

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

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Research fuels fear of gene-altered fish

By Sandi Doughton

Seattle Times staff reporter

In a head-to-head battle for food, normal coho salmon lose out to their genetically engineered cousins, says a new study that adds to the controversy over what critics call "frankenfish."

Not only did the aggressive, gene-modified salmon gobble up most of the feed when raised in tanks with ordinary salmon, but they also gobbled up their weaker competitors — including their own type, British Columbia scientists reported in yesterday's online edition of the Proceedings of the National Academy of Sciences.

The results were often dramatic population crashes, with only one or two of the genetically modified fish surviving in tanks that originally held 50 animals, said lead author Robert Devlin of Fisheries and Oceans Canada.

"When food supplies are low, transgenic (genetically modified) fish have a very significant effect on the population," he said, adding the caveat that laboratory experiments may not predict what would happen if bioengineered salmon escaped into the environment.

But that's a question that needs to be answered soon.

Massachusetts-based Aqua Bounty Farms has asked the U.S. Food and Drug Administration for approval to market what could be the first transgenic food fish: Atlantic salmon that grow twice as fast as normal fish. Aqua Bounty hopes to raise its transgenic salmon in coastal net pens in the United States and market the eggs around the world, said Joseph McGonigle, vice president for external affairs. "We are constantly hearing from companies that are interested in it," he said.

Faster-growing salmon would cut costs dramatically for fish farmers and lead to lower prices in the supermarket, McGonigle said.

Consumer groups, commercial fishermen and some scientists say studies such as Devlin's show the potential ecological consequences of unleashing man-made breeds of fish.

"We should not be taking a risk like this at a time when native salmon stocks are already in trouble," said Doug Gurian-Sherman, senior scientist at the Center for Food Safety, a consumer group based in Washington, D.C.

A 2002 National Academy of Sciences report expressed moderate concern that genetically engineered fish might pose risks to consumers if, for example, a person who was allergic to scallops ate fish with a scallop gene spliced into its DNA. But experts agreed that the biggest danger is that some of the gene-modified fish would inevitably escape into the environment.



⊕enlarge STEVE RINGMAN / THE SEATTLE TIMES

Although gene-modified fish grow much faster than normal coho salmon, they don't get much bigger at maturity, researchers say.

Hundreds of thousands of Atlantic salmon have escaped into Northwest waters from salmon farms over the past several years when floating pens were ripped apart by storms or marauding sea lions.

The worst-case scenario involving transgenic fish is the "Trojan gene" hypothesis proposed by Purdue University geneticist William Muir: Genetically engineered salmon outcompete normal fish for food and mates, leading to less-hardy hybrids and the eventual extinction of the entire wild population.

McGonigle says the net pens would hold only sterile females, eliminating the possibility that escapees could breed in the wild. Several other studies, including some in Devlin's lab, have shown that the genetically engineered fish aren't likely to survive well outside of captivity because they're more susceptible to disease and oblivious to predators.

"We realize we have no chance of getting approval unless we can clearly demonstrate these fish are completely sterile, and they represent no genetic threat and no behavioral threat, in terms of competition for resources," he said.

Washington's Fish and Wildlife Commission banned genetically engineered fish from marine net pens, but the state has no rules that bar them from land-based tanks or fresh water, said John Kerwin, who manages the state's hatchery program. Oregon has similar restrictions, while California bans the creatures entirely — including the fluorescent Glo Fish, a genetically engineered aquarium fish that went on sale last year.

Devlin's research for the Canadian government is attempting to unravel the possible impacts of genetically engineered food fish before they're approved.

"We're just starting to gather the kinds of laboratory information which we hope will provide us with understanding about these animals," he said.

He works with coho salmon that overproduce growth hormone as a result of genetic tinkering. Aqua Bounty's Atlantic salmon were engineered in a similar way, using genes from chinook salmon and a species called ocean pout.

In both cases, the genetically engineered fish grow much faster than ordinary fish but don't get much bigger at maturity.

At 1 year of age, Devlin's gene-engineered fish are 10 times the size of ordinary coho.

For the study reported yesterday, Devlin and his colleagues manipulated the amount of food available to the fish. When food was abundant, normal and genetically modified fish coexisted well. It was only when

food was scarce that competition turned deadly for the normal fish.

While populations made up only of normal fish were able to ride out food shortages, mixed populations invariably crashed.

But the experiments also revealed another wrinkle: Populations made up of only genetically engineered fish also crashed when food supplies were low.

Does that mean transgenic fish might pose little risk if they escaped into the environment because they would die out when food supplies drop?

It's possible, Devlin said.

"If you had a small population, where the fish couldn't migrate out of the area, transgenic fish might eat themselves out of house and home and there would be no risks," he said.

But on the other hand, if numbers boomed when food was plentiful, the bioengineered fish could devastate normal fish in the cutthroat competition that would ensue.

McGonigle says he hopes to have an FDA ruling within the next two years, but the target date has been pushed back repeatedly.

Because of regulations to protect businesses, the agency's evaluation process is largely secret, leading critics to call for a new system that is open and gives more authority to environmental and wildlife agencies.

"FDA has absolutely no experience with these kinds of issues," said Gurian-Sherman, the Center for Food Safety scientist. "And we know nothing about what they're doing."

Sandi Doughton: 206-464-2491 or sdoughton@seattletimes.com

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Salmon Spawn Rainbow Trout

Scientists in Japan have engineered Asian salmon to produce the eggs and sperm of North American trout, an unprecedented bit of reproductive manipulation that may someday allow researchers to recruit common critters to replenish dwindling endangered species.

The team dissected newly hatched embryos of rainbow trout and removed small batches of "primordial germ cells." Those eventually become eggs or sperm in response to signals they receive from the developing fish.

The researchers, from the Tokyo University of Marine Science and Technology, injected those germ cells into newly hatched Pacific salmon embryos. Some of the cells made their way into the developing ovaries and testes of the recipient salmon, where they matured into rainbow trout eggs and sperm.

A year later, the team collected the milt – the cloud of sperm that male fish release into the water at maturity – of one of those salmon and mixed it with trout eggs. The result was a crop of purebred baby trout, sired by a salmon. (That salmon also produced salmon sperm, which when mixed with trout eggs created hybrid fish that did not survive.)

Other scientists have transplanted primordial germ cells from one fly species to another and from one bird species to another, resulting in the growth of sperm and eggs of one species inside the sex organs of the other. But the new experiment, described in the Aug. 5 issue of the journal *Nature*, marks the first such success in fish and the first to create progeny in any species.

Rainbow trout are plentiful, but the technique could help rare species. For example, salmon take one year to become sexually mature while trout take two, suggesting endangered species may be aided through reproduction by faster-breeding species.

-- Rick Weiss

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Both sides in fight over genetically modified fish are hoping this big one does not get away

By MARK HUME

UPDATED AT 2:21 PM EST

Friday, Dec 10, 2004

VANCOUVER -- They are swimming lazily in a few fish tanks right now, but Atlantic salmon that were developed in Canada may soon be the focus of the next big fight over genetically modified food.

To critics, the salmon designed to grow up to six times as fast as ordinary farmed salmon, are freaks of nature -- Frankenfish that shouldn't be allowed out of the lab.

Proponents say they're a remarkable creation that will help feed an increasingly hungry world and can reduce the environmental impact of fish farming by producing bigger fish, in less time, with less food.

"There's no question that this is the way things will go . . . this is the way salmon and many other fish will be grown in the future," Joseph McGonigle, the vice-president of Aqua Bounty Technologies, said yesterday.

His company, which has offices in the United States and Canada, has developed a fish that has trademark protection. Aqua Bounty has applied to the U.S. Food and Drug Administration for approval to market the salmon and is preparing to make a similar application in Canada, perhaps next year.

The first genetically modified fish approved in North America appeared on the market last year. The GloFish™, a pet that glows in the dark, was cleared for sale in the United States with little opposition. Some shipments were made to Canada but have stopped pending a review by Environment Canada.

But the AquAdvantage salmon is a more complicated product; it is meant for human consumption, and it could survive in the wild.

"If these salmon get into fish farms, it will only be a matter of time before they get out," the Sierra Club's Vicky Husband said. "All you need is to have one escape and then they are interbreeding with the wild populations. It's horrific. We say absolutely no way to these fish."

Theresa Rothenbush of the Raincoast Conservation Society, said "consumers would be in shock if this fish was to ever get to market."

Mr. McGonigle said much of the criticism he hears is unfair and the Frankenfish label makes him bristle. "It's just silly. This is professional spin-doctoring going on."

AquAdvantage salmon are like any other Atlantic salmon, except for the genetic change that allows them to grow more rapidly, he said.

Has he ever eaten one?

"I have. I've had them smoked. They are absolutely indistinguishable from any other farmed fish. . . They are perfectly good-looking fish. I mean they are normal."

The AquAdvantage salmon were developed by Canadian scientists trying to help farmed Atlantic salmon survive winter. Those experiments, which involved introducing fish anti-freeze protein genes into Atlantic salmon from flounders, led to a growth breakthrough when genes from Chinook salmon (a Pacific species) and pout (a type of cod) were introduced.

In the early stages of life, the AquAdvantage salmon grow four to six times as fast as unaltered fish. They then slow down and approach the normal rate of growth. The early growth spurt could allow fish farmers to get fish to market size in 18 months rather than 36 months.

AquAdvantage salmon are found only in experimental fish tanks in the company hatchery in Prince Edward Island and at Memorial University in Newfoundland. A similar type of genetically modified salmon is also under study in a federal government lab in Vancouver.



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Industry leery of genetically altered fish

■ **SALMON:** Would fast-growing "Frankenfish" imperil wild stocks?

By **MATT VOLZ**
The Associated Press

JUNEAU — Producers of a genetically modified salmon that would speed the fish's growth to maturity expect their nine-year federal application to sell the fish in the United States to be decided within a year.

That has renewed concern among commercial fishermen who, competition aside, wonder what would happen if the genetically modified fish escaped their pens and mingled with wild salmon.

"They show up in rivers in Alaska, they show up in our fishing nets and already we fear Atlantic salmon as an invasive species in our productive salmon spawning waters," said Mark Vinsel of the United Fishermen of Alaska. "When you add in the genetically modified fish, I think the concerns are multiplied."

Genetically modified, or transgenic, fish are already being denounced by fishermen and anti-fish-farming states such as Alaska as unhealthy, uneconomic and dangerous to native species of salmon.

See Page B-2, **DESIGNER FISH**

B-2 Wednesday, March 9, 2005

Anchorage Daily News

DESIGNER FISH: *Altered salmon*

Continued from B-1

"I'd prefer if you'd call it Frankenfish," said Alaska Sen. Kim Elton, a Democrat from Juneau. "We don't know what additional challenges might accrue because people are changing the genetics of fish."

A transgenic fish's genetic structure is changed at the molecular level, in this case to allow a mature salmon to grow from an egg in 14-16 months instead of the 22-30 months it takes wild salmon to grow. If approved, it would be the first genetically modified animal allowed for food consumption in the United States.

The earliest that genetically modified salmon could hit U.S. and Canada markets would be the next decade, after permits for selling and raising the fish in both countries are approved.

Aqua Bounty Technologies, based in Waltham, Mass., is nine years into the application process with the Food and Drug Administration, and spokesman Joe McGonigle said he expects a decision within a year.

FDA spokeswoman Rae Jones acknowledged by e-mail Aqua Bounty's pending application, but said: "We cannot provide any information about if or when it will be approved, nor can we provide any information about where it is in the approval process."

Aqua Bounty plans to sell genetically modified fish eggs to fish farms. McGonigle said the concerns of interbreeding with wild salmon are unfounded — sterilized transgenic fish could actually reduce the chance of an invasive species hurting the wild salmon populations of the Pacific Northwest.

"You're sitting at the epicenter of hostility to salmon farming," McGonigle said of Alaska. "The single most significant issue is the risk of interbreeding. The only way you can control that is to sterilize the fish."

Sterile or not, Vinsel said, an escaped transgenic fish would still be competing with wild fish for food and to mate.

"I can't honestly take that seriously," McGonigle said, saying the number of wild salmon that

return to native streams outnumber the farmed fish many times over.

McGonigle said he does not expect the genetically modified salmon to compete directly with wild salmon in the market, but contends the products can coexist. Consumer and price tiers will likely be established, with wild salmon at the top and the less expensive and more plentiful transgenic fish at the bottom.

The genetically modified salmon would make it easier for fish farmers to have better control of their stocks and even out periods of gluts and scarcity, McGonigle said.

"Nobody wants to see the prices fall, not to where it becomes difficult for people to make a living," he said.

In Alaska, lawmakers are already preparing for the introduction of genetically modified fish to the market. A bill by Elton and state Sen. Gary Stevens, a Republican from the fishing community of Kodiak, would require labeling genetically modified fish.

Elton says his proposal is complementary to past legislation that required farmed fish to be labeled in Alaska restaurants and shops. Those bill were products of a legislative salmon task force for which the goal was to protect one of the state's biggest industries.

"Hopefully, it sets a pattern," Elton said. "As frequently happens, if one state does something, another state says, 'That's a good model.'"

Elton and Stevens' bill has passed the state Senate and is being considered by the state House.

Aqua Bounty says foods produced through biotechnology are not required to be labeled unless an allergen is introduced, the nutritional content is altered or the result of modification is a new food item.

But the company plans to require its licensees to label their fish, saying consumers are more likely to accept the fish if they have the facts, and for brand recognition.

"Branding is essential for our fish, or for Alaska or for anyone else," McGonigle said.



"THAT MUST BE ONE OF THOSE FARMED SALMON
WE'VE BEEN HEARING ABOUT."

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FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 25
 (S) Publish Date: 2/9/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to labeling and identification of RDU CIVIL
genetically modified fish and fish products." Component Environmental
 Sponsor Senator Elton
 Requester Senate Resources Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends the Alaska Food, Drug, and Cosmetic Act, AS 17.20.040 by adding genetically modified fish or fish product to the list of misbranded food, unless conspicuously labeled or identified as such. Legislation at the federal level already prohibits the sale of any genetically modified foods.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhetee, Director Phone 465-3673
 Division Administrative Services Division Date/Time 2/2/05 3:07 PM
 Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General Date 2/2/2005
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 25
(S) Publish Date: 2/9/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
Title Genetically modified fish RDU Environmental Health
Component Food Safety and Sanitation
Sponsor Senator Elton
Requester (S) Labor & Commerce Component No. 2343

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
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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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 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)

Under current federal rules, genetically modified fish and fish products cannot be used or sold in the United States. Under the current FDA rules, this bill will have no fiscal impact on the department. Should the FDA allow the sale and use of genetically modified fish and fish products in the future, increased inspection and compliance resources will be required to comply with the provision of this bill.

Prepared by: Kristin Ryan, Director Phone (907) 269-7644
Division: Environmental Health Date/Time 1/28/05 4:04 PM
Approved by: Kurt Fredriksson Date _____
Agency: Department of Environmental Conservation

SCOMM

138:24

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Senate President

SPONSOR STATEMENT

Senate Bill 113

"An Act relating to entry into and management of Gulf of Alaska groundfish fisheries."

Senate Bill 113 provides statutory authority for the Board of Fisheries (BOF) and the Commercial Fisheries Entry Commission (CFEC) to jointly develop a Dedicated Access Privilege (DAP) program for Gulf of Alaska (GOA) groundfish as species, areas, and gear types warrant. The legislation provides for a full public process and grants appropriate authorities to the Commission and Board for development and implementation of a form of fisheries limitation for state water Gulf groundfish fisheries reflective of historic involvement in these fisheries. It does not predetermine whether a fishery will become a DAP fishery or how it will be managed.

The Alaska Board of Fisheries has led a joint effort to explore how best to respond to the changes facing Gulf of Alaska groundfish fisheries. A diverse fishing fleet utilizing different gear types and vessel sizes harvest multiple species of migratory groundfish from 0-3 miles off the Alaska Gulf coast. The GOA groundfish fisheries in state waters from 0-3 miles are comprised of two distinct components: a state waters fishery managed under an established Guideline Harvest Level (GHL), and a parallel fishery managed under a federal Total Allowable Catch (TAC). Efficiency has increased in many of these fisheries resulting in shortened seasons, an increased race for fish, decreased quality, and lost opportunities for value added products. The consequences are lower ex-vessel values. In addition, the federal government, through the North Pacific Fishery Management Council (NPFMC) is "rationalizing" the groundfish stocks and fisheries under its jurisdiction from 3-200 miles. This is likely to result in additional fishing effort and exacerbation of existing problems in the 0-3 mile state waters.

Because the Gulf of Alaska groundfish fisheries in state waters are managed by harvest limits, a dedicated access privilege program (DAP) may be feasible and appropriate for managers to meet harvest objectives. It may better serve the goals of resource conservation and prevention of economic distress among fishermen and those dependent upon fishermen for a livelihood. It will also promote the safety of those involved in prosecuting these fisheries.

With the passage of Senate Bill 113, a lengthy, public process will ensue. ADF&G collects and CFEC holds all the fisheries harvest and vessel participation information. This information will have to be compiled and analyzed for a fishery being considered as a potential DAP fishery. Both the CFEC and the BOF have extensive public hearing processes and the public will have ample opportunity to participate in the development of any potential DAP program for GOA groundfish fisheries.

Senate Bill 113 protects the state's interests. It provides an important new tool for ensuring our state water groundfish fisheries can be developed to maximize the state's interests and protect the resource and those who depend upon it.

ALASKA STATE LEGISLATURE



Official Business

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Juneau, AK 99801-1182

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Senator Ralph Seekins, Vice-Chair

Senator Ben Stevens

Senator Kim Elton

Senator Fred Dyson

Senator Bert Stedman

Senator Gretchen Guess

Letter of Intent – April 25, 2005

SB 113: Gulf of Alaska Groundfish Fishery

The Memorandum of Understanding between the Alaska Board of Fisheries (BOF) and the Alaska Commercial Fisheries Entry Commission (CFEC), with respect to the Gulf of Alaska Groundfish Fisheries, is hereby adopted as a Letter of Intent.

A copy of that four page document, signed by Bruce Twomley, Chair of the CFEC and Arthur N. Nelson, Chair of the BOF, dated April 5 and 6 2005 respectively, is attached and made part of this document.

Memorandum of Understanding between the Alaska Board of Fisheries and the Alaska Commercial Fisheries Entry Commission with respect to the Gulf of Alaska Groundfish Fisheries

SB113 (the Act) is now pending before the Alaska State Legislature and, if passed, would authorize (but not mandate) a dedicated access privilege program (as defined in the Act) as a new, alternative form of limited access potentially applicable for limiting access to the Gulf of Alaska groundfish fisheries within State of Alaska jurisdiction.

AS 16.43.530(a) [Sec. 5, lines 4-8] provides in relevant part:

If the commission finds that entry into a Gulf of Alaska groundfish fishery should be limited on the basis of dedicated access privileges to serve the purposes of this chapter, the commission may adopt regulations, developed in conjunction with the Board of Fisheries, that are necessary to establish and implement a dedicated access privilege program for that fishery.

This Memorandum of Understanding (MOU) between the Alaska Board of Fisheries (the Board) and the Alaska Commercial Fisheries Entry Commission (the Commission or CFEC) sets forth the agreement between the Board and the Commission outlining the procedure by which the two bodies intend to develop regulations in conjunction with each other. The purpose of this MOU is to provide a working definition of the phrase "in conjunction with" as understood by the two bodies. When this agreement is finalized, the Board and the Commission will present the agreement to the legislature and propose the agreement be incorporated into the legislative history of the Act.

This agreement will take effect on passage of the Act.

In this agreement, references to the Board and to the Commission include representatives of each body delegated to ensure the outlined procedure may go forward in a timely fashion not restricted by the public meeting schedule of either full body.

In this memorandum, the term fishery refers only to Gulf of Alaska groundfish fisheries as specified in AS 16.43.530(a).

To outline the steps in the process by which the Board and the Commission will develop regulations for the Gulf of Alaska Groundfish fisheries under the Act, the Board and the Commission agree as follows.

(1) As practicable, the Board will continue to explore options through the Gulf of Alaska Groundfish Rationalization Committee process and will continue to include the Commission or its representative in such meetings.

(2) As soon as practicable, the Board, in consultation with the Alaska Department of Fish and Game (ADF&G), will identify for the Commission the particular fisheries the Board believes to be most in need of immediate review. Similarly, the Board will identify those fisheries the Board believes do not require limited access at this time. The Board may also transmit any guidance the Board wishes to offer with respect to the fisheries.

Neither the Board nor the Commission will be proposing limited access for a fishery in the absence of an express request from participants in the fishery to do so. This practice pre-exists this agreement: in more than 20 years, the Commission has not proposed limitation of any fishery without a specific request from the public to do so, and the commission has turned down many requests it has received

(3) In light of the information presented by the Board and ADF&G, the Commission will develop data and analyses of the fisheries and generally examine the fisheries under the standards set forth in the Act.

(4) When the Commission develops preliminary findings or a proposal for any of the fisheries, prior to making a public proposal for the adoption of regulations, the Commission will present its preliminary

findings or proposal to the Board for the Board's review and guidance under the standards set forth in the Act. The Board and the Commission will meet to discuss these matters. The Board may concur in the Commission's preliminary findings or proposal. In the event the Board takes issue with any preliminary findings or the proposal, the Board shall specify for CFEC how the particular matters fail to meet the standards set forth in the Act or other policy goals of the Board. Upon notice of such issues, CFEC will reconsider any of its preliminary findings or its proposal and report the results of its reconsideration to the Board.

(5) When CFEC proposes regulations for a fishery, during the following public comment period, the Board and CFEC will hold joint hearings to receive public comment on the proposal. In addition, the Commission will share any written public comment it receives with the Board.

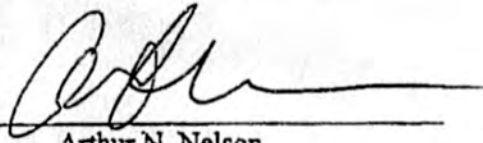
(6) In addition to the Board's opportunity to comment under the procedures of paragraphs (2), (4), and the following paragraph (7), the Board is free to comment throughout the public comment period.

(7) Following the public comment period, based on public comment received, the Commission will develop and present to the Board its preliminary findings with respect to the proposed regulations including proposed modifications of the original proposal. The Board may concur in these preliminary findings. In the event the Board takes issue with any of the preliminary findings, the Board may ask the Commission to reconsider its preliminary findings specifying where they failed to serve standards set forth in the Act or other policies of the Board. In the event the Board raises such issues, the Commission will reconsider any of its preliminary findings.

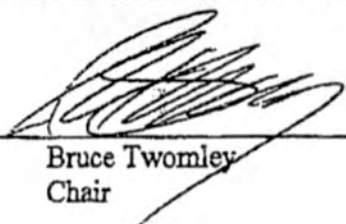
(8) In making their final decision on proposed regulations for a fishery, the Commission will fully consider any comments by the Board and will specifically address those comments in writing in the Commission's rationale supporting its final decision.

(8) Future Commission regulatory proposals pursuant to the Act will be governed by the procedures outlined herein.

Alaska Board of Fisheries

by  4/6/2005
Arthur N. Nelson Date
Chair

Alaska Commercial Fisheries Entry Commission

by  4/5/2005
Bruce Twomley Date
Chair

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Mail Stop 3101

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

MEMORANDUM

May 5, 2005

SUBJECT: Sectional summary of CSSB 113(RES); An Act relating to entry into and management of Gulf of Alaska groundfish fisheries (Work Order No. 24-LS0306X)

TO: Representative William Thomas
Attn: Ian Fisk

FROM: George Utermohle 
Legislative Counsel

You have requested a sectional summary of CSSB 113(RES); An Act relating to entry into and management of Gulf of Alaska groundfish fisheries.

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 sets out the findings of the legislature and a statement of the legislative purpose for the bill.

Section 2 of the bill amends AS 16.05 by adding a new section (AS 16.05.740) to provide that the holder of a dedicated access privilege, issued by the Alaska Commercial Fisheries Entry Commission, is entitled to share in the overall harvest of a Gulf of Alaska groundfish species authorized by the Board of Fisheries, to the extent authorized by the privilege. The Board of Fisheries is also authorized to allocate portions of the harvestable surplus of Gulf of Alaska groundfish species to associations of holders of dedicated access privileges. In considering whether to approve an allocation of a Gulf of Alaska groundfish species, the board is to seek to promote specific fisheries, economic, and social goals.

Section 3 of the bill amends AS 16.43.210(a) to provide that the Alaska Commercial Fisheries Entry Commission shall issue interim-use permits under this subsection for fisheries that are not subject to a dedicated access privilege program.

Section 4 of the bill amends AS 16.43.210 by adding a new subsection to provide that an interim-use permit for a fishery subject to a dedicated access privilege program may be issued only to a person who qualifies for the permit under regulations adopted by the commission.

Section 5 of the bill amends AS 16.43 by adding a new article relating to the Gulf of Alaska groundfish fisheries.

Sec. 16.43.530 provides that the Alaska Commercial Fisheries Entry Commission may adopt regulations, developed in conjunction with the Board of Fisheries, to establish and implement a dedicated access privilege program for a Gulf of Alaska groundfish fishery, if the commission finds that a dedicated access privilege program is necessary to limit entry into the fishery in order to achieve the purposes of AS 16.43. The goals that the commission is to promote, and the findings that the commission is to make, in adopting a dedicated access privilege program are set out. The subject matter to be addressed in regulations establishing a dedicated access privilege program is set out. The terms "groundfish" and "Gulf of Alaska groundfish fishery" are defined. "Gulf of Alaska groundfish fishery" is defined to mean pelagic trawl, non-pelagic trawl, pot, or longline gear, but not to include mechanical jigging machine gear.

Sec. 16.43.535 provides that a dedicated access privilege is a use privilege that can be modified or revoked by the commission or by law without compensation. A dedicated access privilege may not be pledged, mortgaged, encumbered, attached, distrained, or sold on execution or other process or order of a court. The grant of authority for the commission to establish a dedicated access privilege program does not limit the statutory powers of the Board of Fisheries. The Alaska Commercial Fisheries Commission and the Department of Fish and Game may release information on the catch history of a vessel to the owner of the vessel.

Sec. 16.43.540 provides that the commission may establish fees for the application, issuance, renewal, and transfer of dedicated access privileges. The commission may also charge interest on overdue fees.

Sections 6 - 14 of the bill make technical changes to AS 16.43.945, 16.43.960(a), 16.43.960(b), 16.43.960(c), 16.43.960(g), 16.43.970(b), 16.43.970(d), 16.43.970(e), and 16.43.970(j)(2) to conform to authorization of a dedicated access privilege program under sec. 5 of the bill.

Section 15 of the bill amends AS 16.43.990 by adding a definition of "dedicated access privilege."

GU:lmb

05-177.lmb

LEGAL SERVICES

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#1 rec'd
3-14-05
11:45 am

MEMORANDUM

March 14, 2005

SUBJECT: Constitutionality of SB 113, an Act relating to entry into and management of Gulf of Alaska groundfish fisheries (Work Order No. 23-LS0306\L)

TO: Senator Tom Wagoner
Attn: Mary Jackson

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether SB 113, relating to entry into and management of Gulf of Alaska groundfish fisheries, is constitutional. This memorandum is in response to your question.

SB 113 would authorize the Alaska Commercial Fisheries Entry Commission to establish a dedicated access privilege system for the Gulf of Alaska groundfish fisheries. A dedicated access privilege system is a form of commercial fisheries limited entry. The precise nature of the dedicated access privilege system will be determined by the commission at a later time. The key element of a dedicated access privilege system is the allocation of a privilege to harvest a specified portion of the allowable harvest of a groundfish species. It is the allocation of a privilege to an individual to harvest a specified portion of the allowable harvest that may raise significant issues under provisions of the Alaska Constitution.

An entry permit issued under AS 16.43 is a grant of an exclusive right of fishery that was specifically authorized when the "no exclusive right of fishery" section of the Alaska Constitution was amended in 1971 to allow a limited entry system to control entry into the state's commercial fisheries.

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

Article VIII, sec. 15, Constitution of the State of Alaska (emphasis added).

The second sentence of the no exclusive right of fishery section would seem to permit any form of limited entry, including a dedicated access privilege system, that would promote resource conservation or prevent economic distress among fishermen and those who depend on fishermen for their livelihood. However, the 1971 amendment must be construed in light of the specific language of the amendment and within the context of the common use section (art. VIII, sec. 3)¹, uniform application section (art. VIII, sec. 17),² and the equal protection clause (art. I, sec. 1)³ of the Alaska Constitution, and the first sentence of the no exclusive right of fishery section.

The Alaska Supreme Court recognizes that limited entry into commercial fisheries is inconsistent with the common use section of the Alaska Constitution. State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983). The court also recognizes that the inconsistency between limited entry and the common use section, equal protection clause, or other provisions of the Alaska Constitution was largely cured by the 1971 limited entry amendment. Id. at 1189 - 90. However, the court also found that the 1971 limited entry amendment did not justify every possible limited entry scheme that fostered resource conservation and promoted economic security for fishermen: "whatever system of limited entry is imposed must be one which, consistent with a feasible limited entry system, entails the least possible impingement on the common use reservation and on the no exclusive right of fishery clause." Id. at 1191 (emphasis added); see also, Johns v. Commercial Fisheries Entry Commission, 758 P.2d 1256, 1266 (Alaska 1988). Thus, the 1971 limited entry amendment must be construed narrowly so as to not unreasonably

¹ Article VIII, sec. 3, Constitution of the State of Alaska states:

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

² Article VIII, sec. 17, Constitution of the State of Alaska states:

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

³ Article I, sec. 1, Constitution of the State of Alaska states:

Inherent Rights. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

impinge on common use any more than is necessary to regulate entry into fisheries. Johns, 758 P.2d at 1266. For that reason, the state's current limited entry system only limits the right to participate in a commercial fishing user group. Those persons who obtain an entry permit have the right to participate in commercial fishing in common with all other permit holders. Each permit holder is free to catch as much of the available resource as possible given the permit holder's expertise, equipment, and dedication to fishing. No permit holder has a private right, interest, or expectancy to any portion of a fishery resource.

The direct allocation of fishery resources to individual fishermen, based on the fishermen's catch history in the fishery, impinges on the common use section and "no exclusive right of fishery" section. Under the common use doctrine, fishery resources are "owned" or held by the state in trust for all citizens of the state until the resource is lawfully reduced to physical possession of the fisherman. Isakson v. Rickey, 550 P.2d 359, 367 (Alaska 1976). Until the fish is in the physical possession of the fisherman, the fisherman has no claim to the fish. The creation of private interests in a fishery resource before the resource is caught by a fisherman seems to be the kind of special privilege that the common use and "no exclusive right of fishery" sections were intended to prohibit.⁴ The 1971 limited entry amendment of the "no exclusive right of fishery" section did not make special privileges, such as the proposed dedicated access privileges, constitutional.⁵ The 1971 limited entry amendment only allows the state to limit entry into the commercial fishing user groups only as necessary to achieve certain conservation and socio-economic goals. The amendment did not authorize the state to grant other kinds of exclusive rights or special privileges of fishery that were not directly related to limiting access to a commercial fishing user group. Because a dedicated access privilege system

⁴ The Natural Resources Committee of the Alaska Constitutional Convention explained the purpose of the common use clause in part, as follows:

Game fish, wildlife, fisheries, and water are recognized as belonging to the state so long as in a natural state. These resources are subject to a private right only when they have been acquired or utilized as provided by law. For example, a private person has no right to buy and sell wild animals in their natural state, but once an animal is taken in compliance with law, it becomes the property of the taker, subject to use or disposition within the law

⁶ Proceedings of the Alaska Constitutional Convention, Appendix 5, Proposal 8 at 75; Proposal 8A at 98. (Emphasis added.)

⁵ The common use section "mandates that limited entry be achieved through the least possible 'privatization' of the common resource." Ostrosky, dissent, 667 P.2d at 1196 (emphasis added).

Senator Tom Wagoner
March 11, 2005
Page 4

also allocates rights to a specific portion of the harvest of a fishery resource to individuals, it goes beyond limiting access to the right to fish.

The Alaska Supreme Court has not established precise criteria for determining whether a limited entry system impinges too much on the open access, equal rights, and no exclusive rights of fishery provisions of the Alaska Constitution though the Ostrosky and Johns cases provide some guidance.⁶ The court may find that a dedicated access privilege system is consistent with the limited entry amendment to the constitution, though there is a significant possibility that the court may find that a dedicated access privilege system impinges too much on the other "equal access" provisions of the Alaska Constitution and thus, is not permissible under the Alaska Constitution.

If the Alaska Supreme Court finds that the Alaska Constitution does not allow a state dedicated access privilege system then the Alaska constitution must be further amended to specifically authorize a dedicated access privilege system.

If I may be of further assistance, please advise.

GU:jad
05-154.jad

⁶ The Grunert case, which currently is awaiting a written decision by the Alaska Supreme Court, may also provide additional guidance. Grunert v. State of Alaska, Alaska Supreme Court case no. S-10841.

"emailed to define" 3/14/05
gmm

Request for legislative legal opinion Re: SB 113
3/11/2005

Question

In light of the issues addressed in the Background section below, would a dedicated access privilege program under SB 113, that is well constructed to meet the requirements of Article VIII, Section 15, of the Alaska Constitution and Johns v. CFEC, 758 P.2d 1256 (Alaska 1988), be likely to withstand a legal challenge under Article VIII of the Alaska Constitution?

Background

(1) Alaska's Existing License Limitation System

Although relatively severe in its operation, Alaska's existing License limitation program has been upheld in the face of serious challenges under the State Constitution. *See, for example, State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983).

A primary goal of Alaska's existing license limitation program is to issue no more than the maximum number of permits in a limited fishery. AS 16.43.270. To avoid issuing more than the maximum number of permits, all eligible applicants are ranked against one and other based on their dependence on the fishery. At the end of the process, permanent entry permits are issued to applicants only at or above a particular point level. Conversely, all other applicants one (1) or more points below the issuance level are denied. AS 16.43.260 and AS 16.43.270. Thus, under the existing license limitation system, issuing and denying permits is a severe all or nothing determination: an applicant is either finally in or out of the fishery.

In order to meet the requirements of Alaska's constitution, and, in particular, Article VIII, Section 15:

a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely prevention of economic distress to fishermen and resource conservation.

Johns v. CFEC, 758 P.2d 1256, 1266 (Alaska 1988) [citation omitted].

Additionally, Article VIII of Alaska's Constitution is better served when more participants can be included in a fishery rather than fewer. As the Alaska Supreme Court observed in State v. Hebert, 803 P.2d 863, 867 (Alaska 1990):

Further, we note that the regulation, if anything, furthers the interest underlying [Article VIII,] section 3's common use mandate. The board found that the number of fishermen probably would increase under the super exclusive use regulation, thus making it possible for more rather than fewer people to participate in commercial herring fishing.

Despite these operational and constitutional constraints, the state has successfully defended its existing license limitation program when it adopted the lowest possible maximum number for a limited fishery to serve conservation needs. Johns v. CFEC, 758 P.2d 1256 (Alaska 1988); Simpson v. State, CFEC, 101 P.3d 605 (Alaska 2004).

(2) A Well-Constructed Dedicated Access Privilege Program under SB 113

In contrast, a dedicated access privilege program under SB 113 would not be tied to a particular maximum number and many applicants could be included based upon their levels of past participation, without jeopardizing conservation of the fishery. Qualified participants under a dedicated access privilege program who receive a dedicated access privilege may continue to participate in the fishery, but their individual share of the fishery would be limited to the level authorized by their dedicated access privilege.

In a fishery managed by a quota (in contrast to a salmon fishery managed by escapement), such dedicated access privileges would likely serve conservation better than a license limitation program. For example, the state's license limitation program failed to meet the conservation needs of the Northern Southeast inside sablefish fishery. Simpson v. State, CFEC, 101 P.3d 605 (Alaska 2004).

In contrast, under a dedicated access privilege program, management could better ensure guideline harvest levels for the fishery were not exceeded. There would no longer be an incentive to race for fish nor the need to maintain a short season to contain the fishing effort. Therefore, the risk of exceeding the fishery's overall quota would be substantially reduced (as compared to a license limitation fishery).

In the absence of an incentive to race competing fishermen for the fish, the season in a dedicated access privilege fishery could likely be extended. An extended, more orderly season would create an opportunity for fishermen to improve the quality of their catch and allow for more flexibility in determining when to fish in consideration of available prices and markets. In short, a dedicated access privilege would likely improve the economic value of the fishery for participants. Additionally, a more orderly and less frantic season would likely contribute to safety by creating the flexibility for participants to wait for good weather and take more time for safety precautions.

Not being tied to a maximum number of units of gear, a dedicated access privilege program would likely allow more individual participants to participate in a fishery than a license limitation program in the same fishery. SB 113 requires the state to establish measures in a dedicated access privilege program to ensure such a fishery does not become too exclusive by allowing too much consolidation of shares. In addition to placing limits on consolidation of shares, the state could--if necessary to assure constitutionality--issue additional shares for a fishery. Similarly, if transferability were chosen as the means to ensure new entrants have access to a dedicated access privilege fishery, a portion of the shares could be restricted to individual smaller blocks of shares that could only be sold as individual blocks designed to ensure entry level opportunities in the fishery. Finally, a share system allows for the incremental purchase of small quantities or shares (in contrast to the all or nothing purchase of a license in a license limitation system.)

Summary

In short, as applied to a fishery managed by quota, SB 113 would likely authorize the establishment of a limited access program that would be more inclusive of fishermen, better insure reasonable rates of economic return, and better serve conservation than the state's existing license limitation program.

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#2 read
3-14-05 3 pm

MEMORANDUM

March 14, 2005

SUBJECT: SB 113; Constitutionality of dedicated access privileges system for the Gulf of Alaska groundfish fishery (Work Order No. 24-LS0306L)

TO: Senator Tom Wagoner
Attn: Mary Jackson

FROM: George Utermohle
Legislative Counsel

You have asked whether "a dedicated access privilege program under SB 113, that is well constructed to meet the requirements of Article VIII, Section 15, of the Alaska Constitution . . . , be likely to with stand a legal challenge under Article VIII of the Alaska Constitution?" This memorandum is supplemental to my memorandum to you regarding the constitutionality of SB 113, dated March 14, 2005.

As background to your question, you have stated that: A dedicated access privilege program would not be tied to a maximum number of participants in a fishery. Qualified applicants for a dedicated access privilege would continue to participate in a fishery to the extent their dedicated access privilege. A dedicated access privilege would more likely serve conservation than would a license limitation program. A dedicated access privilege system would serve to prevent a race for fish and the need to maintain a short season to contain fishing effort and would likely improve the economic value of the fishery for participants. A dedicated access privilege program would likely allow more individuals to participate in a fishery. And, under a dedicated access privilege program consolidation of fishing privileges can be regulated and entry level opportunities in the fishery can be ensured.

Each of the points that you mention are consistent with statements the Alaska Supreme Court has made in regard to what are essential elements of a constitutional limited entry system for commercial fisheries. Each of those points would probably be viewed by the courts as supporting a entry limitation system authorized under art. VIII, sec. 15, of the Alaska Constitution and thus, would strengthen the argument that a dedicated access privilege program would be a constitutional means of regulating entry in Alaska commercial fisheries.

However, as I stated in my previous memorandum, the Alaska Supreme Court may not reach the issue of whether a dedicated access privilege program is a constitutional means

Senator Tom Wagoner
March 14, 2005
Page 2

of limiting entry into a fishery until the court has first resolved whether dedicated access privileges create an exclusive right or special privilege of fishery that is prohibited by the first sentence of art. VIII, sec. 15, of the Alaska Constitution.¹ If the Alaska Supreme Court finds that a dedicated access privilege is not a prohibited exclusive right or special privilege of fishery, then each of the points that you set out would provide support for the constitutionality of a dedicated access privilege program.

Because the precise nature of the dedicated access privilege program actually adopted by the Alaska Commercial Fisheries Entry Commission, in consultation with the Board of Fisheries, is unknown and unknowable, a more specific discussion of the constitutionality of such a system is not possible.

If I may be of further assistance, please advise.

GU:jad
05-156.jad

¹ Article VIII, Sec. 15, Constitution of the State of Alaska states (emphasis added):

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

Revised Legal Memorandum #1
(revised March 17, 2005)

There are 2 technical revisions in this memorandum.

One is at the top of the page three – the revision says “1972 limited entry amendment” and the previous said “1971 limited entry amendment”.

The second is deletion of footnote #6 – referencing the Grunert case. That case was just resolved and the decision has no application to this bill.

Mary Jackson,
3-18-05

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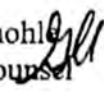
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 14, 2005
(Revised March 17, 2005)

SUBJECT: Constitutionality of SB 113, an Act relating to entry into and management of Gulf of Alaska groundfish fisheries (Work Order No. 23-LS0306L)

TO: Senator Tom Wagoner
Attn: Mary Jackson

FROM: George Utermohle 
Legislative Counsel

You have asked whether SB 113, relating to entry into and management of Gulf of Alaska groundfish fisheries, is constitutional. This memorandum is in response to your question.

SB 113 would authorize the Alaska Commercial Fisheries Entry Commission to establish a dedicated access privilege system for the Gulf of Alaska groundfish fisheries. A dedicated access privilege system is a form of commercial fisheries limited entry. The precise nature of the dedicated access privilege system will be determined by the commission at a later time. The key element of a dedicated access privilege system is the allocation of a privilege to harvest a specified portion of the allowable harvest of a groundfish species. It is the allocation of a privilege to an individual to harvest a specified portion of the allowable harvest that may raise significant issues under provisions of the Alaska Constitution.

An entry permit issued under AS 16.43 is a grant of an exclusive right of fishery that was specifically authorized when the "no exclusive right of fishery" section of the Alaska Constitution was amended in 1972 to allow a limited entry system to control entry into the state's commercial fisheries.

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Article VIII, sec. 15, Constitution of the State of Alaska (emphasis added).

The second sentence of the no exclusive right of fishery section would seem to permit any form of limited entry, including a dedicated access privilege system, that would promote resource conservation or prevent economic distress among fishermen and those who depend on fishermen for their livelihood. However, the 1972 amendment must be construed in light of the specific language of the amendment and within the context of the common use section (art. VIII, sec. 3)¹, uniform application section (art. VIII, sec. 17),² and the equal protection clause (art. I, sec. 1)³ of the Alaska Constitution, and the first sentence of the no exclusive right of fishery section.

The Alaska Supreme Court recognizes that limited entry into commercial fisheries is inconsistent with the common use section of the Alaska Constitution. State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983). The court also recognizes that the inconsistency between limited entry and the common use section, equal protection clause, or other provisions of the Alaska Constitution was largely cured by the 1972 limited entry amendment. Id. at 1189 - 90. However, the court also found that the 1972 limited entry amendment did not justify every possible limited entry scheme that fostered resource conservation and promoted economic security for fishermen: "whatever system of limited entry is imposed must be one which, consistent with a feasible limited entry system, entails the least possible impingement on the common use reservation and on the no exclusive right of fishery clause." Id. at 1191 (emphasis added); see also, Johns v. Commercial Fisheries Entry Commission, 758 P.2d 1256, 1266 (Alaska 1988). Thus, the

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² Article VIII, sec. 17, Constitution of the State of Alaska states:

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1972 limited entry amendment must be construed narrowly so as to not unreasonably impinge on common use any more than is necessary to regulate entry into fisheries. Johns, 758 P.2d at 1266. For that reason, the state's current limited entry system only limits the right to participate in a commercial fishing user group. Those persons who obtain an entry permit have the right to participate in commercial fishing in common with all other permit holders. Each permit holder is free to catch as much of the available resource as possible given the permit holder's expertise, equipment, and dedication to fishing. No permit holder has a private right, interest, or expectancy to any portion of a fishery resource.

The direct allocation of fishery resources to individual fishermen, based on the fishermen's catch history in the fishery, impinges on the common use section and "no exclusive right of fishery" section. Under the common use doctrine, fishery resources are "owned" or held by the state in trust for all citizens of the state until the resource is lawfully reduced to physical possession of the fisherman. Isakson v. Rickey, 550 P.2d 359, 367 (Alaska 1976). Until the fish is in the physical possession of the fisherman, the fisherman has no claim to the fish. The creation of private interests in a fishery resource before the resource is caught by a fisherman seems to be the kind of special privilege that the common use and "no exclusive right of fishery" sections were intended to prohibit.⁴ The 1972 limited entry amendment of the "no exclusive right of fishery" section did not make special privileges, such as the proposed dedicated access privileges, constitutional.⁵ The 1972 limited entry amendment only allows the state to limit entry into the commercial fishing user groups only as necessary to achieve certain conservation and socio-economic goals. The amendment did not authorize the state to grant other kinds of exclusive rights or special privileges of fishery that were not directly related to limiting access to a commercial fishing user group. Because a dedicated access privilege system

⁴ The Natural Resources Committee of the Alaska Constitutional Convention explained the purpose of the common use clause in part, as follows:

Game fish, wildlife, fisheries, and water are recognized as belonging to the state so long as in a natural state. These resources are subject to a private right only when they have been acquired or utilized as provided by law. For example, a private person has no right to buy and sell wild animals in their natural state, but once an animal is taken in compliance with law, it becomes the property of the taker, subject to use or disposition within the law

⁶ Proceedings of the Alaska Constitutional Convention, Appendix 5, Proposal 8 at 75; Proposal 8A at 98. (Emphasis added.)

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Senator Tom Wagoner
March 14, 2005 (Revised 3/17/05)
Page 4

also allocates rights to a specific portion of the harvest of a fishery resource to individuals, it goes beyond limiting access to the right to fish.

The Alaska Supreme Court has not established precise criteria for determining whether a limited entry system impinges too much on the open access, equal rights, and no exclusive rights of fishery provisions of the Alaska Constitution though the Ostrosky and Johns cases provide some guidance. The court may find that a dedicated access privilege system is consistent with the limited entry amendment to the constitution, though there is a significant possibility that the court may find that a dedicated access privilege system impinges too much on the other "equal access" provisions of the Alaska Constitution and thus, is not permissible under the Alaska Constitution.

If the Alaska Supreme Court finds that the Alaska Constitution does not allow a state dedicated access privilege system then the Alaska constitution must be further amended to specifically authorize a dedicated access privilege system.

If I may be of further assistance, please advise.

GU:jad
05-164.jad

Alaska State Legislature

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Senate President

SENATE BILL 113

"An Act relating to entry into and management of Gulf of Alaska groundfish fisheries."

FACT SHEET

Senate Bill 113 Does Not

- Does *not* provide processor Designated Access Privileges (DAPs) or "processor quota shares" for Gulf of Alaska groundfish in state waters
- Does *not* set a precedent for "processor quota shares" in GOA groundfish, salmon, or any other state fisheries
- Does *not* predetermine which, if any, species, areas, or gear types may have a DAP program developed
- Does *not* predetermine DAP recipients

Senate Bill 113 Does

- Does grant sufficient statutory authority to the Alaska Board of Fisheries and the Commercial Fisheries Entry Commission to adequately address fisheries development plans for Gulf of Alaska groundfish species
- Does clearly define the respective roles of the Alaska Board of Fisheries and the Commercial Fisheries Entry Commission in developing dedicated access privilege programs
- Does provide ample opportunities for the public to participate in the development of any DAP programs through the Board of Fisheries and Commercial Fisheries Entry Commission public hearing process
- Does offer the opportunity to be a more inclusive limited entry program than the existing statutes allow through the license limitation model

SB 113

"An Act relating to entry into and management of Gulf of Alaska groundfish fisheries."

ADF&G Discussion Points

March 2005

- The Gulf of Alaska (GOA) groundfish fisheries are comprised of a diverse group of users, vessels, gears, areas, and species. The fisheries are currently managed under open access, "race for fish" conditions that do not provide for maximization of the economic value of the fisheries to fishermen, processors, coastal communities, or the state, nor for addressing fisheries management issues such as bycatch reduction, habitat protection, and localized depletion, or for the safety of fisheries participants.
- Over time, because of the "race for fish," fishermen have become more efficient at harvesting, and therefore, seasons are compressed in time (and sometimes in area), exacerbating the concerns previously described. Additionally, planned rationalization of the federal GOA groundfish fisheries has the potential to further aggravate the problems inherent in the "race for fish."
- While Alaska's current Limited Entry program satisfactorily addresses fisheries and social issues in many fisheries, it may not best serve all of Alaska's diverse groundfish fisheries given the demands of today's global marketplace for consistent supply, quality, and market and product diversity.
- SB 113 provides authorities to the Board of Fisheries (BOF) and the Commercial Fisheries Entry Commission (CFEC) that allow them to explore innovative GOA groundfish fisheries allocation and management strategies that can provide solutions to the changing global marketplace and that will benefit the resource, the resource users, and the communities dependent upon them.
- One size will not fit all in addressing the needs of these diverse fisheries. Therefore, SB 113 has been purposefully written to provide for maximum flexibility without predetermining any programmatic outcome. It is intended that program development for each GOA groundfish fishery will be developed in the transparent BOF and CFEC public processes, and not within this legislation.
- This is "process" legislation, not "programmatic."

FRANK H. MURKOWSKI
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU
February 28, 2005

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The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

As you know, the groundfish fisheries in the Gulf of Alaska (GOA) are facing significant challenges from changing economic conditions and management practices in the Exclusive Economic Zone (EEZ) that affect fisheries and fishery resources in state waters. These economic and fishery management changes are likely to result in increased biological pressures. To fulfill its mandate of conserving, developing, and utilizing fishery resources, the State of Alaska is carefully considering the nature of those changes and evaluating the ways in which state management should respond in order to best serve the interests of Alaskans.

This evaluation has been underway for over six years by Alaska's representatives to the North Pacific Fishery Management Council (NPFMC). In addition, the Alaska Board of Fisheries (BOF) has been addressing these issues for almost two years. Both of these public processes have resulted in broad agreement that an integrated and coordinated state/federal management system for the GOA groundfish stocks migrating across jurisdictional lines best meets the public interest and assures that critical issues of mutual concern are responsibly addressed.

I support the Alaska Board of Fisheries' findings on this issue and appreciate your support in drafting legislation that seeks to confer authority to the Commercial Fisheries Entry Commission to authorize access to GOA groundfish fisheries based upon historical harvests.

At its December 2004 meeting, the NPFMC unanimously endorsed the approach sought by the BOF.

As always, thank you for your efforts in support of Alaska's fisheries.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Frank H. Murkowski".
Frank H. Murkowski
Governor

Alaska Board of Fisheries

Findings on Status of Gulf of Alaska Groundfish Rationalization and Further Charge to Steering Committee #2004 – FB - 234

Background

In 2003, the Board of Fisheries charged a committee to develop alternatives for board action concerning Gulf of Alaska groundfish "rationalization" issues for Alaska waters.¹ The committee fulfilled its charge, reporting to the full board in February and November, 2004.

In February, the committee reported on the results of meetings held with stakeholders in the fishery, and recommended pursuit of legislation to impose a temporary moratorium on entry to Gulf of Alaska groundfish fisheries. The legislation was introduced, but did not pass. In November, the committee recommended that the committee receive a new charge to continue work on Gulf of Alaska groundfish rationalization issues, and informed the board of a potential long-term management approach that appears to merit further analysis.

As the board's committee performed its work, the North Pacific Fishery Management Council has continued to formulate a rationalization plan for Gulf of Alaska groundfish fisheries in the Exclusive Economic Zone.

Findings

Groundfish fisheries in Alaska waters in the Gulf of Alaska are facing significant changes, including: changing economic conditions, changing management practices in the EEZ affecting Alaska waters, and potentially, increased biological pressures as a result of economic and management changes. To fulfill the mandate of conserving, developing, and utilizing fishery resources, the board should carefully consider the nature of these changes and the ways in which state management should respond in order best serve the interests of the state.

The work performed in the board's Gulf Groundfish Rationalization Committee, with tremendous input from stakeholders appointed to a steering committee, has revealed a type of approach that appears to offer significant advantages that should be more thoroughly explored and weighed against potential disadvantages. The approach involves "dedicated access privileges," meaning that fishermen would have a temporary privilege to catch a specific portion of the harvestable surplus of a stock of fish. A key feature of this approach, as developed in the committee, is that the proposed allocations of "dedicated access privileges," or a portion of them, would automatically expire on a time certain basis and revert back to the State for reallocation by the board as it sees fit. In concept, the reallocated privileges could be issued according to criteria that can be modified by the board, if desired, in order to insure that they best serve the interests of the state. It is envisioned that many of the benefits of limited entry could be realized with this program, even in a diverse fishery, without making it too difficult for new entrants to come into the fishery.

The board has received advice from the Department of Law that the legislature has not conferred authority to allocate fishing privileges in proportion to the historical landings, so new authorizing legislation would be necessary to implement a dedicated access privilege program. The board finds that it would be desirable for the legislature to confer authority to allocate fishery resources on the basis of historical landings—but only in the Gulf of Alaska groundfish fisheries—to skippers, crew, vessel owners, or other entities, by fisheries, as deemed appropriate. The proper

¹ See #2003 - 226 – FB.

agency to receive such authority may be the board or the Commercial Fisheries Entry Commission, or some combination of the two.

The board also finds that it would be desirable for the board to have express statutory authority to allocate fishery resources to cooperatives. Allocation to cooperatives is being considered by the North Pacific Fishery Management Council for the Gulf of Alaska groundfish fisheries in the EEZ, and cooperatives may provide a good way to coordinate the two management regimes that fish on groundfish stocks that straddle jurisdictional boundaries between the State of Alaska and the federal government.

Pursuit of these authorities in the 2005 legislative session would enable the board to work in coordination with the North Pacific Fishery Management Council on Gulf groundfish rationalization issues, and ensure that such a program, if ultimately approved by the board, could be implemented. This approach maximizes the options available to the board as it continues its examination of promotion of resource conservation, economic efficiency, and safe and orderly fisheries in the Gulf of Alaska groundfish fisheries.

Charge to Steering Committee

The board's Gulf of Alaska Groundfish Rationalization Committee, comprised of Ed Dersham, Art Nelson, and Mel Morris, shall continue its work.

The committee shall continue to explore the dedicated access privilege model, giving special consideration given to the ways in which the model could promote resources conservation, economic efficiency, safe and orderly fisheries, and coordination with EEZ fisheries. The committee shall also consider administrative feasibility and constitutional standards for access to state resources. The committee may also explore options other than dedicated access privileges.

The committee shall advocate the adoption of legislation that would enable the allocation of fishery resources on the basis of historical landings, but only in the Gulf of Alaska groundfish fisheries. Further, the committee shall advocate the adoption of legislation that would enable the allocation of fisheries resources to cooperatives.

The committee shall keep the board apprised of its progress, and give a full report to the board at the work session in October 2006.

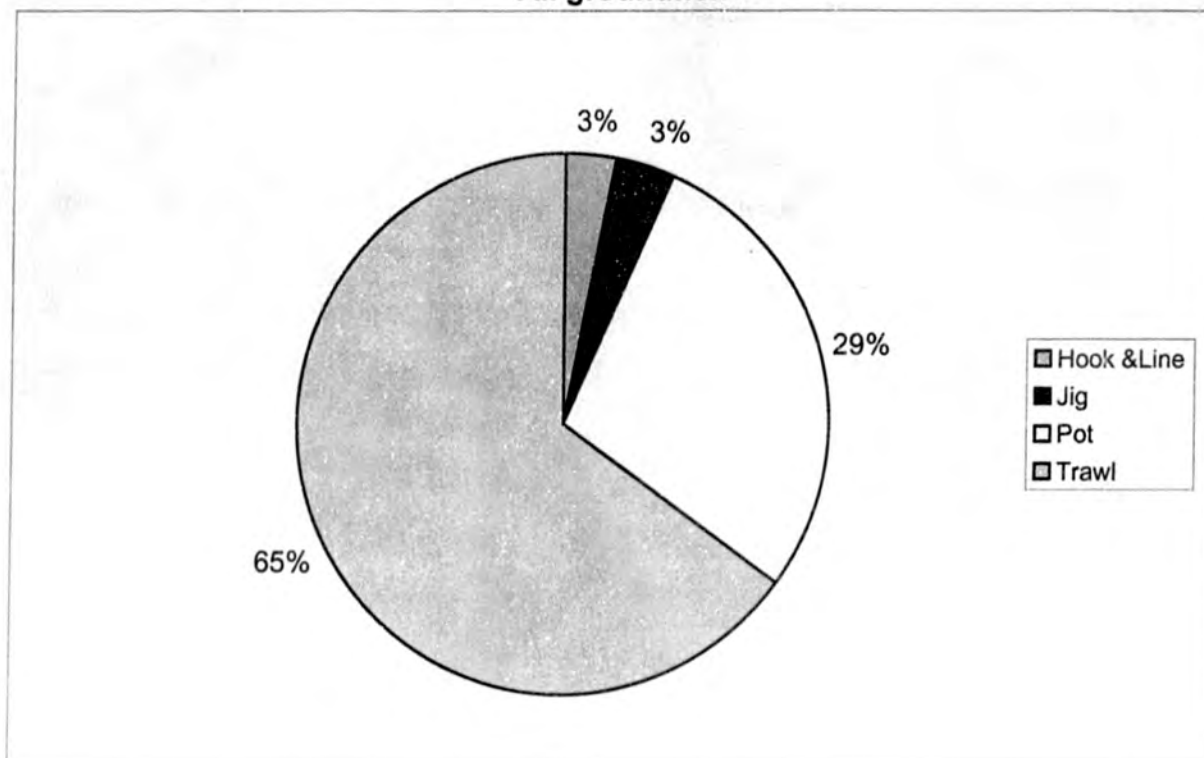
ADOPTED: _____
Anchorage, Alaska

Art Nelson, Chair

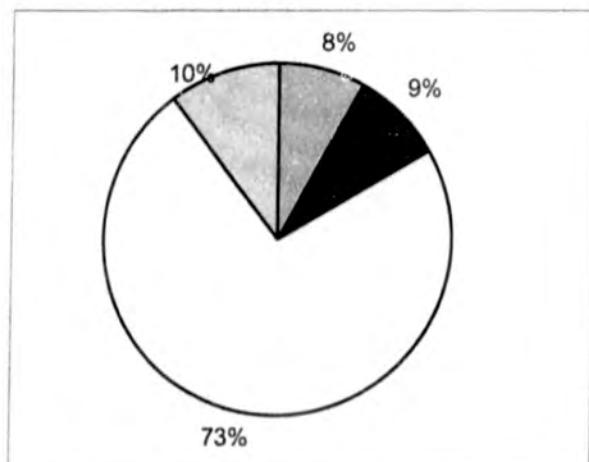
Date

Gulf of Alaska groundfish¹ commercial harvest in state waters
(state managed and parallel fishery)
1998-2002

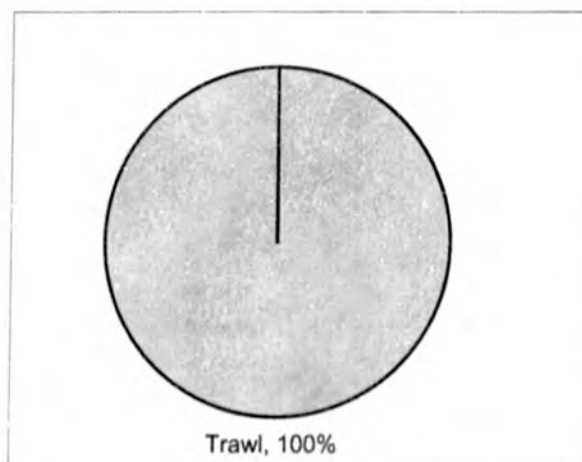
All groundfish



Pacific cod



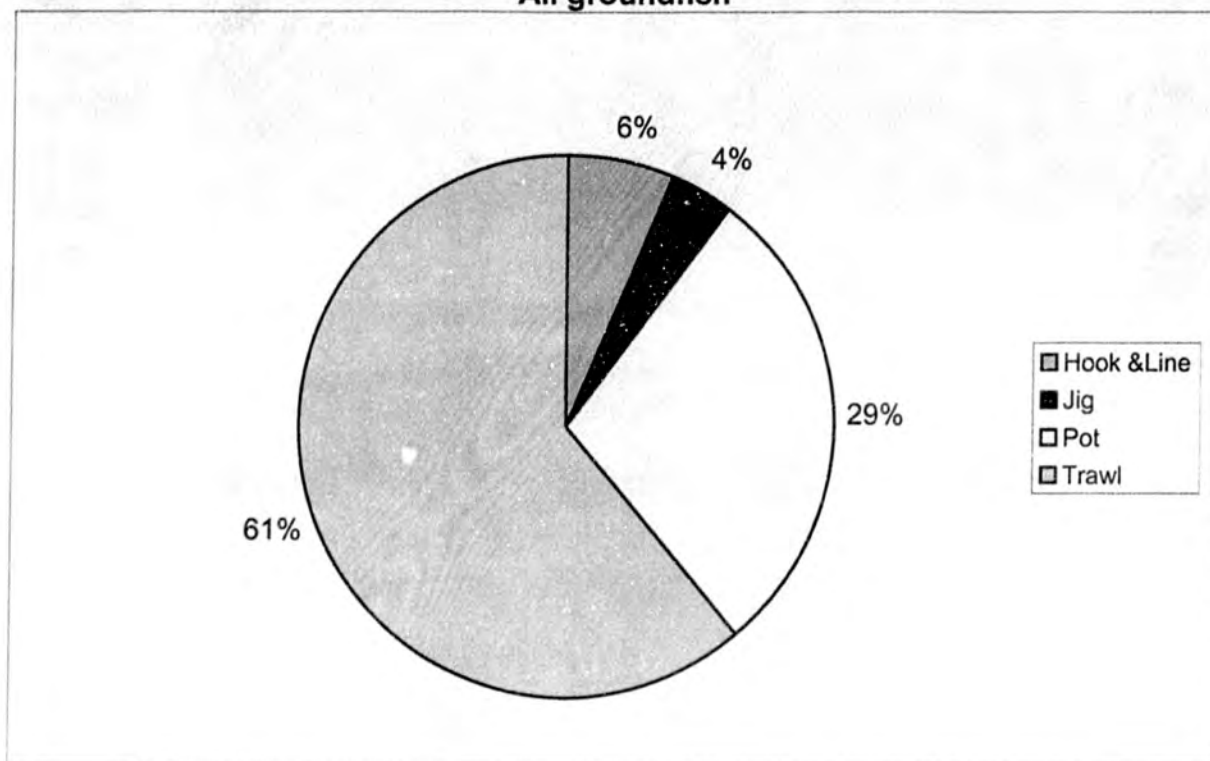
Other groundfish (primarily pollock)



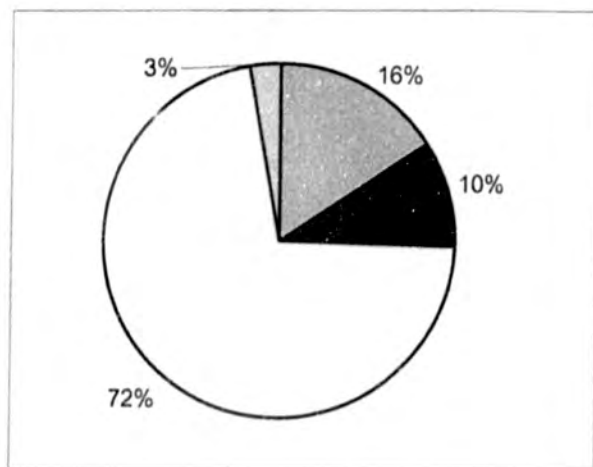
¹Halibut are not considered groundfish.

Central Gulf of Alaska groundfish¹ commercial harvest in state waters
(state managed and parallel fishery)
1998-2002

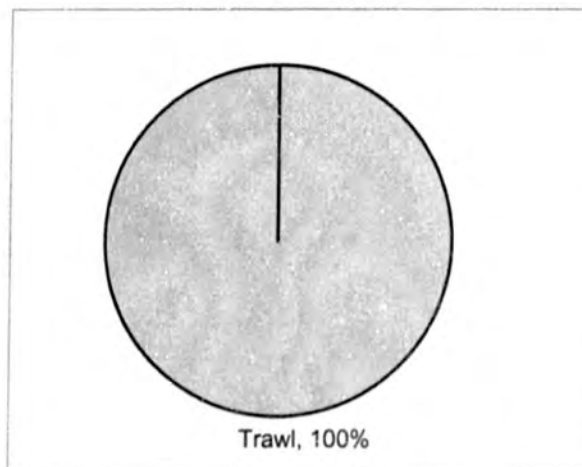
All groundfish



Pacific cod



Other groundfish (primarily pollock)

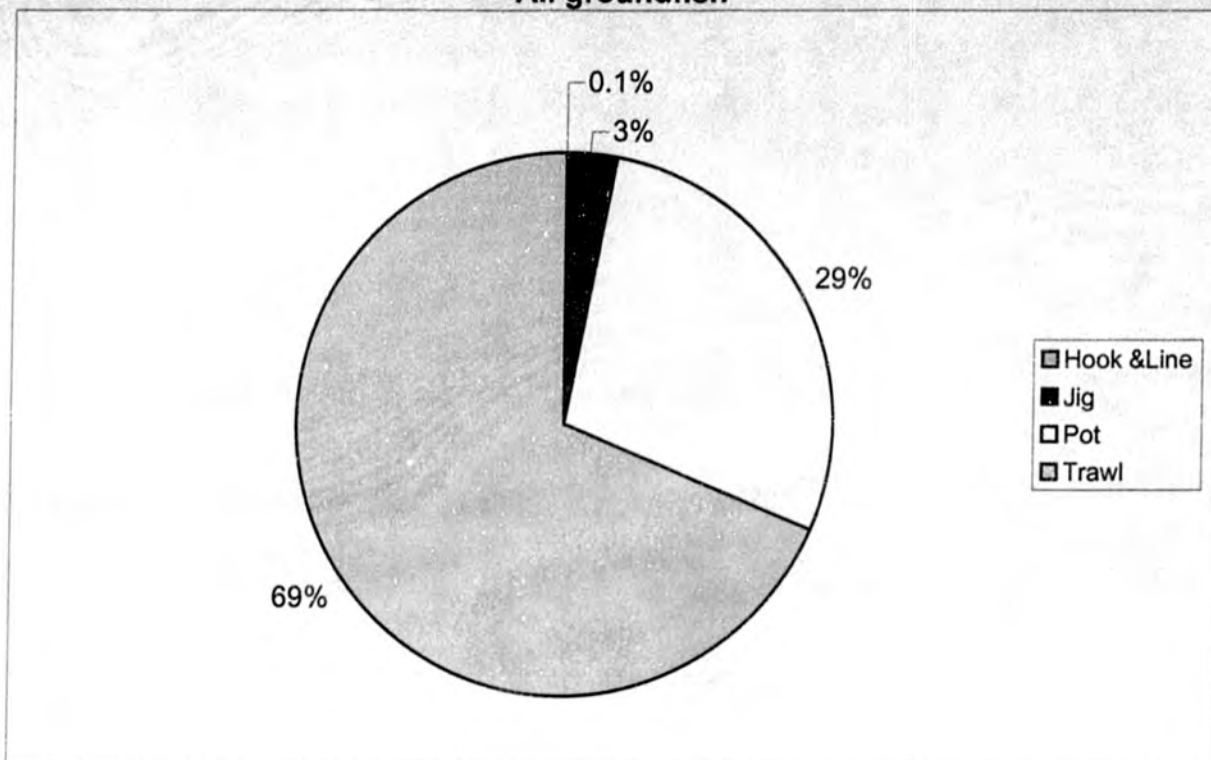


Western Gulf of Alaska groundfish¹ commercial harvest in state waters
(state managed and parallel fishery)
1998-2002

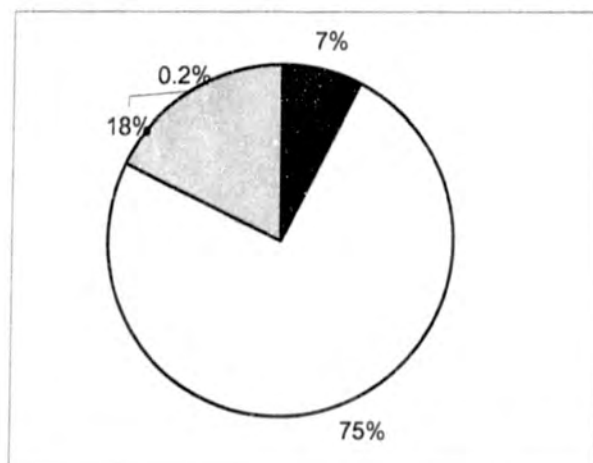
¹Halibut are not considered groundfish

Prepared by the Alaska Department of Fish and Game from data compiled by North Pacific Fishery Management Council staff

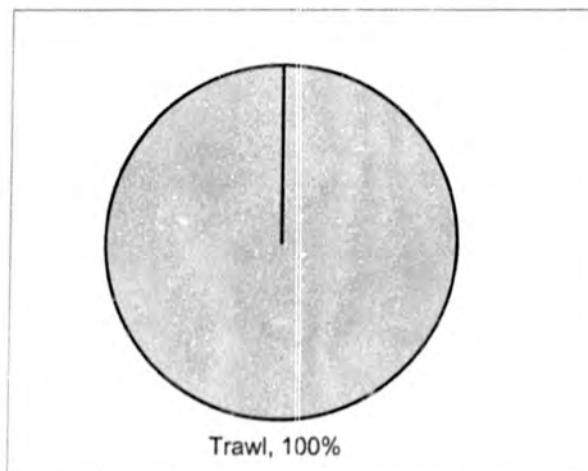
All groundfish



Pacific cod



Other groundfish (primarily pollock)



¹Halibut are not considered groundfish.

GOA groundfish harvest 0 - 3 miles from 1998-2003:

- We will focus on Areas K (Kodiak) and M (S AK Pen) as they have the most significant groundfish harvest
- ADF&G matched landing record ADF&G numbers and CFEC permit numbers with CFEC permit and vessel files to determine AK or non-AK address for permit holders and vessel owners
- Names and addresses of vessel owner and permit holder were compared to estimate the % of harvest taken by owners onboard and hired skippers (some landings could not be classified in either category) and residency

- In the Kodiak longline fisheries (7% of total Kodiak harvest), 96% of the groundfish was harvested by Alaskan vessel owners and/or hired skippers
- In the Kodiak pot fisheries (30% of total Kodiak harvest), 95% of the groundfish was harvested by Alaskan vessel owners and/or hired skippers

For each Kodiak longline and pot fishery, in % of total landed pounds by fishery:

	AK owner + AK skipper	AK owner	AK skipper	Estimated owner onboard	Estimated hired skipper
Longline <60ft	97%	62%	35%	62%	38%
Longline >60ft	83%	34%	49%	32%	66%
Pot <60ft	98%	37%	61%	38%	62%
Pot >60ft	89%	27%	62%	28%	71%

In the longline fishery, the percentage of groundfish taken by owners onboard was higher in the <60ft fleet (62%) than in the >60ft fleet (32%).

In the pot fishery, 60 - 70% of the groundfish harvest was taken by hired skippers.

- In the Kodiak trawl fishery (62% of total Kodiak harvest), 47% of the trawl groundfish was taken by Alaskan vessel owners and/or hired skippers

For the Kodiak trawl fishery, in % of total landed pounds for the fishery:

	AK owner + AK skipper	AK owner	AK skipper	Estimated owner onboard	Estimated hired skipper
Trawl	47%	11%	36%	16%	77%

- In the S AK Pen longline fisheries (0.2% of total S AK Pen harvest), 98% of the groundfish commercial harvest was taken by Alaskan vessel owners and/or hired skippers
- In the S AK Pen pot fisheries (31% of total S AK Pen harvest), 82% of the groundfish was harvested by Alaskan vessel owners and/or hired skippers

For the S AK Pen longline and pot fisheries, in % of total landed pounds by fishery:

	AK owner + AK skipper	AK owner	AK skipper	Estimated owner onboard	Estimated hired skipper
Longline	99%	30%	69%	30%	70%
Pot <60ft	87%	39%	48%	40%	59%
Pot >60ft	81%	35%	46%	31%	67%

In the longline and pot fisheries, approximately 60 - 70% of the harvest was taken by hired skippers.

- In the S AK Pen trawl fishery (69% of total S AK Pen harvest), 58% of the groundfish commercial harvest was taken by Alaskan vessel owners and/or hired skippers

For the S AK Pen trawl fishery, in % of total landed pounds for the fishery:

	AK owner + AK skipper	AK owner	AK skipper	Estimated owner onboard	Estimated hired skipper
Trawl	58%	5%	53%	14%	79%



Gulf of Alaska Coastal Communities Coalition (GOAC3)
PO Box 201236, Anchorage Alaska 99520
Phone: (866) 561-7633 or (907) 561-7633 Fax: (907) 561-7634
Web: www.goac3.org Email: goaccc@alaska.net

Gulf of Alaska Coastal Communities Coalition Resolution 2005-001

A RESOLUTION OF THE GULF OF ALASKA COASTAL COMMUNITIES COALITION OPPOSING THE DEDICATED ACCESS PRIVILEGE (DAP) MANAGEMENT APPROACH ENCOMPASSED IN SB 113 AAN ACT RELATING TO ENTRY INTO AND MANAGEMENT OF GULF OF ALASKA GROUND FISH FISHERIES.

- WHEREAS, the residents of Gulf of Alaska Coastal Communities are dependant on groundfish resources within State of Alaska waters for their livelihoods as commercial fishermen; and
- WHEREAS, the economic survival of Gulf of Alaska Coastal Communities depends on resident fishermen having access to and participating in State of Alaska groundfish fisheries; and
- WHEREAS, the experience of Gulf of Alaska Coastal Communities with the federally managed halibut and sablefish Individual Fishing Quota (IFQ) program indicates that individual fishing privileges tend to migrate from Alaska's smaller coastal communities; and
- WHEREAS, the impacts on smaller Gulf of Alaska Coastal Communities from the federally managed halibut and sablefish Individual Fishing Quota program was loss of jobs, decline in community revenues and reduction in community population; and
- WHEREAS, the Gulf of Alaska Coastal Communities Coalition has worked for many years to mitigate the impacts of IFQs on smaller Gulf of Alaska Coastal Communities and to ensure stable fishing opportunities for residents of these communities; and
- WHEREAS, Senate Bill 113 provides authority for the Commercial Fisheries Entry Commission and the Alaska Board of Fisheries to create Dedicated Access Privilege management systems in State Waters for groundfish that are similar to the Halibut and Sablefish IFQ program; and
- WHEREAS, Senate Bill 113 further provides authority for the formation of Associations that can be awarded Dedicated Access Privileges. However it does not provide

limitations on the amount of quota shares that can be awarded to these Associations or limits to the possible consolidation of each fishery; and

WHEREAS, Senate Bill 113 does not ensure that owners of the Dedicated Access Privileges will be required to be aboard their vessels when fishing groundfish resources in State Waters or otherwise actively engaged in the fishery; and

WHEREAS, the criteria set out in Senate Bill 113 for considering the implementation of Dedicated Access Privileges does not mention community protections, the importance of maintaining healthy Alaska communities or the need to ensure that Alaska residents maintain participation in and access to Alaska's groundfish fisheries;

THEREFORE BE IT RESOLVED, that the Legislature of the State of Alaska oppose Senate Bill 113 and vote against its implementation' and

BE IT FURTHER RESOLVED, that if the Legislature is persuaded that the Dedicated Access Privileges is an important tool for managing Alaska's Groundfish Fisheries, that Senate Bill 113 be modified as follows:

1. The considerations for approval of Dedicated Access Privileges be expanded to include protection of Alaska's coastal fishing communities and provision for continued access to Alaska's groundfish resources by coastal community residents, ie. entry level opportunities for entry into the fisheries;
2. The authority to transfer Dedicated Access Privileges to Associations (the so called co-op@ provisions) be eliminated;
3. Provisions requiring that the owner of the Dedicated Access Privilege, after a grandfather period of 5-10 years, be aboard the vessel when the privileges are being fished be added to the legislation.

**CITY OF KODIAK
RESOLUTION NUMBER 05-13**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK URGING THE
STATE OF ALASKA LEGISLATURE AND GOVERNOR TO PROTECT KODIAK'S
ECONOMIC WELFARE, ALASKAN FISHERMEN'S INDEPENDENCE, AND THE
STATE'S RIGHTS AND TO ADDRESS OTHER ISSUES RELATED TO GULF OF
ALASKA GROUND FISH FISHERIES**

WHEREAS, the City of Kodiak has spent numerous hours listening to constituents and studying the complex issues of Gulf of Alaska (GOA) groundfish fisheries and conclude that the State of Alaska must continue to protect, manage, and pass legislation that promotes a healthy fish stock; maintains Alaskan fishermen's independence; provides for the long-term stability and sustainability of Kodiak Island coastal communities; and protects Kodiak resident harvesters' interests in the Federal parallel fisheries of Pacific cod Total Allowable Catch (TAC) with the North Pacific Fishery Management Council; and

WHEREAS, the Constitution of the State of Alaska provides, "fish...are reserved to the people for their common use" and legislation or rules should never be passed that would infringe or dilute the meaning, purpose, or rights of that provision but should protect and provide equal opportunity for commercial fishermen to be independent now and in the future; and

WHEREAS, all business ventures have inherent risks, which are probably greater in the fishing industry (inclement weather, poor fish stocks, high interest rates, high taxes, costly regulations), and continuing to fund effective seafood marketing programs and safety regulations and reviewing and deleting any rules or programs that are ineffective, and interacting with the Federal fish management agencies (National Oceanic and Atmospheric Administration, National Marine Fisheries, North Pacific Fishery Management Council) to increase Alaska's share of groundfish quotas is encouraged, as long as these efforts do not include quota concepts that infringe on future Alaskans entry into the fishing industry; and

WHEREAS, the North Pacific Fishery Management Council is currently developing regulations for GOA groundfish that presently include fishing co-ops between harvesters and processors and quotas for each that would, in their opinion, increase the value of processed fish, increase fish processor workers' incomes, decrease a "race for fish," protect habitat, reduce by-catch, and increase fleet safety; and

WHEREAS, if the North Pacific Fishery Management Council rationalizes GOA groundfish, the reduction of fishing boats and crews due to consolidation will create an exodus from the Kodiak community creating an economic burden; and

WHEREAS, there may be sound economic advantages to the Federal rationalization program; however, further encroachment into Alaskan waters would create further economic hardships for coastal communities; and

WHEREAS, the state of Alaska should join the Council of the City of Kodiak in lobbying the North Pacific Fishery Management Council and Federal government to include Pacific cod catch history of Kodiak fishermen participating in past GOA Federal parallel groundfish programs who caught Pacific cod within the State of Alaska three mile zone.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that the Legislature and the Governor of the State of Alaska promote or enact any legislation that will increase future fish stocks to State of Alaska waters; protect the Constitution of the State of Alaska, Article VIII, Section 15 (common use clause); ensure the continued good management of our fisheries for future generations of fishermen, processors, and related industries; and vigorously maintain State sovereignty of State of Alaska waters to include increasing higher quotas of Federal fish arriving inside the three mile zone.

BE IT FURTHER RESOLVED that the Legislature and Governor of the State of Alaska should encourage the North Pacific Fishery Management Council, the National Marine Fisheries Service, and the Federal government to promote and adopt provisions, policies, and regulations that ensure Kodiak resident harvesters who have harvested GOA Pacific cod from inside of three miles in the parallel fishery of the Federal Pacific cod TAC during the Federal Gulf of Alaska groundfish fishery are treated equally to those harvesters who have harvested GOA Pacific cod from outside of three miles during this fishery program, and that this equal treatment include the implementation of legislation and rules that govern the allocation, award, distribution, assignment, ownership, use, lease, transfer, and recognition of fishing history that was earned during the Federal GOA groundfish fishery.

BE IT FURTHER RESOLVED that the Commercial Fisheries Entry Commission, the Alaska Board of Fisheries, the Governor's Fisheries Policy Advisor, the Commissioner of the Alaska Department of Fish and Game, Senator Gary Stevens, and Representative Gabrielle LeDoux are called upon to conduct a town meeting in the City of Kodiak, at a time conducive to participation by all affected fishermen, including but not limited to skippers, crew members, and vessel owners to hear and respond to concerns about rationalization of the Gulf of Alaska groundfish fishery.



CITY OF KODIAK

Carolyn Floyd
MAYOR

ATTEST:

Debra L. Martin

CITY CLERK

Adopted: April 28, 2005

From: Schactler [schactler@alaska.com]

Sent: Tuesday, January 25, 2005 3:33 PM

To: Rep. Gabrielle LeDoux; Rep. Bill Thomas; Sen. Gary Stevens

Cc: Alan Austerman

Lady and gentlemen,

Last year/session, Senator B. Stevens introduced a bill to create a "temporary" moratorium for all state waters ground fisheries except for Jig Pacific Cod.

Fortunately for all but the federal fisheries boat owners, Rep. Seaton killed the bill in the House special committee on fisheries. This was I believe the right thing to do.----- Not strictly for reasons of content. (I personally would have killed it on content, because it created corporate ownership and created a moratorium that would immediately exclude new entry residents----residents for which the State water's fisheries were created in the first place) For this conversation, it is about process!!

This conversation about managing our state fisheries like the Feds., has not been a public one. Yes, the BOF has had a subcommittee that has met quite a few times. a subcommittee that was appointed and is primarily a group of consultants and paid representatives of specific interest.

What I mean by a public process, is one like the normal BOF process or in the case of the groundfish/Federal fisheries, the North Pacific Council. You all know the process well. Even tho it is the definition of conflict of interest and of special interest, the process is open, transparent and inclusive of any and all that want to take part. It is extremely well noticed and the analysis of impact and content is extensive. To allow something like this year's expected legislation to go anywhere would be completely in opposition with the State's and BOF's position on fisheries restructuring and the process it takes to do something that is so extremely different and controversial, to and among the stakeholders....and even the constitution.

I assure you that the majority of fishermen stakeholders know nothing of the proposed Legislation, or of the process(or lack of). It is absolutely certain that the majority of the Legislature know next to nothing about it.....only what they hear from the paid lobbyists that will usually be in direct conflict with what they hear from the boat harbor.

I propose the following, and hope that you all will allow the possibility that this type of leadership will prevail.

That the Governor ask for or supply the funding for the BOF, to conduct a comprehensive series of meeting across the Gulf and into Anchorage to get public comment on this subject of mirrored or cooped management with the Feds. in State waters Fisheries. Maybe the BOF committee's outline would serve as a starting conversation paper, or ??? maybe the Governor's Fisheries advisor should write up the starting point based on his concept of a long term business plan. .

The final meeting should happen in January (back in Anchorage for a 2nd time) to vote on and write the legislation, if in fact Legislation is seen as a being an option after this public process has been conducted.

THE LEGISLATURE IS NOT THE PLACE FOR THE PUBLIC PROCESS ON AN ISSUE SO IMPORTANT THAT EVEN THE CONSTITUTION MAY BE EFFECTED. It is not fair to anyone, including the legislators and certainly not the public trust.

If the Governor makes the case for the process, it will happen, the bill will never go anywhere, and he will be showing his leadership in his favorite forum of natural resource development and the expansion of our state tax base.

Thankyou for your consideration and I am--
standing by

Bruce

5/5/2005

From: Schactler [schactler@alaska.com]
Sent: Thursday, February 03, 2005 5:02 PM
To: Rep. Gabrielle LeDoux; Rep. Bill Thomas; Sen. Gary Stevens
Cc: Duncan Fields
Subject: Re: Differential Shares Legislation

Duncan has an very good point that I should have thought of. Since this is a legislative issue, the hearings should be within that same venue. I guarantee you will have wide support for this show of process and leadership.

The broader question of what kind of power should be given to the BOF is huge, and should be discussed in a very comprehensive, well noticed, extremely open and very accessible process.

Also, anything like this should have social and economic impact studies funded for public review.

Sincerely

Bruce
 Schactler

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

From: Duncan Fields
To: Schactler
Sent: Tuesday, February 01, 2005 11:01 AM
Subject: Differential Shares Legislation

Hi all,

I appreciate Bruce's emphasis that this legislation could represent a significant "paradigm shift" in the way Alaska manages its marine resources. The move from the Limited Entry system that creates a class of participants that, through hard work and personal initiative, can improve their catch percentage to a system that rewards quota share based on participation and catch history in the fishery in a "snapshot" in time is indeed a radical change. Consequently, I also strongly support Bruce's request for significant public opportunity for input and review of the legislation. This is such a change in the way State fisheries will be managed that it requires increased public scrutiny.

I disagree however that the public comment process should be through the Board of Fisheries process. The Bill will be public policy legislation by the Alaska Legislature. As such, the public process should be the Legislature's committee process. I would encourage you to plan on hearings (joint with both resources committees or with the committee of one body) in several communities in the Gulf of Alaska.... At a minimum King Cove, Sand Point, Kodiak, Homer, Seward and Cordova. I would also encourage you to take the time necessary to fully understand the magnitude and consequences of the anticipated proposed changes.

Thank you in advance for your consideration of my thoughts. I believe this bill could be the most significant fisheries legislation considered by you in the Legislature in several decades.

Best Regards
 Duncan Fields

Schactler wrote:

5/5/2005

From: Ron Kavanaugh [sylvstar@ak.net]
Sent: Tuesday, March 01, 2005 10:50 AM
To: Rep. Gabrielle LeDoux
Cc: repreasetative_bill_thomas@legis.state.ak.us; representaive_john_harris@legis.state.ak.us; representative_peggy-wilson@legis.state.ak.us; Rep. Mary Kapsner; Rep. Woodie Salmon
Subject: *****SPAM***** SB113

Representative Ledoux,

We are emailing you as the co-chair of the Fisheries Committee and our House representative. We are a fishing family from Kodiak, Alaska. We are 100% dependant on the health of our fisheries. Our family owns and operates a 58ft vessel, home ported in Kodiak. We participate through out the year in many fisheries, in many areas. For today's purpose, we are participants in the State and Federal Ground Fisheries from Kodiak to Akutan.

It is our desire to stress to you as our Representative, that SB113 is a bill that will have an impact on the management and entry into State Water fisheries, greater than anything preceding it. We would plea with you, that a bill of this magnitude, should have ample time to be brought before the public. There is plenty of time for this bill to complete its journey through the legislative process, as we are still in the first session of the year. It is our opinion that the public deserves a reasonable amount of time to become aware of this bill, that the input of that public is of the utmost importance, and that community meetings addressing the concerns of State Waters Ground Fisheries are crucial.

If SB113 gets to the House Fisheries Committee, we would hope that you would consider the importance of the change in state fisheries management and change in criteria for entry into our state fisheries, as drastic; and realize the prudence of thorough public involvement.

Ron and Julie Kavanaugh
FV Sylvia Star LLC
PO Box 3890
Kodiak, Ak 99615
sylvstar@ak.net

From: Shawn Dochtermann [drdrmann@hotmail.com]
Sent: Tuesday, March 08, 2005 3:56 AM
To: senator_thomas_wagner@legis.state.ak.us; Sen. Ralph Seekins; Sen. Ben Stevens; Sen. Fred Dyson; Sen. Bert Stedman; Sen. Gretchen Guess; senator-gary_stevens@legis.state.ak.us; Rep. Gabrielle LeDoux
Cc: governor_frank_murkowski@lgov.state.ak.us; island1@ptialaska.net; ptuttle@pacseafood.com
Subject: SB113 personal opinion

I've been a fisherman and lived in Kodiak for 28 years. I own a small vessel and depend on the jig groundfish fishery to stay economically solvent. At the present time with open access I can survive. If you rationalize the state waters you will be making me and many others go bankrupt. I'm totally against the whole idea of SB113. There are no guidelines for the AK BOF or CFEC. If this blank check was handed over to them they will have the powers to manipulate the state water fisheries as they please. When 4 votes is all takes to change my life I don't like it.

None of the members of BOF are even fisherman. In fact, I think the BOF (is a load deck) are for their special interest groups and don't follow the true concerns of the fisherman and its communities. In the future these leasable IFQs rights might end up in the hands of an elite few, such as the processors, special interest groups (aka draggers). I would like all state water fisheries left open access, as most participants are Alaskans, but I realize that limited entry with a snapshot of today's picture is the safest bet otherwise. I feel that the fisheries will limit themselves. Take a look at salmon and tanner crab in the Kodiak area, not all the limited entry permits are being utilized. If the legislator would do the math they would figure out that to implement and run a plan for quota shares that it would cost more than the value of the fish at the dock. This kind of boondoggle will only put more stress on the small vessel owners of Alaska. Public hearing must be taken so that any individual in every coastal community can share his opinion. What about the impact on the coastal communities? If this bill passes the economy of Kodiak and other communities will drop like a rock. Don't you realize that the small boat fleets are the ones keeping our communities alive financially. Once again special interest groups are trying to bully us into a new realm of privatization. Why is it that we as fisherman have the smallest voice in the creation of fisheries legislation. It seems no matter what we say you never really listen and try to work with us. As far as I am concerned this state government is working against the little guy. Until you recognize that we would need to be a big part of this unnecessary rationalization we will keep fighting for our rights for open access.

With keen observation,

Shawn C. Dochtermann
PO Box 3886 Kodiak, AK
907-486-8777
drdrmann@hotmail.com

From: United Salmon Association [usalmon@ptialaska.net]

Sent: Monday, March 14, 2005 4:37 PM

To: Rep. Gabrielle LeDoux



P.O. Box 762 • Kodiak • AK • 99615

Phone: (907) 486-6899 • Fax: (907) 486-7058 • Email: usalmon@ptialaska.net

March 13, 2005

Dear Resources Committee:

United Salmon Association (USA)/ Kodiak Chapter would like to provide input on Senate Bill 113 (SB 113). SB 113, introduced by Sen. Ben Stevens, has received a great deal of attention to date by the State's commercial fishermen who will be directly affected by it. SB 113, as written, will have far reaching implications on Alaska's state water ground fish management and harvest.

USA feels very strongly that there will not be adequate time to thoroughly review SB 113 in this session. The degree of interest and controversy over SB 113 should show the great desire by fishermen to have a complete public process for input. USA believes that it is imperative that a Legislative Committee be formed and sent to affected communities.

USA will provide many specific comments on SB 113 as it moves forward. Our main concern that we would like to bring forward at this time is that SB 113 be given more time for thorough review and input.

Sincerely,

Thom Wischer, Chairman, United Salmon Association

From: Shawn Dochtermann [drdrmann@hotmail.com]
Sent: Sunday, March 20, 2005 4:54 PM
To: charliep@gci.net
Cc: Kimberly Wallace
Subject: SB113 Addressing the issues of the GOA rationilization. Revised

Senate Resources Committee, legislators, and citizens of the State of Alaska,

It is well known that the state wants to rationalize the state water fisheries before the feds finish their own rationilization of the gulf of Alaska(GOA). The parallel fish should be allocated from the federal water so we don't have to spend a bunch of money to create a new program to rationilization the state water fisheries. If dedicated access privileges were introduced a major portion of the state water quota would be placed into the hands of possibly 50 persons . This sounds like the lobbyism for the trawl fleet is strong and convincing. The trawl fleet will receive most of the federal allocations of groundfish. My question is when is enough enough? Only when the trawl fleet owners have their arms around both the federal and state water allocations will they be happy. This is pure greed and doesn't take in the concerns of the rest of the fishing fleet in the GOA.

In regards to the discussion of the state water groundfish rationiliaztion. At the present time there is not a race to fish in the pot and jig fisheries. Those that participate in these competitive fisheries execute them in a safe and reasonable manner. We can't prosecute these fisheries in rough weather as it is not safe or productive. I personally watched the trawl fleet leave the night after the last hearing was initiated. The trawl fleet was leaving into 25 ft. seas. They're the ones with the race to fish. Here are the number of vessels that were engaged in the groundfish fisheries within in the past 8 years. The pot and jig fleet have 53 and 106 harvesters in the Kodiak area at the present time. The all-time high number of registered vessels was 81 (1999)and 146(2000) respectively. The trawl fleets in Kodiak and AK Peninsula have shrunk from 85 vessel in 1998 to the present 43 in 2005. Actually there has been a decrease in effort. If there is a decesse in effort why would there be a need to rationalize fisheries that are limiting themselves economically.

Maximization of the economic values of fish only applies to the trawl caught fish. The quality of pot and jig caught fish is at it's all time high. The trawl caught fish are of lesser quality and value, so why should they even fish in the state waters. The issue of value added products has no backing. The surimi ,fishsticks, and fillets produced are the values added products already in the market place. The pot and jig fishery have almost no bycatch, and what is brought aboard is returned alive. The trawl fishery has a history of enormous amounts of bycatch. I have trawled and personally witnessed the waste and dumping of dead bycatch. There will be great economic distress to all the coastal communities if dedicated access privileges are endorsed. At the present time most of the communities are justing getting back on their feet after the rationilization of halibut and black cod. Anytime you take a public resource and make it a private industry many jobs are lost and the trickle down effect is substantial.

Limited entry has worked for all the fisheries that it has been attached to in the past. Why can't the criteria for limited entry be changed , so it is proactive to an overcapitilization of a fishery? The global market place for consistent supply and quality in the marketplace already exist and are at the their maximum effeciency in groundfish in GOA. Limited entry with the tools already in the Board Of Fishs' pocket are all that are necessary to keep these fisheries in check.

How will this dedicated access privilege benefit the resource? Also the users and communities dependent on these resources? If you take a pie and you give 5 people a piece rather than 20:then you are making it economically more difficult for the other 15 plus the businesses that are supported by them. This legislation give the BOF the power to allocate the resource and hurt the economies of the communities. Yes, we do need to be concerned with biological and resources of these fisheries. The next concern should be the people that are engaged and affected by the fisheries, such as fisherman, processors, support businesses, and all others in the coastal communities. It's my belief that the people are

the state and their concerns come first before state government. Remember that the government is there to protect and serve. I feel that in this case they are halting our abilities as fisherman to engage in harvesting a public resource. The state would be taking ownership of a public resources and it making it a private industry within a state government. Doesn't that sound wrong to you? It sure does to me.

The best way to fix this problem is to administer limited entry to the pot and jig fisheries and put the trawlers outside 3 miles. Limited entry would be open access, so all that participants fish until the TAC is caught. There is another issues that need to be resolved and that is the BOF. The Alaska board of fish should be made up of 13 elected officials from the demographics of the state fish and game commercial and subsistence areas. This new provision should be drafted into this bill to protect all fisherman that will be affected by DAP if this bill is passed into law. That would make it less likely for special interests groups to be involved in issues pertaining to commercial fisheries. I believe that the BOF doesn't always do what is in the best interest of the people of this state. There is far too much corruption in lobbying and all the little guys like me are tired of fighting big corporations and associations that stand to win in the political processes of this state government with regards to state waters rationalization and all other aspects of our lives.

With the gravest concerns,

Shawn C. Dochtermann
Kodiak, Alaska

email
3/23/05

To whom it may concern:

I am opposed to Senate Bill NO 113 !!!

My name is Ludger Dochtermann. I have lived in Kodiak for 32 years. I am a fixed gear fisherman. I am the owner of two 90' vessels that operate in the Gulf of Alaska and BSAI, long lining for halibut and groundfish and pot fishing for crab and codfish.

Senate Bill 113 encompasses all state waters and is inclusive of the state water fisheries for codfish, which is prosecuted by only two gear types, pot and jig. During the Federal Groundfish Fisheries trawling and long lining is allowed in state waters. The exclusive state water fishery which commenced with the 1997 season was requested by fisherman from Kodiak to allow entry level participation by ENVIRONMENTALLY responsible gear types that are target specific and virtually by catch free. The purpose was to take crab predator cod fish out of state waters without harming crab stocks and through these efforts bring about a resurgence of our crab resources. The crafters of this fishery also deliberately excluded long lining for cod in the state water fishery because of the high by-catch of halibut. After initially receiving a 10 % allocation of the cod TAC we were able to request an increase to 25 %, which is the present share. A 60-pot limit was instituted for the state water fishery to prevent large boats from taking an unfairly large share. The 25 % state water catch was also divided fairly between pot and jig gear type fishing.

There was vociferous opposition from the trawl fleet to any state water fishery, since it took away a quarter of the quota of which they were catching the lions share.

Around Kodiak all the bays and other crab sensitive areas are off limits to the trawl fleet for hard on bottom trawling.

The positive impact of the state water cod fishery has been that we are seeing a resurgence of the tanner crab stocks, which has allowed a small fishery to be prosecuted the past 5 years. This has been a needed infusion of dollars into the community.

The other positive result is that it provides an entry-level fishery for the future fisherman of Alaska. These are local people who otherwise would have no starting point into the fishing life. This has been a boon to most coastal communities.

It is clear to everyone in this community that the hard on bottom cod trawl fleet could take the entire federal and state water quota in a few days. The federal pot fishery in the GOA is only possible because the TRAWLERS requested a stand down for the first 20 days of January. This year the quota was taken in 4 days once the trawlers entered the fray. The fishing power of a trawl is awesome. When a trawl is hard on bottom it is also all-inclusive with obscene by catch of everything that lives in the net's pass.

The driving force behind the federal and state groundfish rationalization program is the trawl industry. Their lobby is very powerful. In Kodiak the non-trawl fishers call the GOA rationalization process the trawlers retirement program. The trawl sector wants to get a guaranteed share of the groundfish resources.

Times are changing and we are all becoming more conscious of our environment. The handwriting is on the wall. There will be more and more restrictions once the general public realizes the terrible impact of hard on bottom trawling. Can there be a better way of forestalling restrictions on their fishing practices then to privatize the resource and chisel it in stone?

This brief history was necessary for the majority of the legislators who come from non-fishing communities and who might be hoodwinked into buying into Senate Bill 113 because of not knowing the facts.

SB 113 Page 1 line 6: What are the changes in the significant economic conditions facing the fisheries? There has not been any increase in effort in either the trawl, pot, logline and jig fisheries in the central and westward region of the State.

I include here the data from the ADFG that shows the effort for all these fisheries.

Page1 line 10: The economic health of fisherman will be detrimentally affected because the state wants to charge royalties, which will make it impossible for the jig, pot and long line fisherman to operate an already marginal profitable fishery. This would only benefit the trawl fleet, which has smaller labor, and fuel costs then the rest of the industry. They could outbid the more labor-intensive fisheries.

Page 1 line 12: Ensure conservation of biological and capital resources.

The NPFMC sets the quotas in most Alaska fisheries. WE catch what they give us for quotas. How would this program conserve the resource? This bill would sanction obscene by-catch in the trawl sector instead of reducing it, which would help biological conservation.

Page 1 line 13: Capitol resources of the fishery.

Since there has been virtually no effort change in the fishing fleet, how would this bill affect the capitol resources of the fishery? The negative impact would be that by having to pay resource fees marginally profitable mostly small operators would be forced out of business. The resulting trickle down effect on the local businesses supplying goods and services will be devastating. The resulting consolidation, especially in the trawl sector, will cause shrinkage in the fleet as new owner barons sell their quotas and/or fishing rights and retire to other climes.

Page 2 Sec 5,6,7: This is the old-fashioned money grab. The LLP program controls access into most fisheries. There is no entry unless you are already qualified. The state water cod fishery is the only one that allows free entry as the crafters had intended. The statistics prove my point. There is fluctuation, but the effort now is lower then it was at the beginning of the fishery.

Page 2 Sec 8 I addressed lines 16,17 and 18 above. Promoting Safety: I do not see how this bill promotes safety. When the weather is bad the fleets here do not go out and fish. The foolish people have either left or are dead.

The rest of SB 113 goes into specifics to establish this new bureaucracy and justify its perpetuation.

If the reason for Senator Ben Stevens introduction of this bill is to get more tax money from the fishing industry, then it would be a lot cheaper to just increase the fish tax for which there is a bureaucracy already in existence. I think that approach would be a lot more palatable to fisherman then to establish more paper work, more licenses, more laws and regulations of which we are burdened with already. The State of Alaska is already bloated with regulatory agencies; logic would suggest to stop now with this nonsense bill.

If on the other hand SB 113 is only there to guarantee wealth and retirement benefits for the already wealthy fishing industry vessel owners then I consider this to be
abject irresponsibility on part of the legislature
to pass this bill or even give it serious consideration.

In order for costal communities to maintain their economic vibrancy it is essential that the Federal and State
RATIONALIZATION process must be STOPPED!

When all is said and done,
and this bill and rationalization should go through,
the carpetbaggers will be gone and leave us with another empty basket.

My suggestion is for an immediate increase of the state water cod fishery to 40 % of the TAC and an eventual phase out of the trawl fishery of directed cod fishing in the GOA. To be generous I will concede them 25 % of the quota so they can keep their by-catch of cod in their other fisheries.

Respectfully,

Ludger W. Dochtermann
Owner Operator F/V Stormbird and F/V North Point

State Managed Season Cook Inlet Area

Year	Vessels	Landings	Jig/troll	Vessels	Landings	Pot
1997	46	233	561,947	10	136	276,966
1998	29	123	188,209	13	183	542,260
1999	14	51	127,229	24	278	1,390,678
2000	5	12	13,885	17	219	1,135,903
2001	5	13	19,428	9	196	875,923
2002	6	15	18,163	9	306	1,310,684
2003	15	160	429,684	10	140	1,023,854
2004	18	20	326,298	12	170	1,785,386
2005	5			9		

State Managed Season Prince William Sound Area

Year	Vessels	Landings
1997	9	36
1998	9	33
1999	7	27
2000	12	36
2001	3	3
2002	0	0
2003		
2004		

Westward Region Registration by Year and area 3/16/05
Trawl Vessels

AREA	2005	2004	2003	2002	2001	2000	1999	1998
Kodiak	26	46	41	40	54	36	66	74
SAP	17	13	19	24	17	19	21	23
Chignik	1	0	0	0	0	0	0	0

Catch and effort by gear type from the Kodiak Area state-waters Pacific cod fishery

Year	Gear	Vessels	Landings
1997	Jig	73	481
	Pot	40	231
1998	Jig	91	663
	Pot	52	317
1999	Jig	119	794
	Pot	81	465
2000	Jig	146	1227
	Pot	69	482
2001	Jig	70	433
	Pot	36	239
2002	Jig	51	340
	Pot	33	212
2003	Jig	102	689
	Pot	42	149
2004	Jig	120	960
	Pot	47	160
2005	Jig	106 ~	
	Pot	53	120

Catch and effort by gear type from the South Alaska Peninsula Area state-waters Pacific cod fishery

Year	Gear	Vessels	Landings
1997	Jig	45	179
	Pot	56	494
1998	Jig	28	124
	Pot	51	309
1999	Jig	27	166
	Pot	53	388
2000	Jig	28	145
	Pot	67	505
2001	Jig	69	416
	Pot	55	311
2002	Jig	70	324
	Pot	50	277
2003	Jig	65	413
	Pot	41	191
2004	Jig	51	317
	Pot	46	278
2005	Jig	26 OPEN	
	Pot	40 OPEN	

From: Tom Evich [tomevich@comcast.net]
Sent: Thursday, March 31, 2005 6:33 AM
To: Rep. Bill Thomas; Rep. Jay Ramras; Rep. Ralph Samuels; Sen. Gary Stevens; Sen. Ben Stevens; Rep. Gabrielle LeDoux
Cc: Joe Childers
Subject: Senate Bill 113

Dear Sir

I am writing in support of Senate Bill 113. It is my understanding that there has been more opposition expressed than support for this bill. The reason may be that those of us that support gulf rationalization have been fishing Pollock and Cod since the first of the year and have not had time to write or testify in favor of this bill.

I own and operate a 58' trawler that use to be a salmon boat. I wish that every one that is opposed to rationalizing the Gulf would have been with us on March 15th when Area 630 opened for the Pollock B season. It was blowing between 60 to 70 MPH. Some of the skippers were trying to get NMFS to delay the opening, or else a voluntary stand down. Both ideas failed and most boats fished, including ourselves. It was not fun and definitely not safe. We seem to keep dodging the bullet considering the weather that we have been forced to fish in the last several of years.

If this bill fails and we do not rationalize the Gulf, then what? Limited entry? I own two salmon permits and have tax returns to prove that does not work. There are two rationalized fisheries in the state right now and by any measure they are glowing successes, and for the life of me I cannot understand why someone would not want to mirror those plans. Further more those fisheries were not even curtailed by sea lion restrictions as we are. I could go on and on with good reasons why this bill should be passed, but in the sense of time I will just ask the you please support this bill.

Most Sincerely
Tom Evich

From: Ron Kavanaugh [sylvstar@ak.net]
Sent: Friday, April 15, 2005 4:57 PM
To: Mary Jackson
Cc: Kimberly Wallace; Sen. Gary Stevens; Sen. Fred Dyson; Sen. Bert Stedman; Sen. Kim Elton; Sen. Gretchen Guess; Sen. Ralph Seekins
Subject: *****SPAM***** SB113

Senator Wagoner,

We are inquiring as to testimony on Monday's hearing on SB113. Will there be any legal findings discussed? Or is this a presentation of the CS from Senator Ben Stevens? We would like to request the opportunity to have public testimony concerning the revised bill and that you consider recommending SB113 be referred to the Judiciary Committee prior to moving the bill out of the Resources Committee. We would be very interested in talking with you about this matter.

It is our hope that SB113 fails to move forward. We are hoping that we can then begin working together within industry on other more viable options for the State Of Alaska's ground fishery. We have clearly identified three options that would be considerably better than SB113. These options would serve well to protect State Waters ground fisheries and not have the Constitutional issues and concerns associated with SB113.

The three options would be:

(#1 and 2 would most likely be the preferred options)

1) a "bright line" concept. This was a concept discussed at last weeks NPFMC meetings. An idea where Federal Fishers executing inside three might be given there history in the Federal program; And then allowed, during a State Water opening to fish inside three on their Federal quota.

2) The concept of an exchange of fish (TAC) between the State and Feds has been on the table predating SB113... it is outlined in several public comments and in one of our earlier letters.

3) A friendly preemption by the Federal side of the 25% Federal TAC inside of three. This does not include the 25% TAC of cod currently and directly managed by the State.

All three options are viable and very do-able, with proper development. There has been no cooperation from the supporters of SB113 in discussion of these matters. They prefer to see SB113 pass as it is at this time their preference. We feel that further discussion of different options will not move forward until SB113 is removed from the table.

The above three options are better than SB113 in that they do not have constitutional impingement issues.

I would direct you to page 9, lines 15 through 18, where the definition of Dedicated Access Privilege is defined. "...authorizes the holder of the privilege to harvest a specified portion...."

If SB113 is passed into legislation, this is the beginning of our legal challenge. It is in direct conflict with the State constitution. We have three legal opinions all in agreement, that this, along with seven other points, would in fact give us cause to believe we would prevail.

We do not wish to get to that stage. We are hopeful that the legislative process is first and foremost concerned about the protection of the constitution. We would also reiterate our previous concern, that the financial burden of a legal challenge would fall to the private sector... something that is by us and others, not anticipated to be pleasant.

The Chignik legal fund required funding for two years and absorbed APPROXIMATELY \$200,000.00. Not only is this burdensome, but also prevents us from working together within industry to solve the issues.

We would like to leave SB113 behind and be able to focus on better options for the State of Alaska, its residents and its entire fishing community. Rationalization will happen; we just would like to see it be "rational" RATIONALIZATION.

We will leave you at that and look to hear from you soon.

5/5/2005

Sincerely

Ron and Julie Kavanaugh

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Version: 7.0.308 / Virus Database: 266.9.11 - Release Date: 4/14/2005

5/5/2005

From: Freed, Linda [lfreed@city.kodiak.ak.us]
Sent: Friday, April 15, 2005 6:02 PM
To: Al Burch (E-mail); Al Unruh (E-mail); Alexis Kwachka (E-mail); Bruce Schactler (E-mail); Cindy Harrington (E-mail); Cliff Farley (E-mail); Dan James (E-mail); Dan Ogg (E-mail); Danny Powell (E-mail); Dave Woodruff (E-mail); Denby Lloyd (E-mail); Donna Jones (E-mail); Doug Hoedel (E-mail); Duncan Fields (E-mail); Rep. Gabrielle LeDoux; Gary Cobban (E-mail); Greg Hathaway (E-mail); Jay Stinson (E-mail); Jean Franquelin (E-mail 2); Jeff Steele (E-mail); Jeff Stephan (E-mail); Jerry Bongen (E-mail); Joe Macinko (E-mail); John Whiddon (E-mail); Jon Black (E-mail); Judy Nielsen (E-mail); Julie Bonney (E-mail); Lacey Berns (E-mail); Lauri Whiddon (E-mail); Lew Lowry (E-mail); Linda Kozak (E-mail); Mark Alwert (E-mail); Marlar, Debra; Matthew Moir (E-mail); Michael Martin (E-mail); Mike and Robin Clark (E-mail); Mike Simpson (E-mail); Mitch Kilborn (E-mail); Oliver Holm (E-mail); Peter Allan (E-mail); Peter Thompson (E-mail); Ron and Julie Kavanaugh (E-mail); Ryan Johnson (E-mail); Scott Smiley (E-mail); Shawn Koson (E-mail); Stosh Anderson (E-mail); Thom Wischer (E-mail); Tim Blott (E-mail); Todd & Cecile Hiner (E-mail); Virginia Adams (E-mail)
Cc: Joe Sullivan (E-mail); whanna@kodiakdailymirror.com; Nancy Galstad (E-mail); news@kmxt.org; Rep. Gabrielle LeDoux; Sen. Gary Stevens; Carolyn Floyd (E-mail); Charlie Davidson (E-mail); Debbie Marlar (E-mail); Dennis McMurry (E-mail); Gabriel Saravia (E-mail); Tom Walters (E-mail)
Subject: Gulf of Alaska Groundfish Fishery Rationalization

The purpose of the e-mail is to let you know that the two resolutions, related to Gulf of Alaska groundfish rationalization (Resolutions 05-5 and 05-9), that had been pending before the City Council were disposed of last night. Both resolutions were tabled indefinitely by the City Council. This means that neither resolution will come back before the Council for consideration.

However, the City Council has determined that they want to be proactive on this issue. To that end a new resolution addressing the Council's concerns will be drafted within the next several days and placed on the April 28th City Council agenda for consideration. The Council will discuss the draft resolution at their work session on April 26th as part of their packet review for the April 28th meeting.

I will e-mail the proposed resolution to all of you as soon as it has been drafted, which should be no later than April 20th.

Linda L. Freed
City Manager, City of Kodiak
710 Mill Bay Road
Kodiak, Alaska 99615
(907) 486-8640 (voice)
(907) 486-8600 (fax)
lfreed@city.kodiak.ak.us

**North Pacific Fisheries Association**

P.O. Box 796

Homer, Alaska 99603

April 18, 2005

Senator Ben Stevens
Senate Resources Committee

Dear Senator Stevens;

Please find the attached resolution in support of the Legislature's efforts to allow the Board of Fish and the CFEC to develop a dedicated access privilege system for the state groundfish fisheries.

Sincerely,

Buck Laukitis
President, NPFA
907-299-0112

cc: Senator Gary Stevens
Senator Tom Wagoner
Representative Paul Seaton

A RESOLUTION OF THE NORTH PACIFIC FISHERIES ASSOCIATION
SUPPORTING A GULF OF ALASKA GROUND FISH RATIONALIZATION PLAN

A Resolution of the North Pacific Fisheries Association (NPFA) supporting a Gulf of Alaska Groundfish Rationalization plan that unlocks the value of our renewable resources, ensures competitive processing markets (and allows for reasonable economic growth) for Kenai Peninsula ports, and promotes conservation of our fishery resources:

Whereas, in 2002 Homer was the third most important fishery port in Alaska by value (eleventh in the nation)

Whereas, the combined value of Kenai Peninsula ports (\$82 million dollars) is second only to Dutch Harbor in 2002 for Alaska and the third highest by value in the nation

Whereas, the majority of NPFA's members who participate in the groundfish fisheries are fixed gear vessels (longliners and pot boats) who are generally small boat, independent family fishermen

Whereas, the majority of Homer's processing businesses are generally small entrepreneurial enterprises specializing in fresh high-valued products; and the strength of Homer's waterfront is the ability to innovate and meet changing market demands and consumer tastes for fishery products

Whereas, certain "processor provisions" and "community protection" measures (closed class of processors, linkages to processors, and regionalized landing requirements), which are stated goals of the GOA Rationalization Plan at the NPFMC, may advantage Kodiak and seriously curtail economic development of the GOA groundfish resources processed on the Kenai Peninsula

Whereas, NPFA previously passed a Resolution opposing processor quotas

Whereas, NPFA members include both long term participants who have made significant capital investments as well as new entrants to the groundfish fisheries in both state and federal waters

Whereas, rationalized fisheries generally slow down the race for fish, promote safety at sea, allow for more orderly management, and promote conservation benefits such as reduced bycatch and wastage

Whereas, NPFA supports the retention of bycaught halibut (only by longliners who own IFQs for halibut) in a rationalized winter cod fishery, as this would reduce wastage of halibut and would also bring high-valued halibut into port for the fresh market - effectively extending the halibut season

Whereas, NPFA supports measures in the GOA Rationalization Plan to include Prohibited Species Caps and/or trawl area closures to provide for the recovery of tanner and king crab and to reduce the bycatch of king salmon

Whereas, NPFA supports measures in the GOA Rationalization Plan to allow voluntary gear conversions so that trawlers would be allowed to fish cod with pots, as this measure could significantly reduce halibut bycatch and lessen adverse effects on marine habitat

Whereas, NPFA supports adequate fishery observer coverage (such as the fee based program being analyzed by the NPFMC) to insure that the conservation goals of the GOA rationalization program are being met

Whereas, NPFA generally supports maintaining an owner on board fleet of harvesters (while protecting existing business practices) where fishermen remain vitally connected to the waterfronts of our coastal communities

Whereas, NPFA supports balancing hired-skipper, permit holders and vessel owners interests in allocations of harvest shares based on their historical participation

Whereas, NPFA supports maintaining entry level opportunities for young fishermen in any rationalized fishery knowing that such opportunities may not be open access opportunities

Whereas, NPFA recognizes that the federal LLP does not control effort in state waters or the parallel fisheries and that compressed seasons present management complications, and the risk of over harvest increases

Whereas, NPFA supported the establishment of the state waters cod fishery in 1997

Whereas, NPFA members have been active participants in the Board of Fish Groundfish Task Force, and the members have conducted a thorough, expansive and informed inquiry into possible programs to successfully manage state water groundfish resources into the future

Whereas, NPFA recognizes that the Board of Fish and ADF&G must act proactively to prevent state water fishermen from being seriously disadvantaged by the pending Federal rationalization plan

Whereas, NPFA supports the state control of resource management inside three miles, but recognizes that a program that integrates to the extent possible program design, data collection, observers and management with the federal program may be in the best interest of fishermen and the state

Whereas, NPFA does not support hard on bottom trawling inside three miles

Whereas, NPFA recognizes that limited entry may not be the best means to control overcapitalization and enhance fishery product value or provide economic stability in the state water groundfish fisheries

Whereas, NPFA recognizes that the Board of Fish, ADF&G, and CFEC all have the state's best interest in mind and have proposed a new method (tool in the tool box) to attempt to craft a solution that best fits groundfish fishery management

AND NOW, THEREFORE, BE IT RESOLVED, that the North Pacific Fishermen's Association supports options in the Gulf of Alaska Rationalization Plan that increase the value of our fisheries resources; and allows open deliveries without processor restrictions for the entire fixed gear catcher fleet, that provides opportunities for our small processors to purchase high quality groundfish; and furthermore if any regionalized landing requirements are imposed in the Plan that the Kenai Peninsula have reasonable opportunity to increase groundfish landings for economic development into the future;

AND FURTHERMORE BE IT RESOLVED that NPFA supports the Legislature, Board of Fish, ADF&G and CFEC in their attempt to develop a Dedicated Access Privilege system for the state groundfish fisheries.

PASSED AND ADOPTED by the North Pacific Fisheries Association of Homer this 15th day of April, 2005.



Buck Laukitis
President, North Pacific Fisheries Association

From: Kip Thomet [kipandleigh@yahoo.com]
Sent: Monday, April 18, 2005 3:01 PM
To: Kimberly Wallace
Subject: Senate bill 113

Dear Senator Wagoner,

Not having a chance to testify to the senate resource committee concerning the c.s. for S.B. 113, I would like to submit this written testimony for your review.

The committee substitute doesn't do anything to lessen the concerns of the harm that Senate bill 113 will do to Kodiak and other fishing coastal communities. It's not just Jig fishermen that are opposed to state water dedicated access privileges. The vast majority of fishermen and business owners that I have spoken with are against this program. These people include not only jiggers but pot fishermen, crabbers, herring seiners, salmon fishermen, and trawl crewmembers.

The main concern is the elimination of jobs through the use of harvesting co-ops and through the consolidation of access rights. Any bill allowing the use of harvesting co-ops in state waters will do tremendous harm to our coastal towns. Shouldn't the state be working towards creating jobs in the rural areas instead of embracing a plan that will eliminate them?

This plan has the potential to eliminate hundreds of jobs in the groundfish fishery alone, and opens the door to consolidation and job losses in other fisheries as well.

This bill also doesn't address the concerns about absentee ownership of the fish resource. This bill, as written, gives the rights of access away and then doesn't require the new "owners" of the resource to be active participants in that fishery. This is precedent setting for the state and will lead to the same problems that we're experiencing after the feds rationalized the halibut and black cod fisheries. When the access rights are no longer tied to the waterfront, the ownership of those rights leave the communities. This bill needs owner on board provisions.

Lastly I would like to note that both the Kodiak city council and the Kodiak borough assembly have refused to support this bill. Both bodies were requested to send in resolutions in support, and both bodies voted unanimously not to support the bill.

Thank you for taking the time to hear this matter.

sincerely, Kip Thomet
Kodiak fisherman.

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From: Charlie Parsons [nightwatch@xyz.net]

Sent: Thursday, April 21, 2005 8:34 PM

Cc: Sen. Gretchen Guess; Sen. Kim Elton; Sen. Bert Stedman; Sen. Fred Dyson; Sen. Ben Stevens; Sen. Ralph Seekins; Sen. Tom Wagoner; Rep. Gabrielle LeDoux; Rep. Bill Thomas; Rep. John Harris; Rep. Jim Elkins; Rep. Peggy Wilson; Rep. Mary Kapsner; Rep. Woodie Salmon; Rep. Ralph Samuels; Rep. Jay Ramras; Rep. Carl Gatto; Rep. Kurt Olson; Rep. Harry Crawford

Subject: SB 113

Hi,

My name is Charlie Parsons I am a second generation fisherman .I have been living in Alaska my hole life and fishing that hole time. The last twenty years I have been fishing ground fish in the Western Gulf around Sandpoint and adjoining areas. I have seen it go from just myself fishing from January to November about ten to eleven months to today wear Cod goes in about three weeks and Pollock going in three days. The only way I see that I am going to be able to survive is with a rationalized fishery. I support SB 113 !

Please support me by supporting SB 113

Charlie Parsons
F/V Night Watch

5/5/2005

From: Tom Evich [tomevich@comcast.net]

Sent: Friday, April 22, 2005 5:51 AM

To: Rep. Harry Crawford; Rep. Kurt Olson; Rep. Carl Gatto; Rep. Jay Ramras; Rep. Ralph Samuels; Rep. Woodie Salmon; Rep. Mary Kapsner; Rep. Peggy Wilson; Rep. Jim Elkins; Rep. John Harris; Rep. Bill Thomas; Rep. Gabrielle LeDoux; Sen. Tom Wagoner; Sen. Ralph Seekins; Sen. Ben Stevens; Sen. Fred Dyson; Sen. Bert Stedman; Sen. Kim Elton; Sen. Gretchen Guess

Cc: Joe Childers

Dear Representative,

I want to state that I strongly support SB 113. In case you do not read any more than the first two lines I want to ask, If not this, what then? Does any one have any better ideas that deal with all the economic, safety, and environmental problems of the Gulf Ground fish fishery. And to prove my point all one has to do is look at Bering Sea Pollock and Halibut to see how successful rationalized fisheries can be. I have been involved with this process for eight years now and to my knowledge there have been no better plans to make some sense out of this business than individual quotas.

I have fished out of Sand Pt, for 26 years now. Beginning in 1989 we started fishing Cod in the winters, and then began fishing Pollock in 1992. I own and operate a 58' fishing vessel that was built to fish Salmon. With the collapse of the Salmon market in 1996 I, and my crew depend almost wholly on Cod and Pollock to make a living. Until 2001 we were able to stay around Sand Pt. where the fishery is conducted near protected waters. In other words that small of boat works well there.

In 2001 after the Sea Lion restrictions were put in place, I felt that I could no longer make enough money staying in Sand Pt in the winter. Two of the last five winters I have fished Pollock in Shelikof Straight and three winters we went out to Adak. Make no mistake, Shelikof and Adak are no place for a 58' vessel in the winter time. Again, we have been forced to do things that we should not do because of Sea Lion restrictions. And that is what this is all about. We are not even able to harvest 40% of the Cod quota in Sand Pt. because it opens at a time when there are not any fish there. That could all be changed with Co-Ops. The reality is that we have dodged a bullet the last several years in some of the weather we have fished in, but that is what we are forced to do when you have to "race" for fish. I could go on and on, but I ask again that you please support SB113 so that the NPMC can continue to develop a plan.

Sincerely
Tom Evich
F/V Karen Evich

From: Ron Kavanaugh [sylstar@ak.net]
Sent: Tuesday, April 26, 2005 2:32 PM
To: Sen. Ralph Seekins
Cc: Sen. Con Bunde; Sen. Lyda Green; Sen. Fred Dyson; Sen. Bert Stedman; Sen. Lyman Hoffman; Sen. Donny Olson; Sen. Gary Wilken; Sen. Gary Stevens; Kimberly Wallace
Subject: *****SPAM***** SB 113..... More to the unconstitutionality

Senator Seekins, Chair Judiciary Committee,

As expected, we watched SB113 leave the RES committee yesterday, but was surprised that there was no discussion about the jig fleet's reaction to exclusion from the bill. We have had dozens of calls and lots of conversations. They (the jig fishers) did not request to be removed. The jig association and its members do not want to be excluded from Rationalization as it happens. What they said is they don't want SB113, and it's authorities to allocate to individuals not actively participating, and also the authority to restrict access to that other than an individual.

My husband Ron and I are Pot fishermen, with substantial history in the Federal and State fisheries. When we talk about the constitutional concerns of SB113, these are some of the issues we are referring to! We have read the opinions concerning the DAP program. We have two of our own legal opinions concerning SB113. But if we could refer you to the memorandum dated March 14, 2005 from George Utermohl, I would ask that you reread pages 2 through 4. It references the Grunert case which is now not applicable because it was found that the Board of Fish surpassed its authority.... The last two sentences of page 4 concern me very much.

"the court may find that a dedicated access privilege system is consistent with the limited entry amendment to the constitution, though there is a significant possibility that the court may find that a dedicated access privilege system impinge too much on other "equal access" provisions of the Alaska Constitution and thus, is not permissible under the Alaska Constitution."

When we read the CFEC memorandum from yesterday, we immediately recognized the repeat of the same supportive arguments for DAP, without any reference to the **equal access problems**.... It appears to us that if they (the Board of Fish, CFEC, and the Sponsor of SB113) continue to repeat their "well developed DAPP" argument, then other stronger arguments will fade in their importance.

What we see, as we've stated before, is that if this "process legislation" moves forward, they are requiring the private sector to challenge this legislation. I would ask that these "significant" concerns be addressed now, before they become the financial burden of the affected public. As in the Grunert Case, Grunert v. State of Alaska, case no. S-10841, we see a Board of Fish attempting to implement a constitutionally flawed program.

There is not just one constitutional issue (DAP) to address. We would like an answer to several.

Page 2 Paragraph 2 lines 1-4 (George Utermohl memorandum)

"...the direct allocation of fishery resources to individual fishermen, based on the fishermen's catch history in the fishery, impinges on the common use section and "no exclusive right of fishery" section.

Page 2 Paragraph 2 lines 10-11 (GU memorandum)

"The 1971 limited entry amendment of the "no exclusive right of fishery" section did not make special privileges, such as the proposed dedicated access privileges, constitutional"

Page 2 paragraph 2 Lines 12-16 (GU memorandum)

"The amendment did not authorize the state to grant other kinds of exclusive right or special privileges of the fishery that were not directly related to limiting access to a commercial fishing user group."

5/5/2005

Bottom of Page 2 and top of 3 (GU memorandum)

"Because a dedicated access privilege system also allocates rights to a specific portion of harvest of a fishery resource to individuals, it goes beyond limiting the access to the right to fish."

Lastly, this memorandum does not address the concern of access rights going to cooperatives, vessel owners, associations, etc.....

Senator Seekins,

How can we continue to pursue SB113 when these questions are being ignored, we have asked them over and over. We believe they are unanswerable. That the GU memorandum is well spoken. But there is more to this memorandum than reference to DAP. That this memorandum states a "significant possibility" that we are correct, that this bill impinges too much. They (the Board of Fish, CFEC, and SB113's Sponsor) continue to ignore these issues. We believe they will use the potential passage of SB113 as strength to continue ignoring these issues.

We strongly believe that it is **the legislative process** that should and must protect the private sector from the financial burden of a legal challenge. SB113 is an attempt to circumvent amending the constitution, as it is viewed as an impossibility to prevail. How can we be successful and have our concerns given their appropriate consideration? There is an obvious repetitive nature to the legal memorandums presented since the original George Utermohl March 14th, 2005 memorandum. The question is not whether a well developed DAP system is constitutional....

Some of the more important questions are:

Does SB113 impinge too much on the Alaska State Constitution?

Does the "authority to restrict access to that other than an individual actively participating " directly violate the Constitution?

Should the access holder have the private right to expect any portion of a fishery resource?

Does SB113 create ability to assign the ownership of a fishery resource prior to retention?

Does SB113 go beyond the limited entry acts authority to limit the access to the right to fish?

Sincerely,

Ron and Julie Kavanaugh
FV Sylvia Star
PO Box 3890
Kodiak Ak 99615
(907)486-5061

From: F/V Point Omega [pomega@gci.net]
Sent: Wednesday, April 27, 2005 4:05 PM
To: Sen. Bert Stedman; Sen. Gary Stevens; Rep. Gabrielle LeDoux; Mary Jackson; Sen. Gary Wilken; Sen. Fred Dyson; Sen. Donny Olson; Sen. Con Bunde; Sen. Lyman Hoffman; Sen. Lyda Green
Subject: SB 113 Senate finance committee hearing 4/27/05

April 27, 2005

Ken and Chris Holland
F/V Point Omega
PO Box 608
Kodiak, AK 99615

RE: SB 113 Senate finance committee hearing

This morning I listened at the Kodiak LIO to the teleconferenced Senate Finance hearing on SB 113. It was one more hearing with testimony by invitation only.

Frankly, I was appalled to hear the Senator who sponsored this bill give a very slanted overview of SB 113. He seems to only pick out the concepts he has some ability to talk to and of course they are all in favor of this. I was very upset to find that there were five persons there to testify in favor of this bill, three of these people were on the joint BOF and NPFMC GOA groundfish rationalization Committee that came up with the DAP program that SB 113 is to create. It is no wonder they would be in favor.

On the opposition side the Senator from District N picked one woman who is from Kodiak and whom I have respect for but is not a stakeholder in any of these fisheries that will be affected nor can she represent the many different positions and opinions of the people who for good reason do not want this new tool (DAP) given to the BOF and the CFEC.

It was also alluded to that Kodiak is a problem and we don't understand that this bill is meant to help us and to facilitate the process of getting the federal rationalization in GOA groundfish tied up.

I want you to understand that this ongoing pressure to get a bill that makes a lot of people unhappy, is being forced through the process by half truths and suppositions. I also feel that the committee that was given the task of coming up with a plan to rationalize GOA groundfish was not composed of the stakeholders who are so worried now.

This plan will undoubtedly make the processors and the trawl people happy (why shouldn't it they are the people who formed it and who will benefit from it) This DAP program is meant to make the trawlers and the processors get control of our resources

inside three miles as well as outside 3 miles. Federal rationalization is about forming co-ops and being affiliated with a processor, SB 113 is trying to get around our Alaska state constitution to give out an allocation of the state's fishing resource in a similar manner. Trawlers seem to want this but as a fixed gear fisherman we do not want to be linked to a processor

I can not say to you often enough that this "process legislation" needs to be brought back to the BOF and a new stakeholders committee formed that is truly representative before it goes on to give this DAP tool to State managers. Let there be a task force formed that includes a more varied group of stakeholders in the groundfish fisheries and let them not make such a narrow options choice. It would be in all of our best interests to have this legislation held over until next year. This would make it possible for more people to get a chance to understand the bill and it's implications.

I also feel that the State should be open to letting the federal history of federal fishers inside three miles go with the federal program. There would be the possibility of impacting the economic viability of less fishers and of having less opposition to the state finding a way to help conserve resources.

Thank you for your consideration in this matter.

Ken and Chris Holland

From: Steven Mathieu [scrim@gci.net]
Sent: Saturday, April 30, 2005 11:20 AM
To: Rep. Tom Anderson
Cc: rep_ethan_berkowitz@legis.state.ak.us; Rep. Mike Chenault; Rep. Sharon Cissna; Rep. John Coghill; Rep. Harry Crawford; Rep. Eric Croft; rep_nancy_dahlstrom@legis.state.ak.us; Rep. Jim Elkins; Rep. Richard Foster; Rep. Les Gara; Rep. Berta Gardner; Rep. Carl Gatto; Rep. Max Gruenberg; rep_davis_guttenberg@legis.state.ak.us; Rep. John Harris; Rep. Mike Hawker; Rep. Jim Holm; Rep. Reggie Joule; rep_mary_kaspner@legis.state.ak.us; Rep. Mike Kelly; rep_beth_kertula@legis.state.ak.us; Rep. Vic Kohring; Rep. Pete Kott; Rep. Gabrielle LeDoux; Rep. Bob Lynn; rep_lesil_mcquire@legis.state.ak.us; Rep. Kevin Meyer; Rep. Carl Moses; rep_mark_nueman@legis.state.ak.us; rep_norman_rokeburg@legis.state.ak.us; Rep. Woodie Salmori; Rep. Ralph Samuels; rep_bruce_weyrauch@legis.state.ak.us; Rep. Peggy Wilson

Subject: SB 113

Dear Representatives of the House,

The other day I spoke to amende SB 113 in a teleconference with the Resource Committee and said the state would be better off giving pot and drag boats jig permits in exchange for their permits as a viable way of conserving the cod resource, stopping the "race for fish", raising the price per lb to fishermen, and spreading out the value of the fishing resource to as many as possible in the coastal communities. I'm sorry if I gave the impression that this was the official view of the Jig association of which I am President. I had just arrive from a cod jigging trip to find that an amended version of the bill was already being revisited with no changes except to exclude the jig fleet. This cod season is now considered one of the states longest fishing seasons and I had little time to study or prepare a response.

I don't know what the rush is to pass this legislation? It seems obvious that more discussion is needed in the communities that would be effected before any legislation is passed so that we, the state, doesn't have to climb out of the same kind of problems allowing foreign buyers to process here, has caused over the last 30 years. Nobody in the coastal communities has a clue how giving carte blanche undefined allocative powers to the board of fish and the CFEC will effect their careers or the communities they raise their children in. I believe Sb 113 will raise individual property taxes to a declining coastl population to pay for the increasing costs of education. Among other side effects.

There was a member of the jig association whos testimony was stricken when he questioned why the bill was introduced in the first place as the sponser may have been influenced financially. Al Birch makes no secret in Kodiak how much good legislation costs. The knowledge of this sort of financial backing can be officially stricken from the resource committee records but is a matter of public knowledge, its a mute point. Good legislation is a relative value judgement and not always correct legislation.

I and Shaun Docterman have spoken brashly as fishermen often do when their carreeres are threatened. We don't always make the right decisions when we are rushed. There are some rookie legislators who will vote for SB113 only to appease and make points with more senior members of the same body. The Alaska Jig Association would like to appeal to the more reasonable legislators to carry the day and postpone this bill till jig fishermen can be included in a more pro-active manner. We are colored in such a poor light when we are given only the chance to be reactive. The communities and the jig fishermen are stake holders in this legislation and as of yet have not been informed or heard from. Even the new appointee to the board of fish that would recieve this un-known power has not been able to comment on the bill for lack of knowledge.

First. The trawl industry is the dirtiest fishery in the state as far as bi-catch is concerned which has been known for many years and documented publicly. I was a deckhand on one of the first three boats to deliver pollock to kodiaks shore plants, the Mar Del Norte and everytime a net was brought to the surface, the quantities and variety of fish in each tow made me think to myself, how can this be legal. Aloud I was glad to have the job for the money to support my new family. I'm sure the state program would include an observer program paid for by the participating boats that trawl.

Secound. The trawl industry and its relationship to the established processors are the main reason the price of cod has gone down and stayed below the 1982 price of .36 cents per pound and has stayed depressed. Two years ago the jig fleet recieved .40 cents per pound albeit for only 2 weeks, we feel we have just scratched the surface. We see the potential.

Third. We would like to take this legislation off the fast-track so we can participate as we have good ideas for limited entry to dicuss with you along with ides about allocation and marketing that would benifit the whole state alot better the the fish processing plant in anchorage.

We are involve in the fishery and have the right to have are ideas shared with you please give us this much time.

With All Due Respect.
 Steven P. Mathieu
 Pres. Alaska Jig Association

5/5/2005

From: Ron Kavanaugh [sylstar@ak.net]
Sent: Monday, May 02, 2005 8:42 PM
To: Rep. Gabrielle LeDoux; Rep. Bill Thomas
Cc: Rep. John Harris; Rep. Jim Elkins; representative_peggy_wilson@legis.state.ak.us;
 reprersentative_mary_kapsner@legis.state.ak.us; representative_woodie_salmon@legis.state.ak.us
Subject: *****SPAM***** SB113; soon to be HB???

May 02, 05

Chair Ledoux & Chair Thomas
 House Fisheries Committee

SB113 is a bill written to support a Dedicated Access Privilege in State Waters. DAP is a concept closely mirroring the Federal IFQ program. It attempts to provide ownership of a State resource with out defying our constitution. There are two major legal roadblocks holding up Dedicated Access Privilege.

#1 the intent to reserve ownership of a specific amount of the resource for an person prior to retention

"The intent that you can provide exclusive rights to harvest a specific amount of fish creates ownership prior to catching it. There is no separating permanent ownership and time specific ownership. Fish as a resource can only be available to the public for the predetermined lifecycle of that specific fish. Exclusive harvesting rights apportioned to specific amounts of public resource effectively predetermine ownership of that specific resource. The thought that a time sure privilege lends itself to a less than ownership situation, is a misrepresentation of fact, and an attempt to divert attention from fact.... ownership is determined by claim and possession. DAP creates a claim and an exclusive right to possess. To highlight this: fish have a predetermined life cycle. If you guarantee the right to capture it, you have created a special privilege." (Legal consideration)

#2 the access rights to the resource awarded to that other than an individual

The intent of SB 113 is to grant the access right to a CO-OP or entity, to retain (protect from open access) your history you will be required (forced) to join the CO-OP or entity. If you choose not to join, you and your history would then be thrown into open access, where you "race" to catch your share. It doesn't seem that a CO-OP or other entity serves to do anything other than bind the fishermen to an unwanted overseer, with unknown rights.

How does this system stop the race for fish or enhance safety for those that choose to fish outside a CO-OP?

Or is it the intent to force CO-OPs on all fishers?

Is there no provision for non-CO-OP fishers to protect their "history?"

Ownership of Access Rights.

If the State creates the authority to assign access to persons not actively participating in the fishery, it ignores constitutional assignment. The access rights in a State Waters Fishery must remain in the hands of fishermen. Access rights awarded to vessel owners and corporations will begin the downward spiral toward absentee ownership.

We would like to like to draw a parallel for this committee. The Board of Fish chose to create the Chignik CO-OP. After its inception fishermen began to make economic decisions based on this new system. They sold their boats and their gear; they no longer pilgrimage to Chignik during the summer, some moved to find crew jobs that were lost, some trained and took up alternate occupations.

With the recent court decision that the Board of Fish exceeded its authority, these fishermen are now left without a viable way to execute their fishery.

If SB113 passes through legislature, and the DAP program is implemented, Fishermen will begin to make those same decisions. Marginalization will force us to consider leasing our fish, our boat will have no job and no value, and our crews will have no jobs and will move on.

It is not likely that a legal challenge of SB113 will occur, it is a surety. The arguments are clear, and SB113 is directly in conflict with our State's Constitution. Do not be mislead with an undeveloped DAP program upholding SB113's constitutionality. It is not reasonable to request flawed legislation pass without first requiring substantial support.

Please understand that SB113 is not what the Gulf of Alaska desires or requires. We hope that a responsible Fisheries Committee will recognize the inherent problems within, and allow SB113 to fade, while more substantial bills are given priority.

We would hope that this committee might see a need for this bill to go back to the Board of Fish until next session. This would allow those concerned with its problems time to address them within industry; and allow the Board of Fish time to go back to the public and discuss their desire to allocate fishing history. We would reflect on the wise words of the Board of Fish's Stakeholder Subcommittee on GOA Ground fish Rationalization.... **In June 2004, shortly after the failure of the ground fish moratorium bill in this same committee, the stakeholders committee commented that before further legislation was sought, there was a need to inform and advise the general fishing community.** We would suggest that this is the appropriate action. There was no attempt prior to this legislation to inform or advise the commercial fishing community. As active members of our community and substantial stakeholders, we have followed Gulf Rationalization closely, but were not privy to any details before SB113 was presented. Please send this bill back to the Board of Fish to be reviewed and considered in the industry community where it belongs!

Ron & Julie Kavanaugh
FV Sylvia Star
PO Box 3890
Kodiak, AK 9961
907-486-5061

From: LIO Kodiak
Sent: Wednesday, May 04, 2005 9:10 AM
To: sen.gary.stevens@legis.state.ak.us; rep.gabrielle.ledoux@legis.state.ak.us
Subject: FW: SB113

Just forwarding a message to you from Dr. Kevin Creelman regarding SB 113.
Lorna

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

From: Kevin Creelman [mailto:drkc@alaska.com]
Sent: Tuesday, May 03, 2005 6:47 PM
To: LIO Kodiak
Subject: SB113

I'd like to join many others in our community to urge all efforts to defeat bill 113 fisheries reallocation of resources, especially in light of Jay Hammond's article about the impeachable conflicts of interest of the bill's sponsor Ben Stevens and his unpardonable reactions after being accused by a Kodiak fisherman trying to protect our fishery. This legislation reeks of bought-off government action at it's worst, a "respected colleague" conning his fellow legislators for personal gain.

Sincerely,
Kevin Creelman, MD
Kodiak

From: Dan Hull [danhull@ctcak.net]
Sent: Thursday, May 05, 2005 8:19 AM
To: Rep. Gabrielle LeDoux; Rep. Bill Thomas; Rep. Jim Elkins; Rep. John Harris; Rep. Peggy Wilson; Rep. Mary Kapsner;
Rep. Woodie Salmon
Subject: SB113

Members of the House Special Committee on Fisheries,

On behalf of the Groundfish Division of Cordova District Fishermen United, I am writing to ask that a hearing be scheduled for SB113 so that the bill can move forward to the Finance Committee and a floor vote. We support this bill and have provided testimony on it to Senate Resources. That testimony is attached to this message.

Thank you for taking our comments into consideration.

Dan Hull, Co-Chair
Groundfish Division
Cordova District Fishermen United
907-424-3447

5/5/2005