as you are well aware and I mentioned these two as examples of much work to be done in sustaining our wild seafood resources of Alaska.

Our office would appreciate very much a seat at the work group table to help find acceptable solutions that can fit into any future State Fisheries Business Plan adopted by the State of Alaska. I can be reached at 463-7341 for further discussion or e-mail dbremner@ccthita.org

Thank you,

Don Bremner, Staff
Business & Economic Development



Rights-Based Fishing: The Wrong Concept and the Wrong Solution for the Wrong Problem

Daniel W. Bromley, Ph.D.

Anderson-Bascom Professor of Applied Economics
Department of Agricultural and Applied Economics
University of Wisconsin-Madison

Summary

Support for so-called rights-based fishing stems from the mistaken belief that such mechanisms will lead to sustainable fishing practices because individual private owners will want to protect resources they own. Such schemes ignore the fact that with the creation of the Exclusive Economic Zone (EEZ), all U.S. citizens became the owners of fishery resources. Under current U.S. fishery policy and management, the agencies charged with protecting the public's wealth of ocean fisheries have not fulfilled that mission and the economic incentives are defective. In order to correct these flaws, fishers should be required to pay for the opportunity to extract fish from this publicly owned resource, and to pay royalties on fish caught. Doing so would correct the economic incentives, reaffirm the reality of public ownership of the oceans and their bounty, and most assuredly lead to more sustainable use of fisheries.

The Setting

U.S. fishery policy suffers from a flawed diagnosis of the fishery "problem," which in turn leads to flawed solutions. A prime example of such a flawed solution is the misnamed concept of "rights-based" fishing associated with the introduction of individual fishing quotas (IFQs). The Magnuson-Stevens Fishery Conservation and

Management Act is abundantly clear that such transferable fishing permits fail to bestow an ownership interest in the oceans or the fish. Fisheries with IFQs are nothing but quota fisheries, and that is what they should be called. The second flawed solution is the fiction that IFQs will rectify other problems in the fishery—paramount among them being the critical issues of stewardship and good management. Quota fisheries provide no incentives for fishing firms to resist the temptation to press fishery management councils to adopt total allowable catch (TAC) levels that threaten sustainable stocks over time. Moreover, having the exclusive opportunity to pursue a share of a specific allowable catch does not provide a fishing firm the opportunity to influence or control the fishing behavior of others. Indeed, with each fisher under a limit of what can be landed (the quota share), there are incentives for fishers to discard, at sea, certain fish that may not bring the highest prices. Finally, IFQs, as currently administered, do nothing to produce income for U.S. citizens, who are the owners of the wealth of ocean fisheries. Indeed, the few IFQ programs now in operation have simply handed over many millions of dollars of income drawn from publicly owned ocean fisheries. Given the untold millions of dollars in government subsidies to expand fishing capacity over the past

"Unfortunately, much of the fisheries literature continues to invoke the language of property rights with little attention to the essential concepts of rights, property, and property rights."

several decades, the industry now benefits in three ways: (1) by subsidies that have expanded fishing capacity; (2) by the opportunity to gain income from a public asset without the inconvenience of paying for that opportunity; and (3) by paying nothing for the fish removed from the oceans. Small wonder U.S. fishery policy is so flawed.

Unfortunately, much of the fisheries literature continues to invoke the language of property rights with little attention to the essential concepts of rights, property, and property rights. The literature does so without benefit of other literature on property rights in general, and natural resource property regimes in particular (Becker, 1977; Bromley, 1991; Christman, 1994; Hohfeld, 1913; Hohfeld, 1917). This conceptual incoherence is the primary source of defective policy advice that prevents clear thought and action regarding innovative fishery management policies.

On Institutional Structure

There are two structural issues in fishery policy. The first pertains to behavioral incentives emanating from the working rules (institutions) that define and mediate the actions of individual fishing firms. The second concerns the property regimes within which firms seek to harvest fish. Contrary to the received wisdom, there is no causal relationship between the two.

Behavioral Incentives

The literature in fishery economics began with a story that linked property regimes and

incentives. Starting in 1954 with H. Scott Gordon's incorrect reference to the open-access fishery as a regime of "common property," and with additional writings in the late 1960s by Harold Demsetz (1967) and Garrett Hardin (1968), most fishery economists had acquired the necessary terminology to craft bogus stories about what came to be called the "fishery problem." The recent preoccupation with IFQs is the predictable result of Gordon's flawed structural diagnosis.

Gordon and those who followed wrote that flawed incentives caused the fishery problem because no one owned the fish until they were harvested. Because no one owned the fish (or rights to the fishery), these writers alleged that no one had an incentive to take care of the fishery. With this magical association between private ownership and proper incentives for stewardship, it became *de rigueur* to insist that a fisher who owned the right to the entire fishery would take good care of it. This is the "sole owner" of early fishery economics. This link between ownership and good stewardship is grounded on one part of economic theory that suggests individuals will always act in their own best interest and would thus be good to nature if only they could become the owner of it.

Interestingly, another part of economic theory points out that a single owner will not necessarily exercise wise and sustainable stewardship of a natural resource. This result follows from the possibility that the owner's desire for income might outstrip the rate at

which the natural resource is regenerated—the natural rate of growth of a forest or of a fish stock. If this occurs, then it is optimal for the individual owner to catch as many fish as possible as quickly as possible and invest those proceeds where they will grow faster than the underlying resource stock. This behavior arises from what is called the “iron law of the discount rate” (Clark, 1973; Page, 1977). Simply put, private ownership of nature provides no assurance that degradation and destruction will not occur. From this realization, the fervent claims for IFQs as private property, and therefore as the sufficient management tool to ensure safe harvests of the fish stock, are twice flawed. IFQs are not private property, and even if they were, that would not be sufficient to assure sustainable management.

Whose Resource Is It, Anyway?

It is curious to observe that when writers advocate privatizing the fishery under IFQs they overlook the obvious fact that all U.S. citizens already own the fishery resource and other economic assets in the EEZ. The advent of the EEZ brought fisheries out to the 200-mile limit under the ownership and jurisdiction of the U.S. The EEZ is a clear example of a state property regime (Bromley, 1991). In addition, the federal government has made unprecedented subsidies to the fishing industry to expand fishing capacity over the past 25 years.

The fishing industry harvests what U.S. citizens already own and sells it back in a different form. This is no different from the har-

vesting of timber on public lands. However, for some reason, fishery policy is talked about in quite different terms. Specifically, the reality of public ownership is curiously missing from discussions of the fishery—a remnant of the original diagnosis that fisheries were common property and therefore “un-owned.”* Thus, it should not be a surprise that fishery policy is a far cry from policy toward petroleum leases on the Outer Continental Shelf or the sale of timber from public land. Only in fisheries are private firms allowed to capture and profit from publicly owned assets without paying anything beyond a nominal license fee. Nor does the industry pay a royalty for every unit of valuable resource taken from the ocean.

Ironically, constant talk of the quota fishery as an example of rights-based fishing has compounded the flaws in this wealth transfer. This artful use of language is evidently motivated by the desire to bolster political support for the idea that if only the U.S. would get on with privatizing its fisheries, the magnificent stewardship tendencies of the industry will burst forth to trump the iron law of the discount rate.

It is essential to understand that property is not an object but is, instead, an income (or benefit) stream that can be associated with a particular setting or circumstance (Bromley, 1991; Macpherson, 1973). It is also necessary to understand that a right is the capacity to compel the state to validate and protect a particular setting or circumstance. A property right, therefore, is the legal ability to com-

“Only in fisheries are private firms allowed to capture and profit from publicly owned assets without paying anything beyond a nominal license fee.”

* This association is itself flawed. Common property is not a regime of the absence of ownership; it is merely the absence of individual ownership (Bromley, 1991).

"Fishery policy would be much enhanced if those who wished to profit from fishing had to offer bids for the opportunity to fish...."

mand the state to protect one's interest in a particular stream of benefits arising from specific settings and circumstances (Becker, 1977; Bromley, 1991; Hohfeld, 1913; Hohfeld, 1917).

The state stands ready to be enlisted in the cause of those to whom it has granted rights. Rights expand the capacities of the individual by indicating what one can do with the aid of the collective power (Bromley, 1989; Macpherson, 1978; Commons, 1968). Sloppy reference to all manner of objects—driver's licenses, grazing, or fishing permits—as "rights" is responsible for much of the incoherence in fisheries policy. This is an example of what legal scholar Mary Ann Glendon calls "rights talk" (Glendon, 1991).

In practical terms, the empirical content of property rights is determined when conflicting rights claims are brought before the courts—especially the U.S. Supreme Court. As a result, property rights are the result of a process that must determine which of the conflicting rights claims before the court seems better, at the moment, to sanctify. Those settings and circumstances that gain protection from this process acquire, by virtue of that protection, property rights (Bromley, 1993; Bromley, 1997).

Whither Fishery Policy?

Clarity in the realm of property relations helps gain clarity in the realm of behavioral incentives. Specifically, language and concepts must become logical, honest, and consistent. Without talk of rights-based fishing or privatizing the fishery, it would be easier to make

the case that the wealth of ocean fisheries belongs not to the fishing industry but to all U.S. citizens. Once this is recognized, it

becomes more difficult to justify massive giveaways of income and wealth to the industry as part of establishing IFQ systems. Indeed, with the idea firmly established that the ocean fishes belong to the citizens, it is easier to sustain the case that firms wishing to earn revenue from a fishery in the U.S. EEZ must pay.

Fishery policy would be much enhanced if those who wished to profit from fishing had to offer bids for the opportunity to fish—the same method used to apportion public timber and fossil fuels. The bidding could be structured so that each firm agreed to pay a fixed permit fee scaled to the size of the vessel, and then offered to pay a royalty for each fish landed. Fishing opportunities could be awarded for multiyear periods to the highest bidders within each partition of vessels—small, medium, and large.

The royalty on each fish would reduce the firm's net price of a fish landed at the dock and this lower net price would induce each vessel to reduce fishing effort sooner than they would in the absence of the royalty. This auction scheme would reduce the artificial inducement for excessive capital and labor now in fishing (artificial because it is free, while land-based producers must own land and pay property taxes). It would also award fishing opportunities to those firms that were the most efficient and could therefore offer the highest royalty bids. Most profoundly, the scheme would finally produce income for the

owners of the ocean and its commercial wealth. In the early years of such an auction, most of the proceeds might be devoted to assisting in the exit of much redundant fishing capacity—both capital and labor—from the

fishery, and to economic transition programs for fishing communities. Over the longer run, the proceeds must go to the owners of the wealth of ocean fisheries. That is, the proceeds must go to the public treasury.

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"Over the longer run, the proceeds must go to the owners of the wealth of ocean fisheries."



The Economics of Fishery Management: Behavioral Incentives and Management Costs

Susan Hanna, Ph.D.
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Summary

Economics teaches the behavioral lesson that people respond to the incentives they face and are, for the most part, rational in what they do. In this way, the economics of fisheries and their management are interrelated. The relationship stems from the signals management provides, the incentives those signals create, and the behavioral responses caused by those incentives. The incentives created by fishery management encourage managers and fishermen to take short-term perspectives and act against long-term ecological and economic interests. Their actions create costs for management that affect its performance. A precondition for improving fishery management is to contain these costs.

Management Structure

The present costs of fishery management have their origins in the management structures and incentives established 25 years ago. The 1976 Fishery Conservation and Management Act (the act) was the first legislation to provide comprehensive federal authority to manage fisheries within the United States Exclusive Economic Zone (EEZ). It removed most foreign fishing from U.S. waters and established a new domestic fishery governance structure that distributed authority among the federal gov-

ernment and the regions through a system of eight regional fishery management councils.

The councils are democratic decision-making bodies comprised of representatives of recreational and commercial user groups, states, tribes, the federal government, and the public. Council advisers include scientists, user groups, and environmental organizations. All contribute to the development of Fishery Management Plans (FMPs) and regulations.

The idea behind the councils is to develop regional approaches to fishery management. The regional approach is based on the premises that people with working knowledge of regional fisheries can make the most informed decisions about those fisheries and that management of fisheries within state waters (out to three miles from shore, in most cases) should be coordinated with management of fisheries in federal waters.

The councils recommend management plans and regulations to the U.S. secretary of commerce, who has final authority for their approval and responsibility for their consistency with federal law. In most cases, the secretary delegates approval authority to the National Marine Fisheries Service (NMFS). The eight councils take different approaches to decision-making and management, as anticipated and intended by the act.



In response to changing fishery conditions, Congress has made many amendments to the act. The most recent amendments in 1996 charges the councils with stricter stewardship responsibilities.

Management Incentives

Congress passed the original version of the act in a climate of foreign exclusion and domestic expansion. The act gave domestic fleets priority and incentives to expand, prohibiting foreign fishing in U.S. waters except in cases where domestic fishing capacity did not exist. However, the councils were given little direction and few tools to accomplish their most difficult task—the allocation of fish between competing and expanding domestic interests.

The council system has operated under mixed incentives. The act eliminated the problem of open access fishing by foreign fleets but did little to resolve the problem of open access fishing by domestic fleets. The law required councils to keep exploitation within conservation limits at the same time they were operating in an expansionary mode. Determined to provide fishing opportunities to all, some councils put the needs of development before conservation. In addition, federal programs designed to assist in fishing industry renovation and expansion—low-interest loans and tax-deferred vessel construction programs—remained in place.

American fishery management under the original act and its subsequent amendments has followed a predictable path. Open access

created a race for fish that led to an overinvestment in fishing capital. The race for fish had common-sense origins and destructive results. Because access to most fisheries remained open, ownership of fish could be achieved only by capture. Fishermen competed by investing in bigger and better fishing vessels. Seafood processors expanded their plants. Investments in fishing and processing capacity far exceeded levels that could be supported by the fishery resource over time (Hanna, 2002).

Concurrent with this overinvestment in fishing and processing capital was an underinvestment in the management capital needed to keep pace with changing conditions. Management capital includes decision-making skills, knowledge of management tools, and understanding of monitoring and evaluation systems (The Heinz Center, 2000).

The race for fish, fishing overcapacity, and management undercapacity combined to shorten the time frames of fishery managers and user groups. Short-term actions crowded out long-term strategies. Reactions to crisis overwhelmed planned management. Assurance about the future declined, and conflict among competing interests increased. From the perspective of rehabilitation and expansion of U.S. fisheries, the path led to limited short-term success. From the perspective of building an institutional structure for long-term ecosystem sustainability, the path led to a fishery management system plagued by dysfunction and high costs (Hanna, 1998).

"The race for fish had common-sense origins and destructive results."

"In responding to the incentives provided by the management system, fishery managers and user groups have contributed to the inflation of management costs."

By the 1990s, U.S. fishery management was under pressure to change. The 1996 SFA added several important strictures to federal fishery law. It required that management actions be taken to eliminate overfishing, rebuild overfished stocks, minimize bycatch, protect essential fish habitat, and account for the effects of fishery regulations on fishing communities.

Also during the 1990s, the U.S. signed several international ocean agreements to protect marine ecosystems by reducing overfishing, reducing bycatch and discards, reducing fishing capacity, and strengthening governance and the scientific basis for ecosystem management (FAO, 1997).

Despite these changes at national and international levels, the problem of incompatible incentives remains in U.S. fishery management. Additionally, expansionary pressures from overcapacity, lingering expectations for growth, and inadequate attention to the long-term economic productivity of fisheries create costs for management as it attempts to adapt to stricter conservation requirements.

Management Costs

Productivity losses have required more complicated regulations, expanded requirements for information, and created more conflicts among user groups. In turn, these factors have increased management costs while undermining management's legitimacy and decreasing its effectiveness.

Fishery management is conducted with reference to a set of objectives specified in a

FMP. Ideally, management will cost the minimum necessary to achieve its objectives, and will generate more benefits than costs. Though reality never reaches the ideal, management can contain costs through the structure of regulations and the process of making decisions.

The costs of fishery management are transactions costs (Matthews, 1986; Eggertsson, 1990). For the councils and NMFS, transactions costs result from coordinating requirements to collect and analyze data, assess the status of fish stocks, design and implement regulations, and communicate and resolve conflicts. For fishery user groups, transactions costs are related to participation in management, including the cost of lost work time and time spent in acquiring information, as well as direct monetary expenditures for information, travel, and communication. Some transactions costs remain fixed; others vary with structure and process (Hanna, 1995).

In responding to the incentives provided by the management system, fishery managers and user groups have contributed to the inflation of management costs. Management has focused on the short-term exploitation of individual species, functioning with poorly articulated objectives, shortened time horizons, and high levels of scientific uncertainty. Broad-scale monitoring and the evaluation of performance are absent. The increasing intensity of fishery use creates a large regulatory burden that strains the personnel resources of management and requires management to focus on short-term regulatory needs. The

short-term focus prevents the development of design experiments that would increase management's adaptability.

Attempts to improve the performance of fishery management through additional requirements such as those added by the SFA have further added to transactions costs. New regulatory requirements are increasingly prescriptive and limit the flexibility with which management can meet its objectives.

One example of the increasing transactions costs burden of fishery management is the large number (greater than 100) of lawsuits pending against the secretary of commerce and challenging specific aspects of fishery management. These suits represent both dissatisfaction with the present costs of fishery management and new transactions costs generated by the information requirements of litigation.

Some transactions costs are attributable to the lack of property rights to guide and control the use of fishery resources. Property rights define legitimate owners and the rules and responsibilities so that expectations are consistent and enforcement possible (Bromley, 1991). The failure to adequately specify property rights to fisheries is a large barrier to the cost-effective conduct of basic management tasks.

Cost Containment

The present management environment includes significant barriers to containing transactions costs, but also suggests the conditions necessary for cost containment. There

are several barriers to cost containment:

- *Fishing overcapacity*: the scarcity created by excess fishing capacity leads to crisis-driven fishery management that tends to be reactive rather than strategic.
- *Adversarial strategies*: overcapacity means that management decisions create winners and losers who are pitted against each other instead of working toward a common objective.
- *The search for no-impact options*: the desire to find management actions without distributional effects causes the expenditure of large amounts of time on analysis.
- *Vague management objectives*: fishery management plans contain long lists of competing and qualitative objectives that make it difficult to assess management performance.
- *Strained human capital*: increasingly complicated management is generating sophisticated information needs and increasing demands on human capital.
- *Micromanagement*: detailed national management requirements ignore regional contextual differences, focus on process, and divert attention from desired outcomes.
- *Inadequate understanding of incentives*: underinvestment in research on incentives and behavior precludes the development of incentive-compatible management approaches.
- *The shadow of history*: the path created by past actions limits the consideration of present alternatives.

"The failure to adequately specify property rights to fisheries is a large barrier to the cost-effective conduct of basic management tasks."

There are a number of conditions that could facilitate cost containment:

- *Increase the economic productivity of fisheries:* motives to conserve and to participate effectively in management depend on economic well-being.
- *Decrease fishing pressure:* reduce capacity to a level that is profitable at much lower yields.
- *Specify measurable objectives:* provide long-term performance targets that leave management less vulnerable to short-term pressures.
- *Specify property rights:* provide consistent expectations about rights and responsibilities of fishery participants.
- *Realign incentives:* define responsibilities associated with rights, introduce accountability, and reward desired behavior.
- *Monitor and evaluate management performance:* develop performance indicators that promote adaptation and improvements in management.
- *Experiment with alternate management approaches:* identify management alternatives that are flexible, less vulnerable to short-term interests, and more cost-effective.

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SCOMM

131:18

23-LS1097\S
Utermohle
3/12/04

CS FOR HOUSE BILL NO. 309()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES WOLF, Rokeberg, Gara

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to nonindigenous fish."**

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

3 *** Section 1.** AS 16.35 is amended by adding a new section to read:

4 **Sec. 16.35.210. Nonindigenous fish.** (a) A person may not knowingly
5 transport, possess, import, export, or release into the water of the state live
6 nonindigenous fish or live fertilized eggs of nonindigenous fish, unless the person
7 holds a permit issued by the commissioner or the commissioner's designee to
8 transport, possess, import, export, or release the fish or live fish eggs. This subsection
9 does not apply to

10 (1) a fisherman who catches and releases a fish into the water from
11 which the fish was taken; or

12 (2) ornamental fish.

13 (b) A person may not knowingly rear live ornamental fish in, or release live
14 ornamental fish into, the water of the state or release fish wastes or wastewater from
15 ornamental fish tanks or other containment systems directly into the water of the state.

1 (c) A person who violates this section is guilty of a class C felony.

2 (d) In this section,

3 (1) "knowingly" has the meaning given in AS 11.81.900;

4 (2) "nonindigenous fish" means a species of fish that is not native to
5 the body of water in which the fish is released or is intended to be released;

6 (3) "ornamental fish" means an aquatic finfish, commonly referred to
7 as tropical fish, aquarium fish, or goldfish, an aquatic invertebrate, or an amphibian
8 that is imported, cultured, or sold in the state customarily for viewing in an aquarium
9 or for raising in an artificial containment system and that is not customarily used for
10 sport fishing in the state or used for human consumption;

11 (4) "water of the state" means any water of the state forming a river,
12 stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea,
13 or ocean, or any other body of water or waterway within the territorial limits of the
14 state.

AS 2) conceptual amendments.

Amend 1) after line ^(p. 1) 12.

" (3) generally accepted conduct
in relation to permitted
commercial saltwater fishing."

Amend 2) p. 2, ^{line 1.} after class C felony,

"and must pay a fine of
at least \$1,500"

Doug Vincent -
Lang.

S. Fish Division

HS FSH

- 15 adopted

- DNL (ADFG) 50-50K
- Rhotinore

- Oat: Aub,

(exclude "Commercial")

Amend: (if does it)
(Salt water)

(3) generally accepted
conduct in relation
to permitted fishing
commercial

- Object
Salt water (if does it)
affect
com. fish,
by Rep.

[ADOPTED]

267-2339

GARRA: Amended

P. 2 line 1, after C felony

"ed must pay a fine
of at least \$1500."

(unless minimum is
provided elsewhere w/
class C)

adopted

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB309CS-DPS-ABWE-3-19-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title Act Relating to Non-indigenous Fish Release RDU Alaska State Troopers
 Component Alaska Bureau of Wildlife Enforcement
 Sponsor Rep. Wolf
 Requester (H) Fisheries Component No. 2746

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 1 amends AS 16.35 by adding a new section that makes it illegal to transport, possess, import, export, or release into the water of the state live non-indigenous fish or live fertilized eggs of non-indigenous fish, unless the person holds a permit issued by the commissioner or the commissioner's designee to transport, possess, import, export, or release the fish or live eggs. This section does not apply to catch and release situations or ornamental fish. It does, however, make it illegal to rear live ornamental fish in or release them into the water of the state or to dump ornamental fish wastewater directly into the water of the state.

The bill provides a definition of non-indigenous fish, ornamental fish, and water of the state. Violations of this statute would be a class C felony.

It is not anticipated that the provisions of this bill will have a fiscal impact on the Alaska State Troopers.

Prepared by: Lt. Al Storey Phone 269-4532
 Division: Alaska State Troopers Date/Time 3/19/04 10:29 AM
 Approved by: Commissioner William Tandeske Date 3/19/2004
 Agency: Department of Public Safety

(7)

FURTHER REFERRALS: Resources

HB 309

PROHIBIT RELEASE OF PREDATORY FISH

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

*List of
Abbrev
for
Depts.:*
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

[illegible][illegible]

Signing with recommendations		Printed Last Name	DP	DNP	NR	AM
NR → 204 U.S. 100 J. J. Mon	Ogg Gare Gillenberg		✓		✓	
Peggy Wilson	Wilson	✓				
Chair: Paul R. Seaton	SEATON	✓				
Chair:						

23-LS1097\S
Utermohle
3/12/04

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12 (2) ornamental fish.

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5 the body of water in which the fish is released or is intended to be released;

6 (3) "ornamental fish" means an aquatic finfish, commonly referred to
7 as tropical fish, aquarium fish, or goldfish, an aquatic invertebrate, or an amphibian
8 that is imported, cultured, or sold in the state customarily for viewing in an aquarium
9 or for raising in an artificial containment system and that is not customarily used for
10 sport fishing in the state or used for human consumption;

11 (4) "water of the state" means any water of the state forming a river,
12 stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea,
13 or ocean, or any other body of water or waterway within the territorial limits of the
14 state.

23-LS1097\Q

Utermohle

5/16/03

CS FOR HOUSE BILL NO. 309(FSH)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-THIRD LEGISLATURE - FIRST SESSION****BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES****Offered:****Referred:****Sponsor(s): REPRESENTATIVES WOLF, Rokeberg, Gara****A BILL****FOR AN ACT ENTITLED**

1 "An Act prohibiting the release of nonindigenous predatory game fish into public
2 water."

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

4 * **Section 1.** AS 16.35 is amended by adding a new section to read:

5 **Sec. 16.35.210. Release of nonindigenous predatory game fish.** (a) Unless
6 the person possesses a permit issued by the department to transport and release live
7 nonindigenous predatory game fish into a body of fresh public water, a person may not
8 knowingly release, or knowingly transport for release, live nonindigenous predatory
9 game fish into a body of fresh public water. This section does not apply to a
10 fisherman who catches and releases a fish into the water from which the fish was
11 taken. In this subsection,

12 (1) "knowingly" has the meaning given in AS 11.81.900;

13 (2) "predatory game fish" has the meaning adopted by the Board of
14 Fisheries by regulation;

- 1 (3) "public water" has the meaning given in AS 38.05.965.
- 2 (b) A person who violates this section is guilty of a class C felony.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB309CS-DPS-ABWE-3-19-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title Act Relating to Non-indigenous Fish Release RDU Alaska State Troopers
Component Alaska Bureau of Wildlife Enforcement
Sponsor Rep. Wolf
Requester (H) Fisheries Component No. 2746

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 1 amends AS 16.35 by adding a new section that makes it illegal to transport, possess, import, export, or release into the water of the state live non-indigenous fish or live fertilized eggs of non-indigenous fish, unless the person holds a permit issued by the commissioner or the commissioner's designee to transport, possess, import, export, or release the fish or live eggs. This section does not apply to catch and release situations or ornamental fish. It does, however, make it illegal to rear live ornamental fish in or release them into the water of the state or to dump ornamental fish wastewater directly into the water of the state.

The bill provides a definition of non-indigenous fish, ornamental fish, and water of the state. Violations of this statute would be a class C felony.

It is not anticipated that the provisions of this bill will have a fiscal impact on the Alaska State Troopers.

Prepared by: Lt. Al Storey Phone 269-4532
Division Alaska State Troopers Date/Time 3/19/04 10:29 AM
Approved by: Commissioner William Tandeske Date 3/19/2004
Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 309
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title Prohibiting the release of BRU
nonindigenous fish Component _____
Sponsor Representative Wolf
Requester House Fisheries Component No. _____

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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (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: Gordy Williams, Legislative Liaison
Division: Commissioner's Office
Approved by: Gordy Williams, Legislative Liaison
Agency: Commissioner's Office

Phone 465-6143
Date/Time 5/15/03 8:30 p.m.
Date 5/15/2003

Alaska State Legislature

Session:
State Capitol Building, Room 418
Juneau, Alaska 99801-1182
Phone: (907) 465-2993
Fax: (907) 465-3835
Toll Free: 1-800-463-2693



Interim:
145 Main Street Loop Road
Suite 221
Kenai, AK 99611
Phone: (907) 283-2690
Fax: (907) 283-2763

Representative Kelly Wolf *House District 33*

Sponsor Statement HB 309

Transportation of nonindigenous predatory game fish has become a problem in some parts of Alaska. Currently it is a misdemeanor to transport live game fish in Alaska. By passing this bill Alaska will be able to send a message that bucket biology will not be tolerated in Alaska by unauthorized individuals who for their own desires wish to alter the ecosystems in Alaska.

When a person or group makes their mind up to take management of Alaska's fishery resources in to there own hand's. They put at risk the local economy's and place the burden of the expense of controlling the spread of these nonindigenous predatory fish which costs Alaska hundreds of thousands or even millions dollars for there self interests.

23-LS1097I
Utermohle
5/9/03

CS FOR HOUSE BILL NO. 309()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES WOLF, Rokeberg, Gara

A BILL

FOR AN ACT ENTITLED

1 **"An Act prohibiting the release of nonindigenous predatory fish into public water."**

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

3 *** Section 1.** AS 16.35 is amended by adding a new section to read:

4 **Sec. 16.35.210. Release of nonindigenous predatory fish.** (a) Unless the
5 person possesses a permit issued by the department to transport and release live
6 nonindigenous predatory fish into a body of fresh public water, a person may not
7 knowingly release, or knowingly transport for release, live nonindigenous predatory
8 fish into a body of fresh public water. This section does not apply to a fisherman who
9 catches and releases a fish into the water from which the fish was taken. In this
10 subsection, "public water" has the meaning given in AS 38.05.965.

11 (b) A person who violates this section is guilty of a class C felony.

23-LS1097\Q
Utermohle
5/16/03

CS FOR HOUSE BILL NO. 309(FSH)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES WOLF, Rokeberg, Gara

A BILL

FOR AN ACT ENTITLED

1 "An Act prohibiting the release of nonindigenous predatory game fish into public
2 water."

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

4 * **Section 1.** AS 16.35 is amended by adding a new section to read:

5 **Sec. 16.35.210. Release of nonindigenous predatory game fish.** (a) Unless
6 the person possesses a permit issued by the department to transport and release live
7 nonindigenous predatory game fish into a body of fresh public water, a person may not
8 knowingly release, or knowingly transport for release, live nonindigenous predatory
9 game fish into a body of fresh public water. This section does not apply to a
10 fisherman who catches and releases a fish into the water from which the fish was
11 taken. In this subsection,

12 (1) "knowingly" has the meaning given in AS 11.81.900;

13 (2) "predatory game fish" has the meaning adopted by the Board of
14 Fisheries by regulation;

1

(3) "public water" has the meaning given in AS 38.05.965.

2

(b) A person who violates this section is guilty of a class C felony.

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

May 13, 2003

SUBJECT: Sectional Summary, CSHB 309(), draft version I, an Act prohibiting the release of nonindigenous predatory fish into public water (Work Order No. 23-LS1097\I)

TO: Representative Kelly Wolf
Attn: Neal DuPerron

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of CSHB 309(), draft version I, an Act prohibiting the release of nonindigenous predatory fish into public water.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill adds a new section to AS 16.35 to prohibit the knowing release, or the transport for release, of a live nonindigenous predatory fish into a body of fresh public water, unless the person has a permit to transport and release the fish from the Department of Fish and Game. This provision does not apply to a fisherman who catches and releases a fish into the water from which the fish was taken. The term "public water" is defined. A person who violates this section is guilty of a class C felony.

GU:med
03-526.med

Sec. 38.05.965. Definitions.

In this chapter, unless the context otherwise requires,

(17) "public water" means navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest;

Chapter 41 Transportation, Possession and Release of Live Fish; Aquatic Farming

Article 1 Scope of Regulations

Section

1. Application of this chapter.

5 AAC 41.001. Application of this chapter

The provisions of this chapter govern the transportation, possession, or release of live fish transplanted for or cultivated for human consumption or sport fishing purposes, or as part of an aquaculture program for scientific, educational, or propagative purposes, and the transportation and possession of shellfish or aquatic plants for commercial purposes in conjunction with an aquatic farming operation. Unless specifically provided, the provisions of this chapter do not apply to the cultivation of ornamental fish. Additionally, the provisions of this chapter do not apply to the transportation, possession, or release of fish taken for commercial fishing, sport, or subsistence purposes.

Article 2 Permit System Established

5 AAC 41.005. Permit required

(a) No person may transport, possess, export from the state, or release into the waters of the state, any live fish unless the person holds a fish transport permit issued by the commissioner or his authorized designee, and the person is in compliance with all conditions of the permit and the provisions of this chapter. A fish transport permit will be issued for a fixed term subject to the provisions of (c) of this section.

(b) A fish transport permit authorizes only that operation specified in the permit. Any change of species, brood stock, or location requires a new permit. Any other change requires an amendment to the permit.

(c) The commissioner shall suspend the permit, or particular provisions of the permit including amendments, if he finds

(1) on the basis of new information or changed circumstances, that the permitted activity will adversely affect the continued health and perpetuation of native, wild, or hatchery stocks of fish; or

(2) the permittee has failed to comply with permit terms or the provisions of this chapter.

(d) Notwithstanding the expiration, termination or suspension of a fish transport permit, each permittee is responsible for the obligations arising under the terms and conditions of the permit, and under the provisions of this chapter.

New draft
from Rex - this
is ADF & G's
language, Wolf
is happy w/ it

HOUSE BILL NO. 309

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES WOLF, Rokeberg, Gara

Introduced: 5/8/03

Referred: House Special Committee on Fisheries, Resources

A BILL

FOR AN ACT ENTITLED

1 "An Act prohibiting the release of nonindigenous predatory fish into public water."

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

3 * Section 1. AS 16.35 is amended by adding a new section to read:

4 **Sec. 16.35.210. Release of nonindigenous predatory fish.** (a) A person may
5 not knowingly transport or release live nonindigenous predatory fish into a body of
6 fresh public water if that species of fish is not indigenous to that body of fresh water,
7 unless the person possesses a permit issued by the department to transport and release
8 the fish. This section does not apply to a fisherman who catches and releases a fish
9 into the water from which the fish was taken. In this subsection, "public water" has
10 the meaning given in AS 38.05.965.

11 (b) A person who violates this section is guilty of a class C felony.

DRAFT

HOUSE BILL NO. 309

DRAFT

A BILL

FOR AN ACT ENTITLED

"An act prohibiting the release of nonindigenous fish into public water."

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

*Section 1. AS 16.35 is amended by adding a new section to read:

Sec. 16.35.210. Release of nonindigenous fish.

(a) A person may not knowingly transport, possess, import to the state, export from the state, or release into the waters of Alaska any live nonindigenous fish or fertilized nonindigenous fish eggs unless the person possesses a permit issued by the Commissioner of the Alaska Department of Fish and Game or his authorized designee to transport and release nonindigenous fish or live fish eggs, and the person is in compliance with all conditions of the permit.

(b) Ornamental fish not raised for human consumption or for sport fishing purposes may be imported into the state, but may not be reared in or released into the waters of Alaska. Fish wastes and wastewater from ornamental fish tanks or other containment systems may not be released directly into the waters of Alaska.

(c) This section does not apply to a fisherman who catches and releases a fish back into the water from which the fish was taken.

(d) In this section, fish has the meaning defined in AS 16.05.940 (12)

(e) "waters of Alaska" means the internal waters of the state including rivers, streams, lakes and ponds, the tidal zone of the state from mean higher high water to mean lower low water, and those waters extending three miles seaward as defined in 5 AAC 39.975 (13).

(f) "nonindigenous" means any species of fish, including its eggs, or other life stages, which is not native to the body of water which it was released into, or intended to be released into.

(g) "Ornamental fish" means fish or amphibians commonly known as "tropical fish," "aquarium fish", or "goldfish" that are imported, cultured, or sold in the state customarily for viewing in aquaria or for raising in artificial systems, and not customarily used for sport fishing or human consumption purposes.

(h) A person who violates this section is guilty of a class C felony.

SCOMM

131:19

Alaska State Legislature

Co-Chair
House Finance Committee
Subcommittee Chair
Environmental Conservation
Courts

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

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

Representative William K. Williams

MEMORANDUM

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

From: Representative Bill Williams

Date: January 29, 2004

Subject: Request for Hearing

I respectfully request that HB341, "An Act relating to the dive fishery management assessment", be scheduled for a hearing in the House Special Committee on Fisheries.

Attached are:

- A Copy of the Bill as filed
- A Sponsor Statement
- A Bill Analysis from George Utermohle, Legislative Legal Counsel
- A Zero Fiscal Note from the Department of Revenue

I have requested a Fiscal Note from the Department of Fish and Game.

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 341
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Dive Fishery Mgmt Assessment RDU Revenue Programs & Services
 Component Tax Division
 Sponsor Representative Williams
 Requester House Fisheries Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill authorized three additional assessment rates for electing management areas. Only the Southeast region has opted into the assessment at this time. The current assessment rates are 5% for goosdick and sea cucumber and 7% for sea urchin. There are insufficient taxpayers within this region to enable the Department to disclose revenue by species. A 1% change in the assessment rates in the Southeast region will increase or decrease revenue from all species by \$36,850 based on FY03 data.

Our cost to administer the assessment was \$4,391 during FY03. The Department will incur additional costs only if rate changes are adopted or additional management areas participate. We do not envision a need for additional funds to deal with occasional rate changes under the bill. It is possible that frequent rate changes or the addition of one or more management areas will generate the need for additional funding in which case we will address the issue at that time.

Prepared by: Chuck Hariamert Phone 465-2320
 Division Tax Division Date/Time 2/1/04 8:14 PM
 Approved by: Steve Porter, Deputy Commissioner Date 2/1/2004
 Agency Department of Revenue

Alaska State Legislature

Co-Chair
House Finance Committee
Subcommittee Chair
Environmental Conservation
Courts



Representative William K. Williams

During Session:
State Capitol
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Fax (907) 465-3793

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

Sponsor Statement for HB 341 Dive Fishery Management Assessment

"An Act relating to the dive fishery management assessment."

House Bill 341 is a housekeeping measure requested by the Southeast Alaska Dive Fishery Association (SARDFA) to provide more flexibility in its operations.

SARDFA was formed in 1998, under AS 43.76.150-210. SARDFA works in partnership with the Alaska Department of Fish & Game and the Department of Environmental Conservation in developing its Annual Operating Plan. The Annual Operating Plan determines how the dive assessments, a self-imposed tax on the value of harvested dive resources, will be spent. The creation of SARDFA provided an innovative approach to the development of biologically and economically sustainable fishery resources. SARDFA partners industry, government, and local communities in successful fishery resource development.

The association has been extremely successful managing existing dive fisheries and at working to develop new fisheries in southeast Alaska using revenues collected from the self-imposed tax of its members. Under AS 43.76.150 and AS 43.76.160, association members elect to tax themselves by species at a rate of one percent, three percent, five percent or seven percent of the value of their landings in a particular dive fishery. HB 341 would give association members the option to elect to tax themselves at the two percent, four percent or six percent rates. The additional rates provide flexibility for the association members to determine what rate is necessary for a particular species. HB 341 does not alter any other portions of AS 43.76.150-210. The election and management process remains the same.

Contact: Tim Barry, Aide to Representative Bill Williams at (907) 465-3424

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

January 29, 2004

SUBJECT: Sectional summary of HB 341; An Act relating to the dive fishery management assessment (Work Order No. 23-LS1280\A)

TO: Representative Bill Williams
Attn: Tim Barry

FROM: George Utermohle 
Legislative Counsel

You have requested a sectional summary of HB 341, an Act relating to the dive fishery management assessment.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 43.76.150 by adding three new subsections. Each new subsection authorizes the members of a regional dive fishery development association to approve the levy of a dive fishery management assessment at a different rate. Under current law a dive fishery management assessment may be levied at the rate of one, three, five, or seven percent of the value of specified dive fishery resources. The new subsections added to AS 43.76.150 would allow for the levy of an assessment at the rate of two, four, or six percent. If this bill is enacted, the members of a dive fishery development association could vote to levy an assessment of one, two, three, four, five, six, or seven percent on the value of dive fishery resources that they sell or remove from the state.

Sections 2 - 7 of the bill make technical amendments to AS 43.76.160(b), AS 43.76.160(c), AS 43.76.170, AS 43.76.180(a), AS 43.76.190(a), and AS 43.76.190(c), respectively, to conform to the new assessment rates and subsections added in AS 43.76.150, as amended by sec. 1 of the bill.

If I may be of further assistance, please advise.

GU:med
04-111.med

SECTIONAL ANALYSIS

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES



Mission Statement: To develop, expand, and enhance new and existing dive fisheries in Southeast Alaska.

Julie Decker, Executive Director
Box 2138, Wrangell, AK 99929
Ph: 907-874-3110; Fax: 907-874-4270
info@sardfa.org
www.sardfa.org

Legislative Priorities for SARDFA 2004

- HB 341
- 1) **Amending SARDFA Legislation:** SARDFA would like the ability to assess ourselves at 2, 4, or 6% (In addition to the options of 1, 3, 5, or 7%). Also, SARDFA would like to give DOR the authority to disclose tax receipts by species to SARDFA for purposes of allocating revenues to our respective programs.
 - 2) **Re-Appropriating Past Dive Assessments:** SARDFA was notified by ADF&G that \$188,000 of dive assessments have been collected in the general fund but not appropriated. These funds were not accounted for in any Annual Operating Plans (AOPs). ADF&G does not have expenditure authority to legally access these funds. ADF&G and SARDFA are looking for appropriation of these funds for use under the FY05 AOP, or another suitable way to access the funds.
 - 3) **Uniform Geoduck Standards:** SARDFA is still in pursuit of implementing uniform geoduck standards within DEC. We have made a significant step in the right direction this season. However, Alaska is still not able to compete with other geoduck suppliers in Washington and British Columbia on equal footing.
 - 4) **Support Funding for Commercial Fisheries:** SARDFA supports no more cuts to Commercial Fisheries funding. SARDFA was established to bring more funding to increase management activities in our fisheries in an effort to create more quota and economic activity. Further cuts, at this point, will undermine our efforts to "put our money where our mouth is" by directly resulting in reductions of quota. This will only continue a downward spiral for the local economy; this is NOT resource development.
 - 5) **Improved Seafood Transportation:** Transportation in SE continues to be a bottleneck for the seafood industry and SARDFA supports efforts to increase transportation efficiency and opportunities.
 - 6) **Pilot Projects for Geoduck and Sea Cucumber Enhancement:** SARDFA is in the beginning stages of the creation of a pilot project to enhance, or re-seed, geoduck and sea cucumber in specific areas.

Members of:
Southeast Conference
United Fishermen of Alaska
Pacific Coast Shellfish Growers' Assoc.
Interstate Shellfish Sanitation Conference

LETTERS OF SUPPORT

HB341

House Special Committee on Fisheries

Hearing Wednesday, February 4th, 2004

Witness List:

Tim Barry, Aide to Representative Williams (Bill Sponsor)

Julie Decker, Executive Director, Southeast Alaska Regional Dive Fisheries Association (SARDFA) - (907) 874-3110

Pat Cassin, Commercial Diver and SARDFA member, Ketchikan - (907) 225-0809

Chuck Harlamert, Department of Revenue Tax Division (in person) - He'll be available to answer questions, if people have them

Clay BEZENEK : Commercial DIVER: (907) 723-7554

SCOMM

131:20

Testimony on House Bill 396 Commissioner Kevin C. Duffy

House Fisheries Committee
March 15, 2004

- House Bill 396 would result in a fundamental diminution of the ability of the Board of Fisheries to allocate benefits from salmon fisheries. Under this bill, the commissioner is directed to manage a mixed-stock fishery to achieve escapement goals for some stocks such that the long-term average catch in that fishery will be maximized (page 4, line 1-8). The board is then directed to allocate this catch among users according to historical norms (pages 4-5, lines 23-7).
- Section 6 of the bill, proposed AS 16.05.740(c) removes conservation from the purposes of Board of Fisheries' salmon regulations. This is fundamentally inconsistent with the Board's enabling statute, AS 16.05.221(a), which creates the Board of Fisheries for "purposes of the **conservation** and development of the fishery resources of the state," and AS 16.05.251(a)(12), which authorizes the Board to adopt regulations "regulating commercial, sport, guided sport, subsistence, and personal use fishing as needed for the **conservation**, development, and utilization of fisheries." If the legislature wanted to remove the Board's authority to recognize and regulate for conservation concerns, perhaps these two statutes should also be amended to expressly authorize the Board to regulate for "conservation (except in the case of salmon fisheries)."
- Under the proposed AS 16.05.740(c), the following policies in regulations made through a lengthy public process would be rendered moot or require extensive changes:
 - 5 AAC 39.220. Policy for the management of mixed-stock salmon fisheries.
 - 5 AAC 39.222. Policy for the management of salmon sustainable fisheries.
 - 5 AAC 39.223. Policy for statewide escapement goals.
- HB 396 attempts to lock fisheries management into the status quo, limiting the commissioner's and board's ability to adapt to changing resource and economic conditions. Board actions could only be based on utilization and development (page 4, lines 23-25). The board's only duty would be to determine and maintain historic levels of use (page 4, line 30 — page 5, line 11). Intercept fisheries would be protected regardless of the economic impacts on terminal fisheries (page 5 lines 8-11).
- In order to comply with court precedent on regulatory law, the commissioner would have to adopt all escapement and harvest goals into regulation, since the commissioner would be mandated to achieve those goals during the season. So instead of the public discussions before the board, these actions would take place in

the commissioner's regulation process. This might require a regulations specialist to work on that process full-time, since they would have to do a written analysis of all public comments before the commissioner could adopt each regulation. That is not required for board procedures under the Administrative Procedures Act.

- The bill directs the commissioner to manage for MSY ^{Maximum Sustained Yield} from important and dominant stocks and to maximize benefits to the people of Alaska. Depending on the definitions of yield and benefits, these directives may be mutually exclusive.
- Provisions of this bill direct the commissioner to set goals according to MSY regardless of the allocative effects while the "AS 16.05.258(b) Subsistence Use and Allocation of Fish and Game" directs the board to provide for opportunity for subsistence harvest while maintaining sustained yield. In years of poor returns these may be mutually exclusive directives.
- There are conflicting or inconsistent directives regarding allocation of harvests, i.e., the commissioner is directed to meet escapement and harvest goals regardless of allocative consequences and yet the board is charged with maintaining harvest allocations for and among traditional users.
- HB 396 adds a new statute, AS 16.05.740 and amends AS 16.05.251 and AS 16.05.730. Some confusion occurs because amendments to the latter two statutes concern salmon fisheries and salmon stocks exclusively, while the statutes themselves pertain to fish stocks in general, which could be groundfish, shellfish, and resident fish species as well as salmon.
- This bill adds a lot of legal ambiguity to management decisions that will probably result in litigation. Terms describing directives for management in the bill, such as "historic uses," "historic level of the harvest," "highest social as well as economic benefits," "over harvest", "over escapement", "yield", "benefits", "depressed stock", "harm to stocks", "conservation goals", "commercially valuable", and "stability of fisheries", are undefined.
- One important definition is inconsistent. By the definition of "dominant stock", the order of dominance would be pink salmon, sockeye or chum salmon, coho salmon, and chinook salmon, based on the productivity and abundance of these species in most parts of the state. That order is often just the reverse of the economic value of the harvest from these species. The ambiguity occurs if "commercially valuable" means economic value. No guidance is given when we don't know how abundant or productive a stock may be relative to another one. In addition, in the definition of "dominant stock", such a stock is commercially valuable to whom? Who makes that decision? The board? The commissioner?

Questions/Concerns Regarding H.B. 396 – Management of Salmon Stocks and Fisheries

1. This bill would fundamental diminution of the ability of the Board of Fisheries to allocate benefits from salmon fisheries and would bestow new powers to the Commissioner to allocate fishery resources.
2. The bill's restrictions on the ability of the Board to address salmon conservation concerns is inconsistent with the current statutory charges to the Board for fishery conservation found in AS 16.05.221(a) and AS 16.05.251(a)(12).
3. This bill would render moot or require significant revisions to the following regulatory policies: (1) the policy for the management of mixed-stock salmon fisheries; (2) the policy for the management of salmon sustainable fisheries; and (3) the policy for statewide escapement goals.
4. This bill attempts to lock fisheries management into the status quo.
5. The bill forces the ADF&G Commissioner to adopt all escapement and harvest goals into regulation.
6. The bill directs the commissioner to manage for maximum sustained yield from important and dominant stocks and to maximize benefits to the people of Alaska. Depending on the definitions of yield and benefits, these directives may be mutually exclusive.
7. What impact will setting goals according to maximum sustained yield have on subsistence?
8. There are conflicting or inconsistent directives regarding allocation of harvests, i.e., the commissioner is directed to meet escapement and harvest goals regardless of allocative consequences and yet the board is charged with maintaining harvest allocations for and among traditional users.
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10. The bill adds a lot of legal ambiguity to management decisions that will probably result in litigation.
11. The definition of "dominant stock" is inconsistent and it is unclear who would be determining what is or is not a "dominant stock."

From ADF&G

**Questions/Concerns Regarding H.B. 396 – Management of
Salmon Stocks and Fisheries**

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Ninilchik Traditional Council

P.O. Box 39070

Ninilchik, Alaska 99639

Ph: 907 567-3313 / Fx: 907 567-3308

E-mail: ntc@ninilchiktribe-nsn.gov

Web Site: www.ninilchiktribe-nsn.gov

February 23, 2004

Representative Mike Chenault
State Capitol, Room 108
Juneau, AK 99801-1182

Re: HB # 396

Dear Representative Chenault:

Please find the original Resolution 2004-09 supporting HB #396. This Resolution was passed at the last regular Council meeting held on February 20th, 2004.

Sincerely,

Ivan Encelewski
NTC Executive Director

c: file



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RESOLUTION 2004-09

Resolution Supporting House Bill No. 396

WHEREAS, the Ninilchik Village Tribe is a distinct, independent political community, and as such is qualified and exercises powers of self-government by reason of its original tribal sovereignty as passed down from its ancestors since time immemorial; and

WHEREAS, the Ninilchik Village Tribe is a federally Recognized Indian Tribe in Alaska (Federal Register Volume 65, Number 49, March 13, 2000, Notices Pages 13298-13303); and

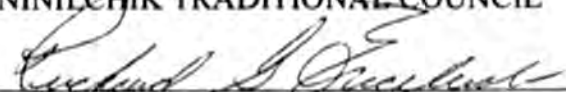
WHEREAS, the Ninilchik Village Tribe is also a State Recognized Indian Tribe as noted in the Millennium agreement between the State of Alaska and the Ninilchik Village Tribe; and

WHEREAS, the Ninilchik Traditional Council is the governing body of the Ninilchik Village Tribe as recognized by Ninilchik Tribal Members and the Constitution of the Tribe; and

NOW THEREFORE BE IT RESOLVED, the Ninilchik Traditional Council is in support of House Bill No. 396, for an act entitled "An Act relating to management of salmon and other fish stocks and salmon fisheries and to the use of funds received by an enhancement facility from the sale of fish."

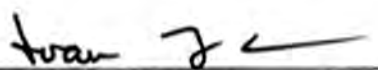
PASSED AND ADOPTED THIS 20th day of February, 2004 at
Ninilchik, Alaska.

NINILCHIK TRADITIONAL COUNCIL


Richard G. Encelewski, NTC President/Chairman

CERTIFICATION

I hereby certify that the foregoing resolution was duly adopted by the Ninilchik Traditional Council at a duly called meeting on the 20th day of February, 2004 at Ninilchik, Alaska, by a vote of 3 FOR, 0 AGAINST, 1 ABSENT, and 1 NOT VOTING.


Ivan Encelewski, NTC Treasurer/Secretary



Ninilchik Traditional Council

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Juneau, AK 99801-1182

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Sincerely,

A handwritten signature in black ink that reads "Ivan 8" followed by a horizontal line.

Ivan Encelewski
NTC Executive Director

c: file



Ninilchik Traditional Council

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Ninilchik, Alaska 99639
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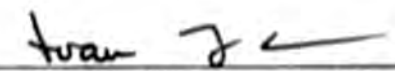
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Ivan Encelewski, NTC Treasurer/Secretary

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 25526
JUNEAU, AK 99802-5526
PHONE: (907) 465-4100
FAX: (907) 465-2332

March 22, 2004

The Honorable Paul Seaton
House of Representatives
Alaska State Capitol, Room 428
Juneau, AK 99801 - 1182

Dear Representative Seaton:

At the March 15th House Fisheries Committee hearing on H.B. 396, you asked for my advice on how best to address the over-escapement of sockeye salmon that occurred last season in Cook Inlet

As you know, the Board of Fisheries (Board) established the restrictions on emergency order fishing time in the Cook Inlet commercial drift and set gillnet fisheries for both conservation and allocation reasons. During years of large sockeye returns, like those that occurred in 2003, some of these restrictions on fishing time have increased the likelihood that sockeye escapements will be exceeded.

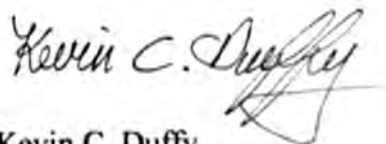
In my view, the primary way to address this issue is through the Board of Fisheries process. During the 2004/2005 regulatory cycle, the Board will likely receive regulatory proposals that seek additional sockeye harvest opportunity for the commercial drift and set gillnet fisheries. The Board will consider these proposals accordingly.

As far as next season goes, department managers are currently in the process of developing the fishery management plan for the Cook Inlet fisheries. I have directed them to closely examine how we can be more effective at harvesting sockeye salmon in the commercial fisheries within the constraints of the existing regulatory management plans.

Last year, I decided to exercise my discretionary emergency order authority to amend the existing management plan. This was a limited and measured response that was based on a set of unusual circumstances, including: (1) a much larger than anticipated sockeye return; (2) sockeye salmon escapement goals met or exceeded in all monitored systems (in some cases by a wide margin); (3) a near record Kenai late-run chinook salmon return and recreational harvest; (4) excellent fishing in the Kenai and Kasilof personal use and recreational sockeye fisheries; and (5) minimal harvest impacts on early returns of coho salmon. With all due respect, I am disinclined to speculate on what decisions I may make next season if faced with a similar set of circumstances, in part because the circumstances will most assuredly be different.

I trust this responds to your inquiry, and I would be happy to provide additional information that might be helpful to your work on fish and game issues. In the meantime, please feel free to share this response with the other members of the House Fisheries Committee.

Sincerely,

A handwritten signature in cursive script, reading "Kevin C. Duffy". The signature is written in dark ink and is positioned above the printed name and title.

Kevin C. Duffy
Commissioner

Questions arising from introduction of House Bill 396

1). Why introduce this bill and for what?

There seems to be some confusion as to the intent and design of this bill currently before the legislature. This bill is intended to put into law the successful fisheries practices utilized by the Department and Board of Fisheries. These practices have been developed since statehood and have generally resulted in healthy salmon stocks and salmon fisheries throughout the state. Nothing in this bill seeks to radically alter any existing department management practice, fishery or regulatory function. Instead it is intended to put into law current practices and coalesce the many regulatory policies developed over the years into a single statute to facilitate efficiency within the Department and Board and clarify for the public why actions are being taken in fisheries. It also hopefully will clarify where the lines of authority lie for both the Board of Fish and the Commissioner. That simply stated is the Department manages the fish stocks and the BoF allocates the fish surplus to escapement needs. The department has the trained field personnel capable of making rational scientific conservation decisions when necessary and the BoF typically has fishermen with fishing expertise who can insure that fisheries are prosecuted in an efficient manner to maximize the benefit from the state's fisheries resources. The careful blend of these two factions should give the state healthy fish stocks managed by the department and healthy fisheries developed by the BoF. We do not wish to manage all stocks for maximum yield but don't wish to see any further evolution towards some kind of weak stock management as the administration allowed.

Since 1996 the BoF began making radical changes to regulations in many areas of the state placing "windows" or closed periods in fisheries or limiting the Commissioners Emergency Order powers. This was not done in any scientific manner. It was done in an attempt to allocate fish through biology. Many of these regulations placed mutually exclusive goals in regulation that have created a great deal of strife between users with no benefit to residents of this state. In a recent Kenai Superior Court case these restrictions to emergency orders were ruled invalid if they restricted the commissioner's authority. The Department of Law representing the BoF has interpreted that these restrictions in regulation are not absolute restrictions because they can be modified by Emergency Order, but only with new information and then only if a biological emergency exists. This interpretation is "loosely" based on the Peninsula Marketing case. In that case Commissioner Rosier wanted to change a quota in the False Pass fishery that the BoF had already refused to change in a public meeting. The entire case talked of "Emergency Powers" because the Commissioner has two types, Emergency Order or Emergency Regulation. Commissioner Rosier used neither, instead he announced his intent to change the quota and it was that announcement that was challenged. The litigants in this case including the State missed a key point of law with respect to the Commissioners powers, namely that Emergency Orders delegated by the legislature can not be written for anything other than time and area. In the conclusion of this case the court ruled that the Commissioner could not summarily change a fisheries management plan without new information that a biological emergency exists. The problem is that neither of these terms was defined and that has led to the power grab by the BoF, which the Department of Law has defended and that the Commissioner has allowed. We think the department

should manage for the escapement goals that have been developed and refined over the years. If not why spend so much money counting fish?

2). Why was this bill introduced? This bill was introduced in order to delineate where the commissioner's authority granted in AS 16.05.060(a) and the BoF's authority granted under AS 16.05.221(a) overlap and to clarify that the BoF allocates fishery resources and the Department manages those resources and is responsible for setting and achieving conservation or escapement goals. The Department under Rue and continuing under Commissioner Duffy has allowed the BoF to usurp much of the power necessary to manage fish stocks. If this bill is passed all fisheries will be managed for escapement goals and allocations will be clearly spelled out and managed for by ADF&G. This will greatly reduce the current strain placed on all users by the BoF process and allow the public to know beforehand what to expect from the fisheries they participate in.

3). What does this bill do? As already stated it puts into statute what is already in regulation. Most of the language in this bill was taken from the Sustainable Salmon Fisheries Policy, The Escapement Goal Policy, The Mixed Stock Fisheries Policy and many other regulations passed over the years since statehood. What it does is preserve the management style that has been so successful since statehood and protects all fisheries governed by these regulations from future power grabs by the BoF in future administrations. This will provide some stability to the fisheries within the state and allow the users to make long-range plans and investments without the worry and constant bickering for fish.

4). Why approach management this way instead of leaving it the way it is? This bill is needed because of the radical and unnecessary changes that the BoF has levied on the salmon users within this state in the last few years. Many of these restrictions were dressed up as being necessary for conservation however many were really nothing more than bio-allocation. This bill would NOT stop the BoF from allocating fish between users. It would only prevent them from doing it under the guise of conservation. One of the biggest problems this has caused over the last 8 years is the change within the department. The department is not really interested in managing salmon, a look at their recent submission of proposal #2 and the widespread opposition to that proposal should serve as a warning of the problems that currently exist. We suspect that the department will be opposed to this bill because it does state in no uncertain terms that they are to manage salmon stocks as they have in the past. Basically requires them to do their job!

5). Why submit this bill now? This bill is necessary now because of the changes that have been occurring within the department and BoF in recent years. Many of the regions of the state are hurting from depressed prices or low returns. At the same time fish are being wasted over and above escapement goals because of arbitrary and unnecessary BoF regulations which were put into regulation by inexperienced and adversarial BoF members. We think that the harm done by these counter-productive regulations must be corrected immediately and on a statewide basis.

EXPLANATION OF WHERE THE LANGUAGE CONTAINED IN THIS BILL COMES FROM

Pages one and two of this bill simply standardize the language in current statutes to conform with the language of the newly created parts of this bill.

Explanation for language covered in Sec. 16.05.740 (a) lines 4-7.

Article VIII, Section 4 of the State Constitution directs that replenishable resources be managed for SUSTAINED YIELD, "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." Under section (a) of this bill sustained yield is defined to be Maximum Sustained Yield (MSY) for those stocks that are either important or dominant within the region. These stocks should be managed for Maximum Sustained Yield in Order to provide for the maximum benefit to the people of the state as set out in 5AAC 39.222 Policy for the Management of Sustainable Salmon Fisheries and Article VIII, Section 2 of the State Constitution. In the State Constitution, SECTION 2. GENERAL AUTHORITY. 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. While there are Attorney General opinions that Sustained Yield as used in the Constitution is consistent with MSY it is not specifically addressed until now. In addition for those stocks which are smaller and/or less important this bill directs that management for a "minimum" of sustained yield is acceptable, especially when the management of these stocks complicates the management of more important stocks in a mixed stock fishery.

This paragraph outlines how the Board and Department should maximize the benefit by managing for dominant or important stocks for Maximum Sustained Yield. In practice this is what the department currently does where and when it can gather the necessary data.

1. There are fisheries, which are managed for goals other than escapement such as an allocated interception of another areas stocks or treaties with other countries. Examples: South East Chinook, Area M (False Pass), Cape Igvak

Explanation for language covered in Sec. 16.05.740 (b) lines 8-12.

In this Paragraph the department is directed to manage smaller or less important stocks for Sustained Yield. Most fisheries in Alaska, sport, commercial, personal use and subsistence are mixed stock and mixed species to some degree. In order to allow for the orderly development of these fisheries and allow for the maximum benefit to the people, it makes sense to manage for MSY on the most productive stocks and SY on those that are less productive. It directs the department to manage the least productive stocks at a rate that they at a minimum are sustainable as defined in the Policy for the Management of Sustainable Salmon Fisheries 5 AAC 39,222. It also directs the department to gather data where necessary or practical for MSY and use it's collective judgment to sustain the remaining stocks. This paragraph protects both users and the department from "Spotted

Owl" weak stock management practices which the department is currently not funded to implement. These weak- stock management practices have had disastrous effects in other areas outside of Alaska and should not be repeated in Alaska.

This paragraph is consistent with the State Constitution and the Policy for the Management of Sustainable Salmon Fisheries 5 AAC 39.222.

Explanation for language covered in Sec. 16.05.740 (b) lines 13-25.

This is currently common practice to change by Emergency Order seasons or open areas established by the BOF in regulation or in specific management plans. This has been heralded as one of the successes of Alaska's salmon management program, local biologists with the Emergency Order Authority managing fisheries on a real time basis to ensure escapements are achieved to sustain production. This program has been so successful that it has been adopted by the Pacific Salmon Commission to manage and conserve the salmon resources shared by Alaska, Washington, Oregon and Canada.

Explanation for language covered in Sec. 16.05.740 (b) (1) through (7) lines 26 on page 3 to line 22 on page 4.

In section 1 of this paragraph the department is directed to manage in a way that minimizes the harm to a single stock when there are stocks with different rates of production harvested in a fishery. This again is common practice in fisheries management, to try and get as close to the weakest stocks minimum escapement goal while exceeding the maximum escapement goal of the strongest stock to the least degree possible, "balance the harm". This is typically a balancing act the department encounters in managing many of its fisheries, commercial, sport or subsistence. This management philosophy basically prevents widespread "weak stock management". Widespread weak stock management leads to wide spread weak stocks and lower yields for all users. The idea is to achieve the weaker stocks escapement at a level at or slightly below the MSY escapement goal and stronger more productive stocks escapement at or slightly above the MSY escapement goal level, when necessary. In doing this the region or area receives the greatest benefit from local stocks by maximizing the yield over all stocks. Nothing in this style of management allow for the gradual extinction of any salmon stocks, because you are generally at or near MSY levels of escapement in both stocks.

In section 2 of this Paragraph the department is directed to ignore the allocative impacts of its decisions when managing under the previous section. This is already common practice and all harvesters share the burden of conservation.

In section 3 of this Paragraph the department is again directed to manage for MSY or SY as appropriate

In section 4 of this Paragraph the department is directed to manage in the absence of a management plan for all escapement goals and place the burden of conservation on users with other local alternative salmon fisheries when necessary. This has some allocative tradeoffs that would likely result in BOF management plans if implemented in-season, however it places conservation of the resource above users needs to harvest.

Sections 5-7 of this Paragraph are restatements for clarification of what is already in this bill or in other state statutes and regulations.

Explanation for language covered in Sec. 16.05.740 (c), (d) & (e) .

In these sections the powers of the Board with regard to development of fisheries are defined. The Board shall allocate the harvestable surplus to all users using the allocation criteria in 5 AAC 05.751.

In section 1 of this Paragraph in fisheries that are fully developed, the board may not exclude a user except for conservation reasons. Under B the board may not add to an escapement goal that will not be harvested by some user, this is consistent with sustained yield management.

Section 2 directs the Board to give more weight to the first of the allocation criteria, historical use, in Sec 16.05.251.

Section 3 allows for established intercept fisheries at historic levels not increasing levels, this is consistent with current Practice and the Policy for the Management of Mixed Stock Salmon Fisheries, 5 AAC 39.220.

Under (e) Definitions of MSY and SY are from 5 AAC 39-222, Policy for the Management of Sustainable Salmon Fisheries.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES



Alaska's Salmon Management

A Story of Success

Management programs and policies promote the sustainability of salmon stocks that are wild, abundant, and healthy. Alaska's world-famous salmon program is built on the principles of conservative management, sound science, and habitat protection. No salmon stocks of Alaska origin are listed as threatened or endangered.

Alaska's Conservation Mandate

Successful Salmon Management, In Law and in Practice

Conservation of salmon stocks is required under the Alaska state constitution. Alaska's constitution, unique among the 50 states, has an article solely devoted to the management and utilization of natural resources. The constitution mandates that renewable resources "shall be utilized, developed and maintained on the sustained yield principle."

Alaska law states: "The Commissioner shall manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well being of the state...through rehabilitation, enhancement, and development programs, [the department must] do all things necessary to insure perpetual and increasing production and use of the food resources of state waters and continental shelf areas."

The Alaska Department of Fish and Game manages salmon fisheries, while the Alaska Board of Fisheries has responsibility for allocating the yield of salmon among users. The clear separation of management authority from allocation authority is one of the strengths of the Alaska management system. The "Sustainable Salmon Fisheries Policy" and other vital conservation management policies define the management program for protecting habitats and sustaining salmon, with priority for wild stocks.

In 1990, Alaska outlawed the farming of salmon to protect strong native stocks from hybridization, disease, pollution, and competition for food.

Alaska's Environmental Record

Protecting Salmon Habitat

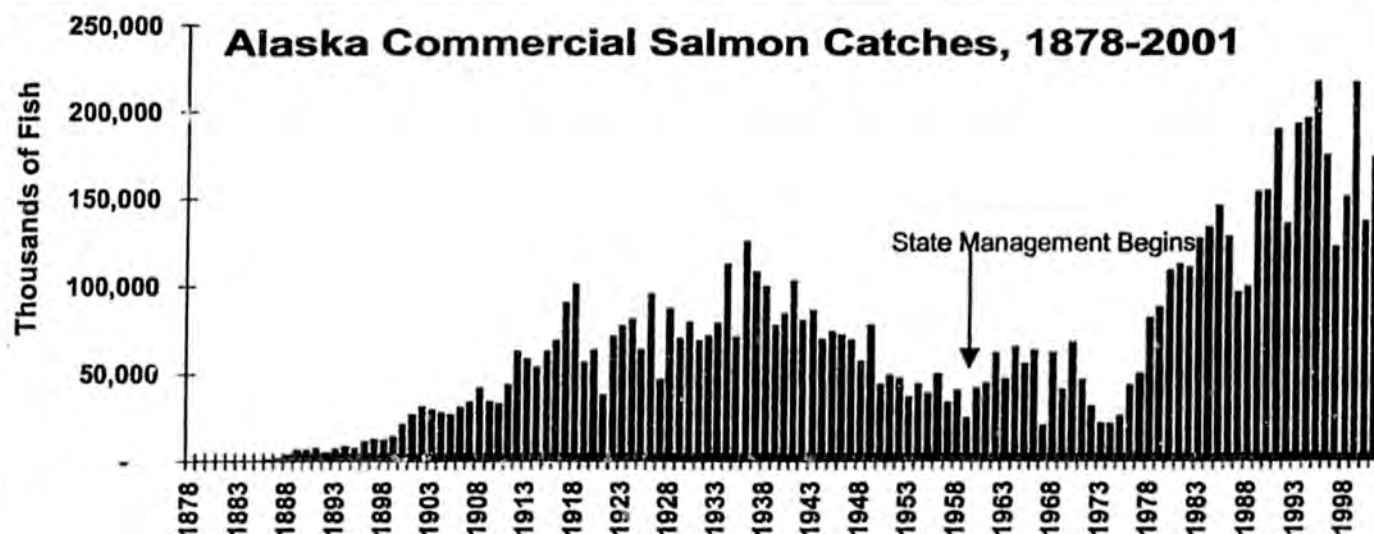
Alaska has always made a strong commitment to conserving and protecting salmon habitats. ADF&G manages salmon in over 15,000 salmon spawning streams and rivers throughout the state.



Alaska's habitat conservation laws and regulations provide clean, free-flowing waterways vital to abundant, sustainable salmon production. There are very strict laws and regulations governing industry and development activities, such as road building, logging, and mining, to protect vital spawning and rearing salmon streams. The "Anadromous Fish Act" (AS 16.05.870) requires prior approval by ADF&G for any in-stream construction activities in salmon streams. Under Alaska's "Forest Practices Act" (41.17.010) buffer zones are required between logging areas and salmon streams to protect spawning and rearing habitats from erosion and other problems. The Commissioner of ADF&G may also acquire water rights to protect fish. Stream flow and volume, necessary for salmon migration and propagation, are protected under the "Water Use Protection Act" (AS 46.15.). In addition, Alaska's Department of Environmental Conservation (ADEC) monitors and regulates the discharge of pollutants to ensure high water quality in both marine and fresh waters.

Alaska has been willing to forego the economic benefits from activities such as hydropower development in order to sustain salmon resources for future generations. For example, although the option of constructing and operating large-scale, hydropower facilities on both the Susitna River and the Yukon River were closely examined, neither was built. The wild salmon resource from these drainages was a major reason that Alaska chose the no-dam option.

(over)



Management History

Salmon Runs were not always bountiful:

Alaska did not always have healthy salmon stocks. Overfishing under federal management was a major factor in the declines of the Alaska salmon fishery that occurred between 1940 and the time of statehood, 1959. Salmon stocks and the fishing industry were in such bad shape that President Eisenhower declared Alaska a federal disaster area in 1953.

In 1959, statewide harvests totaled only about 25 million salmon - less than 20 percent of current sustained production. Over the last 20 years, sound state management with gradually increasing funding for research and management has rebuilt salmon runs from the dismal conditions inherited at statehood to the healthy levels experienced today. Alaska has been at the leading edge of salmon research.

Alaska's Science-Based Management

Letting the Managers Manage

With the constitutional and statutory conservation mandates, the Alaska Department of Fish and Game has effectively managed Alaska's salmon stocks to ensure conservation and to promote sustainable production. As a result, stocks of salmon spawning in Alaska are healthy, and fisheries dependent upon these stocks have benefited, with statewide harvests ranging from about 100 to 200 million salmon per year over the past 15 years.

In-Season Abundance Based Management:

State of Alaska management has been intensive, conducted on a real-time basis with regulations imposed in-season by local biologists who have a clear conservation mandate and authority to open or close fisheries as needed.

Delegated emergency authority provides for immediate management decisions by area biologists. When runs are strong, managers liberalize harvest regulations to utilize surpluses. When runs are poor, managers close fisheries to provide for predetermined escapement needs which ensure long-term sustainable yields.

Local biologists monitor returning salmon using various methods: aerial surveys, weirs, streamside counting towers, fish wheels, sonar, test fisheries, and input from fishermen. Based on their in-season abundance count, salmon managers open and close fisheries on a daily basis to ensure spawning escapements are adequate to sustain production.

Alaska's emphasis on in-season management to maintain adequate spawning escapements is the key ingredient to successful salmon management. This in-season abundance based management program was recently adopted by the Pacific Salmon Commission to manage and conserve salmon resources shared by Alaska, Oregon, Washington, and Canada.



ADF&G Fish Counting Tower

Alaska Department of Fish & Game, Frank Rue Commissioner
Public Communications Section, P.O. Box 25526, Juneau, Alaska 99801-5526, (907) 465-6166
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Web posted Wednesday, February 11, 2004

Bill would remove politics from salmon

By **HAL SPENCE**
Peninsula Clarion

Rep. Mike Chenault, R-Nikiski, has introduced a bill he said could enhance the numbers of salmon available to all user groups and take politics out of fish management by leaving escapement decisions to the biologists.

House Bill 396 amends Alaska fish and game statutes to focus the attention of game managers toward "important and dominant salmon stocks" when making decisions to meet "sustained yield" requirements of the law.

"Right now, it is really and simply an issue of overescapement," Chenault said last week. "Last year, and in previous years, we have overescaped the Kenai River especially."

Chenault said despite good management efforts by local biologists, a half million more reds were allowed to swim to the spawning grounds than were necessary to meet sustained yield escapement goals.

"I've been told that amounts to lost revenues of between \$4 million and \$8 million," Chenault said, adding that was money lost not only to commercial fishers but also to canneries and to municipal fish tax streams.

Existing state law now requires the Board of Fisheries to adopt policies that provide for managing mixed-stock fisheries in a manner "consistent with sustained yield of wild fish stocks." It does not differentiate between species, however.

Chenault's proposed amendments would add language so that management of mixed-stock fisheries is consistent with "maximum sustained yield of important and dominant salmon stocks" and with sustained yield of "other" wild fish stocks.

The bill defines "dominant salmon stock" as wild salmon that

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"is consistently more productive and numerically more abundant or is consistently more commercially valuable than other salmon stocks."

It defines "important salmon stock" as wild salmon for which the department "has established a scientifically based escapement goal and a stock management plan to maintain the stock at escapement levels consistent with maximum sustained yield of the stock."

The bill also would require fish managers to base escapement decisions on "the best reliable scientific information available to the department."

One clause explains that when it is not practical to manage a stock for "maximum" sustained yield, the commissioner of Fish and Game would be given the discretion to "exercise the professional judgment of the department" to ensure escapement sufficient to provide for sustained yield of the stock.

Another provision covers how management decisions should "seek a balance" during fishing season if it is impossible to meet escapement goals for all species simultaneously. Escapement levels would then be set "in a manner that does the least harm collectively to the productivity of all stocks and species in the fishery or management area."

Other provisions would require the commissioner of Fish and Game to conserve depressed salmon stocks and, where practical, rehabilitate and enhance those stocks; avoid overharvest that might threaten sustained yield; and avoid overescapement that might threaten maximum sustained yield.

The Board of Fisheries, meanwhile, would be required to adopt regulation policies "consistent with salmon escapement goals and harvest goals established by the commissioner."

Under the terms of the proposed bill, the board would be required to allocate the harvestable portion of salmon stocks in accordance with main rules.

Among these are provisions that:

n For fully developed salmon fisheries, the board may not exclude existing, historic users from taking historic levels of salmon except to achieve conservation goals set by the commissioner. Nor may the board authorize escapement greater than necessary to satisfy escapement goals.

n The board shall give priority consideration to the history of use of a salmon stock;

n The board shall provide that salmon in excess of that number needed to meet escapement goals be available for harvest.

Doug Mecum, director of the Division of Commercial Fishing, said Commissioner Kevin Duffy had asked him to have the Division of Commercial Fishing work with the Department of Law and the Alaska Board of Fish "to try and formulate, if not opinions, than at least some issues that we see."

Mecum said the bill raised some legal issues about how the Board of Fish operates relative to how the commissioner operates, as well as how it might be implemented if it became law.

"It generates quite a number of questions," Mecum said. He did not elaborate.

The bill currently is the House Special Committee on Fisheries. No hearing has been scheduled.

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STATE OF ALASKA

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To: Representative Paul Seaton
Chairman for Special Committees on Fisheries

Re: Fisheries Committee

Representative Mike Chenault respectfully requests the scheduling of a hearing for HB 396. Thank you for your time and consideration.

Please find the appropriate documentation attached.

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE CHENAULT

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

"An Act relating to management of salmon and other fish stocks and salmon fisheries
and to the use of funds received by an enhancement facility from the sale of fish."

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

* Section 1. AS 16.05.251(h) is amended to read:

(h) The Board of Fisheries shall adopt by regulation a policy for the
management of mixed stock fisheries. The policy must [SHALL] provide for the
management of mixed stock fisheries in a manner that is consistent with maximum
sustained yield of important and dominant salmon stocks and with sustained yield
of other wild fish stocks. In this subsection, "important and dominant salmon
stocks" means those salmon stocks that are either an important salmon stock or a
dominant salmon stock as those terms are defined under AS 16.05.740.

* Sec. 2. AS 16.05.730(a) is amended to read:

(a) Fish stocks in the state shall be managed consistent with maximum
sustained yield of important and dominant salmon stocks and with sustained yield

of other wild fish stocks and may be managed consistent with sustained yield of enhanced fish stocks.

* Sec. 3. AS 16.05.730(b) is amended to read:

(b) In allocating enhanced fish stocks, the board shall consider the need of fish enhancement projects to obtain brood stock. The board shall [MAY] direct the department to manage fisheries in the state to achieve an adequate return of fish from enhanced stocks to enhancement projects for brood stock; however, management to achieve an adequate return of fish to enhancement projects for brood stock shall be consistent with maximum sustained yield of important and dominant salmon stocks and with sustained yield of other wild fish stocks.

* Sec. 4. AS 16.05.730(c) is amended to read:

(c) The board shall [MAY] consider the need of enhancement projects authorized under AS 16.10.400 and contractors who operate state-owned enhancement projects under AS 16.10.480 to harvest and sell fish produced by the enhancement project that are not needed for brood stock to obtain funds for the purposes allowed under AS 16.10.450 or 16.10.480(d). The board shall [MAY] exercise its authority under this title as it considers necessary to direct the department to provide a reasonable harvest of fish, in addition to the fish needed for brood stock, to an enhancement project to obtain funds for the purposes allowed under AS 16.10.450 or 16.10.480(d) [ENHANCEMENT PROJECT] if the harvest is consistent with maximum sustained yield of important and dominant salmon stocks and with sustained yield of other wild fish stocks. [THE BOARD MAY ADOPT A FISHERY MANAGEMENT PLAN TO PROVIDE FISH TO AN ENHANCEMENT PROJECT TO OBTAIN FUNDS FOR THE PURPOSES ALLOWED UNDER AS 16.10.450 OR 16.10.480(d).]

* Sec. 5. AS 16.05.730(d) is amended to read:

(d) In this section,

(1) "enhancement project" means a project, facility, or hatchery for the enhancement of fishery resources of the state for which the department has issued a permit;

(2) "important and dominant salmon stocks" means those salmon