ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672
2212 SCOMM 87: HOUSE SPECIAL COMMITTEE ON FISHERIES, 1993-94 816

GENERAL INFORMATION ONCE CERTIFICATE OF DOCUMENTATION IS ISSUED

The Certificate of Documentation is similar to a car registration and must be kept on board the vessel and be accessible while the vessel is in operation. The Certificate must be produced upon lawful demand of any person acting in an official public capacity. If the Certificate is lost or stolen the owner MUST report it immediately to the Vessel Documentation Office and request an application for replacement.

Failure to have the Certificate of Documentation on board the vessel is a violation of Federal law and could subject the owner to monetary penalties.

The vessel owner must notify the Vessel Documentation Office of any address changes. When notified of the address change, the Vessel Documentation Office will mail the owner a label reflecting the new address. The label must be affixed to the original vessel document. It is not necessary to submit the original Certificate of Documentation for address changes.

Once a Certificate of Documentation is issued, if the vessel was previously operated under State numbers (such as AK registration), the numbers and decal must be removed from the vessel hull and the registration card sent to the Boating Registrar for cancellation.

RENEWAL OF THE CERTIFICATE OF DOCUMENTATION

The Certificate of Documentation (document) is valid for one year and must be renewed on or before the last day of the month in which it expires. A renewal form (CG-1280) is mailed to the managing owner 45 days before the document expires. A renewal decal cannot be issued until the renewal form is signed and returned either in person or by mail.

The renewal decal must be placed on the original Certificate of Documentation, either on the front over the existing decal or on the reverse, as appropriate for the type of document issued. The managing owner should receive the decal within 10 days after the completed renewal form is processed by the Vessel Documentation Office. If the decal is not received within 10 days, contact the vessel's home port. If not received, the owner must write to the Vessel Documentation Office stating that the decal has been lost so that a new decal can be issued. If an address change was noted on the renewal notice, a label will be sent for placement on the document along with the decal. It is NOT necessary to return the original Certificate of Documentation for address changes or renewal.

Failure to receive the renewal notice will not relieve the owner of the responsibility to renew.

Failure to renew the vessel document during the month of expiration renders the Certificate of Documentation invalid and subjects the owner to a penalty of up to $500 PER DAY of continuing violation.

CHANGE OF OWNERSHIP FOR CURRENTLY DOCUMENTED VESSEL

One of the most common reasons for surrender of a Certificate of Documentation is for a change of ownership. When a change of ownership occurs, the OWNER OF RECORD is required to return the original Certificate of Documentation to the Coast Guard. If the vessel is covered by an outstanding mortgage, mortgagee consent must be obtained and evidenced by submission of Form CG-4593 OR the mortgagee must issue an originally signed and notarized release or satisfaction of the mortgage.

In order for the Coast Guard to change its records to reflect a new ownership and issue a Certificate of Documentation to a vessel, Bills of Sale (CG-1340), Application for Documentation (CG-1258), Certificate of Marking (CG-1322) and Declarations of Citizenship (MA-899) are needed. All forms can be obtained from the Vessel Documentation Office. All paperwork must be submitted to the vessel's home port so that a new Certificate of Documentation may be issued.

If anything else is required, the applicant will be notified. Normally, if there are no problems with the paperwork submitted, ownership will be changed and the document should be back to the applicant within 10 days.

DOCUMENTATION OF RECREATIONAL (PLEASURE) VESSELS

A vessel which is at least 5 net tons and used exclusively for recreational purposes is NOT required to be documented, but may be at the owner's option.

A vessel MUST be documented if it is used in the coastwise trade or fisheries even if it is also used for recreational purposes.

Once a Certificate of Documentation is issued, previously issued state motorboat numbers must be surrendered and the number removed from the vessel hull.

REQUIREMENT FOR SURRENDER OF CERTIFICATE OF DOCUMENTATION

A Certificate of Documentation MUST be surrendered to the Documentation Office when one or more of the following occurs:

-The ownership of the vessel changes in whole or in part;

-The general partners of a partnership owning the vessel change by addition, deletion, or substitution;

-The home port (the port which keeps the vessel records) changes;

-The dimensions or tonnage of the vessel changes;

-The name of the vessel changes;

-The restrictions imposed on the vessel change by addition, deletion, or substitution;

-The legal name of any owner of the vessel changes;

-A tenant by the entirety owning any part of the vessel dies;

-A self-propelled vessel becomes non-self-propelled or the opposite occurs;

-The trade endorsement for the vessel changes by addition, deletion, or substitution;

-The discovery of a substantive or clerical error made by the issuing Documentation Office;

-The vessel is placed under the command of a person who is not a citizen of the United States. A new document may be issued by the Vessel Documentation Office when the vessel is once again placed under the command of a citizen of the United States.

PENALTIES

Title 46, United States Code, Chapter 121, provides that:

A person that violates this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $500. Each day of a continuing violation is a separate violation.

A vessel and its equipment are subject to forfeiture to the United States Government when:

(a) the vessel owner knowingly falsifies or conceals a material fact or makes a false statement or representation about the documentation of the vesel, OR

(b) a certificate of documentation is knowingly and fraudulently used for a vessel.

VIOLATION	MAXIMUM PENALTY
Fraudulent application	Forfeiture of the vessel
Fraudulent use of a Certificate of Documentation	Forfeiture of the vessel
Any other violation of Title 46 USC 121 or regulations	$500 each continuing day of violation
Operation of a vessel on an invalid Certificate of Documentation	$500 each continuing day of violation

Failure to provide the Coast Guard with an acknowledged certificate of discharge of the indebtedness on full and final discharge of the indebtedness under a recorded mortgage may subject the mortgagee to a civil penalty of not more than $10,000. (46 U.S.C. 31309/31321(f))

PREFERRED MORTGAGES
(46 CFR 67.35)

GENERAL REQUIREMENTS FOR FILING AND RECORDATION

--Identical instruments must be submitted in quadruplicate--additional copies required if more than one vessel is involved. Two instruments must bear original signatures; two may be copied. Distribution after recording: one original is retained at the homeport, one original is for the mortgagee, two certified copies for the vessel owner (one for the file and one for the vessel itself.)
--Must cover the whole of the vessel
--Must identify the vessel by name and official number
--Must recite the names and addresses of the mortgagors and the individual interest in the vessel held by mortgagors
--Must recite the names and addresses of the mortgagees and the individual interest in the vessel held by each mortgagee
--Must recite one total amount of the mortgage
--Must be signed by or on behalf of the mortgagor
--Must bear the date signed
--Must contain an acknowledgement by a notary public. No officer or employee of the Coast Guard is authorized to take such acknowledgments.
--Must be accompanied by a Declaration of Citizenship from each mortgagee on form MA-899
--Must be accompanied by recording fee--computed by averaging the number of words per page at $.20 per folio (100 words) for the original instrument and each certified copy. A fee is not charged for the copy retained by the homeport.

RESTRICTIONS

--Mortgagee must be U.S. citizen unless specifially exempted by Maritime Administration
--May not be recorded if the instrument bears a material alteration which has not been specifically identified in the acknowledgment
--Must be recorded at the homeport of the vessel
--When a change of homeport is involved, recordings will be made when the General Index or the Abstract of Title has been received at the new port.

NOTE: THE COAST GUARD DOES NOT PROVIDE A MORTGAGE FORM

NOTICES OF CLAIM OF LIEN
(46 C.F.R. SUBPART 67.37)

--Must recite: name and official number of the vessel
name and address of claimant
nature of lien claimed
date on which the lien arose
the amount of the lien claimed

--Must be signed by or on behalf of the claimant and include a date of execution

--Must be acknowledged by a notary public

--Must be submitted in duplicate--at least one copy must bear original signatures

--Must be filed and recorded at the home port of the vessel

RESTRICTION ON FILING AND RECORDATION:

A notice of claim of lien is not entitled to filing and recordation unless the vessel against which the lien is claimed is covered by a preferred mortgage filed or recorded with the Secretary (of Transportation) currently represented by the Coast Guard.

MEMORANDUM STATE OF ALASKA

TO: Commission

DATE: April 1, 1993

FILE NO:

TELEPHONE NO:

FROM: Chris Kelly (CK)
Licensing Project Leader
CFEC

SUBJECT: Impacts of Change in Vessel Fees

I, and the staff in licensing, feel that further explanation of the impacts of the proposed legislation on licensing procedures and workload may be helpful in support of the request for an additional temporary licensing clerk during the first seven months of this transition.

Each fall we mail pre-printed renewal forms to all entities that licensed vessels in the current year. If the vessel owner also held fishing permits, the permit renewal form is printed on the other side of the vessel form. In most cases, very minor changes, if any, are needed on these forms and the license holder simply signs the form and submits the indicated fee. This simplified renewal process was first implemented in 1992 to minimize paper-handling and streamline the process for the fishermen and maximize the efficiency of the small staff available for licensing.

One negative aspect of the process is that less explanatory information can be included on the form. (The assumption is that a simplified form works for straight renewals because the license holders are presumably already familiar with the basic regulations and requirements.) However, the staff has found that license holders tend not to read the preprinted forms closely, they frequently overlook changes in fees even though they may be printed in BOLD print right on the face of the form. Like most people, fishermen are creatures of habit and they tend to sign the form and send it in with the same fee they've paid for years.

For example, in 1992 when these forms were first used, several individuals wrote or called to say that they had received their preprinted permit renewal forms and they really liked having all the permits listed on one form, but they didn't receive their vessel license renewal form(s). They were usually quite embarrassed when we asked them to turn the permit form over, and they found their vessel renewal(s) printed right on the other side!

With a change in the fee schedule, many vessel license applications will have processing delayed until additional fees are received. This

will also delay issuance of permits, since the permit cards cannot be issued until the associated vessels are actually licensed. This requires the staff to send letters explaining the problem and requesting additional fees and these letters must be maintained in a "suspense" file until the fees are received.

As you know, the impact will become greater the closer it gets to the fishing seasons. When license holders find themselves without the necessary permits or vessel licenses as the fishery is about to start, they get on the phone to licensing staff to find out how their licenses may be expedited, and/or to demand that staff make arrangements with local ADF&G offices to somehow enable them to commence fishing even if the licenses haven't been received yet. Each such instance may take 20-30 minutes of phone calls back and forth, and it is not uncommon for you and/or legislators to be dragged into the process.

The renewal forms will have to be modified to explain the new fee schedule and how to determine the vessel length, and to emphasize that the applicant must certify under penalty of perjury that the length information provided is correct. To the extent that we may not be able to list all of the licenses on a single page, this may result in some loss of the efficiencies we gained by introducing the new forms. We know from experience that any such change results in a great deal of confusion and numerous telephone calls from persons complaining about the higher rates and demanding to know how they were established. A significant amount of licensing staff time is taken up in attempting to respond to these inquiries.

These impacts will primarily be felt during the first year of implementation. The additional temporary employee will help to keep licensing productivity at an acceptable level even though the staff will be burdened with a greater than normal volume of telephone calls and correspondence. During the first year, fishermen and vessel owners will be made aware of the changes and the validity of data contained on the vessel license file will be improved. By the second year, the transition should be pretty much accomplished and any lingering impacts can be absorbed with existing permanent and seasonal staff.

Thank you for supporting this request.

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
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MEMBER
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March 16, 1993

FOR IMMEDIATE RELEASE

JUNEAU--Representative Carl Moses of Unalaska has introduced legislation - HB 230 - to make more equitable the annual commercial fishing permit renewal fees and vessel fees.

"I strongly believe that the commercial fishing industry is paying more than its fair share of the costs of managing and protecting our fisheries resources," Moses said. "So far however, we haven't been able to convince the Governor or the Legislature of this, and the Department of Fish and Game continues to be faced with budget reductions that result in money being taken directly out of the state's economy. It doesn't make sense to shortchange the state's largest renewable resource industry."

Moses said he realized his proposed fee increases come at a time when the fishing industry is already reeling from low prices and unstable markets. "But I also believe the fishing industry needs to

show once again that it is committed to contributing significantly to paying for those programs from which they benefit," he added.

Moses noted that his research indicates that the fishing industry contributes more than $55 million each year into the state's coffers, exceeding the costs of the state's fishing-related programs.

"The state's management programs however, are losing ground to inflation and the increasing complexity and value of our fisheries," Moses said. "We have a billion dollar industry in this state, and we need to be doing more to manage and protect our resources in order to maximize their use."

As introduced, HB 230 would make two major changes in state law:

• It would base the annual vessel license fee, currently $20, on gross tonnage of the vessel. "It's only fair that this fee be based on a vessel's capacity to harvest our resources," Moses said. "I know a lot of boats that can be the same length, but have widely differing abilities to benefit from the public's resources."

• It would remove the cap that currently exists on annual commercial fishing license fees. Those fees are based in limited entry fisheries, on the value of the permit, and in unlimited fisheries, on an average of gross earnings. The $750 cap that is currently in statute has artificially kept permit fees down to $250 maximum for Alaska residents and $750 maximum for non-residents.

With the cap removed, only fishermen in the higher-value fisheries would see their fees increased. An initial estimate by the Commercial Fisheries Entry Commission indicates this change in statute could generate as much as $6 million a year to the state.

Moses pointed out that the increases would be felt only in the higher-value fisheries, with nearly 80% coming from non-residents, who tend to be more active in those fisheries.

"I personally am all in favor of a state income tax as a way of getting non-residents to pay a greater share of the cost of state services," Moses said. "But if that's not a real option, then it is only fair to base what the state charges a fisherman to do business in this state on the value of the public's resources that are taken."

"I strongly urge the commercial fishing industry to look over this proposal carefully," Moses said. "I think they will find it to their long-term benefit." Moses pointed out that the legislation includes intent language that the additional funds be used to beef up fisheries management and development programs. "I know we can't dedicates these funds," he said. "But I would not submit this legislation if I did not fully believe that those funds would go toward these purposes."

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UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
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Seafood Industry Contributions to State Revenues - Anticipated FY94

Type of Revenue	Revenue Source	Gross Revenues (millions)
Direct Contributions to General Fund:	Raw Fish Tax	40.3
	CFEC Licensing Revenues	6.0
	ADF&G Crew Member Licenses	2.0
	Commercial Fishing Revolving Loan Fund	5.0
	Confiscated and Test Fish Sales	2.0
	Processors' corporate income taxes	.1
Total Direct Contributions to General Fund:		**$ 55.4**
Additional Contributions to the General Fund:	Corporate Income Taxes from other business	Not Broken Out
	Marine Fuel Tax	Significant portion of the $10.1 million collected
Other Funds Generated by Industry:	Salmon Enhancement Tax (These are passed through to the aquaculture associations to run hatcheries that produce salmon for all users)	6.1
	Seafood Marketing Assessment (These are passed through to ASMI to market seafood)	3.0
	Federal Contributions to management and research	10-12
	Taxes paid by processors to local municipalities and boroughs	No totals, but in millions

SOURCE: Alaska Department of Fish and Game, Alaska Department of Revenue, Alaska Department of Labor, CFEC, and ASMI

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fisherman's Association • Alaska Trollers Association • Area K Seiners Association
Bering Sea Fishermen's Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kenai Peninsula Fishermen's Association
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United Cook Inlet Drift Association • Western Alaska Cooperative Marketing Association

(Over)

Examples of Lost Revenues To the Fishermen, State, and the Seafood Industry

1. Prince William Sound - Have funding available for the best stock assessment tools, to gain the maximum sustained yield in the herring and salmon fisheries. 1972-1988 Fish Tax lost over 1.510 million.

   Copper River Counter - Needs two sonar counters that ar_ state of the art to maximum sustained yield. There is a nine-day lag time to the existing sonar counter resulting loss of revenues in fishing time.

2. Area M - Needs herring survey in Dutch Harbor. No full-time area biologist.

3. Cook Inlet - Development of mainstream Susitna sonar counting - a detailed program to evaluate hydroacoustic techniques for counting all salmon species in the Susitna River. Over 24 lakes produce sockeye salmon in the drainage, yet we do not know what escapement objective each lake should have.

4. Southeast Alaska

   Horse clams. Lots of regional potential. Indications of a market. No money to support in present budgets, cost unknown.

   Seacucumbers - 1992 quota 2.4 million. 1.2 million # Value x vessel/million. Management cost - 50,000 estimated. Need stock assessment of additional and existing areas.

   Fishery - SE Red King Crab. No current stock assessment. Result - no fishery. Potential - lost revenues to fishermen of 1.2 million.

5. Kodiak - Lost funding for two weirs on sockeye systems last year. With these weirs gone, result knowledge of the system is lost. Direct loss to fishermen of 20,000 - 30,000 red salmon. These are red salmon over and above escapement goals.

These are only a few examples of lost revenues to the fishermen, state, and the seafood industry. There is untold millions more. I have examples of many others. Contact me if you are interested in more information or have questions.

For additional information or answers to questions, please contact:
United Fishermen of Alaska, 211 Fourth Street, Suite 112, Juneau, Alaska 99801
(Phone. 586-2820; FAX: 463-2545)

March 15, 1993

UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

Testimony of Jerry McCune, President
United Fishermen of Alaska
on House Bill 230
before the
House Special Committee on Fisheries
Friday, March 26, 1993

Mr. Chairman and Members of the House Special Committee on Fisheries:

My name is Jerry McCune and I am President of United Fishermen of Alaska.

In regards to House Bill 230, United Fishermen of Alaska still stands behind and believes that the commercial fishing industry is paying more than it's fair share to manage and protect fisheries resources.

We thank Representative Moses for making an attempt to generate additional funds to go to the Alaska Department of Fish and Game's budget purposes.

After reading the new proposed fee schedule, we find that some limited entry permit fees in high values have more than a 30% increase. Some of the struggling fisheries (such as the seine fisheries fee) would stay the same, but as soon as they got back on their feet, they would be hit with a fee increase.

Our other problem with House Bill 230 is the large budget cuts which leaves additional funds generated from an increase of fees to be allocated somewhere else.

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Alaska State Legislature

Representative Carl E. Moses

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MEMORANDUM

TO: Representative Bill Williams, Chairman
House Resources Committee

FROM: Representative Carl Moses, Chairman
House Rules Committee

DATE: April 6, 1993

RE: Request for scheduling

I would like to respectfully request that you schedule for a hearing in your committee as soon as possible CSHB 230 (FSH). The goal of this legislation is to make more equitable the annual commercial fishing vessel fee. This fee is currently a flat $20, no matter whether the boat is a skiff or a huge floater-processor. CSHB 230 (FSH) would change the flat fee to a sliding scale based on the length of the vessel. It is only fair that this fee be based on a vessel's ability to benefit from the public's resources, and that the larger boats be charged a higher fee.

HB 230 as originally introduced would also have removed the cap that currently exists on annual commercial fishing license fees. Those fees are based in limited entry fisheries, on the value of the permit, and in unlimited fisheries, on an average of gross earnings. The $750 cap that is currently in statute has artificially kept permit fees down to $250 maximum for Alaska residents and $750 maximum for non-residents. However, after hearing testimony from

commercial fishermen on the potential impacts of this portion of the bill, I have decided to examine the whole issue of fishing fees during the interim. For that reason, CSHB 230 (FSH) now only addresses the vessel license fees, and would generate approximately $600,000 in additional revenue to the state.

The state's fisheries management programs are fast losing ground to inflation and the increasing complexity and value of our fisheries We have a billion dollar industry in this state, and we need to be doing more to manage and protect our resources in order to maximize their use. For that reason, my legislation includes intent language that the additional funds generated by this legislation be used to beef up fisheries management and development programs. I know we can't dedicate these funds, but I would not submit this legislation if I did not fully believe that those funds would go toward these purposes. CSHB 230 (FSH) is supported by the United Fishermen of Alaska.

UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

April 7, 1993

The Honorable Carl Moses, Chair
and Members of the House Special
Committee on Fisheries
Alaska State House of Representatives
The Capitol Building
Juneau, Alaska 99801-1182

Dear Representative Moses and Committee Members:

United Fishermen of Alaska supports Committee Substitute for House Bill 230. We think the scale is fair.

United Fishermen of Alaska wholeheartedly agrees with the intent of the bill that these new proposed vessel fees, which go to the State of Alaska, will be earmarked for the Alaska Department of Fish and Game's budget.

Be assured that United Fishermen of Alaska continues to believe that the commercial fishing industry is paying its way and, therefore, these monies collected belong to the ADF&G budget. If our industry is bringing in money from fisheries, than we definitely feel the monies received should be put back into fisheries and not into some other budgetary fund. We need to reinvest in the future fisheries for the state of Alaska.

Sincerely,

Jerry McCune

Jerry McCune
President

cc: UFA Board of Directors

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DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM April 2, 1992

SUBJECT: Use of the Fish and Game Fund to Support the Fish and Wildlife Law Enforcement Activities of the Department of Public Safety (Work Order No. 7LS-2260)

TO: Senator Lyman Hoffman
ATTN: Molly McCammon

FROM: George Utermohle GU
Legislative Counsel

You have asked whether funds in the Fish and Game Fund may be used to support the fish and wildlife law enforcement activities of the Department of Public Safety.

The answer is no and yes.

The Fish and Game Fund consists of:

> (1) money received from the sale of state sport fishing, hunting, and trapping licenses, special permits, and waterfowl conservation tags purchased by hunters;
>
> (2) proceeds received from the sale of furs, skins, and specimens taken by predator hunters and other employees;
>
> (3) money received in settlement of a claim or loss caused by damage to the fish and game resources of the state;
>
> (4) money received from federal, state, or other governmental unit, or from a private donor for fish and game purposes;
>
> (5) interest earned upon money in the fund;
>
> (6) money from any other source.

AS 16.05.110.

The primary source of money deposited into the fund is the sale of state sport fishing, hunting, and trapping licenses, special permits, and waterfowl conservation tags.

The state participates in federal aid programs for restoration of sport fish and wildlife and has assented to the provisions regulating participation in these federal programs.

AS 16.05.140. As a condition of participation in these programs, the state must agree to dedicate the proceeds derived from sport fishing and hunting licenses to administration of the sport fish and game programs of the Department of Fish and Game. 50 CFR 80.3. Use of the proceeds of sport fishing and hunting licenses to support fish and wildlife law enforcement activities of the Department of Public Safety would be considered a diversion under the provisions of the federal program, because the Fish and Wildlife Protection Division is not part of the Department of Fish and Game. 50 CFR 80.4. Diversion of the proceeds of sport fishing and hunting licenses makes the state ineligible to participate in the federal programs. 50 CFR 80.4(b). Thus, the state may not use the proceeds derived from sport fishing and hunting licenses to support fish and wildlife law enforcement activities of the Department of Public Safety, if the state wants to continue participation in the federal programs.

For purposes of the federal programs, a sport fishing or hunting license is any license, permit, stamp, etc. which is prerequisite for the exercise of sport fishing and hunting privileges. According the U.S. Fish and Wildlife Service, any fee, including a surcharge, charged as a condition of obtaining a sport fishing or hunting license is subject to provisions imposed by the federal programs and thus cannot be diverted to a purpose other than administration of the sport fish and game programs of the Department of Fish and Game. 50 CFR 80.4.

Those funds in the Fish and Game Fund that are derived from sources other than sport fishing, hunting, and trapping[1/] licenses are potentially available to support fish and wildlife law enforcement. These other funds must be used to carry out the purposes of AS 16, but not including AS 16.51 (ASMI) and AS 16.52 (Fishery Industrial Technology Center), and to carry out the purposes designated by the donor of the funds. AS 16.05.100. It is reasonable to conclude that fish and wildlife law enforcement serves to carry out the provisions of AS 16 and thus may be funded out of the Fish and Game Fund, if unrestricted funds are available.

If I may be of further assistance, please advise.

GU:gc
92-273.glc

1/ Though fees obtained from trapping licenses are not subject to the provisions of the federal sport fish and wildlife restoration programs, the state has designated the proceeds of trapping licenses for furbearer management programs. AS 16.05.130(c).

Alaska State Legislature

Representative Carl E. Moses

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SPONSOR STATEMENT

CSHB 230 (FSH)
COMMERCIAL FISHING VESSEL AND LICENSE FEES

The goal of CSHB 230 (FSH) is to make more equitable the annual commercial fishing vessel fee. This fee is currently a flat $20, no matter whether the boat is a skiff or a huge floater-processor. CSHB 230 (FSH) would change the flat fee to a sliding scale based on the length of the vessel. It is only fair that this fee be based on a vessel's ability to benefit from the public's resources, and that the larger boats be charged a higher fee.

HB 230 as originally introduced would also have removed the cap that currently exists on annual commercial fishing license fees. Those fees are based in limited entry fisheries, on the value of the permit, and in unlimited fisheries, on an average of gross earnings. The $750 cap that is currently in statute has artificially kept permit fees down to $250 maximum for Alaska residents and $750 maximum for non-residents. However, after hearing testimony from commercial fishermen on the potential impacts of this portion of the bill, I have decided to examine the whole issue of fishing fees during the interim. For that reason, CSHB 230 (FSH) now only addresses the vessel license fees, and would generate approximately $600,000 in additional revenue to the state.

The state's fisheries management programs are fast losing ground to inflation and the increasing complexity and value of our fisheries We have a billion dollar industry in this state, and we need to be

doing more to manage and protect our resources in order to maximize their use. For that reason, my legislation includes intent language that the additional funds generated by this legislation be used to beef up fisheries management and development programs. I know we can't dedicate these funds, but I would not submit this legislation if I did not fully believe that those funds would go toward these purposes. CSHB 230 (FSH) is supported by the United Fishermen of Alaska.

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL FISHERIES COMMITTEE

MEMBER
FINANCE SUBCOMMITTEES
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SPONSOR STATEMENT

HB 230
COMMERCIAL FISHING VESSEL AND LICENSE FEES

The goal of House Bill 230 is to make more equitable the annual commercial fishing permit renewal fees and vessel fees. As introduced, HB 230 would make two major changes in state law:

• It would base the annual vessel license fee, currently $20, on gross tonnage of the vessel. Since boats of equal length can have widely differing harvesting capacities, it's only fair that this fee be based on a vessel's ability to benefit from the public's resources.

• It would remove the cap that currently exists on annual commercial fishing license fees. Those fees are based in limited entry fisheries, on the value of the permit, and in unlimited fisheries, on an average of gross earnings. The $750 cap that is currently in statute has artificially kept permit fees down to $250 maximum for Alaska residents and $750 maximum for non-residents.

With this cap in place, fishermen in the lower value fisheries have ended up paying a proportionately higher fee for their annual licenses than those in the higher value fisheries. This situation is not equitable.

In removing the cap, only fishermen in the higher-value fisheries would see their fees increased, with nearly 80% coming from non-residents, who tend to be more active in those fisheries. An initial

estimate by the Commercial Fisheries Entry Commission indicates this change in statute could generate as much as $6-7 million a year to the state.

I strongly believe that the commercial fishing industry is paying more than its fair share of the costs of managing and protecting our fisheries resources. My research indicates that the fishing industry contributes more than $55 million each year into the state's coffers, exceeding the costs of the state's fishing-related programs. However, the Department of Fish and Game continues to be faced with budget reductions that result in money being taken directly out of the state's economy. It doesn't make sense to shortchange the state's largest renewable resource industry.

The state's management programs however, are losing ground to inflation and the increasing complexity and value of our fisheries We have a billion dollar industry in this state, and we need to be doing more to manage and protect our resources in order to maximize their use.

For that reason, my legislation includes intent language that the additional funds be used to beef up fisheries management and development programs. I know we can't dedicates these funds, but I would not submit this legislation if I did not fully believe that those funds would go toward these purposes.

I realize these proposed fee increases come at a time when the fishing industry is already reeling from low prices and unstable markets. But I also believe the fishing industry needs to show once again that it is committed to contributing significantly to paying for those programs from which they benefit.

I personally am all in favor of a state income tax as a way of getting non-residents to pay a greater share of the cost of state services. But if that's not a real option at this time, then it is only fair to base what the state charges a fisherman to do business in this state on the value of the public's resources that are taken. I challenge other industries such as mining, timber, and tourism to do the same.

(8) Sablefish Administrative Areas.

Code Letter	Name and Description
A	Northern Southeast Inside Area — districts 9, 10, 11, 12, section 13-C, and districts 14 and 15, as described in Alaska Board of Fisheries regulation 5 AAC 33.200.
B	Statewide Area — all waters subject to the jurisdiction of the state, excluding those waters described as A and C in this paragraph.
C	Southern Southeast Inside Area — districts 1, 2, 3, 5, 6, 7, and 8, as described in Alaska Board of Fisheries regulation 5 AAC 33.200, and that part of the Dixon Entrance district lying east of the longitude of Cape Muzon (132° 41′ 30″ W.)

(9) Nonspecified Administrative Area.

Code Letter	Name and Description
B	Statewide Area — for all fishery resources not specified in this section, permits will be issued for all waters subject to the jurisdiction of the state.

(b) Each administrative area listed in (a)(1) of this section shall include all freshwaters of Alaska draining into the ocean between the points on the coastline which designate the boundaries of the administrative area, unless otherwise provided in the description of the administrative area in (a)(1) of this section. (Eff. 12/18/74, Register 52; am 5/12/75, Register 54; am 4/9/76, Register 58; am 2/25/77, Register 61; am 1/21/78, Register 65; am 3/2/80, Register 73; am 1/2/81, Register 77; am 1/29/82, Register 81; am 10/30/82, Register 84; am 12/30/82, Register 84; am 2/29/84, Register 89; am 10/28/84, Register 92; am 11/25/84, Register 92; am 12/29/84, Register 92; am 4/13/85, Register 94; am 8/24/85, Register 95; am 9/26/85, Register 95; am 12/22/85, Register 96; am 11/22/87, Register 104; am 12/20/87, Register 104; am 8/20/89, Register 111; am 1/17/91, Register 117; am 1/2/92, Register 121)

Authority: AS 16.43.100 AS 16.43.110(a) AS 16.43.200

20 AAC 05.240. SCHEDULE OF ANNUAL FEES. (a) The annual fee for the issuance or renewal of an entry permit or interim-use permit is determined by the commission on a yearly basis according to the following:

(1) The resident annual fee for the issuance or renewal of an entry permit or interim-use permit in a limited fishery is .25 percent of the estimated value of the entry permit, rounded to the nearest fee class amount established in (4) of this subsection. The non-resident annual fee is three times this amount, as set out in (4) of this subsection. If insufficient data are available to determine the estimated value of an entry permit, the annual fee in a limited fishery will be calculated according to (2) or (3) of the subsection.

(2) The resident annual fee for the issuance or renewal of an interim-use permit in an unlimited fishery is .25 percent of the estimated average gross earnings per permit in the most recent three years for which data are available, rounded to the nearest fee class amount established in (4) of this subsection. The non-resident fee is three times this amount, as set out in (4) of this subsection.

(3) Notwithstanding (2) of this subsection, the commission will, in its discretion, make an appropriate adjustment to a fee if more than one permit type allows the directed harvest of the same species with the same gear in the same area. If strict application of (1) and (2) of this subsection results in a fee that exceeds the level appropriate in light of the rate of economic return for the fisheries covered by that permit, the commission will, in its discretion, reduce the fee.

(4) The resident and non-resident annual fees are:

FEE CLASS	ANNUAL FEE	
	Resident	**Non-Resident**
I	$250	$750
II	200	600
III	150	450
IV	100	300
V	50	150

(5) Under (1) of this subsection, the entry permit value for each fishery will be estimated by the commission in the spring of the year immediately preceding the year for which the annual fee applies.

(6) Under (2) and (3) of this subsection, the average gross earnings for each fishery will be estimated by the commission in the spring of the year immediately preceding the year for which the annual fee applies. These estimates will be based upon the most recent three years for which data are available. If less than three years of data are available for a fishery, the average will be calculated using the available years.

(b) Unless fishery resources, gear, or administrative areas are combined under this chapter, and except as provided in 20

AAC 05.120, a separate permit is required for each separate fishery resource, gear, and administrative area.

(c) For the purpose of assessing the fees for the application for, or renewal of, entry and interim-use permits, a "resident" is

(1) repealed 11/26/87.

(2) one who, on the date of permit application or renewal, and throughout the 12-month period before that date

(A) except for brief intervals, military service, attendance at an educational or training institution, or absence for good cause is, and was, physically present in the state with the intent to remain in the state indefinitely and to make a home in the state; and

(B) neither claimed nor received benefits as a resident of another state, territory or country.

(d) For the purposes of this chapter, criteria relevant to a determination of residence include, but are not limited to

(1) where an individual is registered to vote;

(2) where an individual claims residence on his income tax returns;

(3) where an individual registers or licenses his personal property, including but not limited to cars, boats, trucks and trailers;

(4) by which state the individual is licensed to drive;

(5) in which state the individual maintains bank accounts, savings accounts, lines of credit, and other such financial relationships; and

(6) in which state the individual maintains a permanent place of abode.

(e) Alaska residents may apply for a reduced fee of $15 for the issuance of an interim-use permit or the annual renewal of an interim-use or entry permit if their total family income falls within the poverty guidelines for the Legal Services Corporation, as set out in Appendix A to 45 Code of Federal Regulations Section 1611, and as modified by Alaska regional cost-of-living differentials. A commission publication entitled "CFEC Map/Cost of Living Differentials" contains maps designating the regions and charts showing regional cost-of-living differentials, and is incorporated in this section by reference. (Eff. 12/27/79, Register 72; am 1/2/81, Register 77; am 3/4/81, Register 78; am 1/29/82, Register 81; am 10/30/82, Register 84; am 12/30/82, Register 84; am 10/28/84, Register 92; am 12/29/84, Register 92; am 4/13/85, Register 94; am 9/26/85, Register 95; am 11/22/87, Register 104; am 11/26/87, Register 104; am 1/17/91, Register 117)

Authority: AS 01.10.055 AS 16.43.110(a) AS 16.43.160
AS 16.43.100 AS 16.43.140(c) AS 16.43.990

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March 30, 1993

Representative Carl Moses
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Carl,

Given our busy agenda with Pacific Salmon Treaty and the Board of Fisheries, I am late in getting out this communication on State legislative matters. On behalf of SEAS, I would like to take this opportunity to exchange our thoughts and opinions on these fishery legislative matters:

CS for HB 218 - An Act relating to maximum length of salmon seine vessels.
Support. SEAS supports the Committee Subsitute because it treats seine vessel limitations just like all other fishing vessels - it has the Board of Fisheries, not the Legislature, making the appropriate determination. Furthermore, the legislation ensures that the 58 foot vessel limit stays in place until the Board of Fisheries has an opportunity to address the 58 foot regulation in each region. I would like to stress that in supporting this legislation, we are merely supporting the principle of putting this in the right policy arena. SEAS has taken no position on whether or not to alter the 58 foot vessel length limit before the Board of Fisheries.

HB 230 - An Act relating to fees for commercial fishing licenses and permits.
Oppose. Rather than looking at a revenue generating program that calls for "shared sacrifice" of all Alaskans this bill proposes to nickel and dime the industry that is paying it's way. Furthermore, since we have no dedicated funds there is no assurance that the revenue raised from increased fees on licenses and permits would go to fund the budget directly associated with management and enforcement of commercial fisheries. In the past there has been no correlation between ADF&G's budget and increased revenues from raw fish tax, so it is unlikely that such a correlation would exist with these fee increases.

HB 191 -An Act relating to cost recovery receipts of state hatcheries.
No Objection.

SB 177 - An Act relating to Salmon Marketing
Oppose. This marketing proposal differs dramtically with the domestic marketing proposal developed at United Fishermen's of Alaska (UFA)'s recent Board meeting. While SEAS agreed with the substantive elements of UFA's marketing proposal, SEAS could not support the financial obligation of a 1% marketing assessment. But SEAS must oppose this legislation on substantive and financial grounds. SB 177 proposes that the state provide fishermen with professional services for price information and contractual agreements. In other commodity industries this service, sometime called a "mutual", is provided by industry. The State of Alaska can not and should not come between the fishermen and the processors in setting salmon prices. If you read

the enclosed article, you'll understand why it is totally inappropriate and ineffective for the State to take on this responsibility.

On the financial aspects of this bill, here is SEAS position as relayed to UFA:

"SEAS does not support an additional 1% assessment for a domestic marketing proposal. However, SEAS does support transferring 1% of our current 3% enhancement tax to marketing. This position is borne out by the general findings of the economic analysis in the Legislative Review of the Alaska Salmon Enhancement Program which indicate that marketing and not more production would generate higher net benefits and return on investments. The position taken by SEAS Board of Directors follows the poll results of a questionnaire sent to our members."

At a minimum, SEAS would like the opportuntiy for all permit holders in Southeast Alaska to vote on this option of reducing enhancement tax by 1% to enable a 1% assesment for marketing. Southeast Alaska is the only region in the state that has a total 3% enhancement tax.

No position on HB 251, HB 252, or SB 153. Once the Executive Committee takes a position on these bills, I will be back in touch.

High Priority Concerns:

1. Support Confirmation of Debra Lyons to Board of Fisheries - If you read the enclosed endorsement letter SEAS sent to Governor Hickel, you'll understnd why this is a high prirloty concern. We strongly encourage you to vote yes on Debra Lyons' confirmation.

2. Pass a Hold the Line Budget for ADF&G for these reasons:

* Commercial fishing more than pays its way. State tax revenues from commercial fishing and processing for FY 91 totaled $53,760,000. State funding for Commercial Fisheries Division, FRED, CFEC and Boards for FY 91 totaled $36,429,000. **This is a $17 million surplus.**

* ADF&G's budget recommendation in the House Subcommittee is less than ADF&G's FY 83 budget. This FY 94 budget recommendation represents more than a decade of decline in ADF&G's budget; and this does not even account for inflation.

* If ADF&G loses sonar information, weir counts, aerial survey time, field bioligist, etc. ADF&G will not only continue their conservative management appoach but make more closures in the new and developing fisheries. Conservative management and closures means lost revenues to the State of Alaska.

* ADF&G's budget is not a fiscal probelm because of all the revenues and jobs generated by commercial fishing. Rather if viewed properly, adequate funding of ADF&G is part of the revenue solution.

Please call if you have questions or desire more information.

Sincerely,

Kate Troll

Kathryn Troll
Executive Director

Enclosures
Distribution List: All Southeast Legislators and Members of House Committee on Fisheries.

SCOMM 87:15

February 7, 1994

Carl:

Comments on HB 251

This bill has had two hearings already:

March 29, 1993
April 16, 1993

At the April hearing, Representative Nicholia presented an amendment package. You did not accept the amendments because you said you did not intend to move it out of committee.

My guess is that the same amendment package will be moved by her. This bill has no support on the record except that which you identified from former Governor Jay Hammond. The following people/organizations testified in opposition to the bill:

1. Aleutians East Borough
2. Robin Samuelson
3. Tom Elias, Chair, Board of Fish
4. Southeast Herring Coalition
5. Norman Anderson
6. United Fishermen of Alaska
7. Dale Kelley, Alaska Troller's Association

Support of Irene Nicholia's amendment:

1. Tate Hayes, Northern District Setnetter, Upper Cook Inlet

It appears that this bill does not have much support. We have it scheduled for Wednesday -- how would you like to proceed with it?

Cheryl

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL FISHERIES COMMITTEE

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SPONSOR STATEMENT

HOUSE BILL 251
MANAGEMENT AND ALLOCATION OF FISHERY RESOURCES

House Bill 251 was introduced at the request of former Governor Jay Hammond and others who believe that the Board of Fisheries needs a definitive policy from the Alaska Legislature in managing and allocating fishery resources. The Constitution mandates that these resources be utilized to the maximum benefit of Alaska and its residents. Although there are federal Constitutional concerns in upholding the state constitution, it has become apparent to many fishermen in watching the struggles of the Board of Fisheries over the past years, that further policy guidelines are necessary in order to comply with the constitution to the extent legally possible.

House Bill 251 would establish a new management policy in statute which would make clear that the policy of the state is to maximize benefit to the state by managing our resources consistent with the sustained yield principle and in a manner that has the least adverse effect on the people of the state.

IRENE NICHOLIA TESTIMONY

Irene Nicholia - Testimony to House Special Committee on Fisheries

COMMENTS ON HOUSE BILL 251

I am placing before this committee amendments to the State Fisheries Management Policy.

Agree with sponsor's statement -- we need to provide policy guidance to the Board of Fisheries

Agree with Governor Hammond's priorities
first priority to conservation

management and allocation of our fisheries to benefit Alaskans first.

I suggest we amend this bill to include conservation.

The Legislature has not provided clear policy direction to the Board of Fisheries regarding the conservation and management of our fisheries.

Conservation decisions must be made at a level that covers the entire range of the species.

I'll give you an example of how conservation measures are taken now.

During our fishing season on the Yukon River, conservation measures are not taken until the salmon start their migration up river. The managers decide in-season that fishing time must be cut back or eliminated, including subsistence.

In-river fishermen are the only fishermen to take conservation measures.

The policy proposed in my amendment would direct managers at the Department of Fish and Game to look at entire migration range of the species and apply conservation measures throughout that migratory range.

Good management decisions must be based on sound scientific information.

We are still not at the point where we have adequate data to manage all our fisheries.

If this information is not available, we end up with status quo management.

If we have fisheries that are facing conservation problems, our policy should advocate erring on the side of management.

When we see a fisheries start to experience conservation problems, our management regimes must start taking preventative measures rather than waiting for and reacting to a crisis.

We need to separate decisions made for conservation from decisions made for allocation.

Conservation decisions should be made before it is ever decided who the users should be and how much fish they should be allocated.

I would like to see a day when the department provides a report to the board on the status of the fisheries, identifying conservation problems, and recommending conservation measures.

Then, let the Board of Fisheries deal with allocation decisions.

We need to look at how best our fisheries can be managed. Our fisheries are being managed for strong stocks at the expense of the weaker stocks where there are mixed stocks.

I am not advocating weak stock management -- a very controversial approach.

What I am advocating is the department getting a better handle on its fisheries management strategies.

We know management of terminal stream fisheries can be done in such a way as to provide for conservation of our fisheries resources.

We need to recognize this kind of management enables the state to comply with the constitutionally mandated sustained yield principle.

If our fisheries cannot be managed to provide protection to our weaker stocks, the department needs to bite the bullet and identify management measures that should be taken.

Our management plans need to include sustained harvest and allocation policies which not only address subsistence, commercial, sport fishing and personal use needs, but also include incidental catch.

Our habitat is critical to the well-being of our fisheries resources. Management plans should all address habitat.

Where we know we have conservation problems, we need to include strategies in our plans for restoration and rebuilding of our fisheries.

We have long been in need of a strong advocate for the resource!

It is the responsibility of the Board of Fisheries, the Commissioner and the Dept. of Fish and Game to protect and conserve the resource.

"Unless the resource is managed so that it may reproduce with a population surplus from year to year, there will, sooner or later, be no reason to quibble over allocation since the surplus or the species itself will become depleted."

The overriding priority of our fisheries management should be to conservation in order to maintain the resource for future generations.

AMENDMENTS

TO: HB 251 BY: Representative Irene Nicholia

page 1, line 1 -- Title Change

"An Act relating to the conservation, management and allocation of fishery resources."

page 3, beginning with line 13

Sec. 16.05.725. **STATE FISHERIES CONSERVATION AND MANAGEMENT POLICY.** (a) It is the policy of the State of Alaska to [utilize, develop, and] conserve, develop, and utilize the fisheries resources of the state for the maximum benefit and common use of the people of the state through management of fisheries resources consistent with the sustained yield principle and allocation of fisheries resources in a manner that has the least adverse effect on the people of the state. It is the intent of the legislature that fisheries management be implemented through fisheries management plans that

(1) encompass the migratory range of the species;

(2) are based on the best scientific information available, and when that information is not available, shall err on the side of conservation by taking preventative rather than reactive measures;

(3) provide for the separation of conservation and allocation decisions, with conservation measures encompassing the entire migratory range of the species;

(4) provide preference to those fisheries management strategies that afford greater assurance of compliance with the constitutional sustained yield mandate;

(5) develop short-term and long-term sustained harvest and allocation policies which address subsistence, commercial, sport fishing, and personal use needs as provided for in statute, as well as incidental catch;

(6) provide for the protection of fisheries habitat;

(7) include stock restoration/rebuilding strategies where there are known conservation problems; and

(8) include socio-economic data describing the contribution of the fisheries to the traditional, cultural and economic well-being of Alaska's communities.

Add new (b) and re-letter following section accordingly:

(b) The Board of Fisheries, the Commissioner, and the Alaska Department of Fish and Game are mandated by this policy to actively advocate the State's constitutional and statutory mandates to conserve and protect the fisheries resources.

HOUSE SPECIAL COMMITTEE ON FISHERIES
MARCH 29, 1993
8:30 a.m.

MEMBERS PRESENT

Representative Carl E. Moses, Chairman
Representative Harley Olberg, Vice-Chairman
Representative Gail Phillips

MEMBERS ABSENT

Representative Irene Nicholia
Representative Cliff Davidson

COMMITTEE CALENDAR

HB 218 "An Act repealing the restriction on the maximum length of salmon seine vessels; and providing for an effective date."

CSHB 218 (FSH) MOVED OUT WITH A DO PASS RECOMMENDATION

*HB 251 "An act relating to the management and allocation of fishery resources."

HEARD AND HELD IN COMMITTEE FOR FURTHER CONSIDERATION

(* first public hearing)

WITNESS REGISTER

Representative Carl Moses
State Capitol, Room 204
Juneau, Alaska 99801-1182
Phone: 465-4451
Position Statement: Prime Sponsor of HB 218 and HB 251

Geron Bruce, Special Assistant
Alaska Department of Fish and Game
P.O. Box 25526
Juneau, AK 99802-5526
Phone: 465-6143
Position Statement: Department has not developed a position yet on HB 251.

PREVIOUS ACTION

BILL: HB 218

SHORT TITLE: REPEAL 58 FT. LIMIT FOR SEINE VESSELS
BILL VERSION: CSHB 218(FSH)
SPONSOR(S): REPRESENTATIVE(S) MOSES
TITLE: "An Act relating to the maximum length of salmon seine vessels; and providing for an effective date."

JRN-DATE	JRN-PG		ACTION
03/10/93	592	(H)	READ THE FIRST TIME/REFERRAL(S)
03/10/93	592	(H)	FISHERIES, RESOURCES
03/22/93		(H)	FSH AT 08:30 AM CAPITOL 17
03/22/93		(H)	MINUTE(FSH)
03/29/93	824	(H)	FSH RPT CS(FSH) NEW TITLE 2DP 1NR
03/29/93	824	(H)	DP: MOSES, PHILLIPS
03/29/93	824	(H)	NR: OLBERG
03/29/93	824	(H)	-ZERO FISCAL NOTE (F&G)NEW TITLE 3/29/93
03/26/93		(H)	MINUTE(FSH)
03/29/93		(H)	FSH AT 08:30 AM CAPITOL 17

BILL: HB 251
SHORT TITLE: MANAGEMENT AND ALLOCATION OF FISH
BILL VERSION:
SPONSOR(S): REPRESENTATIVE(S) MOSES
TITLE: "An Act relating to the management and allocation of fishery resources.

JRN-DATE	JRN-PG		ACTION
03/24/93	761	(H)	READ THE FIRST TIME/REFERRAL(S)
03/24/93	761	(H)	FISHERIES, RESOURCES, JUDICIARY
03/29/93		(H)	FSH AT 08:30 AM CAPITOL 17

ACTION NARRATIVE

TAPE 93-18, SIDE A
Number 000

CHAIRMAN CARL MOSES called the meeting to order at 8:32 a.m. He noted Representatives Moses, Olberg and Phillips in attendance and said the meeting would begin by bringing up once again HB 218 and then hearing HB 251.

HB 218: REPEAL 58 FT. LIMIT FOR SEINE VESSELS

CHAIRMAN MOSES, PRIME SPONSOR OF HB 218, informed the committee they had before them a proposed committee substitute for HB 218 (CSHB 218 (FSH)) which clarifies that the 58 foot limit is repealed in state law, but authority for making restrictions on length goes back to the Board of Fisheries, to be done on a fishery by fishery or regional basis. He added CSHB 218 (FSH) incorporates the change proposed by the Alaska Department of Fish and Game, the Board of Fisheries,

and fishing groups to switch the seine length restrictions to the Board over a three year period in order to match their meeting cycle.

VICE CHAIR HARLEY OLBERG MOVED to ADOPT CSHB 218 (FSH) for discussion purposes.

REPRESENTATIVE GAIL PHILLIPS asked if limit restrictions were a factor in other states.

CHAIRMAN MOSES was not aware of any.

REPRESENTATIVE PHILLIPS MOVED to PASS out CSHB 218 (FSH) from the committee with individual recommendations. There were no objections, and CSHB 218 (FSH) MOVED out of committee with individual recommendations.

HB 251: MANAGEMENT AND ALLOCATION OF FISH

CHAIRMAN MOSES, PRIME SPONSOR OF HB 251, told the committee HB 251 was introduced at the request of former Governor Jay Hammond and others who believe the Board of Fisheries needs a definitive policy from the Alaska Legislature for management and allocation of fisheries resources. According to the Chairman, the constitution mandates that these resources be utilized to the maximum benefit of Alaska and its residents. Although there are federal constitutional concerns, he noted it has become apparent to many fishermen in watching the struggles of the Board of Fisheries over the years that further policy guidelines are necessary in order to comply with the constitution to the extent legally possible.

CHAIRMAN MOSES advised HB 251 would establish such a policy in statute and make clear the policy of the state is to maximize benefits for the state's resources consistent with the sustained yield principle and with the least adverse impact on the people of the state.

Number 048

GERON BRUCE, SPECIAL ASSISTANT WITH THE ALASKA DEPARTMENT OF FISH AND GAME (ADF&G), told the committee the ADF&G was still reviewing HB 251 and had faxed it to members of the Board of Fisheries for their comments before developing a position.

MR. BRUCE gave a brief history of the efforts behind HB 251. Alaska's fishery resources were originally developed by residents of the Pacific Northwest and California, and MR. BRUCE noted the long struggle to wrestle control over those interests and get the resources into the hands of Alaskans. He said that the ADF&G supports efforts to achieve this goal.

MR. BRUCE explained that the legislature several years ago adopted criteria in an attempt to do this kind of thing, and one of the provisions talk about the number of residents and non-residents who have participated in the fishery in the past, and the number that can be reasonably expected to participate in the future. The purpose of this criteria was to do what is being proposed in HB 251. However, there are complications in dealing with federal law, especially the provisions not to discriminate against non-residents in matters affecting interstate commerce.

MR. BRUCE informed the committee the Department of Law has advised the Board of Fisheries not to utilize this particular criteria when they are making allocation decisions for Alaska's fisheries resources. It would be important in reviewing this legislation, he advised, to get an opinion from the Department of Law regarding whether or not the approach proposed in HB 251 would be a more effective tool to have and whether it would fall prey to the same problems the earlier criteria did.

MR. BRUCE also explained the recent history of this legislation. Two years ago when the Board of Fisheries took up proposals concerning the Bristol Bay fisheries, there was a section of regulation dealing with setnet fishing in the Kvichak section of the Naknek-Kvichak District. This setnet section allowed for additional time for setnetters in excess of what was given the driftnetters, recognizing that setnet gear was fixed and the driftnetters could move around and have other opportunities. The only way for the setnetters to make up for interceptions was to fish some extra time.

MR. BRUCE added the Board took public testimony and decided to remove section f from the regulation book, primarily because they were concerned there wasn't specific enough criteria to the department for implementing section f. The department believed it was putting them in the position of making an allocation call instead of the Board. The job of the department is to manage, not allocate.

MR. BRUCE passed out graphs developed by the Commercial Fisheries Entry Commission that showed the consequences of repealing section f, which caused people to question the wisdom of the Board's action. In the Naknek-Kvichak, only 30% of the value of the harvest in the driftnet fishery is taken by the residents of the state of Alaska, whereas in the setnet fishery, almost 75% is. The argument runs that by eliminating the section f provision, the opportunity for Alaskans to maximize benefits from the resources was reduced. The Board of Fisheries ended up revisiting this issue this past winter and reinstated the section f provision.

MR. BRUCE disclosed Governor Hammond's argument is that a lot of energy and time went into this exercise, and if there had been something in statute that would have made it clear that the Board should not do things that would reduce the opportunities for Alaskans to benefit from the fishery resources, they would have quickly disposed of the original proposal as not being in the interest of the state of Alaska.

Number 140

REPRESENTATIVE PHILLIPS expressed interest in the percentages in the graphs, noting there was probably a similar situation in Cook Inlet.

MR. BRUCE affirmed they would be waiting to hear from the Board of Fisheries and the Department of Law before completing their analysis. He explained that the original criteria was sponsored by Senator Vic Fischer in the mid-1980s. He said the criteria was used, except for the one provision concerning residents and non-residents, which they have been advised not to use. He believed HB 251 would certainly be challenged by residents from outside the state

There was some discussion between REPRESENTATIVE PHILLIPS and CHAIRMAN MOSES over who in their districts could be impacted by this legislation.

CHAIRMAN MOSES noted it was typical of attorneys to be overly cautious about something that might happen and the legislature should not always act on something that might happen.

HB 251 WAS HELD FOR FURTHER CONSIDERATION.

ADJOURNMENT

CHAIRMAN MOSES adjourned the meeting at 9 a.m.

HOUSE SPECIAL COMMITTEE ON FISHERIES
APRIL 16, 1993
8:30 a.m.

MEMBERS PRESENT

Representative Carl E. Moses, Chairman
Representative Harley Olberg, Vice-Chairman
Representative Gail Phillips
Representative Irene Nicholia

MEMBERS ABSENT

Representative Cliff Davidson

COMMITTEE CALENDAR

HB 251 "An Act relating to the management and allocation of fishery resources."

HELD IN COMMITTEE FOR FURTHER CONSIDERATION

(* first public hearing)

WITNESS REGISTER

Steve White, Assistant Attorney General
Alaska Department of Law
P. O. Box 110300
Juneau, AK 99811-0300
Phone: 465-3600
Position Statement: Believes HB 251 is unconstitutional.

Tom Elias, Chairman
Alaska Board of Fisheries
P.O. Box 25526
Juneau, AK 99802-5526
Phone: 465-4110
Position Statement: Opposed to HB 251.

Robin Samuelsen,Resources Director
Bristol Bay Native Association
P.O. Box 310
Dillingham, AK 99576
Phone: 842-5257
Position Statement: Opposed to HB 251.

Peggy Osterback
Aleutians East Borough
P.O. Box 101
Sand Point, AK 99661
Phone: 383-2696

Norman Anderson
General Delivery

Naknek, AK 99633
Phone: 246-4423
Position Statement: Opposed to HB 251.

Andy Rauwolf
Southeast Herring Coalition
P.O. Box 8555
Ketchikan, AK 99901
Phone: 225-3697
Position Statement: Opposed to HB 251.

Tate Hayes
Upper Cook Inlet setnetter
2310 20th Avenue
Anchorage, AK 99508
Phone: 272-3943
Position Statement: Would like to see more conservation elements in HB 251.

Dale Kelley, Executive Director
Alaska Trollers Association
130 Seward St., No. 505
Juneau, AK 99801
Phone: 586-9400
Position Statement: Testified in opposition to HB 251 on behalf of ATA and United Fishermen of Alaska.

ACTION NARRATIVE

TAPE 93- 20, SIDE A
Number 000

CHAIRMAN CARL MOSES called the meeting to order at 8:40 a.m. He noted Representatives Moses and Olberg in attendance and said the committee would hear once again HB 251, relating to the management and allocation of fishery resources.

Number 008
HB 251: MANAGEMENT AND ALLOCATION OF FISH

CHAIRMAN MOSES reminded the committee they had heard from the Alaska Department of Fish and Game concerning some of the history behind HB 251 in Bristol Bay. He indicated his intention was to hear further testimony on the bill over the teleconference, generate discussion, and hold the bill for further consideration.

Number 014

MR. STEVE WHITE, ASSISTANT ATTORNEY GENERAL WITH THE DEPARTMENT OF LAW, who has the responsibility of advising the Alaska Department of Fish and Game and the Board of Fisheries, testified that although HB 251 looked pretty innocuous on the face of it, there were potential constitutional problems with it. He said the constitutional problem arises in section 2 of the bill, which directs the Board of Fisheries to allocate resources in a manner that has the least adverse impact on the people of the state. He believes the intent of that section is to create a resident preference in fisheries allocation. The Department of Law has consistently held that preferences for residents over

non-residents, when in a commercial context, probably run up against several constitutional problems, number one being the Privileges and Immunities clause of the U.S. Constitution. That clause has been the principal reason that the state's local hire bills have been struck down by the Alaska Supreme Court. MR. WHITE said the Privileges and Immunities clause guarantees that a citizen of one state may do business in another state on terms of substantial equality.

According to MR. WHITE, the federal constitution allows discrimination against non-residents, but only if several conditions are found. There has to be a legitimate difference for the discrimination against non-residents. MR. WHITE said the courts have held that merely economic protectionism is not a legitimate purpose. There has to be another purpose for legislation of this type, such as conservation of the resource. The non-residents would have to be shown to be a "peculiar source of the evil" if the evil is conservation, and it would have to be shown that the non-resident component of the fishery creates a greater conservation problem than the resident population does. If the nonresidents do create a greater problem than the residents, it would have to be shown that there is no alternative way to cure that problem other than discriminating against nonresidents. The burden on the state is quite high, MR. WHITE said, and all the findings would be evidence for the record.

Several other constitutional clauses are implicated,MR. WHITE said, one being the commerce clause under the U.S. Constitution which says a state can not erect barriers against another state in matters of trade and commerce. If a non-resident discrimination would affect the travel of non-residents in a significant way, it could be considered a burden on interstate commerce. Finally, the Uniform Application clause in the resource section of the Alaska constitution says the resource laws must apply equally in similarly situated persons. If nonresidents and residents create the same management concerns, differences in how they are managed in order to favor one group over another would not be allowed, MR. WHITE said.

MR.WHITE also referenced a Department of Law memo from himself to HOUSE SPEAKER RAMONA BARNES responding to a proposal from one of her constituents concerning an uneven tax on non-resident commercial fishermen, guides and outfitters. The proposal would be to tax all those people 10% of their gross income from their businesses, but people who receive Permanent Fund Dividends (residents) would get a credit against that tax. According to MR. WHITE, that would be discrimination against nonresidents.

Besides the constitutional problems, MR. WHITE said HB 251 would create some internal conflicts with other state statutes. He said subsection b in Section 2 would supersede all other state laws in dealing with allocation. Theoretically it would supersede the subsistence law, MR. WHITE pointed out, and this would direct the Board of Fisheries to allocate fisheries to subsistence users in all cases as opposed to commercial, sport and personal use fisheries. The result would conflict with the existing subsistence law which creates a priority only in certain circumstances. MR. WHITE also said it may conflict with the law that sets up criteria for allocating among different user groups. He cautioned the committee to consider the far-reaching implications of HB 251 before adopting it.

Number 106

MR. TOM ELIAS, CHAIR OF THE BOARD OF FISHERIES, testified that in reviewing HB 251 he has many of the same concerns as MR. WHITE. The problem of resident versus nonresident always comes up before the Board of Fisheries he said, and while he sympathizes with the notion that residents should be given preferential treatment because of

their ownership of the resource, he did see problems that could arise. MR. ELIAS called the residential preference a good idea, but not workable given the context of the law.

Number 135

ROBIN SAMUELSEN, FORMER BOARD OF FISHERIES MEMBER, AND CURRENTLY RESOURCES DIRECTOR FOR THE BRISTOL BAY NATIVE ASSOCIATION, testified in opposition to HB 251. According to MR. SAMUELSEN, the management and allocation of fisheries has been worked out over time among the various user groups in the proper forum - the Board of Fish, with a lot of public meetings. MR. SAMUELSEN said his concerns echo those of MR. WHITE. Who will pay for these new changes in light of the budget cuts taken by the Division of Boards and the Department of Fish and Game, MR. SAMUELSEN asked. He said HB 251 is quite vague on what roles the Board, the Department, and the Commissioner have, and all that needs to be spelled out. There is more than what meets the eye in this bill, MR. SAMUELSEN warned, and if adopted with these vague interpretations, could be very disruptive to the user groups that have sat through countless board meetings coming to decisions.

Number 160

PEGGY OSTERBACK, TESTIFYING ON BEHALF OF THE ALEUTIANS EAST BOROUGH, said it was difficult to analyze HB 251 since its intent is not immediately clear. On the surface it looks like a paraphrasing of several sections of Article VIII of the Alaska Constitution. However, this particular paraphrasing appears to be aimed at basing fishing regulations and in-season management decisions on the basis of the number of Alaska residents in any segment of the fishery. If that is the case, MS. OSTERBACK cautioned, the amendment to Title 16 contained in HB 251 is fraught with equal protection and U.S. Commerce clause problems when it is applied to commercial fisheries management and allocations.

According to MS. OSTERBACK, it is true that the legislature has provided the Board of Fisheries with allocation criteria which include a comparison of the number of residents and nonresidents in each fishery. However, the Department of Law has repeatedly warned the board that it would be difficult, if not impossible, to come up with a viable application of this standard for commercial fisheries, she said.

The majority of the permits for salmon fisheries in the Aleutians East Borough are held by residents, MS. OSTERBACK pointed out, with a larger percentage of Area M permits held by residents than in both Bristol Bay fisheries. However, even as potential beneficiaries of such a preference, MS. OSTERBACK said the Aleutians East Borough could not support legislation that is bound to confuse allocation and management decisions and increase the number of lawsuits filed.

While they understood the desire to benefit Alaska residents, MS. OSTERBACK argued that in some cases the impediments are simply too great, in particular, the U.S. Constitution and the Commerce Clause. Looking closely at Article VIII, the Natural Resources Article of Alaska's Constitution, MS. OSTERBACK said the borough is not certain that the proposed statute accurately reflects the principles listed. The section 4 language, "subject to preferences among beneficial uses," does not say "subject to preferences among beneficial users." According to MS. OSTERBACK, it appears to the Aleutians East Borough that the "least adverse impact" language in HB 251 attempts to change the focus of the constitution to provide the opportunity for the Board of Fisheries and the Department of Fish and Game to make regulatory and in-season allocation

decisions based on the murky and dangerous concept that what's best for some individuals is somehow best for the state.

MS. OSTERBACK also argued that Section 17 is also relevant to this issue, because there can be no legal barrier to nonresidents holding interim use or entry permits, so that all commercial fisheries are similarly situated. Given that, attempting to impose a residency standard on allocation and management decisions could not be condoned, she said.

REPRESENTATIVE GAIL PHILLIPS AND REPRESENTATIVE IRENE NICHOLIA JOINED THE COMMITTEE.

Number 224

MR. NORMAN ANDERSON testified in opposition to HB 251, calling it a multi-faceted bill. He believes a portion of this bill is condoning the actions of the Department of Fish and Game in over-managing the Egegik fishery, which negatively impacted the Kvichak district.

Number 257

MR. ANDY RAUWOLF, REPRESENTING THE SOUTHEAST HERRING COALITION, testified in opposition to House Bill 251, arguing that it would restrict the Board of Fisheries' ability to act on proposals aimed at conservation and enhancement of a resource. Scientific studies indicate that some harvest THRESHOLDS now being used on depleted stocks are designed as tradeoffs, he said. His organization does not believe enough consideration to enhancing depleted stocks would be given if HB 251 were adopted. Maximum benefit, consistent with sustained yield, can only be vaguely defined at best, he said. According to MR. RAUWOLF, the Alaska Constitutional Convention concluded that sustained yield is not an absolute. In fisheries it would be impossible to calculate because it is not capable of precise specification. Under HB 251 MR. RAUWOLF argued, you wouldn't be able to require enhancement of depleted stocks.

Number 297

MR. TATE HAYES, a commercial setnetter in the northern district of Upper Cook Inlet, expressed concern about the future of Alaska's fisheries. Conservation must be the most important aspect of any management plan, he said. Management plans must be implemented and carried out throughout the entire migratory range for the species if conservation is to be ensured, he added, and management plans for different areas must be incorporated throughout in order to ensure sustained yield. All fisheries harvests, as well as incidental takes, must be incorporated in those plans, he said, since they all play a role in the future of the fisheries resources. He also stressed that the protection of fish habitat is crucial to Alaska's fisheries. A restoration strategy is needed to be in place before a disaster occurs, MR. HAYES argued. Management of fisheries must follow the constitutional mandate and statutes, and the Board of Fisheries should follow these guidelines.

REPRESENTATIVE NICHOLIA asked to put forth an amendment to HB 251.

CHAIRMAN MOSES responded that no amendments would be taken at this time since it was not his intent to act on the legislation.

Number 353

MS. DALE KELLEY, REPRESENTING THE UNITED FISHERMEN OF ALASKA AND THE ALASKA TROLLERS ASSOCIATION, testified in opposition to HB 251 on behalf of both groups. She explained their concerns that HB 251 would increase allocation disputes among Alaska residents and that it has questionable constitutionality. Resident fishermen who fish in fisheries dominated by nonresidents would be unfairly discriminated against and cause significant problems in the state, she argued. UFA and ATA believe there should be equal consideration for all permit-holders since they all benefit the state in significant ways, she added. Additionally, they believe that HB 251 totally disregards those benefits received by the predominantly resident support industry to the fleets - processing, gear sales, etc. The Board of Fish is the best forum to assess the maximum benefit to the state of Alaska, MS. KELLEY said. She pointed out that the Board is currently mandated to manage under sustained yield, with socio-economics a key part of their decision-making, based on statistical evidence and public testimony. She also questioned whether you can legally discriminate against nonresidents under the constitution. The Board of Fisheries process is not broken and does not need to be fixed, MS. KELLEY concluded.

Number 407

REPRESENTATIVE NICHOLIA offered the committee copies of a proposed amendment to HB 251. Management and allocation of our fisheries should benefit Alaskans first, she agreed. However, she suggested HB 251 be amended to include conservation because the Legislature has not provided clear policy to the Board of Fisheries regarding conservation and management of Alaska's fisheries. Conservation decisions must be made at a level that includes the entire migratory range of the species, she said.

REPRESENTATIVE NICHOLIA used the Yukon River fishery as an example of how conservation measures are taken now: during the fishing season, she said, conservation measures are not taken until the salmon start their way up the Yukon River. The managers decide in-season that fishing time must be cut back or eliminated, even for subsistence fishing. Yukon fishermen are the only fishermen to take conservation measures, she pointed out

The policy proposed in REPRESENTATIVE NICHOLIA's amendment would direct managers at the Department of Fish and Game to apply conservation measures throughout the entire migratory range of the fish specie. Good management decisions must be made on sound scientific information, REPRESENTATIVE NICHOLIA asserted. However, she doesn't believe that the state has adequate data to manage all its fisheries. If this information is not available, according to REPRESENTATIVE NICHOLIA, the end result is status quo management. If fisheries have conservation problems,the policy should advocate erring on the side of management, she said, and when a fishery starts to experience conservation problems, managers must start taking preventative measures rather than waiting until a crisis occurs.

REPRESENTATIVE NICHOLIA also argued that decisions made for conservation should be separated from decisions made for allocation. Conservation decisions should be made before it is ever decided who the user should be and how much fish they should be allocated, she said. I

REPRESENTATIVE NICHOLIA said that fisheries with strong stocks are currently managed at the expense of the weak stocks.. Although she does not advocate "weak stock management," a very controversial approach, she said she does advocate the Department of Fish and Game getting a better handle on its fishery management strategies. Management of terminal stream fisheries can be done in such a way to provide conservation

of the resources, she added, and recognizing this kind of management enables the state to comply with the constitutionally mandated sustained yield principle. If fisheries cannot be managed to provide protection to weaker stocks, then ADF&G needs to bite the bullet and identify management measures that should be taken.

REPRESENTATIVE NICHOLIA said management plans need to include sustained harvest and allocation policies, which not only address the subsistence , commercial, sport fishing, and personal use fisheries, but also include incidental catch. Habitat is critical to the well-being of fishery resources, REPRESENTATIVE NICHOLIA pointed out. Management plans should all address habitat, she said. Unless the resource is managed so that it may reproduce with a population surplus from year to year, there will, sooner or later, be no reason to quibble over allocation since the surplus or the species itself will become depleted, she added. The overriding priority of our fisheries management should be towards conservation in order to maintain the resource for future generations, she concluded.

HB 251 WAS HELD FOR FURTHER CONSIDERATION.

ADJOURNMENT

CHAIRMAN MOSES adjourned the meeting at 9:15 a.m.

ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF
■KING COVE ■SAND POINT ■AKUTAN ■COLD BAY ■FALSE PASS ■NELSON LAGOON

Comments on HB 251

SUMMARY: This bill would amend the statutes by adding the following:

> Sec. 16.05.725 STATE FISHERIES MANAGEMENT POLICY. (a) It is the policy of the State of Alaska to utilize, develop, and conserve the fisheries resources of the state for the maximum benefit and common use of the people of the state through management of fisheries resources consistent with the sustained yield principle and allocation of fisheries resources in a manner that has the least adverse effect on the people of the state.
>
> (b) Notwithstanding any other provision of law, this policy shall govern the actions of the Board of Fisheries, the commissioner, and the department.

It is somewhat difficult to analyze this bill, since its intent is not immediately clear. On the surface it looks a paraphrasing of several sections of Article VIII of the Alaska Constitution. However, this particular paraphrasing appears to be aimed at basing fishing regulations and in season management decisions on the basis of the number of Alaska residents in any segment of the fishery.

If that is the case, this amendment to Title 16 is fraught with equal protection and U.S. Commerce clause problems when it is applied to commercial fisheries management and allocations.

It is true that the legislature has provided the Board of Fisheries with allocation criteria which include a comparison of the number of residents and nonresidents in each fishery. However, the Department of Law has repeatedly warned the board that it would be difficult if not impossible to come up with a viable application of this standard for commercial fisheries.

The majority of the permits for salmon fisheries in the Aleutians East Borough are held by residents. In fact, a larger percentage of Area M permits are held by residents than in both Bristol Bay fisheries. However, even as potential beneficiaries of such a preference, we cannot support legislation that is bound to confuse allocation and management decisions and increase the number of lawsuits filed.

While we understand the desire to benefit Alaska residents, in some cases the impediments are simply too great. The U.S. Constitution and the Commerce Clause certainly rank as a significant impediments.

Looking closely at Article VIII, the Natural Resources Article of Alaska's Constitution, we are not certain that the proposed statute accurately reflects the principles listed. I have included the appropriate sections here.

> **Section 1-Statement of Policy.** It is the policy of the State to encourage the settlement of its land and the development of it resources by making them available for maximum use consistent with the public interest.
>
> **Section 2-General Authority.** The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.
>
> **Section 3-Common Use.** Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.
>
> **Section 4-Sustained Yield.** Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

There are several other provisions in the Natural Resource Section of Alaska's Constitution, but the only other section that appears to be directly related to this bill is Section 17:

> **Section 17-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. (emphasis added)

The Section 4 language, "subject to preferences among beneficial uses," does not say "subject to preferences among beneficial users." It appears to AEB that the "least adverse impact" language in HB 251 attempts to change the focus of the constitution to provide the opportunity for the Board of Fisheries and the Department of Fish and Game to make regulatory and in-season allocation decisions based on the murky and dangerous concept that what's best for some individuals is somehow best for the state.

AEB believes that Section 17 is also relevant to this issue, because there can be no legal bar to nonresidents holding interim use or entry permits so all commercial fisheries are similarly situated. Given that, attempting to impose a residency standard on allocation and management decisions could not be condoned.

NATURAL RESOURCES DEPARTMENT

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MEMORANDUM

State of Alaska
Department of Law

TO: Hon. Don Collinsworth
Commissioner
Dept. of Fish and Game

DATE: November 15, 1988

FILE NO.: 663-89-0200

TEL. NO.: 465-3600

SUBJECT: State residency as an allocation criteria: potential constitutional problems

FROM: Larri Irene Spengler
Assistant Attorney General
Natural Resources Section

You have asked whether the Board of Fisheries may validly consider the number of state residents and nonstate residents who participate in commercial fisheries in allocating commercial fishing opportunity. From your memorandum of inquiry, we gather that the board has not considered this factor, but that there is some concern among members of the public that it might. Since there is no actual situation before us to evaluate, this memorandum will not analyze the abstract question in much depth. However, in brief, it is very likely that consideration of the residency/nonresidency of participants in commercial fisheries in making allocation decisions would raise constitutional problems.

This question arises because AS 16.05.251(e) requires the Board of Fisheries to

> establish criteria for the allocation of fishery resources among personal use, sport, and commercial fishing. The criteria may, as appropriate to particular allocation decisions, include factors such as
>
> ....
>
> (2) the number of residents and nonresidents who have participated in each fishery in the past and the number of residents and nonresidents who can reasonably be expected to participate in the future.

In 5 AAC 39.205, the board has adopted the seven factors used as examples in AS 16.05.251(e). Neither the statute nor the regulation require the board to use all of the factors in every allocation decision, and apparently the board has chosen not to consider the state residency or nonresidency of individuals participating in commercial fisheries among which the board

allocates. That restraint on the board's part is well-advised. Allocating commercial fishing opportunity based on the state residency or nonresidency of the participants would potentially violate at least two provisions of the United States Constitution: article I, section 8, clause 3 (the commerce clause), and article IV, section 2 (the privileges and immunities clause.)

The privileges and immunities clause of the United States Constitution provides:

> The citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states.

Article IV, section 2.

The Alaska Supreme Court has recognized that under United States Supreme Court decisions the "primary purpose of this clause is to prevent states from enacting measures which discriminate against nonresidents for reasons of economic protectionism." Robison v. Francis, 713 P.2d 259, 263 (Alaska 1986). It is hard to imagine how the Board of Fisheries would consider the state residency of commercial fishery participants for any other purpose than economic protectionism, potentially running afoul of the privileges and immunities clause.

The commerce clause of the United States Constitution provides:

> Congress shall have power . . . to regulate commerce within foreign nations, and among the several states, and with Indian tribes.

Article I, section 8, clause 3. The test for the commerce clause analysis was discussed by the United States Supreme Court in Hughes vs. Oklahoma, 441 U.S. 322, 336 (1979). The court said that under the commerce clause it must inquire

> (1) whether the challenged statute regulates evenhandedly with 'incidental' effects on interstate commerce, or discriminates against interstate commerce either on its face or in practical effect;
>
> (2) whether the statute serves a legitimate local purpose; and if so,

(3) whether alternative means could promote this local purpose as well without discriminating against interstate commerce.

Clearly, an allocation decision which purposefully allocated commercial fishing opportunity away from nonstate residents would, in most circumstances this department can envision, discriminate against interstate commerce at least in practical effect. Thus, under the test, the analysis would be whether the allocation serves a "legitimate local purpose." Referencing back to the disapproval the United States Supreme Court has evidenced toward measures which "discriminate against nonresidents for reasons of economic protectionism," explained in Robison, it appears that an allocation based on such considerations would be constitutionally vulnerable.

As discussed above, because there is no particular situation before us to evaluate, this opinion does not contain an in-depth analysis of the possible constitutional problems with allocating commercial fishing opportunity to state residents and away from nonstate residents. However, speaking generally, allocation based on such considerations would be very likely to at least violate the United States Constitution's privileges and immunities clause and the commerce clause.

LIS:dlm
cc: Elizabeth Stewart, Director
Division of Boards
Department of Fish and Game

Ken Parker, Director
Commercial Fisheries Division
Department of Fish and Game

Gary Slaven, Chairman
Board of Fisheries
P.O. Box 205
Petersburg, AK 99833

MEMORANDUM

State of Alaska
Department of Law

TO: Hon. Carl L. Rosier
Commissioner
Alaska Department of
Fish and Game

DATE: March 19, 1992

FILE NO.: 663-92-0347

TEL. NO.: 465-3600

SUBJECT: Allocation of southeast chinook salmon

FROM: Stephen M. White
Assistant Attorney General
Natural Resources -- Juneau

You informed us that the Alaska Trollers Association petitioned the Alaska Board of Fisheries ("Board") to allocate a portion of the available chinook salmon quota to the commercial troll fleet. In essence, this allocation would create an allocation to southeast Alaska chinook anglers (sport fishers).

You have asked the following questions concerning this proposal. We have given our answer and discussion after each question.

Question 1. Can the Board adopt regulations for anglers who use commercial services and facilities, like charter boats and lodges, that are different from regulations for anglers who do not use them?

Answer: Uncertain. Under existing statutes, it is not clear whether the legislature has given the Board statutory authority to allocate fishery resources between anglers who use commercial services and those who do not.

Discussion:

A. General Principles Governing Board Regulations.

For all of these questions, we believe it would be helpful to review legal principles that govern Board regulations.

The Alaska Supreme Court has held that the Board of Fisheries, when it adopts regulations, must comply with two general principles. Under the first principle, the Board must stay within its statutory authority. That is, the Board must pursue permissible purposes, and it must use means that are within its powers. Meier v. State, 739 P.2d 172, 173 (Alaska 1987). This is because "administrative agencies are creatures of statute, deriving from the legislature the authority for the exercise of any power they claim." Rutter v. State, 688 P.2d 1343, 1349 (Alaska 1983).

The Board was created "[f]or the purposes of the conservation and development of the fishery resources of the state . . . ." AS 16.05.221. For sport fishing, the legislature has given the Board authority to adopt regulations needed for conservation, development, and utilization of fisheries. AS 16.05.251(a)(12). The Alaska Supreme Court has held that the words "conserving" and "developing" involve the utilization of resources, and these purposes permit the board to establish priorities for use between fishing groups due to sharp competition between them for a limited fishery resource. Meier, 739 P.2d at 174.

Under the second general principle, Board regulations must be reasonable and not arbitrary. That is, the regulations must be consistent with and reasonably necessary to the purposes for which the Board was created, i.e., conservation and development. Meier, 739 P.2d at 173. 1/

B. Board's Statutory Authority to Adopt Different Sport Fishing Regulations for Users of Commercial Support Services.

The permissible ways that the Board can regulate sport fisheries are set out in AS 16.05.251(a). The Board can regulate, among other ways, by (1) establishing open and closed seasons and areas for taking fish, (2) setting quotas, bag limits, harvest levels, and sex and size limitations, and (3) establishing methods and means employed in the pursuit, capture, and transport of fish. AS 16.05.251(2), (3), and (4).

It is not clear from your request what type of different regulations are envisioned for sport anglers who use commercial services. The most restrictive regulations would cause an outright ban on the use of these services.

If an absolute ban is intended, we have previously advised that, under the Board's power to establish "methods and means," it has statutory authority to absolutely prohibit support services. Such a prohibition, however, cannot be arbitrary or unreasonable, and in this context, it must be consistent with and reasonably necessary to the conservation and development of southeast Alaska chinook stocks. Gilbert v. State, 803 P.2d 391 (Alaska 1990). Also, it must satisfy constitutional requirements such as equal protection. (See discussion in Question 3.)

1/ This principle is reiterated in AS 16.05.251(d), which says that Board regulations must, consistent with sustained yield and the subsistence law, provide a fair and reasonable opportunity for the taking of fishery resources by personal use, sport, and commercial fishers.

On the other hand, the Board may elect to allow anglers to use support services, but adopt more restrictive area, season, period, bag, possession, or equipment regulations for them. As we understand it, the intended purpose of this type of regulation would not be conservation. The fish that would be spared by these regulations would not contribute to escapement, but instead would be available for harvest by anglers who do not use these services. The purpose, then, would be allocation.

Concerning allocations, the Alaska Supreme Court held that the Board's duty under AS 16.05.221(a) to conserve and develop fishery resources implies a concomitant power to allocate fishery resources among competing users. Kenai Peninsula Fisherman's Coop. Ass'n v. State, 628 P.2d 897, 903 (Alaska 1981). In that case, the court held that the Board's allocation power permitted it to establish priorities for use between commercial and recreational fishermen as a response to sharp competition between the two groups for a limited fishery resource. Id. In a later case, where there was keen competition between two subgroups of commercial fishermen, i.e., between commercial setnet and driftnet fishermen in Bristol Bay, the court said that the Board's power allows it to allocate salmon between these two subgroups. Meier, 739 P.2d at 174.

Here, the Board would be allocating fishery resources between two "subgroups" of another overall user group, sport fishers. The two subgroups are (1) anglers who use commercial services and (2) those who do not. This raises the question of what authority the Board has to identify subgroups for allocation purposes.

Alaska Statute 16.05.251(e) directs the Board to establish criteria for making allocation decisions. 2/ Among the criteria that the Board may use are seven criteria that are listed in this statute. The Board has said that it will consider factors such as the seven statutory criteria when they are appropriate to allocation decisions. 5 AAC 39.205.

Six of the seven allocation criteria deal with the characteristics of "fisheries." AS 16.05.251(e)(1)-(3), (5)-(7). Thus, the legislature intended that allocations could be made between subgroups that are "fisheries."

2/ This statute has been interpreted to apply to allocations between commercial "subgroups" as well as to allocations among overall user groups, i.e., among personal use, sport, and commercial fishers. Peninsula Marketing Ass'n v. State, __ P.2d__, Op. No. 3754 (Alaska Sept. 20, 1991).

The statutes define a "fishery" as "a specific administrative area in which a specific fishery resource is commercially taken with a specific type of gear," with the Board having authority to designate that a fishery has more than one area, gear type, or resource. AS 16.05.940(12) (emphasis added). The terms "type of gear" and "gear" are defined in a statute that pertains to the Alaska Commercial Fisheries Entry Commission, and thus are also defined in the context of commercial fishing. See AS 16.43.990(4) and (8).

Accordingly, for allocations within the overall user group of commercial fishing, we believe that the statutes identify permissible subgroups according to (1) the geographic fishing area(s), (2) the fishery resource(s) harvested, and (3) the type(s) of apparatus used to harvest the resource, such as purse seine, drift gillnet, set gillnet, power troll, or hand troll. For a permissible allocation between two groups of commercial fishermen, the groups should differ by at least one of these characteristics.

For subgroups within the overall user group of sport fishing, however, the allocation statute—AS 16.05.251(e)—is not helpful. As mentioned above, this statute refers to competing "fisheries," which, in AS 16.05.940(12) and AS 16.05.990(4) and (8), are defined according to commercial fishing. Even if the allocation statute "fit" a sport fishery allocation, it would not help the present one. Since anglers who use commercial services share the same waters, fish with the same "gear", (i.e., rod and reel), and fish for the same resource (i.e., chinook salmon) as anglers who do not use these services, they cannot be considered separate "subgroups" under this statute.

On the other hand, it may be argued that the Board is not limited in its discretion to define subgroups for allocation purposes. That is, it could be argued that the Board is authorized to define sport fishing subgroups according to their "methods and means"—such as whether or not they use charter boats and lodges—and then allocate different fishing opportunities among them.

This argument would be aided by the fact that fish and game laws are to be "liberally construed." Kenai Peninsula, 628 P.2d at 897. Other case law holds that, when a statute delegating authority to an administrative agency does not expressly provide a standard, the standard may be implied from the general policy and purposes underlying the statute. Kenai Peninsula, 628 P.2d at 907.

Under these precedents, one can argue that the clear purpose of AS 16.05.251(e) is to allow the board to allocate "among . . . sport . . . fishing" and that the "methods and means" authority of AS 16.05.251(a)(4) is a permissible way to identify

allocation groups. Although we believe that the contrary argument is stronger, it is not conclusively so.

Question 2. Can the Board adopt regulations that set bag, possession, and size limit regulations for resident anglers that are different from such regulations for nonresident anglers?

Answer: Uncertain. Again, it is not clear whether the legislature has given the Board statutory authority to discriminate against nonresident anglers.

Discussion: As noted above, the Board must stay within its statutory authority. That is, the Board must pursue permissible purposes, and it must use means that are within its powers. Meier v. State, 739 P.2d 172, 173 (Alaska 1987). The question, therefore, is whether the Board has statutory authority to set bag, possession, and size limits that discriminate against nonresident anglers.

As we understand it, the reason that the Board would be adopting more restrictive regulations for nonresidents is not to allow the spared fish to escape to spawning streams, but instead, to enable resident anglers to catch them. Thus, the regulations would have to be justified on allocation, not conservation grounds.

There is statutory authority that would allow the Board to consider resident and nonresident use of fish when making allocations among fisheries. Alaska Statute 16.05.251(e) directs the Board to adopt allocation criteria, and it says that these may include (1) the participation of residents and nonresidents in each fishery, (2) the importance of each fishery in providing for residents' consumption, and (3) the importance of each fishery in providing recreational opportunities for residents and nonresidents. AS 16.05.251(e)(2), (3), (7).

The authority to account for resident and nonresident participation and recreational opportunities, and the authority to account for residents' consumption, is not clear legislative authority to establish different fishing opportunities for these two groups. However, it is not logical that the legislature, having authorized the Board to account for resident and nonresident use when deciding allocations, intended that these accountings would not be reflected in the decisions themselves. We believe that the authority to account for resident and nonresident use is a strong implication that the Board is authorized to treat residents and nonresidents as separate subgroups for allocation purposes.

On the other hand, we note that the legislature has clearly authorized the Board of Game to limit nonresidents' taking of big game in a particular situation. AS 16.05.256. 3/

A rule of statutory interpretation says that when a specific activity is designated by statute it must be inferred that all omitted activities are intentionally excluded. 2A Norman J. Singer, Sutherland Statutory Construction § 47.23 (5th ed. 1992). Here, the rule means that, if the legislature has granted a certain kind of authority in one area, its failure to grant the same type of authority in another area means that it withheld the authority in that second area.

Thus, it could be argued that the legislature's clear grant of authority to the Board of Game to discriminate against nonresidents, and its failure to give the Board of Fisheries the same clear authority, supports a conclusion that it did not intend for the latter to have this power. This is buttressed by the fact that the definition in AS 16.05.940(12) does not identify resident and nonresident anglers as separate "fisheries" when they fish in the same area for the same species with the same tackle.

Accordingly, we caution the Board against adopting different regulations for resident and nonresident anglers unless the legislature gives it clear authority to do so. If the Board does discriminate against nonresidents under its present authority, the Board should exercise restraint. Depending upon the method, degree, and purpose, such a discrimination may raise state and federal constitutional problems.

We have previously advised the Board about constitutional concerns that arise if state residency is used as an allocation criteria in commercial fisheries. 1988 Inf. Op. Att'y Gen. (Nov. 15; 663-89-0200). Except for violation of the Privileges and Immunities Clause of the federal constitution (U.S. Const. art. IV, § 2), these same concerns, as well as equal protection, would be raised by regulations that discriminate against nonresident sport fishers.

At this time, we do not know the manner in which the Board would discriminate against nonresidents. Once there is a specific proposal that identifies the method, degree, and purpose

---

3/ The legislature has enacted other laws that distinguish nonresidents. For example, it has set higher license and tag fees for nonresidents who take fish and game (AS 16.05.340(a), 16.05.480), and it has required nonresidents to be accompanied by guides when hunting certain big game species. (AS 16.05.407).

for treating nonresident anglers differently, we will be able to advise the Board on these constitutional issues.

Question 3. Can the Board limit the catch in a sport fishery in order to allocate to a limited entry commercial fishery the fish that the sport anglers might have caught if no catch limit were imposed? Would this be consistent with the common use and equal protection provisions of the Alaska Constitution?

Answer: Yes to both questions.

Discussion:

A. Statutory Authority.

As discussed in our answer to Question 1., the Board's allocation power allows it to establish priorities for use between commercial and recreational fishers. Kenai Peninsula, 628 P.2d at 903. In the Kenai Peninsula case, the Board adopted a policy that closed commercial fishing on late-run cohos so that sports fishers could catch them.

Here, the Board would be doing the opposite of its actions in Kenai Peninsula - it would be allocating in favor of commercial fishers to the detriment of sport fishers. Nevertheless, we believe that the holding of that case applies regardless of which user group benefits.

Like any other allocation, this one must be consistent with and reasonably necessary to the conservation and development of Alaska fishery resources. Meier, 739 P.2d at 174. Also, in making the allocation, the Board must consider the appropriate allocation criteria set out in AS 16.05.251(e). 5 AAC 39.205.

B. Constitutional Issues.

The "common use" clause (Alaska Const. art. VIII, § 3) and two other clauses in the Alaska Constitution--the "no exclusive right" clause (Alaska Const. art VIII, § 15) and the "uniform application" clause (Alaska Const. art. VIII, § 17)--are often referred to as the "equal access" clauses. See McDowell v. State, 785 P.2d 1, 8 n.14 (Alaska 1989). The Alaska Supreme Court has consistently held that these clauses are implicated only when the state places limits on the admission of persons to resource user groups. Id. Also, the court has consistently distinguished the

state's power to limit admission to user groups from the Board's power to allocate fishery resources. 4/

Placing a limit on the sport chinook catch in favor of increased catch by commercial trollers would be an allocation between these two user groups, not a limitation on admission to either of them. Accordingly, we believe that an action like this would not implicate the "common use" clause.

Equal protection in the regulation of fish and game is provided by one of the "equal access" clauses, that is, by the "uniform application" clause (Alaska Const. art. VIII, § 17). The supreme court stated that analysis under this clause may invoke "more stringent review" than analysis under the general equal protection clause of the Alaska Constitution, i.e., under article I, section 1. Gilbert v. State, 803 P.2d at 398. This statement leads us to believe that if an allocation satisfies the "uniform application" clause it will necessarily satisfy the more lenient provisions of the general equal protection clause.

The "uniform application" clause only applies to persons who are "similarly situated." Gilbert, 803 P.2d at 399. In the Gilbert case, the court noted several differences between the competing fisheries, including (1) where in the migratory route each fishery's effort was directed (one was an "intercept" fishery, the other was a "terminal" fishery), (2) how long the respective fisheries had existed, (3) their historic catch levels, and (4) the number of permit holders in each fishery. Because of these differences, the court concluded that the two groups of fishers were not "similarly situated." Id.

4/ For example, in Kenai Peninsula, the court said,

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

Kenai Peninsula, 628 P.2d at 904. In McDowell, the court said, "The state may, indeed must, make allocation decisions between sport, commercial, and subsistence users. That authority, however, does not imply a power to limit admission to a user group." McDowell v. State, 785 P.2d at 8.

HOUSE COMMITTEE REPORT

(5)

Date Referred: March 24, 1993 FURTHER REFERRALS: Resources
Judiciary

Date of Committee Action: _____

The HOUSE SPECIAL COMMITTEE ON FISHERIES considered: HB 251

HOUSE BILL NO. 251 MANAGEMENT AND ALLOCATION OF FISH

"An Act relating to the management and allocation of fishery resources."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [ ] zero fiscal note(s) _____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*DNP*	*NR*	*AM*

_____
CHAIRMAN'S SIGNATURE

ALASKA STATE LEGISLATURE
HOUSE BILL NO. 251

HISTORY IN THE HOUSE

19 93

3/24 Read first time and referred to: FSH RES Jud

_____ RPT CS( ) ___New Title
_____DP _____DNP _____NR _____AM
_____FN _____0FN _____Previous FN

_____ RPT CS( ) ___New Title
_____DP _____DNP _____NR _____AM
_____FN _____0FN _____Previous FN

_____ RPT CS( ) ___New Title
_____DP _____DNP _____NR _____AM
_____FN _____0FN _____Previous FN

Read second time
CS( ) Adopted

Amended

Advanced

Read third time

Return to second for specific amendment

PASSED	EFD Same ___ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

_____Intent adopted

Reconsideration
Reconsideration not taken up

PASSED ON RECON.	EFD Same ___ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

_____Intent adopted

Reported correctly engrossed
Signed by Speaker, to the Senate

_____
Chief Clerk of the House

HISTORY IN THE SENATE

19

Read first time and referred to:

_____ RPT(_____) CS ___DP ___NR ___DNP ___AM
___New Title ___Same Title ___Previous FN
___FN ___0FN To_____

_____ RPT(_____) CS ___DP ___NR ___DNP ___AM
___New Title ___Same Title ___Previous FN
___FN ___0FN To_____

_____ RPT(_____) CS ___DP ___NR ___DNP ___AM
___New Title ___Same Title ___Previous FN
___FN ___0FN To_____

_____ Rules Calendar(_____) CS ___AM ___Other
___New Title ___Same Title ___Previous FN
___FN ___0FN

Read second time

_____ CS Adopted (_____) ___New Title
_____Amended _____Advanced

Read third time

_____ Letter of Intent adopted
_____ Return to second for specific amendment

PASSED	EFD Same ___ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

Reconsideration
Reconsideration not taken up

PASSED	EFD Same ___ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

Reported correctly engrossed
Signed by President, to the House

_____
Secretary of the Senate

HB

HOUSE-SENATE HISTORY Continued

19

Received from the Senate

_____

Concur in Senate amendment
Y____ N____ E____ A____
____Efd same or Y____ N____ E____ A____

Failed to concur Senate amendment, ask Senate recede
Y____ N____ E____ A____

Senate failed to \ receded from amendment
Y____N____ E____ A____

CC appointed by House_____Chair
_____ _____

CC appointed by Senate_____Chair
_____ _____

(H) Granted Limited Powers of Free Conference

(S) Granted Limited Powers of Free Conference

19

(H) Adopted CC Rpt_____
Y____ N____ E____ A____
____Efd same or Y____ N____ E____ A____

(S) Adopted CC Rpt _____
Y____ N____ E____ A____
____Efd same or Y____ N____ E____ A____

To enrolling
Reported enrolled and sent to Governor

_____By Governor

Chapter Number _____

Filed with Lieutenant Governor

HOUSE BILL NO. 251

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MOSES

Introduced: 3/24/93
Referred: House Special Committee on Fisheries, Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act relating to the management and allocation of fishery resources."

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

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

(a) The Board of Fisheries may adopt regulations **under** [IT CONSIDERS ADVISABLE IN ACCORDANCE WITH] AS 44.62 (Administrative Procedure Act), **that the board determines are consistent with the policy set out in AS 16.05.725 and are necessary,** for

(1) setting apart fish reserve areas, refuges, and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of fish; if consistent with resource conservation and development goals, the board may adopt regulations establishing restricted seasons and areas necessary for persons 60 years of age and older to participate in sport, personal use, or subsistence fishing;

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New Text Underlined [DELETED TEXT BRACKETED]

(3) setting quotas, bag limits, harvest levels, and sex and size limitations on the taking of fish;

(4) establishing the means and methods employed in the pursuit, capture, and transport of fish;

(5) establishing marking and identification requirements for means used in pursuit, capture, and transport of fish;

(6) classifying as commercial fish, sport fish, guided sport fish, personal use fish, subsistence fish, or predators or other categories essential for regulatory purposes;

(7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation, and stocking of fish;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(10) establishing seasons, areas, quotas, and methods of harvest for aquatic plants;

(11) establishing the times and dates during which the issuance of fishing licenses, permits, and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43;

(12) regulating commercial, sport, guided sport, subsistence, and personal use fishing as needed for the conservation, development, and utilization of fisheries;

(13) requiring, in a fishery, observers on board fishing vessels, as defined in AS 16.05.475(d), that are registered under the laws of the state, as defined in AS 16.05.475(c), after making a written determination that an on-board observer program

(A) is the only practical data-gathering or enforcement mechanism for that fishery;

(B) will not unduly disrupt the fishery;

(C) can be conducted at a reasonable cost; and

(D) can be coordinated with observer programs of other agencies, including the National Marine Fisheries Service, North Pacific Fishery Management Council, and the International Pacific Halibut Commission;

(14) establishing nonexclusive, exclusive, and superexclusive registration and use areas for regulating commercial fishing;

(15) regulating resident or nonresident sport fishermen as needed for the conservation, development, and utilization of fishery resources.

*** Sec. 2.** AS 16.05 is amended by adding a new section to article 5 to read:

Sec. 16.05.725. STATE FISHERIES MANAGEMENT POLICY. (a) It is the policy of the State of Alaska to utilize, develop, and conserve the fisheries resources of the state for the maximum benefit and common use of the people of the state through management of fisheries resources consistent with the sustained yield principle and allocation of fisheries resources in a manner that has the least adverse effect on the people of the state.

(b) Notwithstanding any other provision of law, this policy shall govern the actions of the Board of Fisheries, the commissioner, and the department.

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL FISHERIES COMMITTEE

MEMBER
FINANCE SUBCOMMITTEES
FISH AND GAME
PUBLIC SAFETY

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SPONSOR STATEMENT

HOUSE BILL 251
MANAGEMENT AND ALLOCATION OF FISHERY RESOURCES

House Bill 251 was introduced at the request of former Governor Jay Hammond and others who believe that the Board of Fisheries needs a definitive policy from the Alaska Legislature in managing and allocating fishery resources. The Constitution mandates that these resources be utilized to the maximum benefit of Alaska and its residents. Although there are federal Constitutional concerns in upholding the state constitution, it has become apparent to many fishermen in watching the struggles of the Board of Fisheries over the past years, that further policy guidelines are necessary in order to comply with the constitution to the extent legally possible.

House Bill 251 would establish a new management policy in statute which would make clear that the policy of the state is to maximize benefit to the state by managing our resources consistent with the sustained yield principle and in a manner that has the least adverse effect on the people of the state.

ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF
■KING COVE ■SAND POINT ■AKUTAN ■COLD BAY ■FALSE PASS ■NELSON LAGOON

Comments on HB 251

SUMMARY: This bill would amend the statutes by adding the following:

> Sec. 16.05.725 STATE FISHERIES MANAGEMENT POLICY. (a) It is the policy of the State of Alaska to utilize, develop, and conserve the fisheries resources of the state for the maximum benefit and common use of the people of the state through management of fisheries resources consistent with the sustained yield principle and allocation of fisheries resources in a manner that has the least adverse effect on the people of the state.
>
> (b) Notwithstanding any other provision of law, this policy shall govern the actions of the Board of Fisheries, the commissioner, and the department.

It is somewhat difficult to analyze this bill, since its intent is not immediately clear. On the surface it looks a paraphrasing of several sections of Article VIII of the Alaska Constitution. However, this particular paraphrasing appears to be aimed at basing fishing regulations and in season management decisions on the basis of the number of Alaska residents in any segment of the fishery.

If that is the case, this amendment to Title 16 is fraught with equal protection and U.S. Commerce clause problems when it is applied to commercial fisheries management and allocations.

It is true that the legislature has provided the Board of Fisheries with allocation criteria which include a comparison of the number of residents and nonresidents in each fishery. However, the Department of Law has repeatedly warned the board that it would be difficult if not impossible to come up with a viable application of this standard for commercial fisheries.

The majority of the permits for salmon fisheries in the Aleutians East Borough are held by residents. In fact, a larger percentage of Area M permits are held by residents than in both Bristol Bay fisheries. However, even as potential beneficiaries of such a preference, we cannot support legislation that is bound to confuse allocation and management decisions and increase the number of lawsuits filed.

While we understand the desire to benefit Alaska residents, in some cases the impediments are simply too great. The U.S. Constitution and the Commerce Clause certainly rank as a significant impediments.

Looking closely at Article VIII, the Natural Resources Article of Alaska's Constitution, we are not certain that the proposed statute accurately reflects the principles listed. I have included the appropriate sections here.

> **Section 1-Statement of Policy.** It is the policy of the State to encourage the settlement of its land and the development of it resources by making them available for maximum use consistent with the public interest.
>
> **Section 2-General Authority.** The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.
>
> **Section 3-Common Use.** Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.
>
> **Section 4-Sustained Yield.** Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

There are several other provisions in the Natural Resource Section of Alaska's Constitution, but the only other section that appears to be directly related to this bill is Section 17:

> **Section 17-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. (emphasis added)

The Section 4 language, "subject to preferences among beneficial uses," does not say "subject to preferences among beneficial users." It appears to AEB that the "least adverse impact" language in HB 251 attempts to change the focus of the constitution to provide the opportunity for the Board of Fisheries and the Department of Fish and Game to make regulatory and in-season allocation decisions based on the murky and dangerous concept that what's best for some individuals is somehow best for the state.

AEB believes that Section 17 is also relevant to this issue, because there can be no legal bar to nonresidents holding interim use or entry permits so all commercial fisheries are similarly situated. Given that, attempting to impose a residency standard on allocation and management decisions could not be condoned.

NATURAL RESOURCES DEPARTMENT

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UNITED FISHERMEN OF ALASKA

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April 16, 1993

The Honorable Carl Moses, Chairman
and Committee Members
House Special Committee on Fisheries
Alaska State House of Representatives
The Capitol Building
Juneau, Alaska 99801-1182

Dear Chairman Moses and Committee Members:

United Fishermen of Alaska (UFA) is very concerned about HB 251: An Act relating to the management and allocation of fishery resources.

UFA believes the proposed language in Section 2 would give one user group preference over other user groups in the state of Alaska. For example, if one user group was made up of 100% residents, they would have preference over a commercial fishery which might be made up of 75% residents and 25% non-residents.

So, with the good intention of reaching **all** residents with a maximum benefit of the resources, many other residents would suffer. All allocation issues should be heard at the Board of Fisheries which gives all user groups equal ground. We oppose this bill for two reasons. The first is that we feel it is against the U.S. Constitution. The second reason is because we feel it would upset the balance of **all** the commercial fisheries in the state of Alaska.

Sincerely,

Jerry McCune

Jerry McCune
President

cc: The Honorable Walter J. Hickel, Governor
UFA Board of Directors

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fisherman's Association • Alaska Trollers Association • Area K Seiners Association
Bering Sea Fishermen's Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kenai Peninsula Fishermen's Association
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Seafood Producers Cooperative
Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association • Western Alaska Cooperative Marketing Association

AMENDMENTS

TO: HB 251 BY: Representative Irene Nicholia

page 1, line 1 -- Title Change

"An Act relating to the conservation, management and allocation of fishery resources."

page 3, beginning with line 13

Sec. 16.05.725. **STATE FISHERIES CONSERVATION AND MANAGEMENT POLICY.** (a) It is the policy of the State of Alaska to [utilize, develop, and] conserve, develop, and utilize the fisheries resources of the state for the maximum benefit and common use of the people of the state through management of fisheries resources consistent with the sustained yield principle and allocation of fisheries resources in a manner that has the least adverse effect on the people of the state. It is the intent of the legislature that fisheries management be implemented through fisheries management plans that

(1) encompass the migratory range of the species;

(2) are based on the best scientific information available, and when that information is not available, shall err on the side of conservation by taking preventative rather than reactive measures;

(3) provide for the separation of conservation and allocation decisions, with conservation measures encompassing the entire migratory range of the species;

(4) provide preference to those fisheries management strategies that afford greater assurance of compliance with the constitutional sustained yield mandate;

(5) develop short-term and long-term sustained harvest and allocation policies which address subsistence, commercial, sport fishing, and personal use needs as provided for in statute, as well as incidental catch;

(6) provide for the protection of fisheries habitat;

(7) include stock restoration/rebuilding strategies where there are known conservation problems; and

(8) include socio-economic data describing the contribution of the fisheries to the traditional, cultural and economic well-being of Alaska's communities.

Add new (b) and re-letter following section accordingly:

(b) The Board of Fisheries, the Commissioner, and the Alaska Department of Fish and Game are mandated by this policy to actively advocate the State's constitutional and statutory mandates to conserve and protect the fisheries resources.

IRENE NICHOLIA TESTIMONY

Irene Nicholia - Testimony to House Special Committee on Fisheries

COMMENTS ON HOUSE BILL 251

I am placing before this committee amendments to the State Fisheries Management Policy.

Agree with sponsor's statement -- we need to provide policy guidance to the Board of Fisheries

Agree with Governor Hammond's priorities
first priority to conservation

management and allocation of our fisheries to benefit Alaskans first.

I suggest we amend this bill to include conservation.

The Legislature has not provided clear policy direction to the Board of Fisheries regarding the conservation and management of our fisheries.

Conservation decisions must be made at a level that covers the entire range of the species.

I'll give you an example of how conservation measures are taken now.

During our fishing season on the Yukon River, conservation measures are not taken until the salmon start their migration up river. The managers decide in-season that fishing time must be cut back or eliminated, including subsistence.

In-river fishermen are the only fishermen to take conservation measures.

The policy proposed in my amendment would direct managers at the Department of Fish and Game to look at entire migration range of the species and apply conservation measures throughout that migratory range.

Good management decisions must be based on sound scientific information.

We are still not at the point where we have adequate data to manage all our fisheries.

If this information is not available, we end up with status quo management.

If we have fisheries that are facing conservation problems, our policy should advocate erring on the side of management.

When we see a fisheries start to experience conservation problems, our management regimes must start taking preventative measures rather than waiting for and reacting to a crisis.

We need to separate decisions made for conservation from decisions made for allocation.

Conservation decisions should be made before it is ever decided who the users should be and how much fish they should be allocated.

I would like to see a day when the department provides a report to the board on the status of the fisheries, identifying conservation problems, and recommending conservation measures.

Then, let the Board of Fisheries deal with allocation decisions.

We need to look at how best our fisheries can be managed. Our fisheries are being managed for strong stocks at the expense of the weaker stocks where there are mixed stocks.

I am not advocating weak stock management -- a very controversial approach.

What I am advocating is the department getting a better handle on its fisheries management strategies.

We know management of terminal stream fisheries can be done in such a way as to provide for conservation of our fisheries resources.

We need to recognize this kind of management enables the state to comply with the constitutionally mandated sustained yield principle.

If our fisheries cannot be managed to provide protection to our weaker stocks, the department needs to bite the bullet and identify management measures that should be taken.

Our management plans need to include sustained harvest and allocation policies which not only address subsistence, commercial, sport fishing and personal use needs, but also include incidental catch.

Our habitat is critical to the well-being of our fisheries resources. Management plans should all address habitat.

Where we know we have conservation problems, we need to include strategies in our plans for restoration and rebuilding of our fisheries.

We have long been in need of a strong advocate for the resource!

It is the responsibility of the Board of Fisheries, the Commissioner and the Dept. of Fish and Game to protect and conserve the resource.

"Unless the resource is managed so that it may reproduce with a population surplus from year to year, there will, sooner or later, be no reason to quibble over allocation since the surplus or the species itself will become depleted."

The overriding priority of our fisheries management should be to conservation in order to maintain the resource for future generations.

SCOMM 87:16

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL FISHERIES COMMITTEE

MEMBER
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SPONSOR STATEMENT FOR

HB 252
REFINANCING OF COMMERCIAL FISHING LOANS

I have introduced House Bill 252 to give the Department of Commerce the authority to refinance existing commercial fishing loans. Most of the 1,200 commercial fishermen who now have state loans are paying 10.5% in interest rates. Regulations provide for new fixed rate loans at 2% above the bank prime rate. Since the current bank prime rate is 6%, current commercial fishing loans are now at 8% rates. However, the Department of Commerce has no mechanism to allow for current loans to be refinanced to take advantage of the lower interest rates that are currently available.

Commercial fishermen have been faced these past few years with low prices and unpredictable fish returns. Following the disastrous 1991 salmon season, the Department of Commerce approved loan extensions for nearly half of the existing loans. More than 3000 fishermen are reportedly in arrears this year to the Internal Revenue Service for back taxes. The commercial fishing industry is obviously in bad shape. Allowing fishermen to refinance their loans and reduce their monthly payments is one obvious way the legislature can help the industry out. Although there is a cost for such a refinancing program, there is sufficient cash flow in the revolving loan fund to accomodate it. Additionally, fishermen would have an easier time making their payments if their loans were at lower interest rates.

HB 252 Refinancing of Commercial Fishing Loans
Sponsored by Representative Carl Moses

Administration contact:

Martin Richard, Director
Division of Investments
Department of Commerce and Economic Development
465-2510

BASIS Journal Text

HB 252 was read the third time.

The question being: "Shall HB 252 pass the House?" The roll was taken with the following result:

HB 252
Third Reading
Final Passage

ÚYEAS: 38 NAYS: 2 EXCUSED: 0 ABSENT: 0å

Yeas: Barnes, Brice, Brown, Bunde, Carney, Davidson, Davies, B.Davis, G.Davis, Finkelstein, Foster, Green, Grussendorf, Hanley, Hoffman, Hudson, James, Kott, Larson, Mackie, MacLean, Menard, Moses, Mulder, Navarre, Nicholia, Nordlund, Olberg, Parnell, Phillips, Porter, Sanders, Sitton, Toohey, Ulmer, Vezey, Williams, Willis

Nays: Martin, Therriault

And so, HB 252 passed the House and was referred to the Chief Clerk for engrossment.

HOUSE COMMITTEE REPORT

4/12

(7)

Date Referred: March 24, 1993

FURTHER REFERRALS: Resources, Finance

Date of Committee Action: 4/08/93

The LABOR AND COMMERCE Committee considered: HB 252

HOUSE BILL NO. 252 REFINANCING COMMERCIAL FISHING LOANS

"An Act amending the Commercial Fishing Loan Act to authorize refinancing of existing loans made under that Act."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)

[X] do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[X] fiscal impact DCED

[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Porter		Green		✓	
Mackie	✓				
Hudson					

Hudson

CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(9)

Date Referred: April 12, 1993 FURTHER REFERRALS: → Finance

Date of Committee Action: _____

The RESOURCES Committee considered: HB 252

HOUSE BILL NO. 252 REFINANCING COMMERCIAL FISHING LOANS

"An Act amending the Commercial Fishing Loan Act to authorize refinancing of existing loans made under that Act."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [ ] zero fiscal note(s) _____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*DNP*	*NR*	*AM*

Waived 4/13 to Fin

_____
CHAIRMAN'S SIGNATURE