

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2986 SCOMM 131: HOUSE SPECIAL COMMITTEE ON FISHERIES, 2003-04

1 stocks that are either an important salmon stock or a dominant salmon stock as
2 those terms are defined under AS 16.05.740.

3 * Sec. 6. AS 16.05 is amended by adding a new section to article 5 to read:

4 **Sec. 16.05.740. Management of salmon stocks and salmon fisheries. (a)**

5 The commissioner and the Board of Fisheries shall manage the important salmon
6 stocks and dominant salmon stocks of the state for maximum sustained yield, to the
7 extent practicable, to achieve the greatest benefits for the people of the state.

8 (b) The commissioner shall adopt and revise as necessary escapement goals
9 and harvest goals for important salmon stocks and dominant salmon stocks utilizing
10 the best reliable scientific information available to the department. To the extent
11 practicable, the commissioner shall expeditiously collect information necessary to
12 manage important salmon stocks and dominant salmon stocks for maximum sustained
13 yield. The commissioner shall manage salmon fisheries through emergency orders
14 issued under AS 16.05.060 to achieve the escapement goals and harvest goals for the
15 stocks taken in the fisheries. The commissioner shall exercise the professional
16 judgment of the department to manage salmon stocks for which escapement goals or
17 harvest goals have not been established for the highest level of sustainable yield that is
18 practicable. For a minor stock for which the commissioner finds that it is not practical
19 to manage the stock for maximum sustained yield, the commissioner shall exercise the
20 professional judgment of the department to ensure that the escapement level for the
21 stock is maintained at a level that provides for sustained yield of the stock. In the
22 absence of sufficient information to establish an escapement goal or harvest goal for a
23 salmon stock consistent with maximum sustained yield, the department shall manage
24 the stock for sustained yield. The commissioner shall manage salmon for sustained
25 yield in accordance with the following requirements:

26 (1) where the presence of multiple salmon stocks or species in a
27 fishery or management area results in the inability to simultaneously achieve
28 escapement goals for all of the stocks or species, the commissioner shall seek a
29 balance during the fishing season of the escapements for all stocks and species in a
30 manner that does the least harm collectively to the productivity of all stocks and
31 species in the fishery or management area;

1 (2) the commissioner shall balance the harm of reducing escapements
2 below the escapement goal for weaker salmon stocks with increasing escapements
3 above the escapement goal for stronger salmon stocks without regard to the allocative
4 effects of the decision;

5 (3) the commissioner shall manage important, dominant, and more
6 productive salmon stocks for maximum sustained yield and minor or less productive
7 salmon stocks for sustained yield in order to achieve the greatest benefits for the
8 people of the state;

9 (4) in the absence of a management plan, when management measures
10 affect two or more competing groups of users, the commissioner shall regulate salmon
11 fisheries in a manner that allows for the best probability of simultaneously achieving
12 the escapement goals for all important salmon stocks and dominant salmon stocks
13 with the least disruption to users with no other alternative fisheries in the management
14 area; in this paragraph, "management area" means a salmon net gear registration area
15 established by the Board of Fisheries by regulation;

16 (5) the commissioner shall conserve depressed salmon stocks and, as
17 practicable, rehabilitate and enhance depressed salmon stocks;

18 (6) the commissioner is responsible for conservation of salmon stocks
19 and shall avoid overharvest that may threaten the sustained yield of a salmon stock;

20 (7) the commissioner shall avoid overescapement that may threaten the
21 maximum sustained yield of an important salmon stock, dominant salmon stock, or
22 more productive salmon stock or the sustained yield of other salmon stocks.

23 (c) The board shall adopt by regulation policies providing for utilization and
24 development of salmon stocks, including the allocation of the harvestable portion of
25 each salmon stock among the fisheries of the state. The policies must be consistent
26 with the salmon escapement goals and harvest goals established by the commissioner.
27 The board shall allocate the harvestable portion of salmon stocks in accordance with
28 AS 16.05.258 and, except as otherwise provided in this section, AS 16.05.251(e), and
29 in accordance with the following requirements:

30 (1) for salmon fisheries that are fully developed, the board may not

31 (A) exclude existing, historic users from taking their historic

1 level of the harvest of a salmon stock except to achieve conservation goals
2 adopted by the commissioner;

3 (B) authorize escapement of more salmon than are necessary to
4 satisfy escapement goals adopted by the commissioner;

5 (2) the board shall give priority consideration to the history of use of a
6 salmon stock by a fishery and to the stability of fisheries when fishery management
7 decisions are adopted;

8 (3) where established fisheries have historically harvested a salmon
9 stock that originates in an area outside the area where the fisheries occur, the board
10 shall maintain harvests of that stock by those fisheries at historical levels except as
11 necessary to achieve conservation goals adopted by the commissioner;

12 (4) the board shall provide that salmon in excess of the number needed
13 to satisfy escapement goals adopted by the commissioner are available for harvest to
14 prevent overescapement or waste of salmon.

15 (d) If there is a conflict between this section and AS 16.05.251, this section
16 shall prevail.

17 (e) In this section,

18 (1) "conservation" means the supervision, management, protection,
19 improvement, maintenance, and use of a fishery resource to ensure the highest social
20 as well as economic benefits from the harvest of the resource;

21 (2) "dominant salmon stock" means a wild salmon stock that is
22 consistently more productive and numerically more abundant or is consistently more
23 commercially valuable than other salmon stocks;

24 (3) "important salmon stock" means a wild salmon stock for which the
25 department has established a scientifically based escapement goal and a stock
26 management plan to maintain the stock at escapement levels consistent with maximum
27 sustained yield of the stock;

28 (4) "maximum sustained yield" means achievement and maintenance
29 in perpetuity of the highest level of annual or periodic yield of a renewable resource;

30 (5) "minor salmon stock" means a salmon stock that is not an
31 important salmon stock or dominant salmon stock;

1 (6) "sustained escapement threshold" means the threshold level of
2 escapement of a salmon stock below which the ability of the stock to sustain itself is
3 jeopardized;

4 (7) "sustained yield" means an average annual yield of a renewable
5 resource that can be maintained on an annual basis.

**REPRESENTATIVE
MIKE CHENAULT**

Interim:
145 Main St. Loop, Second Floor
Kenai, Alaska 99611
(907) 283-7223
Fax: (907) 283-3075

STATE OF ALASKA



HOUSE OF REPRESENTATIVES

Official Business

Session:
Capitol Building, Room 432
Juneau, Alaska 99801-1182
(907) 465-3779
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Fax: (907) 465-2833

SPONSOR STATEMENT

HB – 396 MANAGEMENT OF SALMON STOCKS AND FISHERIES

House Bill 396 by request amends several statutes to strengthen biological management of wild fish stocks. In a time when farmed salmon is threatening natural wild fish stock in Alaska, it is more important than ever to manage fisheries by biological means. HB 396 further defines "important and dominant salmon stocks".

Overall the bill fine tunes statutory authority to encourage sound biological management for the fish users and the State of Alaska.

LEGAL SERVICES

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

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

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

MEMORANDUM

January 23, 2004

SUBJECT: Sectional summary of HB 396; An Act relating to management of salmon and other fish stocks and salmon fisheries and to use of funds received by an enhancement facility from the sale of fish (Work Order No. 23-LS1395\H)

TO: Representative Mike Chenault

FROM: George Utermohle 
Legislative Counsel

You have requested a sectional summary of HB 396; An Act relating to management of salmon and other fish stocks and salmon fisheries and to use of funds received by an enhancement facility from the sale of fish.

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 16.05.251(h) to provide that the Board of Fisheries' policy on management of mixed stock fisheries must 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.

Sections 2 and 3 of the bill amend AS 16.05.730(a) and (b) to provide that 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.

Section 4 of the bill amends AS 16.05.730(c) to provide that the Board of Fisheries shall exercise its authority to direct the Department of Fish and Game to provide a reasonable harvest of fish needed by fishery enhancement facilities for brood stock and for cost recovery to obtain funds for purposes allowed under AS 16.10.450 or 16.10.480(d), if the harvest is consistent with maximum sustained yield of important and dominant salmon stocks and with sustained yield of other wild fish stocks.

Section 5 of the bill amends AS 16.10.730(d) by adding a definition of "important and dominant salmon stocks."

Section 6 of the bill amends AS 16.05 by adding a new section (Sec. 16.05.740) relating to management of salmon stocks and salmon fisheries.

Subsection (a) provides that the commissioner of fish and game and the Board of Fisheries shall manage important salmon stocks and dominant salmon stocks for maximum sustained yield for the greatest benefits for the people of the state.

Subsection (b) provides that the commissioner shall adopt and revise escapement and harvest goals for important salmon stocks and dominant salmon stocks based on the best reliable scientific information available and sets out requirements for management of salmon stocks.

Subsection (c) provides that the Board of Fisheries shall adopt policies for utilization and development of salmon stocks and sets out requirements governing the allocation of salmon stocks by the board.

Subsection (d) provides that this section (Sec. 16.05.740) prevails over AS 16.05.251 to the extent that there is a conflict between the two sections.

Subsection (e) sets out definitions for several terms used in this section.

If I may be of further assistance, please advise.

GU:med
04-074.med

March 31, 2004

Section 1. The Board of Fisheries and the Department of Fish and Game, as directed by the Constitution, shall regulate and manage the salmon stocks of Alaska in a manner that is consistent with maximum sustained yield principles to the extent practicable, to achieve the greatest benefits for the state.

Section 2. The Board of Fisheries and the Department of Fish and Game shall regulate and manage the salmon stocks of Alaska in a manner that provides for salmon escapement to remain within the established biological escapement goals. Where there are no established escapement goals the Department of Fish and Game shall manage salmon stocks on the sustained yield principles.

Rebuttal to "Questions/Concerns Regarding H.B. 396- Management of
Salmon Stocks and Fisheries.

1. This bill would not diminish the ability of the BOF to allocate fisheries resources, it states quite clearly that the BOF is able and expected to allocate salmon surplus to escapement needs, according to the allocation criteria in statute. What it does seek to prevent is the allocation of resources through a false "Conservation Concern" as they have done through the Knowles Years. It is interesting you used the term "Benefits" as was done by the department in proposal number two in October. The BOF and the public opposed Mr. Hepler's attempt to change fisheries policy then and will continue to oppose these changes. The BOF allocates fish, not benefits.
2. There are no restrictions on the BOF with regards to conservation. This bill seeks to define conservation so that boards in the future won't be able to repeat the poor performance of the Knowles Board.
3. This bill was taken from many of the policies you quote and would do nothing to any of these policies and certainly wouldn't render any of them moot. What this bill seeks to do is to coalesce these policies into a single fisheries statute.
4. This bill seeks to stabilize fisheries to provide for some predictability and consistency in regulation. It serves no purpose to see major pendulum swings in allocations every three years according to the BOF cycle.
5. This bill does not force the commissioner to adopt any goals into regulation. Many fisheries are managed for escapements and escapement goals, which are not in any regulation. This bill would require the department to manage for the highest combined yield to a management area as possible. This is what seat of the pants management biologists have done since statehood. It seems to have worked well!
6. Yield is defined in the Sustainable Salmon Fisheries Policy. Benefits are defined in Webster's. We don't see this apparent conflict, rather MSY as you are already directed to manage for should provide the best of both.
7. Again this is already your directive in the Sustainable Fisheries Policy, so as long as you actually do your job there should be ample fish for subsistence.
8. In this bill the commissioner is directed to meet escapement goals and BOF allocations (Harvest Goals) but if it is necessary to meet the escapement objective he should close the fisheries and ignore the allocative ramifications. This seems simple, the resource come first! The BOF is not responsible for maintaining harvest allocations. Simply follow their own regulations, the allocation criteria. The first of these criteria is that the historic use of the resource must be considered.
9. The changes would only apply to salmon.

10. This assertion can't be addressed without specifics. Ironical that the same concern wasn't expressed during the creation of the many conflicts and ambiguities which were created in the last Cook Inlet BOF meeting.
11. Dominant and/or important stocks are those stocks, which the department is currently investing most of their management efforts on. The most important likely have escapement goals.

The need for a fiscal note is absurd. Nothing in this bill asks the commissioner to allocate any resources. Further nothing in this bill requires any adoption of escapement or harvest goals into regulation. I guess the commissioner is new to the world of fisheries management and never noticed that many of the goals or management objectives are not in regulation. No one expects all escapement goals or other management objectives to be codified. No one expects all escapement goals or other management objectives to be attained with 100 percent accuracy. It would be nice if the department were not able to hide behind the BOF when all systems exceed the upper bounds of the escapement goals while the fisheries remain closed or restricted. In short the department should do the job for which they are trained and paid and the BOF should structure fisheries regulations to facilitate both the conservation mandate of the department and the orderly and productive harvest of those salmon surplus to escapement needs.

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State Of Alaska
Legislative Affairs Agency
Kenai LIO
145 Main St Lp, Ste 217
Kenai, AK 99611
907-283-2030

Date: 4-2-04

Please accept the enclosed original(s) of written testimony for
the HFSH teleconference hearing that was
scheduled on 3-15-04.

A copy of this testimony was transmitted to your committee via
fax on 4-2-04.

Thank You,

MB Byrne



Alaska State Legislature

Please enter into the record my testimony to the

HOUSE FISHERIES
committee name

Committee on

NB 396
bill # / subject

, dated

3-15-04
public hearing date

SEE TWO PAGES ATTACHED

Signed:

Chris Garcia
Testifier

(CHRIS GARCIA)

Representing (optional)

BOX 203 NENAI, AK, 99644
Address

907-283-2731
Phone number

STATE OF ALASKA

Cooper Landing Fish & Game Advisory Committee

Frank H Murkowski, Governor

Bill Stockwell, Chair
PO Box 721
Cooper Landing, AK 99572-0721
Phone: 595-1540

March 22, 2004

Honorable Paul Seaton
Chair, House Fisheries Committee
Representative, House District 35
State Capitol Building, Room 428
Juneau, AK 99801-1182

SENT BY FAX 1 PAGE

SUBJECT: House Bill 396

Dear Representative Seaton and Committee Members,

At our meeting of March 18, 2004, the members of the Cooper Landing AC asked me to relay their concerns about House Bill 396. We understand that this bill is a work-in-progress and thus our concerns will be general.

We are opposed to any change in statute that would alter the present statutory requirement to manage mixed stock fisheries for the sustained yield of wild fish stocks. This statute should not be changed to require the management emphasis to be placed on a strong/main/most-important stock policy to the detriment of mixed stocks and/or weak stocks.

We believe that the present Policy for the Management of Mixed Stock Salmon Fisheries and the Policy for the Management of Sustained Salmon Fisheries are working and necessary changes should be made through the public process now available to propose changes in these regulations.

Please keep us informed on the progress of HB 396. If you have suggestions or comments, please contact Bill Stockwell at phone or fax at 595-1540.

Thanks again for the help with our issues.

Sincerely,



Bill Stockwell, Chair

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 black ink, appearing to read "Kevin C. Duffy". The signature is fluid and cursive, with a large, stylized "K" and "D".

Kevin C. Duffy
Commissioner

Introduced by:	Mayor
Date:	04/20/04
Action:	Adopted as Amended
Vote:	8 Yes, 1 No

**KENAI PENINSULA BOROUGH
RESOLUTION 2004-044**

**A RESOLUTION SUPPORTING HB 396 "AN ACT RELATING TO
MANAGEMENT OF SALMON AND OTHER FISH STOCKS AND SALMON
FISHERIES AND TO THE USE OF FUNDS RECEIVED BY AN ENHANCEMENT
FACILITY FROM THE SALE OF FISH"**

- WHEREAS,** the fishing industry has long been an integral part of the economy of Alaska and especially on the Kenai Peninsula; and
- WHEREAS,** the fishing industry is a renewable resource and employs thousands of local residents including family owned small businesses; and
- WHEREAS,** the fishing industry provides over 100 million dollars in gross revenues in the Kenai Peninsula Borough; and
- WHEREAS,** in a time when farmed salmon is threatening natural wild fish stock in Alaska, it is more important than ever to manage fisheries by biological means; and
- WHEREAS,** currently the Board of Fish (BoF) has exceeded its policy making authority and has overly restricted the administration from using emergency orders and other methods to biologically manage the salmon resource on the basis of maximum sustained yield; and
- WHEREAS,** HB 396 puts into statute the current BoF policy that salmon stocks in the state be managed consistent with maximum sustained yield of important and dominant salmon stocks and with sustained yield of other salmon stocks; and
- WHEREAS,** HB 396 puts into statute current BoF policy for in-season abundance based management, delegating to the area biologist emergency order authority to provide for immediate management decisions; and
- WHEREAS,** HB 396 simply attempts to clarify the policy that 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; and
- WHEREAS,** 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;

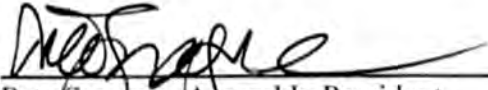
NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. The Assembly of the Kenai Peninsula Borough supports the passage of HB 396 as it was written on introduction in the legislature.

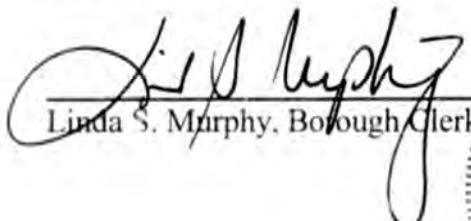
SECTION 2. That a copy of this resolution be provided to Representatives Carl Morgan, Mike Hawker, Kelly Wolf, Mike Chenault, and Paul Seaton, and Senators Georgianna Lincoln, Con Bunde, Thomas Wagoner, and Gary Stevens.

SECTION 3. This resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20TH DAY OF APRIL, 2004.


Pete Sprague, Assembly President

ATTEST:


Linda S. Murphy, Borough Clerk





COOK INLET FISHERMAN'S FUND

Non-profit Advocate for all Commercial Fishing Gear Types in Area H
P.O. Box 39408 Ninilchik, AK 99639 phone/fax 907-260-5614

Dear Legislator,

March 10, 2004

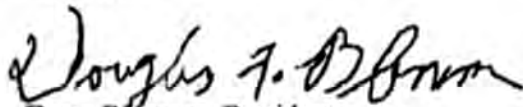
House Bill 396 has been introduced by Representative Mike Chenault. We at Cook Inlet Fishermen's Fund strongly urge you to support this bill and facilitate its passage. If passed, this bill would increase the value of mixed-stock fisheries by providing for Maximum Sustained Yield for dominant salmon stocks, while still protecting lesser stocks by requiring Sustained Yield policies. Essentially, it will require the Department of Fish and Game to not forsake the harvest of a larger or more valuable salmon stock in order to maximize escapement of a lesser stock. Sustained Yield policy will still remain for all stocks to ensure conservation. It will also require the Department of Fish and Game to provide for the harvest of surplus salmon to prevent overescapement and waste.

We have had many instances where there were very large salmon runs, good available markets, and yet no openings to harvest this surplus. The dollars lost to the fishermen, canneries, and the economy runs far into the millions. The value of last year's unharvested surplus sockeye in Cook Inlet alone was over \$8 million. Passage of HB 396 will prevent further wanton waste. In times like these, with low fish prices and tough economic times for our industry, it is unfathomable that this amount of waste should be permitted.

House Bill 396 has been crafted and recrafted painstakingly with many long hours of intensive work by many people involved in the salmon industry. Fishermen from several organizations, cannery officials, and fisheries managers have been involved in the making of this bill.

With all the work being done to try to solve the problems in the salmon industry, it is a terrible shame that the state allows the waste of a resource which we are completely capable of utilizing. Pass HB 396 and you will be helping to stop the waste of fish worth millions of dollars to the economy of Alaska.

Sincerely,


Doug Blossom, President

Officers

Doug Blossom, President
John McCombs, Vice Pres.
David Martin, Treasurer
Janet Clucas, Secretary

Board of Directors

Dan Ducker Butch Leman
Teague Vanek Tim Keener
Steve Vanek Mark Ducker
Chris Garcia

Support Staff

Joe Malatesta, Sr., Consultant
John McCombs, Editor

SUSTAINABLE SALMON FISHERIES POLICY
FOR THE STATE OF ALASKA

The Alaska Department of Fish and Game
and the Board of Fisheries

June 22, 2001

5 AAC 39.222. POLICY FOR THE MANAGEMENT OF SUSTAINABLE SALMON FISHERIES. (a) The Board of Fisheries (board) and Department of Fish and Game

(department) recognize that

(1) while, in the aggregate, Alaska's salmon fisheries are healthy and sustainable largely because of abundant pristine habitat and the application of sound, precautionary, conservation management practices, there is a need for a comprehensive policy for the regulation and management of sustainable salmon fisheries;

(2) in formulating fishery management plans designed to achieve maximum or optimum salmon production, the board and department must consider factors including environmental change, habitat loss or degradation, data uncertainty, limited funding for research and management programs, existing harvest patterns, and new fisheries or expanding fisheries;

(3) to effectively assure sustained yield and habitat protection for wild salmon stocks, fishery management plans and programs require specific guiding principles and criteria, and the framework for their application contained in this policy.

(b) The goal of the policy under this section is to ensure conservation of salmon and salmon's required marine and aquatic habitats, protection of customary and traditional subsistence uses and other uses, and the sustained economic health of Alaska's fishing communities.

(c) Management of salmon fisheries by the state should be based on the following principles and criteria:

(1) wild salmon stocks and the salmon's habitats should be maintained at levels of resource productivity that assure sustained yields as follows:

(A) salmon spawning, rearing, and migratory habitats should be protected as follows:

(i) salmon habitats should not be perturbed beyond natural boundaries of variation;

(ii) scientific assessments of possible adverse ecological effects of proposed habitat alterations and the impacts of the alterations on salmon populations should be conducted before approval of a proposal;

(iii) adverse environmental impacts on wild salmon stocks and the salmon's habitats should be assessed;

(iv) all essential salmon habitat in marine, estuarine, and freshwater ecosystems and access of salmon to these habitats should be protected; essential habitats include spawning and incubation areas, freshwater rearing areas, estuarine and nearshore rearing areas, offshore rearing areas, and migratory pathways;

(v) salmon habitat in fresh water should be protected on a watershed basis, including appropriate management of riparian zones, water quality, and water quantity;

(B) salmon stocks should be protected within spawning, incubating, rearing, and migratory habitats;

(C) degraded salmon productivity resulting from habitat loss should be assessed, considered, and controlled by affected user groups, regulatory agencies, and boards when making conservation and allocation decisions;

(D) effects and interactions of introduced or enhanced salmon stocks on wild salmon stocks should be assessed; wild salmon stocks and fisheries on those stocks should be protected from adverse impacts from artificial propagation and enhancement efforts;

(E) degraded salmon spawning, incubating, rearing, and migratory habitats should be restored to natural levels of productivity where known and desirable;

(F) ongoing monitoring should be conducted to determine the current status of habitat and the effectiveness of restoration activities;

(G) depleted salmon stocks should be allowed to recover or, where appropriate, should be actively restored; diversity should be maintained to the maximum extent possible, at the genetic, population, species, and ecosystem levels;

(2) salmon fisheries shall be managed to allow escapements within ranges necessary to conserve and sustain potential salmon production and maintain normal ecosystem functioning as follows:

(A) salmon spawning escapements should be assessed both temporally and geographically; escapement monitoring programs should be appropriate to the scale, intensity, and importance of each salmon stock's use;

(B) salmon escapement goals, whether sustainable escapement goals, biological escapement goals, optimal escapement goals, or inriver run goals, should be established in a manner consistent with sustained yield; unless otherwise directed, the department will manage Alaska's salmon fisheries, to the extent possible, for maximum sustained yield;

(C) salmon escapement goal ranges should allow for uncertainty associated with measurement techniques, observed variability in the salmon stock measured, changes in climatic and oceanographic conditions, and varying abundance within related populations of the salmon stock measured;

(D) salmon escapement should be managed in a manner to maintain genetic and phenotypic characteristics of the stock by assuring appropriate geographic and temporal distribution of spawners as well as consideration of size range, sex ratio, and other population attributes;

(E) impacts of fishing, including incidental mortality and other human-induced mortality, should be assessed and considered in harvest management decisions;

(F) salmon escapement and harvest management decisions should be made in a manner that protects non-target salmon stocks or species;

(G) the role of salmon in ecosystem functioning should be evaluated and considered in harvest management decisions and setting of salmon escapement goals;

(H) salmon abundance trends should be monitored and considered in harvest management decisions;

(3) effective management systems should be established and applied to regulate human activities that affect salmon as follows:

(A) salmon management objectives should be appropriate to the scale and intensity of various uses and the biological capacities of target salmon stocks;

(B) management objectives should be established in harvest management plans, strategies, guiding principles, and policies, such as for mixed stock fishery harvests, fish disease, genetics, and hatchery production, that are subject to periodic review;

(C) when wild salmon stocks are fully allocated, new fisheries or expanding fisheries should be restricted, unless provided for by management plans or by application of the board's allocation criteria;

(D) management agencies should have clear authority in statute and regulation to

(i) control all sources of fishing mortality on salmon;

(ii) protect salmon habitats and control non-fishing sources of mortality;

(E) management programs should be effective in

(i) controlling human-induced sources of fishing mortality and should incorporate procedures to assure effective monitoring, compliance, control, and enforcement;

(ii) protecting salmon habitats and controlling collateral mortality and should incorporate procedures to assure effective monitoring, compliance, control, and enforcement;

(F) fisheries management implementation and outcomes should be consistent with regulations, regulations should be consistent with statutes, and effectively carry out the purpose of this section;

(G) the board will recommend to the commissioner the development of effective joint research, assessment, and management arrangements with appropriate management agencies and bodies for salmon stocks that cross state, federal, or international jurisdictional boundaries; the board will recommend the coordination of appropriate procedures for effective monitoring, compliance, control, and enforcement with those of other agencies, states, or nations;

(H) the board will work, within the limits of its authority, to assure that

(i) management activities are accomplished in a timely and responsive manner to implement objectives, based on the best available scientific information;

(ii) effective mechanisms for the collection and dissemination of information and data necessary to carry out management activities are developed, maintained, and utilized;

(iii) management programs and decision-making procedures are able to clearly distinguish, and effectively deal with, biological and allocation issues;

(I) the board will recommend to the commissioner and legislature that adequate staff and budget for research, management, and enforcement activities be available to fully implement sustainable salmon fisheries principles;

(J) proposals for salmon fisheries development or expansion and artificial propagation and enhancement should include assessments required for sustainable management of existing salmon fisheries and wild salmon stocks;

(K) plans and proposals for development or expansion of salmon fisheries and enhancement programs should effectively document resource assessments, potential impacts, and other information needed to assure sustainable management of wild salmon stocks;

(L) the board will work with the commissioner and other agencies to develop effective processes for controlling excess fishing capacity;

(M) procedures should be implemented to regularly evaluate the effectiveness of fishery management and habitat protection actions in sustaining salmon populations, fisheries, and habitat, and to resolve associated problems or deficiencies;

(N) conservation and management decisions for salmon fisheries should take into account the best available information on biological, environmental, economic, social, and resource use factors;

(O) research and data collection should be undertaken to improve scientific and technical knowledge of salmon fisheries, including ecosystem interactions, status of salmon populations, and the condition of salmon habitats;

(P) the best available scientific information on the status of salmon populations and the condition of the salmon's habitats should be routinely updated and subject to peer review;

(4) public support and involvement for sustained use and protection of salmon resources should be sought and encouraged as follows:

(A) effective mechanisms for dispute resolution should be developed and used;

(B) pertinent information and decisions should be effectively disseminated to all interested parties in a timely manner;

(C) the board's regulatory management and allocation decisions will be made in an open process with public involvement;

(D) an understanding of the proportion of mortality inflicted on each salmon stock by each user group, should be promoted, and the burden of conservation should be allocated across user groups in a manner consistent with applicable state and federal statutes, including AS 16.05.251(e) and AS 16.05.258; in the absence of a regulatory management plan that otherwise allocates or restricts harvests, and when it is necessary to restrict fisheries on salmon stocks where there are known conservation problems, the burden of conservation shall be shared among all fisheries in close proportion to each fisheries' respective use, consistent with state and federal law;

(E) the board will work with the commissioner and other agencies as necessary to assure that adequately funded public information and education programs provide timely materials on salmon conservation, including habitat requirements, threats to salmon habitat, the value of salmon and habitat to the public and ecosystem (fish and wildlife), natural variability and population dynamics, the status of salmon stocks and fisheries, and the regulatory process;

(5) in the face of uncertainty, salmon stocks, fisheries, artificial propagation, and essential habitats shall be managed conservatively as follows:

(A) a precautionary approach, involving the application of prudent foresight that takes into account the uncertainties in salmon fisheries and habitat management, the biological, social, cultural, and economic risks, and the need to take action with incomplete knowledge, should be applied to the regulation and control of harvest and other human-induced sources of salmon mortality; a precautionary approach requires

(i) consideration of the needs of future generations and avoidance of potentially irreversible changes;

(ii) prior identification of undesirable outcomes and of measures that will avoid undesirable outcomes or correct them promptly;

(iii) initiation of any necessary corrective measure without delay and prompt achievement of the measure's purpose, on a time scale not exceeding five years, which is approximately the generation time of most salmon species;

(iv) that where the impact of resource use is uncertain, but likely presents a measurable risk to sustained yield, priority should be given to conserving the productive capacity of the resource;

(v) appropriate placement of the burden of proof, of adherence to the requirements of this subparagraph, on those plans or ongoing activities that pose a risk or hazard to salmon habitat or production;

(B) a precautionary approach should be applied to the regulation of activities that affect essential salmon habitat.

(d) The principles and criteria for sustainable salmon fisheries shall be applied, by the department and the board using the best available information, as follows:

(1) at regular meetings of the board, the department will, to the extent practicable, provide the board with reports on the status of salmon stocks and salmon fisheries under consideration for regulatory changes, which should include

(A) a stock-by-stock assessment of the extent to which the management of salmon stocks and fisheries is consistent with the principles and criteria contained in the policy under this section;

(B) descriptions of habitat status and any habitat concerns;

(C) identification of healthy salmon stocks and sustainable salmon fisheries;

(D) identification of any existing salmon escapement goals, or management actions needed to achieve these goals, that may have allocative consequences such as the

- (i) identification of a new fishery or expanding fishery;
- (ii) identification of any salmon stocks, or populations within stocks, that present a concern related to yield, management, or conservation; and
- (iii) description of management and research options to address salmon stock or habitat concerns;

(2) in response to the department's salmon stock status reports, reports from other resource agencies, and public input, the board will review the management plan, or consider developing a management plan, for each affected salmon fishery or stock; management plans will be based on the principles and criteria contained in this policy and will

(A) contain goals and measurable and implementable objectives that are reviewed on a regular basis and utilize the best available scientific information;

(B) minimize the adverse effects on salmon habitat caused by fishing;

(C) protect, restore, and promote the long-term health and sustainability of the salmon fishery and habitat;

(D) prevent overfishing; and

(E) provide conservation and management measures that are necessary and appropriate to promote maximum or optimum sustained yield of the fishery resource;

(3) in the course of review of the salmon stock status reports and management plans described in (1) and (2) of this subsection, the board, in consultation with the department, will determine if any new fisheries or expanding fisheries, stock yield concerns, stock management concerns, or stock conservation concerns exist; if so, the board will, as appropriate, amend or develop salmon fishery management plans to address these concerns; the extent of regulatory action, if any, should be commensurate with the level of concerns and range from milder to stronger as concerns range from new and expanding salmon fisheries through yield concerns, management concerns, and conservation concerns;

(4) in association with the appropriate management plan, the department and the board will, as appropriate, collaborate in the development and periodic review of an action plan for any new or expanding salmon fisheries, or stocks of concern; action plans should contain goals, measurable and implementable objectives, and provisions, including

(A) measures required to restore and protect salmon habitat, including necessary coordination with other agencies and organizations;

(B) identification of salmon stock or population rebuilding goals and objectives;

(C) fishery management actions needed to achieve rebuilding goals and objectives, in proportion to each fishery's use of, and hazards posed to, a salmon stock;

(D) descriptions of new or expanding salmon fisheries, management concern, yield concern, or conservation concern; and

(E) performance measures appropriate for monitoring and gauging the effectiveness of the action plan that are derived from the principles and criteria contained in this policy;

(5) each action plan will include a research plan as necessary to provide information to address concerns; research needs and priorities will be evaluated periodically, based on the effectiveness of the monitoring described in (4) of this subsection;

(6) where actions needed to regulate human activities that affect salmon and salmon's habitat that are outside the authority of the department or the board, the department or board shall correspond with the relevant authority, including the governor, relevant boards and

commissions, commissioners, and chairs of appropriate legislative committees, to describe the issue and recommend appropriate action.

(e) Nothing in the policy under this section is intended to expand, reduce, or be inconsistent with, the statutory regulatory authority of the board, the department, or other state agencies with regulatory authority that impacts the fishery resources of the state.

(f) In this section, and in implementing this policy,

(1) "allocation" means the granting of specific harvest privileges, usually by regulation, among or between various user groups; "allocation" includes quotas, time periods, area restrictions, percentage sharing of stocks, and other management measures providing or limiting harvest opportunity;

(2) "allocation criteria" means the factors set out in AS 16.05.251(e) considered by the board as appropriate to particular allocation decisions under 5 AAC 39.205, 5 AAC 75.017, and 5 AAC 77.007;

(3) "biological escapement goal" or "(BEG)" means the escapement that provides the greatest potential for maximum sustained yield; BEG will be the primary management objective for the escapement unless an optimal escapement or inriver run goal has been adopted; BEG will be developed from the best available biological information, and should be scientifically defensible on the basis of available biological information; BEG will be determined by the department and will be expressed as a range based on factors such as salmon stock productivity and data uncertainty; the department will seek to maintain evenly distributed salmon escapements within the bounds of a BEG;

(4) "burden of conservation" means the restrictions imposed by the board or department upon various users in order to achieve escapement, rebuild, or in some other way conserve a specific salmon stock or group of stocks; this burden, in the absence of a salmon fishery management plan, will be generally applied to users in close proportion to the users' respective harvest of the salmon stock;

(5) "chronic inability" means the continuing or anticipated inability to meet escapement thresholds over a four to five year period, which is approximately equivalent to the generation time of most salmon species;

(6) "conservation concern" means concern arising from a chronic inability, despite the use of specific management measures, to maintain escapements for a stock above a sustained escapement threshold (SET); a conservation concern is more severe than a management concern;

(7) "depleted salmon stock" means a salmon stock for which there is a conservation concern;

(8) "diversity", in a biological context, means the range of variation exhibited within any level of organization, such as among genotypes within a salmon population, among populations within a salmon stock, among salmon stocks within a species, among salmon species within a community, or among communities within an ecosystem;

(9) "enhanced salmon stock" means a stock of salmon that is undergoing specific manipulation, such as hatchery augmentation or lake fertilization, to enhance its productivity above the level that would naturally occur; "enhanced salmon stock" includes an introduced stock, where no wild salmon stock had occurred before, or a wild salmon stock undergoing manipulation, but does not include a salmon stock undergoing rehabilitation, which is intended to restore a salmon stock's productivity to a higher natural level;

(10) "escapement" means the annual estimated size of the spawning salmon stock; quality of the escapement may be determined not only by numbers of spawners, but also by factors such as sex ratio, age composition, temporal entry into the system, and spatial distribution within the salmon spawning habitat;

(11) "expanding fishery" means a salmon fishery in which effective harvesting effort has recently increased significantly beyond historical levels and where the increase has not resulted from natural fluctuations in salmon abundance;

(12) "expected yields" mean levels at or near the lower range of recent historic harvests if they are deemed sustainable;

(13) "genetic" means those characteristics (genotypic) of an individual or group of salmon that are expressed genetically, such as allele frequencies or other genetic markers;

(14) "habitat concern" means the degradation of salmon habitat that results in, or can be anticipated to result in, impacts leading to yield, management, or conservation concerns;

(15) "harvestable surplus" means the number of salmon from a stock's annual run that is surplus to escapement needs and can reasonably be made available for harvest;

(16) "healthy salmon stock" means a stock of salmon that has annual runs typically of a size to meet escapement goals and a potential harvestable surplus to support optimum or maximum sustained yield;

(17) "incidental harvest" means the harvest of fish, or other species, that is captured in addition to the target species of a fishery;

(18) "incidental mortality" means the mortality imposed on a salmon stock outside of directed fishing, and mortality caused by incidental harvests, interaction with fishing gear, habitat degradation, and other human-related activities;

(19) "inriver run goal" means a specific management objective for salmon stocks that are subject to harvest upstream of the point where escapement is estimated; the inriver run goal will be set in regulation by the board and is comprised of the SEG, BEG, or OEG, plus specific allocations to inriver fisheries;

(20) "introduced stock" means a stock of salmon that has been introduced to an area, or portion of an area, where that stock had not previously occurred; an "introduced stock" includes a salmon stock undergoing continued enhancement, or a salmon stock that is left to sustain itself with no additional manipulation;

(21) "management concern" means a concern arising from a chronic inability, despite use of specific management measures, to maintain escapements for a salmon stock within the bounds of the SEG, BEG, OEG, or other specified management objectives for the fishery; a management concern is not as severe as a conservation concern;

(22) "maximum sustained yield" or "(MSY)" means the greatest average annual yield from a salmon stock; in practice, MSY is achieved when a level of escapement is maintained within a specific range on an annual basis, regardless of annual run strength; the achievement of MSY requires a high degree of management precision and scientific information regarding the relationship between salmon escapement and subsequent return; the concept of MSY should be interpreted in a broad ecosystem context to take into account species interactions, environmental changes, an array of ecosystem goods and services, and scientific uncertainty;

(23) "mixed stock fishery" means a fishery that harvests fish from a mixture of stocks;

(24) "new fishery" means a fishery that new units of effort or expansion of existing effort toward new species, areas, or time periods, results in harvest patterns substantially different from

those in previous years, and the difference is not exclusively the result of natural fluctuations in fish abundance;

(25) "optimal escapement goal" or "(OEG)" means a specific management objective for salmon escapement that considers biological and allocative factors and may differ from the SEG or BEG; an OEG will be sustainable and may be expressed as a range with the lower bound above the level of SET, and will be adopted as a regulation by the board; the department will seek to maintain evenly distributed escapements within the bounds of the OEG;

(26) "optimum sustained yield" or "(OSY)" means an average annual yield from a salmon stock considered to be optimal in achieving a specific management objective other than maximum yield, such as achievement of a consistent level of sustained yield, protection of a less abundant or less productive salmon stock or species, enhancement of catch per unit effort in sport fishery, facilitation of a non-consumptive use, facilitation of a subsistence use, or achievement of a specific allocation;

(27) "overfishing" means a level of fishing on a salmon stock that results in a conservation or management concern;

(28) "phenotypic characteristics" means those characteristics of an individual or group of salmon that are expressed physically, such as body size and length at age;

(29) "rehabilitation" means efforts applied to a salmon stock to restore it to an otherwise natural level of productivity; "rehabilitation" does not include an enhancement, which is intended to augment production above otherwise natural levels;

(30) "return" means the total number of salmon in a stock from a single brood (spawning) year surviving to adulthood; because the ages of adult salmon (except pink salmon) returning to spawn varies, the total return from a brood year will occur over several calendar years; the total return generally includes those mature salmon from a single brood year that are harvested in fisheries plus those that compose the salmon stock's spawning escapement; "return" does not include a run, which is the number of mature salmon in a stock during a single calendar year;

(31) "run" means the total number of salmon in a stock surviving to adulthood and returning to the vicinity of the natal stream in any calendar year, composed of both the harvest of adult salmon plus the escapement; the annual run in any calendar year, except for pink salmon, is composed of several age classes of mature fish from the stock, derived from the spawning of a number of previous brood years;

(32) "salmon" means the five wild anadromous semelparous Pacific salmon species *Oncorhynchus* sp., except steelhead and cutthroat trout, native to Alaska as follows:

- (A) chinook or king salmon (*O. tshawytscha*);
- (B) sockeye or red salmon (*O. nerka*);
- (C) coho or silver salmon (*O. kisutch*);
- (D) pink or humpback salmon (*O. gorbuscha*); and
- (E) chum or dog salmon (*O. keta*);

(33) "salmon population" means a locally interbreeding group of salmon that is distinguished by a distinct combination of genetic, phenotypic, life history, and habitat characteristics, comprised of an entire stock or a component portion of a stock; the smallest uniquely identifiable spawning aggregation of genetically similar salmon used for monitoring purposes;

(34) "salmon stock" means a locally interbreeding group of salmon that is distinguished by a distinct combination of genetic, phenotypic, life history, and habitat characteristics or an

aggregation of two or more interbreeding groups which occur within the same geographic area and is managed as a unit;

(35) "stock of concern" means a stock of salmon for which there is a yield, management, or conservation concern;

(36) "sustainable escapement goal" or "(SEG)" means a level of escapement, indicated by an index or an escapement estimate, that is known to provide for sustained yield over a 5 to 10 year period, used in situations where a BEG cannot be estimated due to the absence of a stock specific catch estimate; the SEG is the primary management objective for the escapement, unless an optimal escapement or inriver run goal has been adopted by the board, and will be developed from the best available biological information; the SEG will be determined by the department and will be stated as a range that takes into account data uncertainty; the department will seek to maintain escapements within the bounds of the SEG;

(37) "sustainable salmon fishery" means a salmon fishery that persists and obtains yields on a continuing basis; characterized by fishing activities and habitat alteration, if any, that do not cause or lead to undesirable changes in biological productivity, biological diversity, or ecosystem structure and function, from one human generation to the next;

(38) "sustained yield" means an average annual yield that results from a level of salmon escapement that can be maintained on a continuing basis; a wide range of average annual yield levels is sustainable; a wide range of annual escapement levels can produce sustained yields;

(39) "sustained escapement threshold" or "(SET)" means a threshold level of escapement, below which the ability of the salmon stock to sustain itself is jeopardized; in practice, SET can be estimated based on lower ranges of historical escapement levels, for which the salmon stock has consistently demonstrated the ability to sustain itself; the SET is lower than the lower bound of the BEG and lower than the lower bound of the SEG; the SET is established by the department in consultation with the board, as needed, for salmon stocks of management or conservation concern;

(40) "target species" or "target salmon stocks" means the main, or several major, salmon species of interest toward which a fishery directs its harvest;

(41) "yield" means the number or weight of salmon harvested in a particular year or season from a stock;

(42) "yield concern" means a concern arising from a chronic inability, despite the use of specific management measures, to maintain expected yields, or harvestable surpluses, above a stock's escapement needs; a yield concern is less severe than a management concern, which is less severe than a conservation concern;

(43) "wild salmon stock" means a stock of salmon that originates in a specific location under natural conditions; "wild salmon stock" may include an enhanced or rehabilitated stock if its productivity is augmented by supplemental means, such as lake fertilization or rehabilitative stocking; "wild salmon stock" does not include an introduced stock, except that some introduced salmon stocks may come to be considered "wild" if the stock is self-sustaining for a long period of time.

(44) "action point" means a threshold value for some quantitative indicator of stock run strength at which an explicit management action will be taken to achieve an optimal escapement goal.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: H.B. 396
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish & Game
Title Management of Salmon Stocks RDU Administration and Support
and Fisheries Component Commissioner's Office
Sponsor Representative Chenault
Requester House Fisheries Component No. 2175

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	80.0	80.0	40.0	40.0	40.0	40.0
Travel						
Contractual						
Supplies	20.0	20.0	10.0	10.0	10.0	10.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	100.0	100.0	50.0	50.0	50.0	50.0

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	100.0	100.0	50.0	50.0	50.0	50.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	100.0	100.0	50.0	50.0	50.0	50.0

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation gives the Commissioner new powers to allocate fishery resources. 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 these goals during season.

We will need an additional Regulations Specialist to compile a written analysis of all the public comments before the Commissioner could adopt each regulation. We anticipate that we will need this additional employee on a full-time basis for the first two years in order to facilitate this new process and on a part-time basis thereafter.

Prepared by: Sarah Gilbertson, Legislative Liaison Phone 465-6137
Division: Alaska Department of Fish & Game Date/Time 3/12/04 9:28 AM
Approved by: Commissioner Kevin Duffy Date 3/12/2004
Agency: Alaska Department of Fish & Game

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. H.B. 396

ANALYSIS CONTINUATION

Similarly, we anticipate the costs associated with issuing public notices and regulations, such as paper, to decrease after the first two years as the department familiarizes itself with the new process.

For simplification purposes, these costs were listed above under Administration and Support/Commissioner's Office. However, these costs would be shared by the Divisions of Commercial Fisheries, Sport Fish, Subsistence, and Boards Support.

SCOMM

131:21

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MEMORANDUM

December 3, 2003

SUBJECT: Approval of commercial fishing regulations by affected commercial fishermen

TO: Representative Bill Williams
Chair, Production Subcommittee
Joint Legislative Salmon Industry Task Force

FROM: George Utermohle *GU*
Legislative Counsel

The purpose of this memorandum is to inform you of a potential constitutional issue of unknown significance associated with certain legislation that is being considered by the Production Subcommittee of the Joint Legislative Salmon Industry Task Force.

The Production Subcommittee is considering a number of draft bills relating to the regulation of commercial fishing that contain a requirement for approval of proposed or adopted regulations of the Board of Fisheries by the permit holders in the affected fishery before the regulations could take effect.

The legislature may delegate quasi-legislative regulation-making powers to the Board of Fisheries, because the board is an agency of the state consisting of public officers appointed by the governor and confirmed by the legislature. However, allowing the permit holders in a fishery to vote to approve a proposed regulation raises the issue of improper delegation of legislative power to private parties in violation of the nondelegation doctrine. The nondelegation doctrine basically holds that the legislature may not delegate its lawmaking powers to a private organization.

Although the nondelegation doctrine is virtually dead in the federal courts, state courts adhere to this doctrine, although not uniformly. See, Northern Lights Motel, Inc. v. Sweaney, 561 P.2d 1176, 1181 (1977). At issue in the Northern Lights Motel case was a statute that adopted the uniform building code, and future amendments to the code, as drafted by a private association of building officials as the official building code in Alaska. The adoption of future versions of the building code raised an issue under the non-delegation doctrine. The primary reason for the prohibition against delegation of regulation-making authority to private groups is that the public does not necessarily receive notice of, or have an opportunity to comment on the regulations, as it does when regulations are adopted by the legislature or a state agency. *Id.* However, due to the

Representative Bill Williams
December 3, 2003
Page 2

particular fact situation in the case, the court did not explain whether and to what extent the nondelegation doctrine applies in this state. Id.

The source of concern for the court in the Northern Lights Motel case, lack of notice and opportunity to comment on a proposed regulation, would be less of an issue when the parties affected by the regulation are given the opportunity to vote on the proposed regulation.

The delegation of agency authority to a private person is an invalid use of agency authority, if the agency does not have the authority to make the delegation. For example, without statutory or constitutional authorization, an agency may not make the issuance of a boat-mooring permit contingent upon the written approval of an adjacent upland landowner. Anderson v. Grand River Dam Authority, 446 P.2d 814 (Ok. 1968). Likewise, an agency may not make the granting of a radio-operator's license contingent upon the written approval of the operator of the local airport, unless the legislature has authorized such a scheme. New Jersey Dept. of Transportation, Division of Aeronautics v. Brzoska, 354 A.2d 650 (N.J. 1976). Such standardless delegations of authority to private persons or groups are not subject to public accountability and are fundamentally suspect. However, delegations of authority such as those struck down in these two cases appear to be possible, if the legislature authorizes the delegation and appropriate standards for the exercise of the delegated authority are established by statute.

Though the delegation of authority to affected individuals to approve regulations adopted by a state agency may be inherently unsettling, there are no cases in this state, or in other states that I could find, that have addressed the validity of delegating authority to affected persons to control whether certain regulations may take effect. It is far from clear whether an Alaska court would find such a delegation to private parties to be an improper delegation of legislative power and thus invalid.¹

Consultation with the Department of Law on this issue would be advisable.

If I may be of further assistance, please advise.

GU:mdr
03-214.mdr

¹ However, the delegation of the legislative taxing power to private parties by allowing them to approve the imposition of taxes is clearly prohibited by the Alaska Constitution under art. IX, sec. 1. See, Alex v. State, 646 P.2d 203 (Alaska 1982).

Subject: HB 409

Date: Thu, 5 Feb 2004 18:21:24 EST

From: Scooski@aol.com

To: Rep_Paul_Seaton@legis.state.ak.us

CC: Rep_Bill_Williams@legis.state.ak.us

Dear Represe Seaton:

I support **HB, 409**. Meeting the challenges of today's markets requires modernizing our seine fleets. For the following reasons **HB, 409** the **58 foot limit bill** is good legislation at the right time.

Abstract:

Alaska's salmon net fisheries were tooled for a canned salmon industry that developed at the turn of the last century. Due to complex market conditions beyond the control of fishermen, old regulations such as the 58 foot seine boat limit, limits the potential of Alaska's seine fishermen to maximize the earning power of their operations. Providing for larger vessels will increase individual capacities for volume and improve quality.

Specifically:

HB, 409 will provide fishermen enough deck space for primary processing -- sorting, grading and bleeding to improve quality for fresh and frozen salmon products. As seiners harvest the majority of Alaska's pink salmon, this bill will help move Alaska's pink salmon production out of cans and into other more modern product forms.

Thank you for your considerations in this matter.

Scott McAllister.
Alaskan purseiner.
316 Ave.
Juneau, Alaska, 99801



Cordova District Fishermen United

P.O. Box 939

Cordova, Alaska 99574

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

Send to file

Feb. 11th, 2004

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

RE: HB 409, "relating to the maximum length of salmon seine vessels"

Dear Representative Seaton,

My name is John Paul Wiese; I am Chair of the Seine Division of Cordova District Fishermen United. I am writing to state our **opposition** to HB 409. The seine fleet of Prince William Sound does not need bigger vessels; we need a consistent stable market for our product. We feel this bill will not help in the revitalization of the salmon industry but could actually be a detriment to the Prince William Sound Seine fishery by encouraging fishermen to over capitalize.

Respectfully,

John Paul Wiese
Chair, Seine Division
Cordova District Fishermen United

Alaska State Legislature

Co-Chair

House Finance Committee

Subcommittee Chair

Environmental Conservation

Courts



Representative William K. Williams

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

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

SPONSOR STATEMENT

House Bill 409

"An Act relating to the maximum length of salmon seine vessels; and providing for an effective date."

House Bill 409 removes the statutory prohibition for the length of salmon seine vessels and leaves the authority to the Alaska Board of Fisheries. It requires that a regulation of the Board of Fisheries to change salmon seine vessel length must be approved by at least 66 percent of the entry permit holders in the affected fishery. If the board adopts a new regulation, and in subsequent years they amend this regulation, fishermen who registered vessels under the previous rule will be grandfathered into the fishery.

This bill will put salmon seine vessels on the same footing as all other commercial fishing boats in the state. At present, the 58-foot limit on salmon seiners is the only length limit enshrined in statute. The length and size of all other fishing boats can be changed by the Board of Fisheries.

If the Board of Fisheries amends the regulation and lengthens the overall seine vessel length, owners of 58-foot vessels would not be required to purchase larger boats. The upgrade to a larger vessel would be optional.

SPONSOR STATEMENT

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



Cordova District Fishermen United

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

Feb. 11th, 2004

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

RE: HB 409, "relating to the maximum length of salmon seine vessels"

Dear Representative Seaton,

My name is John Paul Wiese; I am Chair of the Seine Division of Cordova District Fishermen United. I am writing to state our **opposition** to HB 409. The seine fleet of Prince William Sound does not need bigger vessels; we need a consistent stable market for our product. We feel this bill will not help in the revitalization of the salmon industry but could actually be a detriment to the Prince William Sound Seine fishery by encouraging fishermen to over capitalize.

Respectfully,

A handwritten signature in cursive script, appearing to read "John Paul Wiese".

John Paul Wiese
Chair, Seine Division
Cordova District Fishermen United

FISCAL NOTE**STATE OF ALASKA
2004 LEGISLATIVE SESSION**

Fiscal Note Number:

Bill Version:

H.B. 409

() Publish Date:

Revision Date/Time (Note if correction):

Dept. Affected:

Fish and Game

Title Relating to the Maximum Length of

RDU

Commercial Fisheries

Salmon Seine Vessels

Component

Sponsor

Representative Williams

Requester

House Fisheries

Component No.

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						
-----------------------------	--	--	--	--	--	--

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)

Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson

Division: Legislative Liaison

Approved by: Commissioner Kevin Duffy

Agency: Alaska Department of Fish & Game

Phone 465-6137

Date/Time 2/5/04 1:26 PM

Date 2/5/2004

Alaska State Legislature

Co-Chair
House Finance Committee
Subcommittee Chair
Environmental Conservation
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During Session:
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Ketchikan, AK 99901
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Fax (907) 225-8546

Representative William K. Williams

MEMORANDUM

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

From: Representative Bill Williams

Date: February 3rd, 2004

Subject: Request for Hearing

I respectfully request that HB 409, "An Act relating to the maximum length of salmon seine vessels; and providing for an effective date", be scheduled for a hearing in the House Special Committee on Fisheries.

I attach a copy of the bill as filed.

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

SCOMM

131:22

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 28, 2004

FURTHER REFERRALS: Resources
Finance

Date of Committee Action: Feb. 9th, 2004

The HOUSE SPECIAL COMMITTEE ON FISHERIES considered:

HB 410

HOUSE BILL NO. 410

ENTRY PERMIT BUY-BACK PROGRAM

"An Act relating to the administration of commercial fishing entry permit buy-back programs."

Recommends it be replaced with [] HCS or [] CS for _____(_____)

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
COD

COR
CRT

CREED

DEC

DFG

GOV
1155

HSS
LEG

LAW

LWF

MVA

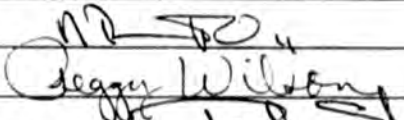
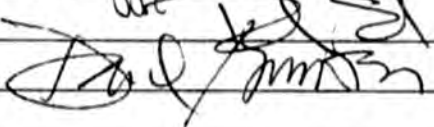
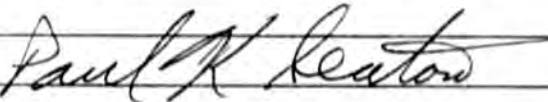
DNR
DPS

DFS
REV

DOT

UA

[illegible][illegible]

Signing with recommendations		Printed Last Name	DP	DNP	NR	AM
	Ogg	✓				
	Wilson	✓				
	SAMUELS				✓	
	GUTTENBERG				✓	
Chair:						
Chair:		SEATON	✓			
Chair:						

Alaska State Legislature

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House Finance Committee
Subcommittee Chair
Environmental Conservation
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(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: February 3rd, 2004

Subject: Request for Hearing

I respectfully request that HB 410, "An Act relating to the administration of commercial fishing entry permit buy-back programs", be scheduled for a hearing in the House Special Committee on Fisheries.

I attach a copy of the bill as filed.

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB0410a
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title Commercial Fishing Entry Permit Buy-Back BRU Comm. Fish Entry Commission
Program _____ Component Commercial Fisheries Entry
Sponsor Rep. Williams Commission
Requester Joint Legislative Salmon Industry Task Force Component No. 471

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

There are no fiscal implications for CFEC associated with this bill.

Prepared by: Shirley Penrose, Administrative Officer
Division: Commercial Fisheries Entry Commission
Approved by: Mary McDowell, Commissioner
Agency: Commercial Fisheries Entry Commission

Phone 907-790-6960
Date/Time 2/5/04 3:17 PM
Date 2/5/2004

Alaska State Legislature

Co-Chair
House Finance Committee
Subcommittee Chair
Environmental Conservation
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50 Front Street, Suite 203
Ketchikan, AK 99901
(907) 247-4672
Fax (907) 225-8546

Representative William K. Williams

SPONSOR STATEMENT

House Bill 410

"An Act relating to the administration of commercial fishing entry permit buy-back programs."

House Bill 410 modifies existing law governing buy-back programs. It would allow the Commercial Fisheries Entry Commission to "front fund" a buy-back program if an appropriation were received. The commission would then continue to collect funds through the designated rate of assessment in the buy-back program to "pay back" the indebtedness.

When the optimum number of permits is reached in a buy-back *and* the reasonable costs of the program have been met, the Commission will terminate the assessment in the affected fishery. HB 410 will make the administration of a buy-back program more workable.

SCOMM

131:23

Alaska State Legislature

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House Finance Committee
Subcommittee Chair
Environmental Conservation
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Juneau, AK 99801-1182
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In Ketchikan:
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(907) 247-4672
Fax (907) 225-8546

Representative William K. Williams

MEMORANDUM

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

From: Representative Bill Williams *Bill*

Date: February 9th, 2004

Subject: Request for Hearing

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

I attach a copy of the bill as filed.

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

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

23-LS1416H
Utermohle
2/13/04

CS FOR HOUSE BILL NO. 415()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE WILLIAMS BY REQUEST

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

Alaska State Legislature

Co-Chair

House Finance Committee

Subcommittee Chair

Environmental Conservation

Courts

During Session:
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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

Representative William K. Williams

SPONSOR STATEMENT

House Bill 415

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

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

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

SPONSOR STATEMENT

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



UNITED FISHERMEN OF ALASKA

February 11, 2004

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

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

Dear Representatives Seaton and Wilson,

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

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

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

Sincerely,

Mark Vinsel
Executive Director

CC: Representative Bill Williams
Attachment

MEMBER ORGANIZATIONS

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

LETTERS OF SUPPORT

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Chapter 2: Diversification Options

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

Species Diversification

Second Salmon Permit

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

IFQ System

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

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

Non-IFQ Fisheries

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

Underutilized Commercial Species

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

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

NAME	ADDRESS	VESSEL
Jessie Nelson	Box 130 Homer	Cape Prince
Erin "Beaver" Nelson	Box 130 Homer	Nuka Point
ERIK Fellows Walt J. Fellows	PO Box 1065 Homer	VALKYRIE
Thomas W. Nelson	PO Box 1392 Homer	Crescent Moon
Kenneth M. Jones D.D. Jones	Box 1044 Homer	Agave
Ken Halpin	Box 1022 Homer	Shiloh
Jeff Cabana	PO Box 26 Homer	Inlet Sunrise
Ken Spearman	PO Box 1019 HOMER	TORQUE
Tim Moore	PO Box 1646 Homer	Marandah
JIM NIEMELA James R. Niemi	P.O. Box 2382	"
MERLIN L. CORDS		JULIE M.
Merlin L. Corder GEOFF CARROLL	146 E. Fairview Ave Homer AK	Lady L.
Glen Carroll	PO 551 Homer Homer AK	Hadassah
Calm McLean	PO 2191 Homer AK	Boulder Bay
Wesley J. Hamblin Wesley Hamblin	PO Box 8191 HOMER AK	HOMER AK 99603 MARIN 12 Juli-300

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

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

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



Cordova District Fishermen United

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

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

Feb. 11th, 2004

Dear Representative Seaton and Members of the Committee,

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

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

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

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

Respectfully,

Page Herring
Executive Director
Cordova District Fishermen United

Jerry McCune UFA

From: Schactler [schactler@alaska.com]

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

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

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

Dear Representative Seaton,

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

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

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

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

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

overcapitalization. It works very well in the herring fisheries!

Sincerely,

Bruce Schactler
At-Large UFA board member

**United Southeast Alaska Gillnetters**

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

February 12, 2004

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

Sent Via Fax to: 465-3472

Dear Representative Seaton,

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

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

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

Yours truly,

Kenneth Duckett
Executive Director

cc: Bill Williams Via Fax: 465-3793

LETTERS OF CONCERN

Subject: Fw: HB415

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

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

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

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

From: Robin Blake

To: rep_paul_seaton@legis.state.ak.us

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

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

Subject: HB415

Chairman of Commercial Fishing: Paul Seaten

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

Peter Blake
Area E fisherman
Cordova Alaska

LEGAL SERVICES

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

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

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

MEMORANDUM

October 15, 2003

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

TO: Senator Ben Stevens
Attn: Cheryl Sutton

FROM: George Utermohle *GU*
Legislative Counsel

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

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

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

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

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

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

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

LEG LEGAL

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

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

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

...

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

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

...

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

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

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

(1) fishing more than one type of gear;

(2) fishing in more than one administrative area;

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Ben Stevens
October 15, 2003
Page 5

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

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

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

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

If I may be of further assistance, please advise.

GU:med
03-683.med

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

MEMORANDUM

STATE OF ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION

TO: Senator Ben Stevens
Attn: Cheryl Sutton

DATE: October 24, 2003

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

FROM: Bruce Twomley, Chairman
 Commercial Fisheries Entry Commission

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

Introduction

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

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

Discussion and Analysis

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

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

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

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

¹ Work Order No. 23-25 1329.

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

³ 5 AAC 39.115.

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

⁵ 79 SLA 1973.

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

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

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

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

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

⁶ Legislative counsel opinion at 4.

⁷ Hebert at 864.

⁸ 20 AAC 05.310(d); 20 AAC 05.320(b).

⁹ Hebert at 866-867 (footnote omitted).

Conclusion

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

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

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

BRISTOL BAY NATIVE ASSOCIATION

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

Tribal Councils
Served by BBNA:

Aleknagik

Chignik Bay

Chignik Lagoon

Chignik Lake

Clarks Point

Curyung

Egegik

Ekuk

Ekwak

Igluvik

Iliamna

Ivanof Bay

Kanatak

King Salmon

Kokhanok

Kotiganeh

Levelock

Manokotak

Naknek

New Smyahok

Newhalen

Nondalton

Pedro Bay

Perryville

Pilot Point

Port Heiden

Portage Creek

South Naknek

Topik

Twin Hills

Ugashik

February 13, 2003

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

Dear Co-Chairs Gary Stevens & Peggy Wilson:

VIA FAX: (907) 465-3517

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

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

Bristol Bay Commercial Salmon Drift Permits:

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

Bristol Bay Commercial Salmon Setnet Permits:

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

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

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

Page 2

Letter to House Special Committee on Fisheries

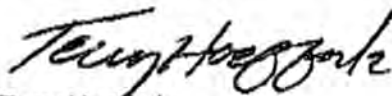
February 13, 2003

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

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

Sincerely,

BRISTOL BAY NATIVE ASSOCIATION



Terry Hoeflerle,
Chief Executive Officer

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



Cordova District Fishermen United

P.O. Box 939

Cordova, Alaska 99574

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

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

Feb. 11th, 2004

Dear Representative Seaton and Members of the Committee,

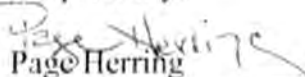
Cordova District Fishermen United, representing the fishing fleet of Area E-Prince William Sound and the Copper River Flats- **supports HB 415.**

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

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

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

Respectfully,


Page Herring

Executive Director
Cordova District Fishermen United

[Fwd: Fw:]

Subject: [Fwd: Fw:]

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

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

Organization: Alaska State Legislature

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

Subject: Fw:

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

From: Schactler <schactler@alaska.com>

To: representative_Paul_Seaton@legis.state.ak.us

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

From: Schactler

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

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

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

Dear Representative Seaton,

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

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

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

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

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

overcapitalization. It works very well in the herring fisheries!

Sincerely,

Bruce Schactler
At-Large UFA board member

Subject: Concerning Bill 415

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

From: Harvey Goodell <hegoodell@hotmail.com>

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

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

To:

The House Special Committee on Fisheries

Chair Rep. Seaton and members

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

Harvey Goodell

Kodiak Island Salmon setnet fisherman



Alaska State Legislature

Please enter into the record my testimony to the

House Fisheries

committee name

Committee on

HB 415

, dated

2-27-04

bill # / subject

public hearing date

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

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

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

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

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

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

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

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

Signed: Steve Webb
Testifier

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

Representing (optional)

PO Box 1127

Kasilof, AK 99610

Address

262-5856

Phone number

MEMORANDUM

STATE OF ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION

TO: Chairman Paul Seaton
House Special Committee on Fisheries

DATE: February 25, 2004

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

FROM: Bruce Twomley, Chairman
Commercial Fisheries Entry Commission

SUBJECT: HB 415

INTRODUCTION

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

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

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

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

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

¹ 5 AAC 39.115.

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

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

⁴ CFEC Options paper.

CONSIDERATIONS

1. BRIEF HISTORY AND PURPOSE OF THE RULE

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

2. LEGAL STATUS OF THE RULE

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

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

⁶ Hebert at 866-867.

3. UNFISHED ENTRY PERMITS

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

CONCLUSION

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

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

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

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

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4. Authorize an Alternative Gear Type

a. Description

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

b. Potential Benefits

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

c. Potential Drawbacks

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

d. How to Undertake

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

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

a. Description

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