

598

ARRC

HAND CONTROLLING

598

half the opportunity to catch fish. Also the hand troller finds himself holding the bag having paid for twice as much gear as he is allowed to use.

Answer: In the qualifying point system let there be two types of permit, one for those who make all their living from fishing allowing 4 gurdies, and one for those who have other income to be allowed only 2 gurdies.

To provide for a future younger generation of fishermen, let there be no ownership nor sale of permits, but let them return to the commission to be applied on a first come - first served basis to a list of new applicants.

No one should be allowed a permit unless he fishes the permit.

Finally: As a personal request I would like the Governor's office to review and shorten the 5 year residency moratorium on a fishermen's loan if he qualifies in all other respects with the loan association.

Respectfully yours

Ertry R. Saroff

P.O. Box 1312
Wrensford, Ak.
99929

Gentlemen:

I moved to Wrangell three years ago after living ten years in Fairbanks. I moved to Wrangell with the sole purpose of somehow getting into the commercial fishing industry. I chose hand-trolling which, at that time, seemed to be a viable and reasonable means of support. And indeed, it was. AT THAT TIME.

I fished the first year from a 14 foot skiff with two down-riggers and a fishing rod. My production from this skiff and especially the production from larger hand-troll boats convinced me that I could make a living within this fishery. At that time, the hand troll fishery was considered to be "an entry level fishery." Meaning that you could make enough money for a living and gain knowledge enough to go onto something more lucrative, if you so chose.

The next spring, I invested about \$10,000, most of it borrowed, into a 28 foot troller.

That year, my second, I sold about \$8,000 worth of fish. I began the season with only two lines and worked my way up to four, buying the other gurdies and line as I could afford them. I fished steadily from the first of May into late October. It was that year that hand trollers were prohibited from fishing in outside waters. This didn't bother me because I had no intention of going out there anyway. In fact, this regulation encouraged me because I, of course, had heard the talk that "they" would be restricting the hand troll fishery (because the power troll fishery was complaining that there were too many hand-trollers). I was encouraged because I thought, "Well, here is the restriction--- the power trollers now have the best fishing grounds and I wasn't planning on fishing there anyway--- so this restriction does not alter my outlook on the possibility of making a living." Further, I thought that this was probably enough of a concession to keep them off our backs. They have the best fishing ground, what more could they want? At the time, I even thought that maybe this regulation was fair and honest because, after all, they did have larger investments and expenses than hand-trollers. And maybe they should have an advantage. And maybe when I got a power troll license, I would feel the same way. In the meantime, I knew it was still possible to make a living fishing the inside waters. You certainly wouldn't get rich but you could at least make a living at it.

The next year saw even more restrictions for the hand-troll fishery. Specifically, the 8-on, 6-off closures in certain areas. None of these were areas in which I fished, so I still figured I could make a living although I knew that these closures would probably put more pressure on the areas where I did fish. Still, that year, last year, I improved my business to a gross sale of \$16,000 and was, by then, totally convinced that even with these additional restrictions, I could still earn a living. Surely, it seemed that we in the hand troll fishery had been penalized enough with these two major restrictions in as many years. Surely, in such a short period of time, there would be no more major restrictions. We could still make a living, however reduced.

And now, now the Board of Fisheries tells us that this year we may use only two lines.

The Board gives ^{us} up two or three months notice that our gear has been cut in half!

The Board gives us two or three months notice that our already marginal incomes are to be cut by at least 1/3.

The Board gives us two or three months notice that we are no longer engaged in a fishery that can provide us with a reasonable chance of making a living.

The Board gives us two or three months notice that hand-trolling is no longer a commercial fishery but merely some kind of expensive hobby to be enjoyed by those who can afford it. By reducing hand-trolling to merely two lines, the Board immediately and casually eliminates the so-called professional hand-troller and reduces the fishery to a mockery of what it was just two and three years ago. The Board has made a mockery out of the profession we have chosen, ~~with the Board's previous blessing,~~ and we feel, understandably I think, cheated.

Let us take an honest look at the hand-troll fishery. Basically, as a commercial fishery, it is a dishonest fishery in that most people who hold and desire hand-troll permits have no intention of making a living at it. These people, and they are in the majority it seems, have other sources of income and view hand-trolling as a pleasant pasttime with which to supplement their incomes. We can go further. There are many people holding hand-troll permits who do not need or even want income from them. With the permit, which costs \$40, and with two or three fishing rods, which they would own anyway, the hand-troll permit provides ^{with} a convenient, and legal, method of tax evasion. ^{them} With an investment of less than one hundred dollars they are able to write off a \$50,000 boat as a business expense.

This, perhaps, is common knowledge, but must be mentioned so that the other side of the coin may be more clearly seen.

The other side ^{for a lot of people,} of the coin is this: Hand-trolling may also be, and has been, a very honest way commercial fishery. There are those of us who go at it full-time, those of us who try to make most, if not all, of our yearly income from hand-trolling. There are those of us who declare this income and pay taxes on it instead of receiving a tax benefit. We entered this fishery with an honest desire to make a living at it and indeed, the State encouraged us by referring to hand-trolling as an "entry level fishery."

We now contend that given the stringent restrictions of the last two years, and especially with the introduction of a two line limit proposed for this year, hand-trolling is no longer a viable means of support. It no longer qualifies as an "entry level fishery" but rather has been made into a subtle form of tax evasion encouraged by the Board of Fisheries ~~and the~~ ^{with} ~~the~~ ^{their} two-line limit, which, by definition, separates the serious hand-troller from the fraudulent hand-troller.

We, the professional hand-trollers of South-east Alaska, we who have improved our efforts and our businesses into something that can support us, probably number no more than three or four hundred permits. We wonder if it was the Board's intention to take our livelihood from us. We trust not.

We recognize the problems facing the Board in dealing with the question of limited entry within the hand-troll fishery. We wonder if the Board recognizes our problem of making a living within the hand-troll fishery. With this latest restriction of just two lines, we think not. We believe that the Board has the responsibility of looking out for our interests as well as for the interests of the salmon stocks. We, who entered the fishery in good faith and performed and conducted ourselves as commercial fishermen, now feel abandoned by those who would govern us. We question their ~~intention~~ ^{intention}. We question their motives. Most of all, we question their compassion for those of us financially dependent upon hand-trolling.

We ask the Board to reconsider its decision to limit, with such short notice, our gear to two lines. We ask the Board to search within its own conscience to determine if there are not some of us entitled to certain "grandfather rights"; specifically, the right to fish with the same gear in 1980 and in future years as we have been permitted to do in the past.

We ask that the four line limit be somehow worked into the limited entry program for hand-trolling. Since we are a divided fishery---divided between "serious" and, for lack of a better word, "amateur" fishermen, we ask that this distinction be made when the limited entry permits are finally finally issued.

We propose that the Board issue two classifications of hand-troll permits. Let us refer to them as Class A and Class B permits. For a Class A permit, we ask the Board to determine, through fishing receipts and tax records available to them, the number of people dependent upon hand-trolling for a substantial proportion of their income. We ask that these people who have demonstrated a desire and ability to earn a living by hand-trolling be issued a Class A permit allowing them to fish four (4) lines and to be governed by the rules and regulations pertaining to its sister fishery, the Power Troll fishery. We merely ask that the recipients of a Class A license be selected in such a way that those people most dependent upon the fishery for their livelihood, receive them.

The Class B license shall be distinguished by a 2 line limit and whichever of the current hand-troll regulations the Board deems necessary to retain.

We believe that this proposal best represents the interests of those involved in this controversy. Therefore, it reflects the best application of ~~the~~ democratic principals. A Class A license protects those who have entered the fishery with the intention of making a living at it. A Class B license will satisfy those who are looking for entertainment and a tax write-off. Hopefully, with the addition of a "use it or lose it" clause, Class B permits will someday be in the hands of those who wish to enter into commercial fishing.

Finally, we hope that this proposal represents the desires of the Board, which, it seems, should be to find a way of controlling the fishery without putting out of business those who are dependent upon it. The Class A and Class B proposal allows the Board to regulate exactly the number of hand-troll lines in the water while still issuing a maximum number of permits.

We are grateful for the chance of being heard by this special committee. It has done much to restore our faith in the democratic process, a process, which lately, we, as fishermen, have become skeptical of. We recognize the need for commercial fishing regulations. However, we do not believe that at this point in time the salmon stocks are so depleted and so desperate as to warrant a reaction by the Board which so severely restricts our ability to earn a living. We ask this committee to convey this feeling to the Board. We ask this committee to consider the closeness of the 1980 fishing season and to consider the financial impact of being informed, with only two or three months notice, that your gear is being cut by 50%. ~~We ask this committee to convey our feelings and situation to the Board of Fisheries.~~ We ask this committee to recommend that the proposed two-line limit for 1980 be lifted until a more reasonable and equitable solution can be found.

Thank you,

Ron Rau



MY NAME IS TOM JACOBSON. I'M FROM PORT PROTECTION, A SMALL
FISHING VILLAGE NEAR PT. BAKER ON PRINCE OF WALES ISLAND.
MY SOLE SOURCE OF INCOME FOR ^{THE PAST} 6 YEARS HAS BEEN FROM
HANDROLLING. I'M HERE REPRESENTING THE 50 SOME COMMERCIAL
HANDROLLERS IN THE VILLAGES OF PT. BAKER AND PORT PROTECTION,
CENTERS OF CONTINUOUS HAND TROLL ACTIVITY FOR OVER
50 YEARS. THE POINT BAKER HAND TROLLERS DEPEND ALMOST
ENTIRELY ON OUR HT INCOME FOR OUR SURVIVAL, THERE
BEING NO OTHER VIABLE ALTERNATIVES IN OUR SMALL ISOLATED
VILLAGE. ~~REGULATIONS CONCERNING~~ ALTHOUGH OUR
INCOMES ARE RELATIVELY MEAGER, THEY HAVE BEEN SUFFICIENT
TO SUSTAIN AN ADEQUATE STANDARD OF LIVING. ~~HOWEVER,~~
HOWEVER, REGULATIONS DESIGNED TO DENY US THE RIGHT TO
FISH TRADITIONAL ~~WATERS~~ GROUNDS (SUCH AS THE CLOSURE
OF OUTSIDE WATERS), REGULATIONS TO REDUCE OUR GEAR
BY 50% (THE NEW 2-LINE LIMIT), AND PROSPECTS FOR
STILL MORE RESTRICTIONS ~~REQUIRED~~ TO COME WILL HAVE
A DISASTROUS EFFECT ON THE SOCIO-ECONOMIC WELL
BEING OF OUR COMMUNITY. NOT HAVING THE ^{TYPE OF} VESSELS OR
THE CAPITAL REQUIRED FOR PERMITS AND GEAR IN ORDER
TO ENTER A DIFFERENT FISHERY, WE WILL FACE THE
PROSPECT OF LEAVING HOMES AND FAMILIES TO SEEK
EMPLOYMENT IN TOWN OR SUCCEEDING TO PUBLIC
ASSISTANCE. IF ALL THIS WERE THE RESULT OF
THERE BEING NO MORE SALMON IT WOULD BE A
REGRETTABLE BUT UNDERSTANDABLE CIRCUMSTANCE
BUT INSTEAD, ALL THIS IS THE RESULT OF INSENSITIVE

OR COMPENSATION.

WE WISH TO UNDERSCORE THE FACT THAT THE PT. ADRIAN
HANDROLLERS ^{support map} ENCOURAGE AND SUPPORT ALL MEANINGFUL
REGULATIONS THAT WILL CONSERVE THREATENED, ~~PERVIOUS~~
SALMON STOCKS. BUT, WE DEMAND EQUAL TREATMENT UNDER
THE LAW. THE TROLL FISHERY MUST BE REGULATED AS
ONE FISHERY WITH ALL FISHERMAN SHARING CONSERVATION
EFFORTS EQUALLY. ~~THE TROLL FISHERY HAS ALWAYS BEEN TAKEN ALONG~~
~~THE TROLL FISHERY~~ ^{IN} THE 70 YEAR HISTORY OF
ALASKAN TROLLING, IT WASN'T UNTIL JUNE 1978, WITH
CLOSURE OF OUTSIDE WATERS ~~UNDER~~ TO HANDROLLING, ~~COAST~~
THAT ~~THE CLOSURE~~ ANY REGULATION WAS MADE WHICH
APPLIED ONLY TO ONE GROUP OF TROLLERS. ^{OF} IN THE 4 YEARS
PRECEDING THIS DISCRIMINATORY CLOSURE OF OUTSIDE WATERS,
~~IT ACCOUNTED FOR LESS THAN 3% OF THE~~ ^{AS A} LESS THAN 3%
OF TROLL CAUGHT ~~IN THESE WATERS~~ ^{KINGS + COLTS} WERE CAUGHT
SOUTHEAST ^{TRADITIONALLY}
BY HT IN OUTSIDE WATERS. YET TO THOSE HT WHO
FISH IN THESE WATERS, IT ACCOUNTS FOR THE MAJOR PORTION OF THEIR
CATCH. CLEARLY THIS WAS NOT PRIMARILY A CONSERVATION
MEASURE, AS POWER TROLLERS AND DUNGE SEINERS WHO ACCOUNT
FOR ABOUT ALL SALMON TAKEN IN OUTSIDE WATERS, WERE
COMPLETELY UNAFFECTED BY THIS CLOSURE. WHEN THE
NORTH PACIFIC MGMT. COUNCIL SUBMITTED THE 1979
TROLL PLAN TO THE SEC. OF COM. IN WASHINGTON DC.
WITH A PROVISION TO BAN HT ^{TROLLING} IN FEDERAL WATERS,
U.S. ^{BY}
THE SECRETARY OF COMMERCE REJECTED THE HAND TROLL PLAN
STATING "AFTER STUDYING ALL AVAILABLE INFORMATION, I
HAVE DETERMINED THAT NO CONSERVATION PURPOSE IS

SOLVED BY DISTINGUISHING HT FROM P-T GEAR.

I HAVE DETERMINED THAT THIS MEASURE IS INCONSISTENT WITH THE FAIRNESS AND EQUITY PROVISIONS OF NATIONAL STANDARD 4. THE PROPOSED BAN WOULD ALLOCATE FISHING PRIVILEGES UNEFAIRLY BETWEEN 2 GROUPS OF FISHERMEN WHO USE ESSENTIALLY THE SAME TYPE OF GEAR. "THE STATE ~~REACTED~~ ^{REACTED} ~~ORDERED~~ BY PROHIBITING ALASKAN HANDTROLLERS FROM PARTICIPATING IN THE FEDERAL WATERS FISHERY, ~~APPROVED~~ ^{APPROVED} IN SPITE OF WASHINGTON'S INSISTENCE THAT ~~HANDTROLLERS ARE PERMITTED TO FISH THERE.~~ ^{HANDTROLLERS ARE PERMITTED TO FISH THERE.} ~~HANDTROLLERS~~ ^{STILL} FROM OTHER STATES MAY LEGALLY FISH THESE WATERS.

THE ^{SUITE} ALLOCATION OF FISHING PRIVILEGES UNEFAIRLY BETWEEN 2 GROUPS OF FISHERMEN WHO USE ESSENTIALLY THE SAME GEAR" TO WHICH THE SECRETARY OF COMMERCE OBJECTS IS PRECISELY ~~THE~~ ^{WHAT} WHAT THE BOARD RESOLVED IN ITS POLICY TO ALLOCATE THE COHO CATCH BETWEEN PT'S AND HT'S ON AN 80% - 20% BASIS. (^{BY THE WAY,} PT'S & HT'S REALLY DO USE PRECISELY THE SAME GEAR, FROM HOOK TO GAFF HOOK, FISH THE ^{SAME} AREAS, WITH ^{THE} SAME STRATEGIES, FOR THE SAME SPECIES THE ONE AND ONLY ^{THE} DIFFERENCE IS THAT POWER TROLLERS USE MECHANICAL MEANS TO ~~RETRIEVE THE GEAR~~ ^{RETRIEVE THE GEAR} WHILE HAND TROLLERS ~~CANNOT RETRIEVE GEAR MANUALLY~~ ^{DO NOT RETRIEVE GEAR MANUALLY} (BOTH USE MANUAL MEANS.) THIS POLICY OF ALLOCATING 80% OF THE TROLL CAUGHT COHOS TO POWER TROLLERS IS THE JUSTIFICATION GIVEN FOR CUTTING ^{THE} HAND TROLLER'S GEAR IN HALF, BY THE 2-LINE LIMIT REGULATION, WHILE ALLOCATING ^{SALMON} ~~COHOS~~ ^{BOTH} ~~COHOS~~ ^{COHOS} TO TROLL + NET, WILL CONTINUE TO USE THE SAME ^{OF} GEAR.

A... AMOUNT...
...
...

FURTHERMORE, IF THE BOARD IS ^{TROLL} CONCERNED ABOUT POWER TROLLERS NOT RECEIVING ^{THEIR} 80% OF THE TROLL CAUGHT COMOS, WHY NOT DO THEY PROPOSE TO LIMIT US TO 2 LINES

12 MONTHS A YEAR, WHEN COMOS ARE ONLY CAUGHT FROM MID JUNE TO MID SEPTEMBER? AGAIN, THE SMALL PROPORTION OF COMOS ~~THAT ARE CAUGHT~~ THAT IS TAKEN BY HAND TROLLERS ~~IS~~

~~THIS~~ IS NOT JUSTIFIED BY A 50% ~~COMO~~ REDUCTION IN OUR GEAR ~~FOR POWER TROLLERS ONLY~~, AND FOR ~~THE~~ AND CERTAINLY NOT FOR THE 9 MONTHS A YEAR WHEN COMOS ARE NEVER CAUGHT! WHILE IT IS TRUE THAT HAND TROLLERS IN 1979 CAUGHT 204,000 MORE COMOS THAN THEY DID IN 1975, POWER TROLLERS CAUGHT OVER 500,000 MORE COMOS IN 1979 THAN IN 1975. CLEARLY THE EFFORT OF POWER TROLLERS HAS INCREASED ~~AND IS GREATER~~ MORE THAN HAND TROLLERS, YET IT IS ONLY

THE HAND TROLLERS WHO ARE HAVING THEIR CUT BY 50%. THIS IS NOT CONSERVATION BUT SOCIAL AND ECONOMIC GEAR ~~MANIPULATION~~. THIS UNJUST ~~AND~~ ~~UNREASONABLE~~ ALLOCATION ~~AND~~ POLICY BETWEEN TROLLERS

ALSO TORPEDOED THE COMM. FISH. ENTRY COMMISSIONS ATTEMPTS TO ~~BY~~ IMPLEMENT A WORKABLE LTD. ENTRY SYSTEM FOR HAND TROLLERS.

BY DIRECTING THE COMMISSION TO LIMIT ^{TO A NUMBER WHICH GUARANTEES} ~~THE~~ THE NUMBER OF PERMITS ~~FOR~~ POWER TROLLERS

~~AT~~ 80% OF THE TROLL COMOS, THE NUMBER OF PROPOSED PERMITS BECAME SO SMALL THAT THE MAJORITY OF POPULAR OPINION AT THE COMMISSION'S PUBLIC HEARINGS ON THE MATTER ~~AND~~ DISAPPROVED OF THE COMMISSION'S PLAN. THE COMMISSION THEN PROPOSED ~~AN UNREASONABLE~~ ^A NUMBER OF PERMITS

UNACCEPTABLY HIGH BY THE BOARD'S ALLOCATION STANDARD, WITH THE RESULT THAT EVEN MORE RESTRICTIONS WERE ~~ALSO~~ ~~IMPOSED~~ ~~AND~~ SO NOW WE HAVE A LTD. ^{ON HAND TROLLERS}

POLICY WHICH BENEFITS NO ONE WHATSOEVER, THE
ENTRENCHMENT OF RESTRICTIONS WHICH WERE SUPPOSED
TO HAVE BEEN ~~HERE~~ ONLY FOR THE INTRIM UNTIL LTD
ENTRY WAS ENACTED FOR HAND TROLLERS, AND THE PROPOSAL
FOR NEW, EVEN MORE RESTRICTIVE REGULATIONS ON
THE WAY.

THE PT. BAKER HAND TROLLERS ASSOC. HAS SPENT COUNTLESS
HOURS ~~REPEATED~~ WHICH WE DON'T HAVE PULLING OVER
OUR STATE'S FISHING BUREAUCRACY TRYING TO PLAY BY
THEIR RULES HOPING TO COME UP WITH ~~WORKABLE~~ SOLUTIONS
THAT WILL WORK BY THEIR STANDARDS. MONEY, ~~AND~~ RESOURCES
WHICH WE DON'T HAVE, HAS BEEN SPENT ATTENDING HEARINGS
AND IN THE HOPE THAT JUSTICE MAY PREVAIL. OUR ~~COMMITTEE~~
~~PROPOSALS~~ CONSIDERED, BY THE RULES PROPOSERS HAVE BEEN
POLITELY RECEIVED AND STUBBLY IGNORED WITHOUT
COMMENT. ~~PRESENTING~~ THE COMMITTEE WITH ^{COPIES OF THE} COMMENTS
WE MADE LAST FALL WHEN THE TROLL MANAGEMENT
PLAN AND LTD. ENTRY PROGRAM WERE BEING FORMULATED,
WE WOULD BE DELIGHTED TO WORK WITH ANY LEGISLATORS
~~DRUBBING~~ ~~BANKS~~ ~~SOME~~ ~~SENSE~~ ~~OF~~ ~~FAIRNESS~~ ~~TO~~ ~~THEM~~
TO DRAFT LEGISLATION TO BRING SOME SENSE OF FAIRNESS
TO THIS BUREAUCRATIC JUNGLE. WE HATE TO ONCE AGAIN
SEE THE LITTLE GUY, SQUEEZED OUT BY THE BIG GUY
NEEDLESSLY

THRU THE POWER OF OUR STATE GOVT. ESPECIALLY SINCE
WE ARE THE LITTLE GUY. THE HOPES AND FUTURES OF MANY
FAMILIES AT PT. BAKER AND ELSEWHERE ARE NOW ^{LITERALLY} IN THE
HANDS OF THIS COMMITTEE. ~~OUR LAST HOPE~~ YOUR CAREFUL
STUDY AND CONSIDERATION ^{OF THE} ISSUE IS OUR LAST HOPE FOR A
^{ESSENTIAL} RESOLUTION OF OUR SITUATION. ~~IT IS~~ IT IS DIFFICULT TO PREDICT WHAT ACTIONS INDIVIDUALS
~~WILL TAKE~~ SHOULD THEIR SOLE MEANS OF SUPPORT BE UNJUSTLY TAKEN AWAY.
THANK YOU

PROPOSED ACTION: I recommend that you concur in my proposed action to accept the Council's judgment that the FMP will not contribute to overfishing either the Alaskan or non-Alaskan salmon stocks.

① Issue 2: Proposal to Ban a Technique of Fishing Known as "Hand Trolling." ←

A basic objective of the FMP is to maintain the status quo with respect to fishing effort in the FCZ. The FMP's proposed ban on hand trolling is intended to help achieve this objective. The ban was deemed necessary to prevent hand trollers from expanding into the FCZ and increasing the amount of fishing pressure on stocks that are already fully utilized. The State of Alaska's ban on hand trolling in its offshore waters (i.e., from the outer coast to the FCZ; see Figure 2) is an attempt to control the burgeoning hand troll fishery which increased from roughly 2,000 boats in 1973 to almost 4,000 in 1978. By keeping the growing number of hand trollers from fishing on the fully exploited stocks in offshore waters, Alaska is promoting wise use of the resource and ensuring escapement to the spawning grounds. Permitting hand trolling in the FCZ could negate the beneficial effects of this State measure and create an enforcement problem.

Section 303(b) of the FCMA allows an FMP to "prohibit, limit, condition, or require the use of specified types and quantities of fishing gear" However, there is little to distinguish hand-from power-trolling gear. The essential difference is that the reels of hand trollers are cranked manually, whereas those on power trollers are cranked by power from the boat's engine. In general, hand trollers operate smaller boats (average length: 22 feet) than power trollers (average length: 35 feet), but some hand trollers have boats longer than 40 feet. Power trollers landed 76 percent of the salmon but made up only 31 percent of the troll fleet. The FMP notes that only five persons hand trolled in the FCZ during 1975-1977.

After studying all the available information, I have determined that no conservation purpose is served by distinguishing hand-troll from power-troll gear. The FCMA requires in National Standard 4, that

"Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocations shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges."

The ban would apply equally to residents of all States and therefore is consistent with the discrimination clause.

However, although the ban has potential merit by reducing the chance of overfishing and by enhancing enforcement of Alaska's regulations, I have determined that this measure is inconsistent with the fairness and equity provisions of National Standard 4. The proposed ban would allocate fishing privileges unfairly between two groups of fishermen who use essentially the same type of gear. While power trollers who have previously fished off Alaska would be permitted to continue to do so, hand trollers who have previously fished this area would not. A provision which would allow all fishermen who have fished these waters to continue to do so would satisfy National Standard 4.

Deleting the ban on hand trollers from the FMP will not destroy the integrity of the FMP. Optimum yield can still be attained since the FMP gives the NMFS Regional Director authority to make in-season adjustments necessary for conservation and management.

PROPOSED ACTION: I propose to disapprove that portion of the FMP which bans hand trollers from the FCZ.

Issue 3: Limit on the number of power trollers in the FCZ.

The FMP proposes to adopt Alaska's system for limiting the number of power trollers. The Council determined that a limited entry system for the FCZ was necessary to prevent expanded fishing effort and overfishing. The Council determined that alternative means of limiting fishing effort in the FCZ would be either too disruptive to present social and economic structures or too costly to administer and enforce (e.g., a separate limited entry system for the FCZ, or a separate FCZ catch quota).

Presently, there is no restriction on the number of power trollers fishing in the FCZ. Although fishermen may not land salmon in Alaska without an Alaskan limited-entry permit, they can land salmon taken off Alaska in Washington, Oregon, and California. A small number of power trollers presently do so. Because of increasing restrictions off Washington, Oregon, and California, it is likely that additional trollers will seek to fish in the FCZ off Alaska.

The proposal to limit entry maintains a fishing privilege gained by those who have historically fished in the FCZ off Alaska. The proposal does not grant excessive privileges to particular groups. The FMP provides that any power-troll fisherman who does not have a State of Alaska power-troll permit is entitled to a Federal entry permit if he can show that he fished in the FCZ in any one of the base years of 1975, 1976, or 1977. Unlike the State permit, the Federal permits would be nontransferable. If a holder of one of the Federal permits should retire from the fishery, that permit would be retired from the fishery.

GENTLEMAN of the BOARD.

Included here are some of my thoughts and accusations toward the regulatory practices of the Dept. of Fish and Game.

I have trolled since 1970 and am totally dependent on salmon trolling for my yearly income.

I basically question the Integrity, Justice, and Honor of the Dept. of Fish & Game.

I challenge the Dept. of Fish & Game's right to make law or regulation, pertaining to the use of privately owned vessels; especially with questionable management and resource data.

I question the way and means by which the Dept. of Fish & Game drafts and institutes certain regulations, i.e. without proper time to respond or public hearing on certain subjects.

Continual disregard for property and livelihood of dependent fishermen in the industry.

Dept. of Fish and Game drafts policy with delusion that all trollers are law breakers and will stop at nothing to eliminate the last salmon in the sea.

In the past, I have volunteered personal fishing information, to the Dept. of F. & G. Only to have

what I considered information substantiating our right to fish, twisted into justification to curtail the trolling effort. I will not communicate with ADF&G under these circumstances.

- My concern for the resource, that the stocks remain strong throughout the coming years, is of utmost importance. Like any person involved in a farming industry, we must deliver a quality product and make our ends meet financially.

- The ADF&G seems to guide to point an accusing finger at the troll industry, for problems the Dept. has trouble substantiating or identifying.

- I have lost sleep, working time (60%) in 1979, and 25% of my off season, these past few years.

My efforts have had little or no influence on ADF&G policy. The regulations are making it almost impossible to operate as a businessman.

I cannot emphasize enough, underlying Dept. policy is to reduce the smaller southeast Alaska troller to poverty. Thus forcing him or her into a soup line or other financial dilemma. In most cases in the bush, there is no alternate occupation.

My patience has been strained to the end and

my character slandered by ADF&G Regulations.
If in the Departments mind, we as trollers
have no credibility; than I believe it is fair
to assume the same of the ADF&G.

These are just a few of the things that
are lodged in my mind. I hope I will
be able to communicate with anyone
responsive to this predicament. I sincerely
thank the Senators and Representatives
responsible for this opportunity. I have
included notes and letters I feel shed a little
light on this situation.

Again Sincerely,
Larry S. Smith
Larry S. Smith
Box 3020
Juneau, ak. 99803
789-9923

P.O. Box 3020
Juneau, Alaska 99803

January 11, 1980

Mr. Carl Rosier
Deputy Commissioner
Program Management
Department of Fish & Game
Support Building
Juneau, Alaska 99811

Dear Mr. Rosier:

This is personal testimony regarding a regulation change proposal by the Alaska Board of Fisheries. The regulation states:

3. Establish a vessel registration system for hand and power troll vessels, designate procedures for registering troll vessels, prohibit a vessel from being registered as both a hand troll and power troll vessel and establish an effective date and a registration deadline.

We have had no public hearing on a matter of this magnitude, directly affecting our very livelihoods, and I demand that the public be informed of this regulation and a public hearing be set before any action be taken.

Also, the Department should show just cause for such a regulation. My conversations with representatives of the Department of Fish and Game have failed to provide a reason for this regulation.

I will comment more on this subject as information becomes available.

Thank you.

Sincerely,

Larry S. Smith

cc: Governor Jay S. Hammond
Lt. Governor Terry Miller
Senator Bill Ray
Representative Mike Miller
Representative Jim Duncan
Commissioner Skoog
Juneau Advisory Board
Editor, Juneau Empire



STATE OF ALASKA

LIEUTENANT GOVERNOR

JUNEAU

January 16, 1980

Mr. Larry S. Smith
P. O. Box 3020
Juneau, AK 99803

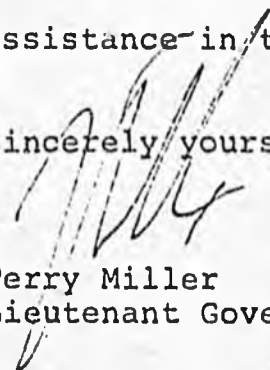
Dear Mr. Smith:

Thank you for sending me a copy of your January 11, 1980 letter to Mr. Carl Rosier, Deputy Commissioner, Department of Fish and Game. I appreciate your bringing the matter of this regulation to my attention. I have contacted the Board of Fisheries and have sent them a copy of your letter. They have informed me that the Board has taken no action on this proposed regulation. At this point in time, they are soliciting written comment and your letter will become part of their file. If you wish to make further comment (pertaining to this particular proposed regulation), I was informed that you must submit written opinions to the Board of Fisheries, Subport Building, Juneau, Alaska 99811 by 4:30 p.m., February 1.

After public hearing is held on these regulations, changes may be made by the Board of Fisheries in conjunction with the Department of Law and the regulations will be drafted into a more permanent format. After complete review, they will be forwarded to my office for filing and for subsequent publication in the Alaska Administrative Code. I would be interested in your comments concerning these regulations after the public hearing phase.

If I can be of any additional assistance in this matter, please let me know.

Sincerely yours,


Terry Miller
Lieutenant Governor

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF
THE ALASKA BOARD OF FISHERIES

Pursuant to the Administrative Procedure Act, Alaska Statutes 44.62, notice is hereby given that the Alaska Department of Fish and Game, under authority vested by Alaska Statutes 16.05.251, 16.05.270, 16.05.475, and 16.05.690, proposes to adopt, amend, or repeal regulations contained in Title 5 of the Alaska Administrative Code which implement, interpret, and make specific the provisions of Title 16, Alaska Statutes.

Regulations to be the subject of the Department's action concern commercial salmon troll fishing in the Southeastern Alaska and Yakutat areas.

The Department may adopt, amend, repeal or take no action on the proposed regulatory changes listed in the following informative summary.

1. Management Plan for the Yakutat and Southeastern Alaska Chinook and Coho Salmon Troll Fisheries. This management plan will establish the manner in which the Department will make inseason adjustments of time and area closures to achieve escapements and distribution of harvest of chinook and coho salmon to inshore areas of Southeastern Alaska.

2. Increase or decrease the number of trolling lines that may be operated from hand and power troll vessels.

3. Establish a vessel registration system for hand and power troll vessels, designate procedures for registering troll vessels, prohibit a vessel from being registered as both a hand troll and power troll vessel and establish an effective date and a registration deadline. *If in FUTURE, there are areas open or closed to hand and not power, or vice versa, ? Collingsworth Jan. 3, 1980*

4. Require that the heads of all chinook and coho salmon must remain attached to the body until the salmon are sold.

5. Prohibit salmon fishing with troll gear in an area closed to coho fishing when coho salmon are on board the fishing vessel.

Copies of proposed changes in regulations summarized in this notice may be inspected at any Department of Fish and Game office or may be obtained upon request by writing to the Department of Fish and Game, Support Building, Juneau, Alaska 99801.

Notice is also given that any persons interested may present written statements or arguments relevant to the action proposed in this notice. Written comments received at the offices of the Alaska Department of Fish and Game, Support Building, Juneau, Alaska 99801, before 4:30 p.m. February 1, 1980 will be considered.

The Alaska Department of Fish and Game, upon its own motion or at the instance of any interested person, may thereafter adopt, amend, reject, supplement or take no action on the proposed regulations without further notice.

Date: _____

Ronald O. Skoog, Commissioner
Alaska Department of Fish and Game

(OVER)

↑
Making
Regulation
on trollers
for future
planned
Area closures
and gear
discrimination

FIRST COMMISSIONER
15 years ago.

Sept. 8. Telephone w/ Sen. Bill Ray - "Commissioner of Fish & Game stated the Dept. policy toward Eroling was to eliminate the fishery"

Phil Rigby (Bottomfish Fish: Game) "Dept. can't ~~regulate~~ regulate stocks with troll fishery harvesting mixed stocks on high seas (Troll shouldn't be allowed to fish mixed stocks because of regulatory practices)"

Dave Cantillan (Common Fish) Aug 25th We will open day Straits corridor for a week, look at figures, and decide what to do. (Announced closure one day after opening with no effort to recover stats - Sept. 1 '79')

Nov. '79' NPMC hearings - Bill Beaver (Fish Biologist - Stape Law Off.) sound [doctored] 10% of real [total] Coho escapements for Chilkat Coho run. Made public issue at hearing. Was passed a note from Dept. person stating. "No one is Stapes office knows how to read figures." (only response)

- Don Bennett - Chairman -
- Ed Dankworth
- George Holman
- Oral Freeman - Vice Chairman - 515 465-4993
- Charlie Parr
- Mike Burns
- Greg Cook exec. Director Board of Fish 465-4110
- MARCH 1986 7 slide Copied Bly.
- Kim Elton Lt. Governors Office

The fish get all the benefit in the doubt without any regard for the fishermen.

Regulation without reason

Regulation on people and gear instead of managing the resource

Where is fish enhancement?

ADF&G spends lots to police US, why not strengthen runs.

Take issue in public with Dept. reg. & policies

TV time KINY

Why accept Reg. (Future)

Proposal 2 gurdie or 4 sport pole limit.

Chuck Patten

John Trout

Kenny Proctor

Bill Stokes

ADF&G Protection Budget Cuts

"line" 2 gurdie limit will force pole fishermen to upgrade to gurdie. & thus making fisherman more efficient and putting more pressure on stock

"4 line 2 gurdie hand troll gear classification

Legal gear for Ht be four line whereas two lines only may be attached to gurdies."

GENERAL PROVISIONS

NO PUBLIC HEARING

5 AAC 39.270 TROLL SPECIFICATIONS AND OPERATIONS

(c) Each vessel engaged in power trolling shall display its permanent Department registration number (ADF&G number) in permanent symbols of black on a white background. Each number shall be at least twelve (12) inches in height, with lines at least one inch wide, and shall be permanently affixed and displayed plainly visible and unobscured on both sides of the hull or cabin at all times.

(d) Each vessel engaged in hand trolling must display the letters HT in permanent block letters on both sides of the vessel. Each letter must be painted in a color contrasting with the background, at least four inches in height, at least one-half inch in width, and permanently affixed on both sides of the vessel hull or cabin, plainly visible and unobscured at all times. No hand troll vessel may display its permanent department registration number (ADF&G number) in any location other than on the vessel license plate.

*"Enforcement justification": (STATED private Board of Fisheries hearing - BARANOT)
It will make it easy for us to police fishing grounds from an airplane."*

5 AAC 48.090. SPORT FISHING FROM A COMMERCIAL SALMON TROLL VESSEL.

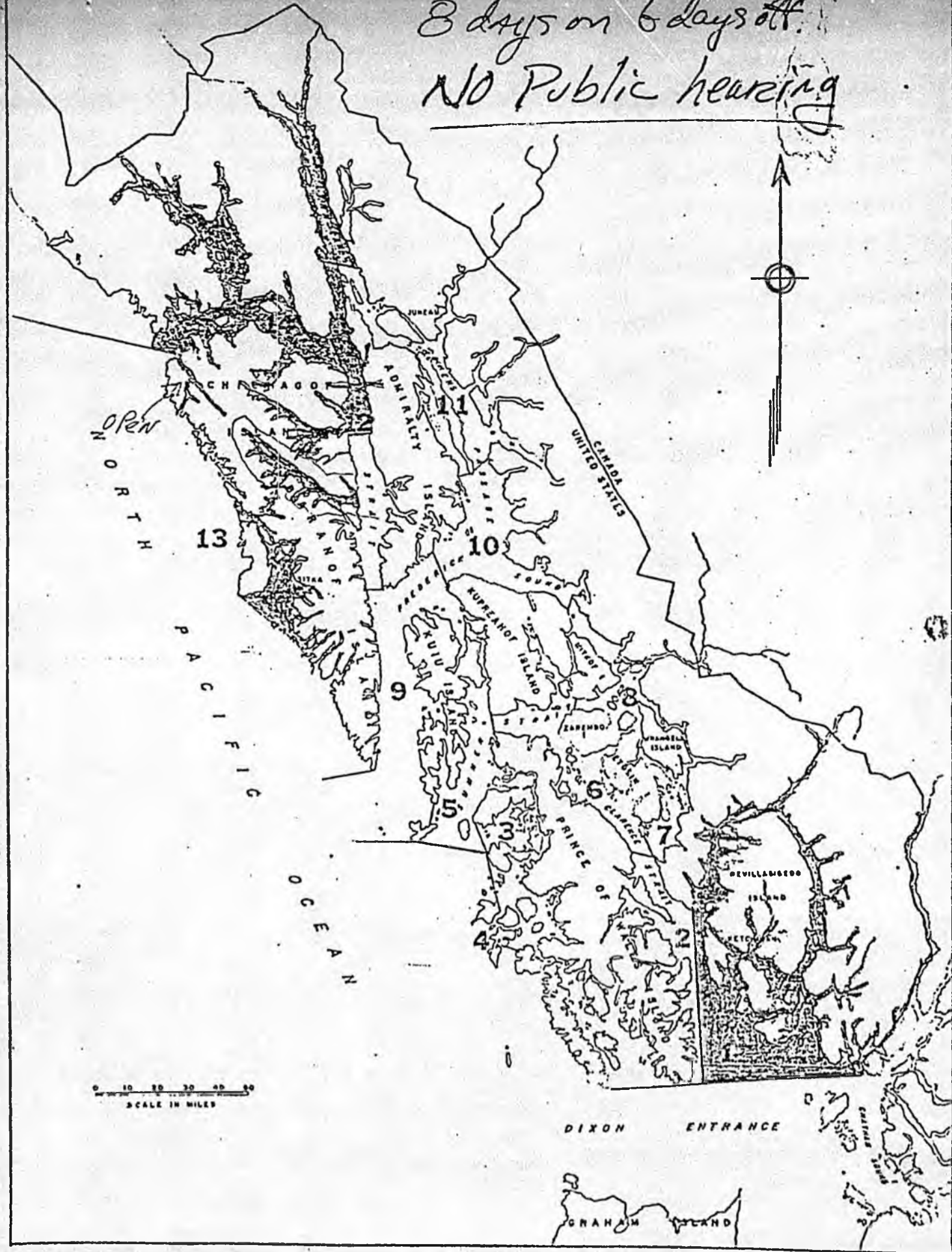
No person may sport fish from a commercially licensed salmon hand troll or power troll vessel, as those vessels are identified by the marking requirements of 5 AAC 39.270 (c) and (d), in any area except that this prohibition does not apply:

- (1) to charter vessels as defined in 5 AAC 72.040 (27); and
- (2) in derby areas during derbies authorized by the department.

01'

adopted 1-15-79

8 days on 6 days off
No Public hearing



0 10 20 30 40 50
SCALE IN MILES

Box 6181
Ketchikan, Alaska
99901

October 18, 1979

Alaska Board of Fisheries
Alaska Department of Fish and Game
Support Building
Juneau, Alaska
99811

Dear Sirs:

We have a problem. The problem had better be looked at, talked about and taken care of before it gets too big to do anything about. The problem is hatcheries and the role of the Board of Fish and ADF&G. To refresh everyone's memory and maybe to educate a few, I was one of the three people who started what has become known as SSRAA. In those days, we had an idealistic dream that we were going to help Mother Nature and help our resource by building back our once great salmon runs. This idealistic dream led us down a primrose path that has now turned into an impenetrable bunch of thorn bushes that I am afraid we are all going to get stuck on. In fact, we are already starting to get stuck on them.

In the beginning, our dream was to help Mother Nature and the natural runs of fish. Our sole purpose was to build up the natural runs, not to create any unnatural runs or any hatchery stocks. We had this plan that we would have some nice, simple plywood boxes with a good water supply, find out from ADF&G which creeks were low, and go to those creeks and get eggs. We would then bring them back for incubation during the winter time and then return those fry to the same creeks. Everything would go on in its own natural way, except for our small part in helping winter survival. The Commissioner of ADF&G, who at that time was James Brooks, and several people in ADF&G told me that the ADF&G was in the business of managing natural stocks and was definitely not going to have anything to do with the management or protection of hatchery stocks. According to these people, the private, non-profit aquaculture system that we were setting up would be on its own, which was the way we wanted it. There would be no guarantees to the aquaculture groups.

Well, SSRAA has turned into a political, bureaucratic monster, and the plywood boxes have turned into a concrete monument. Now the ADF&G, the Commissioner, and the Board of Fish deem it necessary to play "god" and manage our resource for hatchery stocks, guaranteeing the hatcheries their brood stock. I think that the Department has no business in this sort of management. The ADF&G is solely to manage the resource from a biological standpoint, not from a political standpoint. It has definitely become political.

① I believe these two letters have content that should be brought to the board's attention. It does express a growing concern of the fisherman.

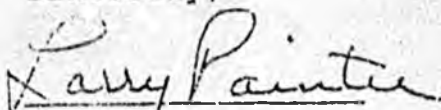
The latest example of this political management versus sound biological management is what has just happened in the judgement sent down by the Board of Fish through the Commissioner to the Department regarding Disappearance Creek in Cholmondeley Sound. This area is our one and only viable fall run which comes through every year. Cholmondeley Sound provides a fall fishery sometimes and always can be relied on for summer production. Disappearance Creek is a beautiful system. The water temperature is very stable in the winter time, and the creek has a welling condition with the water coming through the gravel, which is perfect for chum salmon. I don't think that anyone should be tampering with it. I am sure if you look at it from a biological standpoint, which is the way that the ADF&G should be looking at it, you can do nothing but agree. At any rate, the Board of Fish decided that the standard 30,000 escapement would have to be upped to 40,000 so that SSRAA could get a guarantee for brood stock. How can the Board justify such a reallocation of an established fishery.

This type of political decision is very unhealthy, and I can see no good coming from it in the future. I can see it going from this as a start, to protecting hatchery fish as they come through the fishery, protecting hatchery fish as they near their destination and guaranteeing that the hatchery will get their escapement. This means nothing but more closures for the fishermen, less fishing area and less fishing time as we get deeper and deeper into political management.

It is a sad thing to see such a beautiful dream of helping Mother Nature turn into such a political, bureaucratic monster. I don't know where we went wrong, but I guess one thing led to another. Now it is kind of like a snowball going downhill. Somewhere we have to stop that snowball and either break it up or melt it to where we can deal with it.

The Department must get back into biological management and do what it is supposed to do best. They need to start thinking about the good of the natural runs and not about unnatural runs. The natural runs are the strong ones, anyway, which has been proven many times. I would hate to see the State of Alaska end up with the same situation they have down in Washington and Oregon where all they have are hatchery fish. These states are relying on these unnatural runs for their fisheries. We have a good stock up here of natural runs, and I think that they are the ones that should be taken care of. You don't manage a fishery for the fishermen. You are supposed to manage the fishery biologically for the fish. You certainly aren't supposed to be managing it for the hatcheries.

Sincerely,



Larry Painter
Commercial Fisherman
F/V Alsek

Box 6181
Ketchikan, Alaska
99901

2

October 18, 1979

DEAR FELLOW FISHERMAN:

I am enclosing a copy of a letter I sent to the ADF&G concerning the political management in place of biological management in the allocation of fish to the SSRAA hatchery. As I stated in that letter, I am sorry to say that I was one of the people responsible for the beginning of SSRAA. It seems that the beautiful dream that we started has backfired. What was started out to help our fisheries resources and to help solidify our industry and earning power has lost sight of its original intent. We are going to end up losing our share to hatcheries. SSRAA has received loans from the State. Therefore, the State must make sure that SSRAA is successful in order to get their loans repaid. We are in a Catch-22 situation. This appears to me to be just the beginning, and I am afraid we are going to lose more and more as time goes by. Profit hatcheries are slowly creeping their way up the coast. Washington state is receiving pressure in this direction. We don't need this kind of hatchery or political management. Also, Jack Milnes, the former director of SSRAA, is now serving as a director on the Renewable Resources Corporation. We are playing against a stacked deck.

You have all received the forms to fill out from the Justice Department concerning the 3% assessment. I want you to think about this very deeply before you make your choice of one of the options. I am not going to tell you which option to select, and I am not going to tell you which option I chose, but I just want the facts to be before you. You should be well aware of what has taken place so far, and the direction it seems to be flowing. We certainly don't need more regulations, more politics and more beauracracy involved in our occupations. We have all kinds of trouble in Washington with the Boldt Decision. There is trouble for Washington, Alaska and Oregon trollers on the outside. The 200-mile decision which was supposed to help us out has turned into more politics and more regulation. Everywhere you turn you find the same thing happening. And SSRAA is just another example.

I think that the fishermen are going to have to come to the realization that although we are a bunch of independent, optimistic souls, that we are all akin....that is, we are all interested in one thing, and that is making our living fishing. We are going to have to forget about our gear wars that we have going on, continually looking down our noses at each other and trying to gain over each other.

October 18, 1979

Page 2

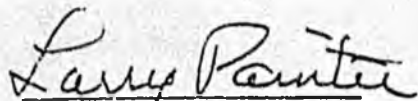
We must start looking down that long, narrowing road and start walking down it together instead of fighting down it. Now more than ever and in the future more than now, we are going to need some unity. The way we are going now we are pretty weak, because we are all haggling amongst ourselves. The politicians are sitting in the background hamstringing us. We as fishermen need to have a more active part in the shaping of our destiny. We must rise up in a united voice and be heard, rather than sit back and accept decisions handed down by people who are not knowledgeable of our problems or the problems of our resource. We do not need political decisions and/or allocations.

We have just lost our fall fishery in Southeast this year. I am not writing this letter due to mere selfish reasons because of the loss of this fishery. There probably wouldn't have been much this year, anyway. There is a good chance that ADF&G won't even attain their escapement, let alone provide 10,000 chums for SSRAA. But the Board of Fish and the ADF&G in Juneau didn't know that, which reflects even more on their lack of knowledge. My reason for writing is that this political allocation is the last straw...the straw that broke the camel's back. Once our back and our spirit is broken, fellow fishermen, we are done.

I don't want to see more regulations, I don't want to see more closures, I don't want our fisheries resources managed by politicians. Biologists have enough trouble, and you are certainly not going to get fairness from political management. I see no reason in supporting SSRAA when they are just turning into an institution which is interested in their own gains. They are turning into a very powerful political force. We don't need that. If we don't watch out, we are all going to be out of business.

I would like to know what you all think about this situation and what you would like to do about it. I would appreciate it if you would put your thoughts down on paper and send them to me. I would also like you to write the Board of Fish your thoughts about them getting in the political ring instead of insuring sound biological management. I hope that there will be enough of you from the different gear types to have some input that will impress the "powers that be" when they receive the letters. Maybe we can start turning the tide before it is too late. Don't sit back, like I know it is easy to do, and like I have at times. Don't figure that "what I say won't make any difference," or, "well, it will take care of itself." I think that it is time that we all start saying something about this problem. What you can say will make a difference. We have to start helping each other. We are on a sinking ship and we have to start bailing. The time is now before it is too late.

Sincerely,



Larry Painter
F/V Alsek

Box 8888
Port Alexander, Ak
998

RECEIVED
MAR 11 1980
COMMERCIAL FISHERIES
ENTRY COMMISSION

March 7, 1980

Mr. Bennet,

It has come to our attention that your committee is accepting statements regarding recent handtroll regulations. Fishing is the major source of income for our community, with handtrolling the predominate fishery. We feel that the economic and social well-being of our community is in jeopardy if the present 1980 handtroll regulations are not changed. We are submitting the following statements for your consideration.

(1) We feel the two line limit being imposed on handtrollers is unjustified and that this law seriously handicaps the efforts of the full-time commercial fisherman. It affects us in a way it never could part-time and weekend fishermen who normally use two lines. Our needs are greater than part-time and week end fishermen and we should not be categorized as such.

(2) We believe the Fish and Game Board's present policy of regulating trolling by dividing it into two groups, (power and hand), is unnecessary and detrimental to trolling in general. Closing the outside coast in 1978, and instituting area and time closures in 1979, (applicable only to handtroll), has caused much of the fleet to be pushed into more limited areas. This has resulted in crowding conditions, unrealistic catch data, and economic hardship.

(3) The Fish and Game Boards ruling, allocating only 20% of the total troll catch to hand troll on "traditional" grounds is not only absurd but poorly disguises the greed and corruption in the allocation of everyone's fish into the hands of a few.

(4) It is our opinion that if Fish and Game feels that limited entry is necessary for the hand troll fishery than limited entry should be instituted in a manner consistent with previous programs in Alaska's salmon fisheries. We fear that if a system of gear, area, and time restrictions are used in place of, or along with a limited entry scheme the hand troll fishery will no longer be a viable commercial fishery. Without a truly commercial handtroll fishery, a vital part in Alaska's fisheries, villiages and bush life as we know it now, will be gone forever.

Respectfully Yours,

Handtrollers of Port Alexander

Bernard P. Oster
Peter O. Kinzey

General Delivery
Gustavus, Alaska 99826
March 17, 1980

Dear Sir:

I live in Gustavus and am starting my fourth season as a commercial fisherman. With the exception of my first season in 1977, 100% of my income has come from hand-trolling. I must support my wife, two children, and make house, boat, and land payments from my earnings as there are very few employment opportunities in the community. Here are my comments regarding the management of the salmon troll fishery in Southeast.

It appears hand-trollers will be under limited entry within the near future. I supported limited entry because the alternative was to be regulated out of existence. Unfortunately, with the large number of permits to be issued and the bias of the Board of Fisheries against hand-trollers, it appears the full-time hand-troller may still be put out of business.

I attended the Limited entry commission's hearing in Hoonah last Fall, and testified in favor of the proposed 1,100 permits. If this number of permits were issued fairly in regards to "hardship" all people who actually depended on hand-trolling as means for income would receive a permit.

The majority of the testimony favored a higher number than the suggested 1,100. I felt part of the reason was the peoples mistrust of the ability of a state agency to fairly issue permits in regard to economic dependence and job availability. Also, many who testified did not seem to realize the alternative to more stringent numbers was more stringent regulations.

It is obvious the majority of testimony state wide would favor no limited entry or a large number of permits, since the majority of present permit holders are part-timers. I had hoped the commission would reach a decision which would favor the person who hand-trolls for a livelihood. Instead, we are having more restrictions imposed by the Board of Fisheries which will take the profit from hand-trolling.

such a closure. I very rarely see another troller and the few boats I do encounter are invariably fishing sport poles. My fish average 20 lbs. and I seldom catch or harm a "shaker". The average profit is low and the weather is more often than not miserable. I winter fish in order to pay bills as the restrictions have made it hard to earn enough to make it through the winter. It is the only way I can earn money and still stay close to my home and family. Again, a winter troll closure, or closure of waters open to trolling would only harm the village handtroller.

The Alaska Board of Fisheries seems to avoid and ignore general public input in it's decision making process. In 1978, in a letter to the Board, I asked if outlying post offices could be mailed a copy of proposals for public posting. I also asked to be put on their mailing list. Neither was done.

The regulations which do come out of the hearings seem to reflect neither the published proposals or public testimony and in some cases receive no public review.

Last summer, I telephoned Dave Cantillon to clarify his position on the shakey start of the Cohoe run and the rumors of an early troll closure. He Told me, if emergency closures took place they would cover the outside waters first, since fish entered that area first; and the 8-6 closure on Icy Straits should be adequit. There was one more opening for Icy Straits and then it was closed until August 28. During the last regular opening, the buyer at Point Adolphis got less than 50 cohoes on several days of the opening. It could hardly be said the few boats in Icy Straits were decimating the run, yet despite what Cantillon told me, Icy Straits was then closed. Meanwhile, power trollers were doing very well in the waters off the coast.

Icy Straits was re-opened on the 28th, supposedly to evaluate the condition of the coho run. On the morning of the 29th at Excursion Inlet, Fish and Game's tag checking girl told me she had already heard the season would be closed the 6th of Semptember. The floating buyers had delivered no fish and it was impossible for the commission to have gotten any information from the field before the closure was decided upon.

A friend of mine has worked for Fish and Game on fish wiers and

doing egg counts in the streams. He tells me that whenever there is a fund shortage this is the first type of activity cut. The technology is available to collect data and make reasonably accurate determinations of what is happening in the salmon fisheries, and end hind-sight management and inaccurate predictions. It would be nice if the State would put some of the effort and money spent trying to put people out of business into improving the runs. Some of the "Oil money" should be spent on hatcheries and enhancement of natural stocks. It is sadly ironic that politicians who give such good lip service to small business and the needs of the bush communities appoint individuals who make regulations detrimental to both.

I am asking for your help. The presently proposed entry program and the attitude of the Board of Fisheries are making regulations which may drive hand-trollers who fish as a livelihood out of business. This will force us to leave homes and families in search of outside employment in already tight job markets. It is unfair for anyone to be cut by an entry program. However, it will be grossly unfair if people who fish only for enjoyment, and don't care about profitability are allowed to drive people in my situation from the fisheries.

Douglas R. Ogilvy
Douglas R. Ogilvy

c.c. Terry Miller
E. J. Haugen
Don Bennett
Bill Ray

THE FOLLOWING:

- (1) the handtroll petition that will be considered by the Board of Fish in March is item #VI-1 on page 7 under notice of proposed changes...etc.
- (2) the largest group of papers contain the Southeastern Alaska and Yakutat area salmon troll regulations adopted by the Board of Fish during Dec. 78 and Jan. 80. Expect they will be approved by the Department of Law for filing by March 1.
- (3) The smaller group of papers, about 4 pages, are regulations on the salmon troll fishery that were adopted by the Department of Fish and Game under delegation from the board. They were delivered to the Department of Law yesterday, so probably will not be approved for filing until mid to late March.

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS
OF THE ALASKA BOARD OF FISHERIES

Pursuant to the Administrative Procedure Act, Alaska Statutes 44.62, notice is hereby given that the Alaska Board of Fisheries, under authority vested by Alaska Statutes 16.05.251, 16.05.475, 16.05.690, 16.05.940, 16.10.380, 16.10.440, and 16.20.260 proposes to adopt, amend or repeal regulations contained in Title 5 of the Alaska Administrative Code which implement, interpret and make specific the provisions of Title 16, Alaska Statutes.

Regulations to be the subject of Board action concern subsistence fishing, commercial fishing, sport fishing, and habitat protection.

The Board of Fisheries may adopt, amend, repeal or take no action on the proposed regulatory changes listed in the following informative summary:

SECTION I. SOUTHEASTERN-YAKUTAT AREA.

A. In the Subsistence Shellfish Fishery:

1. Change the boundary for the area in which the king crab season and size limit applies, so that the area will include all inside waters north of the latitude of Cape Spencer.

2. Increase the king crab season.

3. Establish separate legal size limits for abalone taken with or without diving gear.

D. In the Commercial Shrimp Fishery:

1. Reduce the season for taking shrimp with pots in districts 3, 4, and 5, reduce the shrimp pot limit in districts 3 and 4 and establish a pot limit in district 5.

2. Establish a guideline harvest level for shrimp taken in Cholmondely Sound.

3. Prohibit the use of trawls for taking shrimp in Mituya Bay.

C. In the Commercial Dungeness Crab Fishery:

1. Increase or reduce the dungeness crab fishing season and provide separate dungeness crab fishing seasons for the Southeastern and Yakutat portions of the area.

2. Increase the area closed to dungeness crab fishing in district 11.

THE FOLLOWING:

- (1) the handtroll petition that will be considered by the Board of Fish in March is item #VI-1 on page 7 under notice of proposed changes...etc.
- (2) the largest group of papers contain the Southeastern Alaska and Yakutat area salmon troll regulations adopted by the Board of Fish during Dec. 78 and Jan. 80. Expect they will be approved by the Department of Law for filing by March 1.
- (3) The smaller group of papers, about 4 pages, are regulations on the salmon troll fishery that were adopted by the Department of Fish and Game under delegation from the board. They were delivered to the Department of Law yesterday, so probably will not be approved for filing until mid to late March.

D. In the Commercial King Crab Fishery:

1. Change the opening and closing dates for the king crab fishing season.
2. Require that a permit be obtained from the commissioner prior to taking brown king crab during a specific season and provide provisions that can be required by the permit. Such provisions may include, but not be limited to, harvest area and reporting requirements.
3. Provide a guideline harvest level for king crab in the Yakutat districts.
4. Allow the use of ring nets for taking king crab, reduce the king crab pot limit in districts 3, 4 and 5 and require that king crab pots be removed from the water during specified time periods.
5. Increase the area closed to king crab fishing in district 11.

E. In the Commercial Tanner Crab Fishery:

1. Require that all tanner crab pots be removed from the water during the closed tanner crab fishing season.
2. Change the opening and closing dates of the tanner crab fishing season.
3. Reduce the legal size limit for tanner crab.
4. Provide a tanner crab pot limit for the Yakutat districts.

F. In the Commercial Abalone Fishery:

1. Prohibit the commercial harvest of abalone.
2. Establish a season for taking abalone and provide guideline harvest levels.
3. Limit the amount of gear that may be fished from an abalone fishing vessel.
4. Prohibit shipment out of the state of live unprocessed abalone, require that persons shipping abalone out of the state contact the department and have the abalone inspected prior to shipment, prohibit the shucking of abalone until they have been inspected by the department and adopt other regulations to prevent the harvest of undersized abalone and insure that harvest reporting requirements are complied with.

G. In all Commercial Shellfish Fisheries:

1. Prohibit the taking of crab and abalone in areas adjacent to any community.

H. In the Commercial Salmon Fishery:

1. Change the salmon fishing season opening date in section 1-B.

SECTION II. PRINCE WILLIAM SOUND AREA.

A. In the Subsistence Shellfish Fishery:

1. Establish a daily bag and possession limit and legal size limit for dungeness crab and prohibit the taking of female dungeness crab.

B. In the Commercial Shrimp Fishery:

1. List Kodiak as an inspection and reinspection point for shrimp fishing vessels.

C. In the Commercial Tanner Crab Fishery:

1. Reduce the tanner crab fishing season.

D. In the Commercial Clam Fishery:

1. Allow the taking of gaper clams and change the opening and closing dates for the clam fishing season.

E. In the Commercial Trawl Fishery:

1. Allow the use of trawl gear in portions of Hinchinbrook Entrance now closed to the use of trawl gear.

SECTION III. COOK INLET AREAS.

A. In the Commercial Shrimp Fishery:

1. Change the registration deadline for shrimp trawl vessels and require operators of shrimp trawl vessels to report their catch to the department prior to landing.

2. Establish seasons and weekly fishing periods and change the guideline harvest levels for taking shrimp with pots.

3. Change the seasons, weekly fishing periods and guideline harvest levels for taking shrimp with trawls.

4. Define a selective shrimp trawl and establish a season for its use in taking shrimp.

B. In the Commercial Dungeness Crab Fishery:

1. Change the dungeness crab fishing season in the Southern district.

C. In the Commercial Clam Fishery:

1. Increase the Polly Creek certified clam harvesting area.

D. In the Subsistence Finfish Fishery:

1. Provide a season, weekly periods, open and closed areas, bag and possession limits, permit requirements, gear and operation requirements, and other necessary regulations to allow the taking of king salmon for subsistence purposes in the Northern district.

SECTION III. WESTWARD (KODIAK, CHIGNIK, ALASKA PENINSULA, DUTCH HARBOR, ADAK AND BERING SEA) AREAS.

A. In the Subsistence Shellfish Fishery:

1. Establish a subsistence king and tanner crab pot limit in the Kodiak area.

B. In the Commercial Shrimp Fishery:

1. Change the shrimp fishing seasons for the South Peninsula district and the Unalaska Bay section.
2. Reduce the guideline harvest level for shrimp in the South Peninsula district.
3. Repeal the shrimp trawl gear restrictions for the Inner Marmot Bay and Kalsin Bay sections.

C. In the Commercial King Crab Fishery:

1. Change the Adak and Bering Sea king crab areas to exclusive registration areas, prohibit vessels registered for the Kodiak king crab area from fishing any other king crab area, repeal the registration deadline for the Kodiak king crab area and change the registration deadline for the Cook Inlet king crab area.
2. Change the king crab vessel tank inspection requirements for the Kodiak king crab area.
3. Establish sections for the districts of the Kodiak king crab area.
4. Change the opening and closing dates for the king crab fishing season in all the Westward king crab areas.
5. Change the legal size limit for king crab for the Kodiak and Bering Sea areas.

6. Change the king crab guideline harvest levels for all the Westward king crab areas.

7. Provide that the department may allow district transfer of king crab vessels in the Dutch Harbor and Bering Sea king crab areas after determining there will be no enforcement problem.

8. Change the requirements for removal of king crab pots from closed waters for all the Westward king crab areas.

9. Change the king crab pot limit for the Kodiak king crab area.

D. In the Commercial Tanner Crab Fishery:

1. Establish portions of the Westward tanner crab area as exclusive registration areas.

2. Establish sections in the Kodiak tanner crab district.

3. Change the opening and closing dates for the tanner crab fishing seasons in all the districts of the Westward tanner crab area.

4. Establish tanner crab pot limits for the Kodiak and South Peninsula districts.

5. Change the requirements for removal of tanner crab pots from closed waters for all districts of the Westward tanner crab area.

6. Establish tanner crab vessel tank inspection requirements for all districts of the Westward tanner crab area.

7. Establish a tanner crab vessel district registration system for the Westward tanner crab area, including provisions for the number of districts a vessel may register for, changing district registration, movement of gear and crab between districts, validation of registration and suspension or exemption of registration requirements.

E. In the Commercial Miscellaneous Shellfish Fishery:

1. Establish a season and area for the taking of Korean hair crab in the Westward miscellaneous shellfish area.

2. Clarify in what portion of the Westward miscellaneous shellfish area scallops may be taken during the period June 1 through March 31.

SECTION IV. BRISTOL BAY AND ALASKA PENINSULA AREAS.

A. In the Commercial Salmon Fishery:

1. Adopt a Bristol Bay Sockeye Salmon Management Plan. The plan may include, but is not limited to, changes to seasons, weekly fishing periods, gear, gear operation and specification requirements, vessel specifications, operation and registration requirements, closed waters, and other provisions that will maximize the harvest of Bristol Bay sockeye salmon.

SECTION V. STATEWIDE.

A. In the Subsistence Shellfish Fishery:

1. Allow the use of biodegradable pot lid tiedowns on subsistence shrimp pots as an alternative escape mechanism.
2. Provide a daily bag limit for subsistence taken king crab.
3. Allow the use of jigging gear in salt water at all times of the year for the subsistence taking of shellfish.
4. Allow a commercially licensed fishing vessel not registered for miscellaneous shellfish to have aboard subsistence taken miscellaneous shellfish and gear for taking miscellaneous shellfish.

B. In the Commercial Shrimp Fishery:

1. Establish requirements for the use of a vessel to tender a shrimp fishing vessel.

C. In the Commercial Dungeness Crab Fishery:

1. Allow the use of a single escape ring in dungeness crab pots.

D. In the Commercial King Crab Fishery:

1. Repeal the inspection requirements for king crab vessels landing their catch in an area other than the one for which they are registered.
2. Allow storage of king crab pots in waters closed to king crab fishing for a specified time before the opening of those waters to the taking of king crab.
3. Define a king crab pot.
4. Require the reporting of king crab harvested, but lost, dumped overboard or not sold.

E. In the Commercial Tanner Crab Fishery:

1. Change the tanner crab vessel registration deadline for exclusive registration areas.
2. Allow the use of tanner crab pots on long lines.
3. Define a tanner crab pot.

F. In the General Provisions:

1. Require that operators of floating fish processing vessels report to a local representative of the department located within the area of intended operation prior to commencement of processing operations.

2. Prohibit the use of biodegradable pot lid tie downs on commercial dungeness crab pots and allow their use on commercial shrimp pots as an alternative escape mechanism.

3. Adopt the 1980 halibut fishing regulations of the International Pacific Halibut Commission.

4. Provide that the regulations of the U.S. Secretary of Commerce governing the taking of groundfish in the Gulf of Alaska also apply in state waters.

5. Define "waters of Alaska" and "escapement goals or needs."

G. In the Protection of Critical Fish Habitat Areas.

1. Provide that the commissioner or his authorized designee may require individuals and governmental agencies to submit full plans and obtain a permit for proposed land or water use or construction within waters or lands comprising fish critical habitat areas. Establish permit conditions necessary for the protection and maintenance of fish populations or habitat, provide for permit restrictions or revocation, monitoring of activities by the department, delegation of the commissioner's authority, mitigation procedures for rehabilitating damaged habitat, reporting requirements, and define terms necessary to implement these requirements.

SECTION VI. PETITIONS.

The Board of Fisheries will consider the following petitions submitted in accordance with Alaska Statute 44.62.220 which request the board to adopt, amend or repeal regulations contained in Title 5 of the Alaska Administrative Code:

1. Prohibit or allow sport fishing from commercial fishing vessels licensed under AS 16.05.490 that are used to carry passengers for hire for the recreational or subsistence taking of fish and are also used to take salmon for commercial purposes with troll gear.

2. Establish the Kodiak and Chignik commercial herring fishing areas as exclusive registration areas, prohibit herring fishing vessels and gear that are registered for the Kodiak and Chignik areas from fishing for herring in any other herring fishing area, prohibit herring vessels and gear that are registered for another herring fishing area from fishing for herring in the Kodiak and Chignik areas and establish a deadline for registering herring vessels and gear for the Kodiak and Chignik areas.

Copies of proposed changes in regulations summarized in this notice may be inspected at any Department of Fish and Game office or may be obtained upon request by writing to the Board of Fisheries, Subport Building, Juneau, Alaska 99801.

Notice is also given that any persons interested may present oral or written statements or arguments relevant to the action proposed in this notice. Written comments should be mailed so as to be received by the Board of Fisheries, Support Building, Juneau, Alaska 99801, before 4:30 p.m. on March 14, 1980. Written comments may also be submitted to the Board of Fisheries at any time prior to the close of a public hearing to be held at the Anchorage-Westward Hilton Hotel, Anchorage, Alaska. Oral testimony may be given at the public hearing which will commence at 10:00 p.m. March 25, 1980, and continue until all persons have been given the opportunity to be heard. Additional public hearings may be held throughout the meeting just prior to the consideration and adoption of proposed changes in the regulations of the various regulatory areas. An agenda will be posted daily during the meeting.

All persons interested in or affected by commercial, sport and subsistence fishing and habitat protection regulations are hereby informed that, by publishing this legal notice, the Board of Fisheries may consider all of the subjects covered by the proposed changes contained in this notice; the Board is not limited by the specific language or confines of the actual regulatory proposals submitted by the public or the staff. Unless otherwise specified, references to such topics as areas, seasons, species, gear and guideline harvest levels apply to all or portions of the specific topic. On its own motion, after public hearing, the Board may adopt, amend, reject, supplement, or take no action on these matters. The Board may adopt regulations that fall within the range of existing regulations and the proposals summarized in this legal notice. In addition, the Board may adopt other regulations necessary to implement, administer, or enforce the regulations adopted by the Boards. All persons interested in or affected by the subject matter contained in this legal notice should make written or oral comments if they wish to have their views considered by the Board.

DATE:

15 Feb 80

Ronald O. Skoog
Ronald O. Skoog, Secretary
Alaska Board of Fisheries

CHAPTER 30.
YAKUTAT AREA.

5 AAC 30.100 is amended to read:

5 AAC 30.100. DESCRIPTION OF AREA. The Yakutat area includes all waters of Alaska between the longitude of Cape Suckling (143°53' W. long.) and a line projected southwest from the westernmost tip of Cape Fairweather.

Authority: AS 16.05.251(a) (2)

5 AAC 30.200(a) and (b) are amended to read:

5 AAC 30.200. FISHING DISTRICTS. (a) Yakataga district: all waters of Alaska between the longitude of Cape Suckling (143°53' W. long.) and the longitude of Icy Cape (141°42' W. long.).

(b) Yakutat district: all waters of Alaska between the longitude of Icy Cape (141°42' W. long.) and a line projected southwest from the westernmost tip of Cape Fairweather.

Authority: AS 16.05.251(a) (2)

5 AAC 30.331(a) (1) (C) and (F), (a) (2) (A) and (b) are amended to read:

5 AAC 30.331. GILL NET SPECIFICATIONS AND OPERATION. (a) Set gill nets with mesh size smaller than eight inches may not be deeper than 45 meshes and set gill nets with mesh size eight inches or larger may not be deeper than 35 meshes. The individual and aggregate lengths of any and all set gill nets aboard a vessel or in use by a person may not be more than one of the following hung measure:

(1) in the Yakutat district

(C) Yahtze River, Yana River and Malaspina Lake drainage, one net not to exceed 25 fathoms;

(F) East River, one net not to exceed 20 fathoms, except that after the third Monday in August two nets not to exceed 20 fathoms each and an aggregate length not to exceed 40 fathoms;

(2) in the Yakataga district

(A) Tsiu River; one net not to exceed 15 fathoms;

(b) Set gill net may not obstruct more than two thirds of any salmon migratory waterway; except in the Tsiu River where set gill nets may not obstruct more than one half of the waterway. In the intertidal zone this applies at all stages of the tide.

Authority: AS 16.05.251(a) (4), (5)

5 AAC 30.335 is amended to read:

5 AAC 30.335. MINIMUM DISTANCE BETWEEN UNITS OF GEAR. No part of a set gill net may be set or operated within 100 yards of any part of another set gill net, except that in the Tsiu River, no part of a set gill net may be set or operated within 75 yards of any part of another set gill net.

Authority: AS 16.05.251(a) (4)

5 AAC 30.340 is added to read:

5 AAC 30.340. GILL NET OPERATION IN SURFLINE AREAS. The provisions of secs. 310, 320, 331 and 335 of this chapter as applied to each river fishery also apply to the area within a radius of one-half mile from the terminus of that river.

Authority: AS 16.05.251(a) (2)

5 AAC 30.350(a) is amended to read:

5 AAC 30.350. CLOSED WATERS. (a) Salmon may not be taken in the following waters:

(1) Alsek River: upstream starting at three miles below the southern end of "basin";

(2) Situk River: upstream from the Department of Fish and Game regulatory marker one-half mile west of the tip of Strawberry Point to the cut bank on the eastern side of the mouth of Johnson Slough;

(3) Ankau Inlet: inside of a line from 59°32'51" N. lat., 139°49'42" W. long., to 59°32'47" W. lat., 139°49'42" W. long.

(4) Italo River: upstream from the Department of Fish and Game regulatory markers located six and one-half miles from the terminus of the river;

(5) East River: upstream from the Department of Fish and Game regulatory markers located four miles upstream from the terminus of the river;

(6) Akwe River: upstream from the Department of Fish and Game regulatory markers located six and one-half miles upstream from the terminus of the river;

(7) Lost River: upstream from Department of Fish and Game regulatory markers located 500 yards upstream from the most downstream tree line on the west bank at the terminus of the river;

(8) Old Village Lagoon: upstream from the road.

Authority: AS 16.05.060
AS 16.05.251(a) (2)

CHAPTER 33.
SOUTHEASTERN ALASKA AREA.

5 AAC 33.200(f) (1) (2) and (3), (m), (n) and (o) are amended and (f) (4) is added to read:

5 AAC 33.200. FISHING DISTRICTS AND SECTIONS.

(f) unchanged

(1) section 6-A: waters north of a line from the tip of Point Colpoys to the tip of Macnamara Point, west of a line from the tip of Low Point to the tip of Point Alexander and east of a line from the tip of Point Barne to the tip of Point Baker;

(2) section 6-B: waters south of a line from the tip of Point Colpoys to the tip of Macnamara Point, north and west of a line from the tip of Luck Point to the tip of Point Stanhope to Lincoln Rock light to Key Reef light to Nesbitt Reef light to the tip of Point Nesbitt;

(3) section 6-C: waters enclosed by a line from Lincoln Rock light to the westernmost point of Screen Islands to the westernmost point of March Island to the westernmost point of Steamer Rocks to Mariposa Rock Buoy to the tip of Point Nesbitt to Nesbitt Reef light to Key Reef light to Lincoln Rock light;

(4) section 6-D: all other waters of the district.

(m) District 13: all waters north of a line projecting southwest from the southernmost tip of Cape Ommaney, south of a line projecting west from the southernmost tip of Cape Spencer, west of a line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island, south of a line from the northernmost tip of Soapstone Point to the westernmost tip of Column Point and west of a line from the southernmost tip of Point Hayes to the northernmost point of Point Thatcher.

(n) District 14: all waters of Icy Strait west of a line from the southernmost tip of Point Couverden to Point Augusta light, east of a straight line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island and north of a line from the northernmost point of Soapstone Point to the westernmost point of Column Point.

(p) District 16: all waters north of a line projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

Authority: AS 16.05.251(a) (2)

5 AAC 33.310(b) (1) (A) (iv), (b) (2) and (c) (5) (B) are amended to read:

5 AAC 33.310. FISHING SEASONS AND WEEKLY FISHING PERIODS.

(b) unchanged:

(1) unchanged:

(A) unchanged:

(iv) district 14, except during the period April 16 to August 1 for that portion of the district south of a line from the southernmost tip of Cape Spencer to the northernmost tip of Point Lavinia;

(2) during the period April 16 through September 20, salmon may be taken by power troll gear in that portion of district 12 north of the latitude of the northernmost tip of Point Hepburn, district 14, except during the period April 16 to August 1 for that portion of the district south of a line from the southernmost tip of Cape Spencer to the northernmost tip of Point Lavinia, section 15-A and 15-C only during the fishing periods set forth in (b) (1) (B) of this section;

(c) unchanged:

(5) district 15

(B) section 15-C opens by emergency order.

Authority: AS 16.05.060
AS 16.05.251(a) (2), (4)

5 AAC 33.350 (b) (3) (8) (14) (15) (16) (17) (18) (20) (22) (28), (c) (1) (2) (B), (d) (1) (3) (5) (7) (9) (10) (21) (25) (26) (28) (29), (f) (2) (C), (f) (3) (A) (C), (f) (7) (8) (9) (10), (g) (1) (4) (8) (9) (11) (13) (15) (16), (h) (1) (2) (3) (4) (6) (7) (8) (11), (i) (1) (j) (1) (C), (j) (7) (9) (10) (14) (15), (k) (3) (7), (l) (1) (2) (3) (4) (5), (l) (6) (B) (C), (m) (1) (4), (7) (8) (9) (11) (13) (14) (15), (n) (1) (2) (3) (4) (5) (7) (8) (9) (10) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26), (o) (2) (3) (7) (9) and (p) (3) (4) are amended to read:

5 AAC 33.350. CLOSED WATERS.

(b) District 1

(3) Hidden Inlet: north of the latitude of the tip of Hidden Point;

(8) Very Inlet: inside of a line from 54°57'44" N. lat., 130°57'36" W. long. to 54°57'44" N. lat., 130°57'00" W. long.;

(14) Traitors Cove: east of 131°41'48" W. long.;

(15) Naha Bay: east of 131°38'18" W. long.;

(16) Moser Bay: south of a line from the tip of Cod Point to 55°34'00" N. lat., 131°40'54" W. long.;

(17) Port Stewart: west of a line from 55°43'06" N. lat., 131°49'17" W. long. to 55°41'33" N. lat., 131°50'05" W. long.;

(18) Helm Bay: west of a line from the tip of Helm Point to 55°34'54" N. lat., 131°56'57" W. long.;

(20) Vallendar Bay: south of a line from 55°23'45" N. lat., 131°50'52" W. long. to 55°22'55" N. lat., 131°52'58" W. long.;

(22) Ward Cove: east of a line from 55°23'56" N. lat., 131°44'27" W. long. to 55°23'38" N. lat., 131°44'01" W. long.;

(28) Ray Anchorage: all waters inside a line between 54°56'39" N. lat., 131°13'54" W. long. and 54°55'42" N. lat., 131°12'54" W. long.;

(c) District 2

(1) Nichols Bay: north of 54°42'07" N. lat.;

(2) Moira Sound

(B) Johnson Cove: south of 54°59'43" N. lat.;

(d) District 3

(1) Hunter Bay: east of a line from the tip of Turn Point to 54°52'48" N. lat., 132°21'20" W. long.;

(3) Keete Inlet: east of the longitude of the tip of Keete Point;

(5) Hetta Harbor: east of the longitude of the tip of Hetta Point;

(7) Eek Inlet: west of a line from 55°08'48" N. lat., 132°39'25" W. long. to 55°08'53" N. lat., 132°39'23" W. long.;

(9) Ham Cove: south of 54°53'00" N. lat.;

(10) Kasook Inlet: north of 55°01'40" N. lat.

(21) Salt Lake Bay: east of 133°23'??" W. long.

(25) Edna Bay: north of a line from Limestone Point light to 55°55'55" N. lat., 133°37'40" W. long.;

(26) Tokeen Bay: east of a line from the tip of Holbrook Point to 55°59'52" N. lat., 133°27'51" W. long.;

(28) Devilfish Bay: west of 133°20' W. long.;

(29) Hessa Inlet: east of the longitude of the tip of Whirlpool Point;

(f) District 5

(2) Port Beauclerc

(C) The cove 0.7 miles west of the northern tip of Edwards Island between 56°18'20" N. lat., 133°58'30" W. long., and 56°19'15" N. lat., 133°58'20" W. long.;

(3) Affleck Canal

(A) Bear Harbor: north of a line from $56^{\circ}13'25''$ N. lat., $134^{\circ}05'45''$ W. long., to $56^{\circ}13'50''$ N. lat., $134^{\circ}05'05''$ W. long.;

(C) north of $56^{\circ}16'20''$ W. long.;

(7) Hole in the Wall, northwest coast of Prince of Wales Island: east of $133^{\circ}38'30''$ W. long.;

(8) Alvin Bay: west of $133^{\circ}53'25''$ W. long.;

(9) Reid Bay: west of $133^{\circ}53'55''$ W. long.;

(10) Barrie (Kushehin) Creek: east of a line from $56^{\circ}27'50''$ N. lat., $133^{\circ}40'05''$ W. long., to Trouble Island at $56^{\circ}28'45''$ W. lat., $133^{\circ}40'45''$ W. long. to $56^{\circ}28'00''$ N. lat., $133^{\circ}39'55''$ W. long.;

(g) District 6

(1) Salmon Bay: within a line extending from $56^{\circ}17'24''$ N. lat., $133^{\circ}08'14''$ W. long., to Rookery Island to $56^{\circ}19'06''$ N. lat., $133^{\circ}09'42''$ W. long.;

(4) Ratz Harbor: south and west of a line from $55^{\circ}53'08''$ N. lat., $132^{\circ}35'37''$ W. long., to $55^{\circ}53'16''$ N. lat., $132^{\circ}35'47''$ W. long.;

(8) Rocky Bay, west coast of Etolin Island: north of a line from $56^{\circ}04'20''$ N. lat., $132^{\circ}36'30''$ W. long., to $56^{\circ}04'24''$ N. lat., $132^{\circ}36'03''$ W. long.;

(9) Mosman Inlet: north of $56^{\circ}05'20''$ N. lat.;

(11) Exchange Cove: south of a line from $56^{\circ}13'07''$ N. lat., $133^{\circ}03'42''$ W. long., to $56^{\circ}12'54''$ N. lat., $133^{\circ}03'25''$ W. long.;

(13) Kah Sheets Bay: west of a line from $56^{\circ}31'28''$ N. lat., $133^{\circ}05'12''$ W. long., to $56^{\circ}29'46''$ N. lat., $133^{\circ}07'12''$ W. long.;

(15) Wrangell Narrows: all waters north of the tip of Point Alexander except by trolling;

(A) Blind Slough: east of a line from the tip of Anchor Point to Coast Guard light #25 to Coast Guard light #27 to a point 200 yards due north of the tip of Blind Point;

(B) Petersburg Creek: west of a line from $56^{\circ}48'15''$ N. lat., $132^{\circ}59'33''$ W. long., to Coast Guard light #56 to Coast Guard light #58 to the tip of Bayou Point;

(16) Navy Creek: east of a line from $56^{\circ}03'30''$ N. lat., $132^{\circ}27'54''$ W. long., to the southwest tip of South Burnett Island and east of a line from the northern tip of South Burnett Island to the southern tip of North Burnett Island and east of a line from the northern tip of North Burnett Island to $56^{\circ}04'36''$ N. lat., $132^{\circ}27'29''$ W. long.

(h) District 7

(1) Anita Bay: west of a line from the tip of Anita Point to 56°15'18" N. lat., 132°22'56" W. long., except by trolling;

(2) Olive Cove: south of a line from 56°11'33" N. lat., 132°19'06" W. long. to 56°11'24" N. lat., 132°18'43" W. long.;

(3) Thom's Place, Zimovia Strait: north of 56°09'38" N. lat.;

(4) Fool's Inlet: north of 56°12'30" N. lat.;

(6) Blake Channel and eastern Passage: north of 56°12'00" N. lat., and east of a line from the tip of Babblers Point to 56°27'48" N. lat., 132°16'38" W. long., on Hour Point except by trolling which is closed from April 16 through September 30;

(7) Vixen Inlet: east of the longitude of the westernmost tip of Sunshine Island;

(8) Santa Anna Inlet: south of the latitude of the tip of Point Santa Anna;

(11) Union Bay: south of a line from 55°44'48" N. lat., 132°14'07" W. long. to 55°45'34" N. lat., 132°11'08" W. long.;

(i) District 8

(1) Blind Slough: north of a line from 56°30'45" N. lat., 132°43'18" W. long., to 56°31'55" N. lat., 132°40'32" W. long.;

(j) District 9

(1) Tebenkof Bay

(C) Thetis Bay: south of 56°23'22" N. lat.;

(7) Port Walter and Little Port Walter: west of a line from 56°23'15" N. lat., 134°38'05" W. long. to 56°23'42" N. lat., 134°38'15" W. long.;

(9) Eliza Harbor: north of 57°14'18" N. lat.;

(10) Kadake Bay: south of a line from 56°48'45" N. lat., 133°58'00" W. long. to 56°48'23" N. lat., 133°56'28" W. long.;

(14) Deep Cove: west of 134°43'38" W. long.;

(15) Patterson Bay: north of 56°36'44" N. lat.

(k) District 10

(3) Farragut Bay: Francis Anchorage north of 57°08'45" N. lat.;

(7) Dry Bay: inside of a line from 57°03'32" N. lat., 133°01'55" W. long., to 57°02'49" N. lat., 133°01'45" W. long., to 57°02'57" N. lat., 133°00'10" W. long.

(1) District 11

(1) Auke Bay: inside a line from the tip of Point Louisa to the tip of Outer Point;

(2) Taku Inlet: north of a line from the Annex Creek Power House to a point at 58°17'30" N. lat., 134°01'00" W. long.;

(3) Slocum Inlet: all waters east of a line from 58°08'21" N. lat., 134°04'14" W. long., to 58°07'49" N. lat., 134°04'24" W. long.;

(4) Taku Harbor: all waters east of a line from the tip of Stokade Point to 58°03'41" N. lat., 134°01'59" W. long.;

(5) Limestone Inlet: all waters east of a line from 58°01'48" N. lat., 133°59'16" W. long., to 58°02'04" N. lat., 133°59'40" W. long.

(6) Seymour Canal

(B) Mole Harbor: inside a line from the tip of Flaw Point to a point at 57°39'40" N. lat., 134°01'30" W. long.;

(C) Pleasant Bay: all waters inside a line from 57°38'50" N. lat., 133°59'42" W. long. to a point at 57°38'28" N. lat., 133°57'25" W. long.;

(m) District 12

(1) Wilson Cove: all waters east of the longitude of Point Wilson;

(4) Hood Bay: all waters east of 134°24'30" W. long. except by trolling;

(5) Kootznahoo Inlet: all waters east of a line from the tip of Turn Point to Village Rock light except by trolling;

(7) Funter Bay: all waters inside the longitude of the tip of Clear Point, except by trolling;

(8) Howard Bay: all waters inside the latitude of the tip of Point Howard, except by trolling;

(9) Freshwater Bay: all waters inside a line from a point at 57°53'20" N. lat., 135°07'35" W. long., to 57°54'45" N. lat., 135°06'00" W. long.;

(11) Basket Bay: all waters inside a line from 57°39'50" N. lat., 134°53'12" W. long., to 57°39'17" N. lat., 134°53'53" W. long.;

(13) Wann Springs Bay: west of 134°46'38" W. long.;

(14) False Bay: west of a line from 57°58'33" N. lat., 134°55'05" W. long., to 57°57'00" N. lat., 134°55'23" W. long.;

(15) Wukuklook Creek: west of a line from a point at 57°05'15" N. lat., 135°55'30" W. long., to Flinks Point at 57°52'30" N. lat., 135°57'20" W. long.;

(n) District 13

(1) Isianski Inlet: south of a line from 57°56'46" N. lat., 136°14'10" W. long.; to 57°57'15" N. lat., 136°12'53" W. long. except by trolling;

(2) Salt Lake Lagoon, Takanis Bay: north and east of a line from 57°55'05" N. lat., 136°30'22" W. long., to 57°55'25" N. lat., 136°31'00" W. long.;

(3) Stag Bay: east of 136°21'25" W. long.;

(4) Goulding Harbor: north of a line from 57°46'18" N. lat., 136°15'05" W. long., to 57°46'22" N. lat., 136°15'27" W. long.;

(5) Black Bay: north and east of a line from 57°42'37" N. lat., 136°09'20" W. long., to 57°42'23" N. lat., 136°09'10" W. long.;

(7) Waterfall Cove, Slocum Arm: north and east of a line from 57°37'18" N. lat., 135°56'10" W. long., to 57°30'53" N. lat., 135°55'00" W. long.;

(8) Fish Bay: east of 135°35'10" W. long.;

(9) Hoonah Sound: west and north of a line from 57°44'12" N. lat., 135°43'40" W. long., to 57°43'45" N. lat., 135°44'40" W. long.;

(10) Ushk Bay: west of 135°35'00" W. long.;

(13) Hanus Bay: south of a line from 57°25'29" N. lat., 134°59'00" W. long., to 57°25'18" N. lat., 135°03'40" W. long.;

(14) Nakwasina Passage: north and east of a line from 57°14'12" N. lat., 135°29'55" W. long., to 57°14'53" N. lat., 135°30'28" W. long.;

(15) Nakwasina Sound: north and east of a line from 57°11'42" N. lat., 135°23'30" W. long., to 57°12'12" N. lat., 135°22'40" W. long.;

(16) Katlian Bay: north and east of a line from 57°09'30" N. lat., 135°22'35" W. long., to 57°09'07" N. lat., 135°21'55" W. long.;

(17) Redoubt Bay: east of 135°18'53" W. long.;

(18) Port Banks: south and east of a line from 56°36'07" N. lat., 135°00'20" W. long., to 56°35'55" N. lat., 135°01'10" W. long.;

(19) Still Harbor: south and east of a line from 56°33'15" N. lat., 135°02'40" W. long., to 56°33'38" N. lat., 135°02'25" W. long.;

(20) Redfish Bay: north and west of a line from 56°20'41" N. lat., 134°51'31" W. long., to 56°20'49" N. lat., 134°51'05" W. long.;

(21) Big Branch Bay: north and east of a line from 56°19'27" N. lat., 134°50'30" W. long., to 56°19'18" N. lat., 134°50'08" W. long.;

(22) Sitkoh Bay: west of a line from 57°29'17" N. lat., 134°53'25" W. long., to 57°29'36" N. lat., 134°53'58" W. long.;

(23) Patterson Bay: west of a line from 57°40'23" N. lat., 135°42'42" W. long., to 57°39'35" N. lat., 135°42'18" W. long.;

(24) Fick Cove: south and west of a line from 57°37'51" N. lat., 135°39'38" W. long., to 57°38'25" N. lat., 135°40'39" W. long.;

(25) Starrigavan Bay: all waters east of a line from 57°07'47" N. lat., 135°22'45" W. long., to the ferry terminal dock at 57°08'25" N. lat., 135°22'30" W. long.;

(26) Deep Bay: west of a line from 57°39'35" N. lat., 135°37'20" W. long., to 57°26'32" N. lat., 135°37'46" W. long.

(o) District 14

(2) Fort Althorp: within a line from the tip of Point Lucan to a point at 57° 09'40" N. lat., 135°19'30" W. long., except by trolling;

(3) Idaho Inlet: south of the latitude of the tip of Gull Point, except by trolling;

(7) Whitestone Harbor: within a line from 58°04'15" N. lat., 135°04'36" W. long., to 58°03'36" N. lat., 135°04'15" W. long., except by trolling;

(9) Excursion Inlet: north of a line from 58°22'36" N. lat., 135°28'30" W. long., to 58°22'36" N. lat., 135°28'18" W. long., except by trolling;

(p) District 15

(3) Taiya Inlet: all waters north of the latitude of the tip of Taiya Point, except by trolling;

(4) St. James Bay: all waters north of a line from the tip of Point Whidby to St. James Point at 58°33'45" N. lat., 135°09'45" W. long., except by trolling.

Authority: AS 16.05.060
AS 16.05.25] (a) (2), (4)

5 AAC 33.360 is added to read:

5 AAC 33.360. DISTRICT ONE AND SIX PINK SALMON MANAGEMENT PLAN. In districts 1 and 6, when a purse seine fishery is harvesting pink salmon stocks subject to concurrent fishing by drift gill nets; for each day or portion of a day the purse seine fishery is open, the corresponding gill net fishery shall be open a full 24 hours.

Authority: AS 16.05.060
AS 16.05.251(a) (2), (3), (4)

5 AAC 33.392 is amended to read:

5 AAC 33.392. SIZE LIMIT AND LANDING OF KING SALMON. King salmon taken must measure at least 28 inches from tip of snout to tip of tail (in its natural open position) or 23 inches from the mid-point of the clethral arch to the tip of the tail. The heads of all king salmon must remain attached to the fish until sold. Undersized fish which are taken must be returned to the water without injury. The size limit restrictions in this section do not apply to gill net and purse seine fishing. No king salmon may be mutilated or otherwise disfigured in any manner which prevents determining the minimum size set forth in this paragraph.

Authority: AS 16.05.251(a) (3), (4), (7)

5 AAC 33.393 is amended to read:

5 AAC 33.393. LANDING OF COHO SALMON. The heads of all coho salmon must remain attached to the fish until sold. No troll vessel may be used to take or attempt to take salmon when coho salmon are aboard in an area closed to the taking of coho by troll gear.

Authority: AS 16.05.251(a) (3), (4), (7)

5 AAC 33.410(a) (1) and (2) are amended to read:

5 AAC 33.410. FISHING SEASONS. (a) Sablefish may be taken only as follows:

(1) in the northern area which includes district 9 north and east of a line from the southernmost tip of Cape Omaney to the northernmost tip of Nation Point, district 10, 11, 12, section 13-C, districts 14 and 15, from September 1 through November 15 or until the area is closed by emergency order;

(2) in the southern area which includes districts 1, 2, 3, 5, 6, 7, and 8, from June 15 through November 15 or until the area is closed by emergency order.

Authority: AS 16.05.060
AS 16.05.251(a) (2), (3)

5 AAC 33.415(a) and (b) are added to read:

5 AAC 33.415. GUIDELINE HARVEST LEVELS. (a) In the northern area as described in sec. 410(a) (1) of this chapter, the guideline harvest range for sable fish is 500,000 to 900,000 pounds (227 to 408 m.t.).

(b) in the southern area as described in sec. 410(a) (2) of this chapter, the guideline harvest range for sablefish is 125,000 to 500,000 pounds (57 to 227 m.t.).

Authority: AS 16.05.251(a) (2), (3)

5 AAC 33.420(a), (b) and (c) are added to read:

5 AAC 33.420. REGISTRATION. (a) Operators of fishing vessels intending to fish for sablefish in the northern area as described in sec. 410(a)(1) of this chapter shall notify a local representative of the department by phone, radio or in person within 72 hours before starting fishing operations in the area.

(b) Within 24 hours after leaving the northern area, operators of sablefish fishing vessels shall notify a local representative of the department by phone, radio or in person.

(c) A vessel operator reporting as required by (a) and (b) of this section shall also report the amount of sablefish on board the vessel at the time of reporting.

Authority: AS 16.05.251(a)(2), (4), (7), (12)

Authority: AS 16.05.251(a)
AS 16.05.475
AS 16.05.905
AS 16.05.910
AS 16.05.920
AS 16.05.940

5 AAC 39.250(c) is amended and (d) is added to read:

5 AAC 39.250. GILL NET SPECIFICATIONS AND OPERATION.

(c) Gill net web may not contain no less than 30 filaments.

(d) The float line and floats of gill nets must be floating on the surface of the water while the net is fishing, unless natural conditions cause the net to temporarily sink. The restriction of this subsection does not apply in Kotzebue-Northern area (5 AAC 03.100), Norton Sound-Port Clarence area (5 AAC 04.100), Yukon area (5 AAC 05.100) and Kuskokwim area (5 AAC 07.100).

Authority: AS 16.05.251(a) (4)

5 AAC 39.270(c) and (d) are amended and (e) is added to read:

5 AAC 39.270. TROLL SPECIFICATIONS AND OPERATION.

(c) Each licensed power troll vessel must display its permanent vessel license plate number in permanent symbols of black on a white background. Each number must be at least twelve inches in height, with lines at least one inch in width and must be permanently affixed on both sides of the cabin or hull so as not to be obscured. The numbers must be displayed at all times until the end of the calendar year.

(d) Each licensed hand troll vessel must display the letters HT in permanent block letters. Each letter must be painted on both sides of the vessel hull or cabin in a color contrasting with the background, at least four inches in height, at least one-half inch in width, plainly visible and unobscured at all times. The letters must be displayed at all times until the end of the calendar year. No hand troll vessel may display its permanent vessel plate number (ADF&G number) in any location other than on the vessel license plate.

(e) No more than six troll gurdies may be mounted on board any salmon troll vessel. A troll gurdy is a spool type device around which a troll line can be wrapped.

Authority: AS 16.05.251(a) (4), (5), (7)

TITLE 5. FISH AND GAME.

PART I. COMMERCIAL AND SUBSISTENCE FISHING
AND PRIVATE NONPROFIT SALMON HATCHERIES.

CHAPTER 21.
COOK INLET AREA.

5 AAC 21.430(a) is amended to read:

5 AAC 21.430. GEAR. (a) Bottomfish may be taken in all districts only by trawls, longlines and mechanical jigging machines.

Authority: AS 16.05.251(a)(4), (7),
(12)

CHAPTER 30.
YAKUTAT AREA.

5 AAC 30.392 is amended to read:

5 AAC 30.392. SIZE LIMIT AND LANDING OF KING SALMON. King salmon taken must measure at least 28 inches from tip of snout to tip of tail (in its natural open position) or 23 inches from the midpoint of the clethral arch to the tip of the tail. The heads of all king salmon must remain attached to the fish until sold. Undersized fish which are taken must be returned to the water without injury. The size limit restrictions in this section do not apply to gill net and purse seine fishing. No king salmon may be mutilated or otherwise disfigured in any manner which prevents determining the minimum size set forth in this section.

Authority: AS 16.05.251(a)(3), (4),
(7)

5 AAC 30.393 is amended to read:

5 AAC 30.393. LANDING OF COHO SALMON. The heads of all coho salmon must remain attached to the fish until sold. No troll vessel may be used to take or attempt to take salmon when coho salmon are aboard in an area closed to the taking of coho salmon by troll gear.

Authority: AS 16.05.251(a)(3), (4),
(7)

CHAPTER 33.
SOUTHEASTERN ALASKA AREA.

5 AAC 33.310(b)(1)(ii) is amended to read:

5 AAC 33.310. FISHING SEASONS AND WEEKLY FISHING PERIODS.

(b) Salmon may be taken by hand troll and power troll gear from January 1 through December 31 in all districts except as provided in sec. 350 of this chapter and except as follows:

(1) during the period April 16 through September 20 salmon may be taken by hand troll gear:

- (B) April 16 through April 21
- April 28 through May 5
- May 12 through May 19
- May 26 through June 2
- June 9 through June 16
- June 23 through June 30
- July 7 through July 14
- July 21 through July 28
- August 4 through August 11
- August 18 through August 25
- September 1 through September 8
- September 15 through September 20

Authority: AS 16.05.060
AS 16.05.251(a)(2),(4)

5 AAC 33.365 is adopted to read:

5 AAC 33.365. SOUTHEASTERN ALASKA-YAKUTAT CHINOOK AND COHO SALMON TROLL FISHERIES MANAGEMENT PLAN. (a) The management of the Southeastern Alaska and Yakutat areas chinook and coho salmon troll fisheries is complex because of mixing of the salmon stocks and fishing effort placed upon those salmon stocks by the subsistence, commercial and recreational user groups. The Board of Fisheries is concerned that some user groups, particularly those who traditionally fish the inshore and terminal salmon fishing areas as described in sec. 312(a)(1),(2) and (3) of this chapter, may be receiving reduced opportunities to take chinook and coho salmon because of increasing fishing effort by the salmon power troll fleet on mixed stocks of those species of salmon in the coastal and offshore salmon fishing areas as described in sec. 312(a)(4) and (5) of this chapter. The board is also concerned that continued increases in fishing effort on mixed chinook and coho salmon stocks may result in overharvest of individual salmon stocks or aggregations of those stocks, such that spawning escapement of those stocks to their natal streams may fall below that required to maintain a sustained yield of those stocks. Because of the above concerns, the board has adopted regulations that control the time, area of operation and efficiency of the salmon power and hand troll fisheries.

(b) The board recognizes that changes in size and timing of the chinook and coho salmon runs and changes in the distribution of fishing effort by the hand and power troll fleet may require inseason adjustments to salmon fishing seasons, periods and areas to allow chinook and coho salmon to escape the coastal and offshore fisheries and move into the inshore and terminal fishing areas. The department shall make inseason adjustments to salmon fishing seasons, periods and areas as follows:

(1) there may be no changes made to the chinook salmon fishing seasons, periods and areas during the period January 1 through June 14;

(2) there may be no changes made to the coho salmon fishing seasons, periods and areas during the period June 15 through July 9;

(3) about July 10 the department will evaluate the size and distribution of the coho salmon run and will close the Southeastern and Yakutat areas salmon troll fishery for 10 days, unless the department determines that the coho salmon run is larger than the last 10 year average and that acceptable numbers of coho salmon are moving into the inshore salmon fishing areas;

(4) following any July closure made in accordance with (3) of this subsection, the Southeastern Alaska and Yakutat salmon fishing areas will reopen for salmon hand and power troll fishing as provided for in the salmon hand and power troll fishing regulations contained in chaps. 30, 33 and 39 of this title;

(5) additional closures of the salmon hand and power troll fishing seasons, periods and areas may be required if the department determines that the strength of the coho salmon run in the inshore and terminal salmon fishing areas is less than required to provide a spawning escapement that will maintain the runs on a sustained yield basis.

Authority: AS 16.05.060
AS 16.05.251(a) (2), (3),
(11)

CHAPTER 39.
GENERAL PROVISIONS.

5 AAC 39.120(g) is added to read:

5 AAC 39.120. REGISTRATION OF COMMERCIAL FISHING VESSELS.

(g) Registration requirements for salmon troll fishing vessels are as follows:

(1) the owner or operator of any fishing vessel that is to be used to take salmon with hand or power troll gear shall register that vessel with the department;

(2) no fishing vessel may be registered as both a hand troll and a power troll vessel;

(3) registration is accomplished by completing a form provided by the department and returning that form to a department office;

(4) any vessel that is to be used as a salmon troll fishing vessel must be registered before April 15 of each calendar year;

(5) this subsection becomes effective January 1, 1981.

Authority: AS 16.05.251(a) (2), (4),
(5), (12)
AS 16.05.490
AS 16.05.510

5 AAC 39.270(a) is amended to read:

5 AAC 39.270. TROLL SPECIFICATIONS AND OPERATION. (a) The maximum number of trolling lines that may be operated from any salmon troll vessel is as follows:

(1) from power troll vessels: no more than four lines, except that no more than six lines may be operated in that portion of the Seaward Biological Influence Zone north of the latitude of the southernmost tip of Cape Spencer;

(2) from hand troll vessels

(A) using hand troll gurdies: no more than two lines to which multiple leaders and hooks may be attached;

(B) using fishing rods: no more than four lines with no more than one leader and one lure or two baited hooks per leader;

(3) hand troll vessels may not concurrently use hand troll gurdies and fishing rods;

(4) for the purposes of this subsection, a fishing rod is a tapering often jointed rod equipped with a hand grip and line guides and upon which is mounted a hand powered reel used to deploy and retrieve the trolling line and a hand troll gurdy is a troll gurdy powered by hand or hand crank that is not mounted on or used in conjunction with a fishing rod.

Authority: AS 16.05.251(a)(4),(5),
(7)



Ombudsman

MEMO

Date: April 3, 1980
To: Regulation Review Committee Members
From: Judith Holden, Ombudsman Assistant
Subject: Handtrolling Cases

Attached is a copy of material which was to have been distributed to each of you some months ago, but may not have found its way to your desk.

As you will see, this office investigated quite a number of cases brought to us from handtrollers throughout Southeast Alaska. We made formal recommendations which were not acted upon in a positive manner by the Board of Fisheries. The issue was then brought before your committee, at our request.

We understand that the formal/public hearings have taken place, your committee has discussed the matter, and is now waiting until after the Board of Fisheries meets again; to see what action they take. We further understand that if the Board of Fisheries does not take sufficient action, you will consider the matter further.

We are now in the process of formally closing the handtrolling cases and the ball is in your court. If further input is desired from this office, please contact Frank Flavin. Thank you for your attention to this matter.

/jah
Attachment
cc: Frank Flavin

*Board of Fisheries is meeting this week in Anchorage.

RECEIVED



Ombudsman

State of Alaska

SEP 25 1979

Frank Flavin

Reply to:

September 21, 1979

- 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011
- Pouch W0
Juneau, Alaska 99811
(907) 465-4970
- P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

OFFICE OF THE OMBUDSMAN

Ronald C. Skoog
Commissioner
Alaska Department of Fish & Game
Subport Building
Juneau, Alaska 99801

Re: Ombudsman Complaints J79-0270,
J79-0271, J79-0272, J79-0283,
J79-0366, J79-0368 and J79-0391
4J79-0298

Dear Commissioner Skoog:

Please take notice that the Office of the Ombudsman has completed its investigation of the following allegations:

1. That the ban on hand trolling in the high seas salmon fishery is an unfair and illegal economic sanction;
2. That the ban on hand trolling in the high seas salmon fishery unfairly discriminates against hand trollers vis-a-vis power trollers;
3. And, that the State regulation imposing the hand trolling ban in the Fishery Conservation Zone is illegal in light of the approval of the federal Fishery Management Plan on May 15, 1979.

BACKGROUND

1. At the December¹⁹⁷⁷ Board of Fisheries meeting, the "Board unanimously adopted the coastal fishing area 6/0, Goll absent. It was moved by Jensen and seconded by Fair that hand troll gear be prohibited in the coastal fishing zone. The motion carried 6/0."
2. In early 1979, in a "Report to the Board of Fisheries on the Southeast Alaska Salmon Troll Fishery," it was stated that the North Pacific Fisheries Management Council had recently concluded a first level of review on the draft of the High Seas Salmon Fishery Off the Coast of Alaska East of 175° East Longitude. The FMP was to undergo further review and redrafting and was expected to be implemented by mid-April, 1979. Included in the "proposed regulations in the plan" was "3. Power troll and sport fish gear only."

3. On May 9, 1979, the Division of Commercial Fisheries, in a "NEWS" release, reminded salmon trollers that the State Regulations adopted at the January, 1979 Alaska Board of Fisheries meeting (which extended state regulatory control of the Southeast troll fishery into the adjacent Seward Biological Influence Zone) were currently in effect. It further stated that anticipated adoption of federal regulations for salmon fisheries in the Fisheries Conservation Zone has caused uncertainties over the applicability of the State regulations offshore. The news release concluded that the NPFMC's Fishery Management Plan and its regulations would not go into effect until they were approved by the Secretary of Commerce and therefore, State fishery regulations concerning salmon trolling (ban on hand trolling) were still effective in both state and federal waters.

4. On May 15, 1979, (earlier than was expected) the assistant administrator for Fisheries, Department of Commerce (NCAA) announced approval of the Fishery Management Plan "with the exception of one provision," and issued on an emergency basis regulations implementing the approved portion. The following appeared in the Federal Register, Vol. 44, No. 98, dated Friday, May 18, 1979:

provision of the FMP was not approved and will not be implemented. The disapproved portion of the FMP would have prevented fishing by hand trollers in the fishery conservation zone (FCZ). The Assistant Administrator determined that this provision was inconsistent with National Standard 4 of the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 et seq., (Act), because it would have prohibited fishing by certain hand trollers who had historically fished in this area, while it would have allowed power trollers with a similar history to continue to fish in the FCZ. Power trollers use power from their boats' engines to crank their reels, while hand trollers crank their reels manually. It was determined that no valid conservation purpose was served by the distinctions that were drawn between the two types of gear.

The FMP further stated, under Sec. 674.24 Gear restrictions, that "Commercial fishing for salmon in the East Area is permitted only with power or hand-trol. gear."

5. Winifred H. Meibohm, Executive Director, National Marine Fisheries Service, in a May 15, 1979 communication to the Juneau NOAA office, related detail on the Fishery Management Plan. Selected portions of that memo include:

"Regulations implementing the approved portion of the FMP are issued on an emergency basis in order to limit fishing effort on the salmon stocks."

"The salmon fishery covered by the FMP occurs throughout the waters off Alaska east of 175° east longitude... divided into two management units...(and) Both management units include the FCZ and waters under Alaskan jurisdiction. All harvest taking place on those portions of the management units within State waters will be regulated by Alaska."

"Optimum yield for this fishery corresponds to the average annual harvest during recent years. The FMP is intended to maintain recent levels of fishing effort on the salmon stocks. The NPFMC determined that an increase in fishing effort would be detrimental to the stocks. Any substantial decrease in fishing effort, on the other hand, would be unacceptable for social and economic reasons, because many individuals are dependent on the ocean salmon fishery."

Under a section entitled "Limited Entry Moratorium" it was stated that, "Under those regulations, (limited entry) this maximum number would be exceeded only to the extent necessary to ensure that no eligible person who has been dependent on this fishery would be precluded from harvesting salmon." (Emphasis added.)

"With the exception of allowing hand trolling in the FCZ, these management measures are essentially the same as the Alaska regulations governing salmon fishing in waters under its jurisdiction."

"These regulations are effective immediately as emergency regulations."

It was further stated under Subpart A-General, 674.1 Purpose and Scope, (b), that "These regulations govern fishing for salmon by fishing vessels of the United States within that portion of the North Pacific Ocean seaward of Alaska, east of 175° East Longitude, over which the United States exercised exclusive fishery management authority under the Act." (Emphasis added.) The "Act" means the Fishery Conservation and Management Act of 1976, 16 U.S.C. Sec. 1801-1882, as amended.

6. On May 22, 1979, the Division of Commercial Fisheries, in a "NEWS" release, announced the recent enactment of the Fishery Management Plan. It stated that, "The plan and implementing regulations, which became effective on May 15, 1979, fail to regulate the salmon hand troll fishery in offshore waters. In the absence of federal management and regulatory measures concerning the salmon hand troll fishery offshore, State of Alaska salmon conservation regulations continue to be effective." (Emphasis added; regulation referred to is the "ban" on hand trolling offshore.)

7. In a letter to Mr. Robert C. Loomis dated June 13, 1979, Mr. Harry L. Rietze, Director of the Alaska Region, NOAA, NMFS, commented that "salmon regulations cover fishing for salmon and tanner crab in Alaskan waters outside 3 miles. No other domestic fisheries are now covered by federal regulation within the 3-200 mile Fishery Conservation Zone. When regulations for additional fisheries are finalized, permits may be required, at which time NMFS Juneau will begin issuing permits. Regulations implementing the fishery management plan for the salmon fishery in the 3-200 mile Fishery Conservation Zone (FCZ) in the Gulf of Alaska are now in effect. These regulations allow commercial fishing for salmon with troll gear only." Mr. Rietze further stated that "Persons fishing with hand troll gear are advised that the State of Alaska has implemented a regulation which prohibits use of hand troll gear in offshore waters. We strongly urge that hand trollers contact the Alaska Department of Fish and Game or the Alaska Department of Public Safety regarding this State regulation. NMFS Juneau strongly recommends that all Alaska State fishing and landing laws and regulations be reviewed prior to the beginning of fishing activities." The letter did not, however, make it clear whose regulations (Alaska or Federal) were to be followed.

FINDINGS

Allegation No. 1: That the ban on hand trolling in the high seas salmon fishery is an unfair and illegal economic sanction.

Analysis: The primary Departmental basis for the ban on high seas salmon hand trolling is the increase in effort by hand trollers on depleted King Salmon and heavily utilized coho stocks. [Interviewers - Skoog, Cook, Pennoyer, Cantillon; letter from Commissioner Skoog to Secretary Kreps, April 21, 1979; Memo John G. Gissberg, Assistant Attorney General re: proposed ban on hand trolling in FCZ] The Board of Fisheries intent in

• Commissioner Skoog
September 21, 1979
Page 5

adopting the ban was to limit the total hand troll catch to 20% of the salmon catch. [Performance Review of Commercial Fisheries Entry Commission by Legislative Audit, May 15, 1979, at pages 26 and 376]; Memo John Williams, CFEC from Carl Rosier, Deputy Commissioner Alaska Department of Fish and Game, August 21, 1979, re: Limited Entry for Hand Troll Gear.]

There is no doubt that the increase in hand troll effort is a legitimate cause for Board and Department concern and regulatory response. Certainly, the increase calls for restrictive regulation and arguably a lid on the hand troll effort.

However, a regulation establishing a total ban on one gear type in one area and the adoption of a maximum catch percentage for that gear type in the region is economic and social regulation that is deliberate and not incidental to conservation management.

There is little doubt the high seas hand trolling ban and overall hand troll restrictions are in response to the failure of the Limited Entry Commission to implement limited entry in the hand troll fishery. However, the Board of Fisheries regulatory scheme amounts to limited entry without the procedural safeguards and thorough economic and social research required of the Commercial Fisheries Entry Commission.

It is clear from the Board of Fisheries minutes and our interviews with Departmental staff that hand troll fishermen are considered less "traditional," less "beneficial," and less "dependent" than power trollers. [These assumptions will be considered later in this report.]

The legal problems associated with the Board of Fisheries assuming a responsibility delegated to the Commercial Fisheries Entry Commission has been adequately explored in the recent Legislative audit of the Commercial Fisheries Entry Commission. Practically, the Board of Fisheries does not have the economic or social data base to decide that one class of fishermen, hand trollers, should be totally restricted from the high seas fishery while another class of fishermen, power trollers, are allowed the privilege.

Social or economic manipulation of the livelihood of the state's citizens should be accomplished, if at all, by elected officials (the Legislature) directly or through appointed officials (the Commercial Fisheries Entry Commission) pursuant to a legislatively established formula with due process safeguards. With the Commercial Fisheries Entry Commission safeguards have been legislatively established--with the Board of Fisheries they have not.

It should be noted that the federal Fisheries Management Plan disapproved the high seas hand troll ban because it served no valid conservation purpose.

With the implementation of the high seas hand trolling ban and maximum catch percentage, the Board of Fisheries moved from managing the methods and means of harvest to managing the composition of the harvesters.

To further restrict or even put a lid on the hand troll effort in the high seas would undoubtedly have a salutary effect on the fish. To ban the hand trollers completely has an unconscionably greater salutary effect on competing fishermen.

Determination: Partially Justified. The increase in hand troll effort necessitates restrictions or arguably a lid on the effort. The Board of Fisheries, in adopting a complete high seas ban, has adopted a limited entry rather than conservation measure.

Allegation No. 2: That the ban on hand trollers in the high seas salmon fishery unfairly discriminates against hand trollers vis-a-vis power trollers.

Analysis: One Departmental basis for the hand trolling ban in the high seas fishery was to prevent the hand troll fishery from becoming more established. [Letter from Commissioner Skoog to Secretary Kreps, April 23, 1979.] Most Departmental personnel interviewed felt that power trolling was the "traditional" use in the high seas area.

Some Departmental officials characterize hand trolling as sport-commercial, "weekend warriors," etc. Others point to a growing "professional" hand trolling effort. One is struck, however, with the lack of concrete data, beyond observation or assumption as to both the size and importance (social and economic) of the hand troll effort both in the inshore and high seas zones.

In his memo on the proposed ban on handtrolling in the FCZ, Assistant Attorney General Gissberg states: "In the past that fleet has generally represented weekend fishermen seeking additional income or tax advantages on their fishing expenditures." This statement is fairly reflective of the Departmental characterization of hand trollers that we encountered. However, we have yet to see any hard data which establishes the income, dependence or "tax sophistication" of the average hand troller, past or present.

Even the total number of hand troll fishermen in the high seas area (Fisheries Conservation Zone) is not tied down. Five hand trollers were "reported" operating by both Gissberg and the federal "Informational Memorandum" on the "Partial Disapproval of the Fishery Management Plan for the High Seas Salmon Fisheries off the Coast of Alaska." It is not at all certain that this figure is accurate as it does not account for "occasional" effort, nor is the information on fish tickets accurate or thorough enough to establish the actual location of catch and the total hand troll effort in the FCZ.

If the total hand troll fishing effort in the FCZ were indeed five hand trollers this fact certainly undermines the conservation necessity of a total ban in lieu of tighter restrictions or a lid on the high seas hand troll effort.

The federal Fisheries Management Plan rejected the proposed hand troll ban as power trollers who had previously fished the area would be permitted to continue but hand trollers would not.

Determination: Justified. Very little data concerning the economic and social aspects of the troll fishery have been compiled yet basic assumptions concerning the nature of this fishery have influenced the allocation of fish between user groups. Traditional hand troll effort in the FCZ is not well documented, nor is there any legitimate or rational reason why traditional hand trollers in the FCZ should be banned and power trollers permitted to continue.

Allegation No. 3: That the State regulation imposing the hand trolling ban in the Fishery Conservation Zone is illegal in light of the approval of the federal Fishery Management Plan.

Analysis: On May 15, 1979, the assistant administrator for Fisheries announced the approval of the Fishery Management Plan, but with the disapproval of that portion of the plan that provided for a ban on hand trolling in the FCZ. This created a clear inconsistency between federal regulation and state regulation of hand trolling in the FCZ; the federal plan allowing, the state plan prohibiting.

Since that date neither the State nor federal government have made a reasonable effort to inform the involved fishermen as to which management scheme the fishermen should obey.

Clearly the federal law pre-empts. In State v. Bundrant, et. al., 546 P. 2d 530 (Alaska, 1976) the Alaska Supreme Court stated that the doctrine of pre-emption holds "that when Congress has exercised its regulatory authority over a particular subject

in manner to indicate an intention to deal fully and exclusively therewith, all state regulation in that particular field must yield." (Id. at p. 538)

The language in the Fishery Conservation and Management Act (16 U.S.C. 1801 et. seq.) is clear as to federal exclusivity. The Act provides:

(b) Purposes.--It is therefore declared to be the purposes of the Congress in this Act--

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;. . .

Despite the clear pre-emption of the FMP allowing hand trolling, State and federal regional officials have finessed the pre-emption question leaving involved fishermen guessing as to if and when the FMP takes effect.

The May 22, 1979 Division of Commercial Fisheries "NEWS" release was at best deceptive in stating:

"In the absence of federal management and regulatory measures concerning the salmon hand troll fishery offshore, State of Alaska salmon conservation regulations continue to be effective."

The preceding language implies a failure to act when in fact the hand troll ban was specifically disapproved and a regulatory scheme allowing hand trollers approved.

The director of the Alaska Region, NOAA, NMFS was more artful in dodging the pre-emption question completely and steering Robert C. Loomis, a fisherman, back into the morass of legal uncertainty:

"Persons fishing with hand troll gear are advised that the State of Alaska has implemented a regulation which prohibits use of hand troll gear in offshore waters.

We strongly urge that hand trollers contact the Alaska Department of Fish and Game or the Alaska Department of Public Safety regarding this State regulation. NMFS Juneau strongly recommends that all Alaska State fishing and landing laws and regulations be reviewed prior to the beginning of fishing activities."

Determination: Justified. State and federal regional officials are leaving the pre-emption question murky until ADF&G and the North Pacific Management Council seek a reversal of the disapproval of the hand troll ban in the FCZ. This is fine for administrators and managers but lousy for the fishermen caught in the middle.

CONCLUSION

The expansion of the hand troll fleet clearly calls for increasingly restrictive regulation to protect salmon stocks and diminish the unfairness to other fishermen who have been subject to limited entry. However, any economic regulation of hand trollers is clearly the province of the legislatively empowered Commercial Fisheries Entry Commission and not the Board of Fisheries. The FCZ hand troll ban and 20% catch limitations both amount to economic regulation and the administrative seizure of control over the livelihoods of State residents without their approval, without the approval of their elected representatives, and without adequate research or procedural safeguards.

Recommendations:

1. The Administrative Regulation Review Committee of the Legislature should review 5 AAC 33.330 and 5 AAC 48.090;
2. The Board of Fisheries should reconsider 5 AAC 33.330 and 5 AAC 48.090 at its next meeting;
3. The commissioner of Fish and Game and regional director, NOAA, NMFS should announce the date that hand trolling pursuant to the FMP will be permissible, or offer negotiation or litigation plans for resolving the inconsistencies in the federal and state regulatory schemes; *and*
4. That limited entry of the hand troll fishery be undertaken expeditiously.

Commissioner Skoog
September 21, 1979
Page 10

Thank you for your assistance and consideration in this matter. We look forward to your response within 30 days.

Sincerely,

Frank Flavin

Frank Flavin
Ombudsman

FF:rj

cc: Gregory F. Cook
Steven Pennoyer
Nick Szabo

S. E. Regional "O" Office



Ombudsman

State of Alaska

Frank Flavin

September 25, 1979

Reply to:

- 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011
- Pouch W0
Juneau, Alaska 99811
(907) 465-4970
- P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

RECEIVED
SEP 28 1979

Ronald O. Skoog
Commissioner
Department of Fish and Game
Subport Building
Juneau, Alaska 99801

JUNEAU
OFFICE OF THE OMBUDSMAN

Re: Ombudsman Complaints J79-0279,
J79-0271, J79-0272, J79-0283,
J79-0366, J79-0368, J79-0391 and
J79-0398 (not previously listed)

Dear Commissioner Skoog:

Several items in our findings issued September 21, 1979, need further explanation.

First, we will not send these findings to the Administrative Regulation Review Committee or the Commercial Fisheries Entry Commission until you have responded, and a copy of that response will be included with our materials.

Second, we will not send copies of these findings to our complainants for two weeks. As you know we do not publicize our findings (if at all) until we have a response from the Department. In fairness to agencies, as we cannot control the activities of our complainants, we try to allow a grace period for the Department in controversial matters.

Finally, recommendation number four is made with the understanding that CFEC is already working on limited entry for hand trolling. Because of the problems brought to light by the Alaska Department of Fish and Game we hope that CFEC evaluation and implementation occur expeditiously.

Thank you for your attention and consideration in this matter.

Sincerely,

Frank Flavin
Frank Flavin
Ombudsman

FF:rj

cc: Gregory F. Cook
Steven Penoyer
Nick Szabo

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME OFFICE OF THE COMMISSIONER

SUPPORT BUILDING
JUNEAU, ALASKA 99801

October 12, 1979

RECEIVED
OCT 15 1979

Mr. Frank Flavin, Ombudsman
State of Alaska
840 K Street, Room 203
Anchorage, Alaska 99501

ANCHORAGE
OFFICE OF THE COMMISSIONER

Dear Frank:

I have received your letter of September 21, 1979, and will respond to the allegations and findings contained in that letter in the order in which they were made. I have consulted with Steve Penoyer, Director of the Division of Commercial Fisheries, and Greg Cook, Executive Director of the Alaska Boards of Fisheries and Game, before compiling these comments.

Allegation No. 1. The ban on hand trolling in the high seas salmon fishery is an unfair and illegal economic sanction.

The gist of the analysis appears to be contained in the second full paragraph on page 5, wherein you state "...a regulation establishing a total ban on one gear type in one area and the adoption of a maximum catch percentage for that gear type in the region is economic and social regulation that is deliberate and not incidental to conservation management." In order to respond to that conclusion I must examine each clause of that lengthy sentence separately.

The Board of Fisheries has established a total ban on one gear type in one area in many different instances. For example, a variety of areas exist in the state that are open exclusively to gillnetting for both the salmon fishery and the herring fishery. Also,

- a) Security Cove was made an exclusive gillnet area for herring in December, 1978;
- b) In Upper Cook Inlet, no seining north of Anchor Point is allowed, and no drift gillnetting is allowed below Anchor Point;
- c) Set gillnetting was eliminated from Lynn Canal in 1972.

Such action by the Board of Fisheries is within their delegated powers to affect the methods and means of take of fisheries resources.

(AS 16.05.251. See also Dow v. Ickes 123 F. 2d 909 (1941)). The ban on hand trolling in the FCZ similarly falls within the Board's powers as a regulation affecting the methods and means of take.

The second clause of the sentence cited above states that "the adoption of a maximum catch percentage for that gear type in the region is economic and social regulation that is deliberate and not incidental to conservation management." First, the Board has never "adopted" a maximum catch percentage for hand trolling. The percentage figure to which you refer, I assume, comes from a January 23, 1979, letter from Greg Cook, Executive Director, Board of Fisheries, to the Commercial Fisheries Entry Commission. In that letter the following language appears, "The Board respectfully wishes to express to the Commission its interest in the development of a program that would consider the following elements: 1) preference for rural over urban hand trollers, and 2) allocation of hand troll permits in a number that will result in an overall ratio of the troll catch of 80 percent power troll and 20 percent hand troll." The Board of Fisheries has not adopted any regulations which impose a maximum catch percentage on hand trollers. The percentage figure to which you refer was a request made to the Commercial Fisheries Entry Commission for their consideration. No formal adoption of that figure has been made by the Board of Fisheries.

Finally, you state that the Board's disposition toward that 80 percent/20 percent distribution of the total troll catch is "economic and social regulation that is deliberate and not incidental to conservation management." As stated above, no regulation per se is involved. To claim that limiting effort in a particular fishery is not an aspect of conservation management is not realistic. The level of effort present in a particular fishery corrolates directly to the total number of fish which will be taken, and concomitantly affects total escapement.

In summary, I disagree with all of the conclusions which you state in the second full paragraph on page 5.

In paragraph 3 of page 5, you state that the Board of Fisheries' regulatory scheme "amounts to limited entry." Again I must disagree strongly with your conclusion. As all Alaskans know, a limited entry scheme entails regulating entry into a commercial fishery. (See AS 16.43.100(a)) Entry into the hand troll fishery is still unlimited and is open to anyone with gear and a boat. The Board of Fisheries has taken no action that is tantamount to "limited entry."

In paragraph 4 of page 5, you make the conclusion that hand troll fishermen are considered inferior in several ways in relation to power trollers. Certainly, the Board of Fisheries is well aware that hand trollers antedate power trollers and consequently are more "traditional." However, hand trolling gear has not remained static since the inception of the hand troll fishery. The gear used by hand trollers now is far more sophisticated (more lines, more hooks, more efficient methods of retrieval) than the gear fished by hand trollers during the early years of the fishery. It is the use of the outside waters by the hand trollers that is less traditional than the use of the outside waters by power trollers. (See catch data for troll fishery, Alaska Department of Fish and Game, 1975 - 1977).

In paragraph 6 of page 5, you state that the Board of Fisheries' legal responsibilities have been adequately explored in the recent Legislative audit of the Commercial Fisheries Entry Commission. I suggest that you review the entire report, published May 15, 1979, with special attention to pages 37(f) through 37(j). It should be noted that the auditors' responses on page 40(f) were nonresponsive to the merits of the argument raised in the Department of Fish and Game's response. (See also AS 16.43.350).

Additionally, your conclusion that the Board of Fisheries does not have the economic or social data base to evaluate the restrictions necessary in Alaskan fisheries is incorrect. Regarding the hand troll issue, I would call your attention to the series of hearings held throughout Southeastern Alaskan in 1977 on hand trolling (See below, page 4, paragraph 3). In addition, I also call your attention to the hundreds of fishermen who semi-annually come before the Board of Fisheries to offer both economic and social testimony. Finally, please find appended to this response the Alaska Department of Fish and Game Report to the Board of Fisheries, December 1978.

The final paragraph, which begins on page 5, states that safeguards have not been legislatively established for the Board of Fisheries. Again, I must disagree with this statement since it is incorrect. (See AS 44.62.320, AS 16.05.280). Naturally collateral due process safeguards inhere in the system of judicial review as well. (AS 44.62.-020, .030, .300).

The first full paragraph on page 6 states that "the Federal Fisheries Management Plan disapproved of the high seas hand troll ban because it served no valid conservation purpose." That statement is incorrect. In reality, the reason for the Federal action was stated to be "no valid conservation purpose was served by the distinctions that were drawn between the two types of gear" and the attitude in Washington that the distinction contravened 16 U.S.C. 1851 (emphasis added). The ban on high seas hand trolling reduced the total potential salmon fishing effort on the high seas and prevents further increases in the mixed stock fishery. Consequently, a valid conservation purpose was served by limiting effort. It should be noted that only the Washington, D.C., attorneys for the Department of Commerce took the position that the distinction between hand trollers and power trollers was invalid. An attorney for NOAA in Juneau, Alaska is in agreement with the State's position that the ban on hand trolling in the FCZ is in conformance with the national standards of the FOMA and equal protection under the 14th Amendment to the U.S. Constitution.

In conclusion, I must disagree with the statement that the Board of Fisheries "has adopted a limited entry rather than conservation measure." The Board of Fisheries' action has not slowed entry into the hand troll fishery. Indeed, in 1979, 5,400 permits were issued to commercial hand trollers. This represents an increase of 1,500 over the total number of permits issued in 1978 and an increase of 3,300 over the total number of permits issued in 1975. The number of permits actually fished increased from 1,086 in 1975, to 2,604 in 1978.

Although data are not available in final form for the 1979 high seas troll fishery, I am confident that the reduction in effort occasioned by the ban on hand trolling on the high seas contributed to conservation of the depleted and depressed coho and king salmon stocks present off the coast of Southeastern Alaska. I sincerely appreciate your concern for these depleted and depressed stocks and look forward to hearing your testimony before the Board of Fisheries when they meet to consider finfish proposals in Anchorage December 3-20, 1979.

Allegation No. 2: That the ban on hand trollers in the high seas salmon fishery unfairly discriminates against hand trollers -vis-a-vis power trollers.

The fact that entry and the level of potential effort in the hand troll fishery is presently without bounds establishes a reasonable basis for the Board of Fisheries' action in eliminating hand troll fishing for salmon in the FCZ. This key distinction between hand trollers and power trollers, i.e., power trollers' effort has been limited whereas hand trollers' effort is unlimited in magnitude, is a clear basis for differentiating between the two gear types. The fundamental reason for the distinction between the two gear types remains, of course, functional distinction, viz., the method of retrieval.

From January 20 through March 16, 1978, representatives from the Board of Fisheries held hearings on the hand troll fishery in the communities of Ketchikan, Juneau, Sitka, Petersburg, Wrangell, Angoon, and Hoonah. These hearings were held to allow members of the public to present their views and ideas on possible regulation and limitation of the hand troll fishery. At least one Limited Entry Commissioner and a varied number of Department of Fish and Game personnel attended the hearings with Gordon Jensen and/or Jim Beaton, who represented the Alaska Board of Fisheries. Approximately 145 persons testified during the hearings. Extensive testimony was received on the economic and social aspects of the hand troll and power troll fisheries. I must emphasize that the expertise possessed by the members of the Alaska Board of Fisheries, the data presented by the Commercial Fisheries Entry Commission, the data presented by the Alaska Department of Fish and Game, and the extensive testimony received in regulatory sessions of the Board of Fisheries and special hearings the Board has held constitute a thoroughly legitimate data base on which to make decisions.

Your statement that traditional hand troll effort in the FCZ is not well documented is well taken. It is the Department's and the Board's position that the lack of documentation of such "traditional" effort is due to the fact that the effort has been so low as to be negligible in the past. The Board of Fisheries' action, however, was based on the precept that the previously negligible level of effort is subject to rapid expansion, and the depleted and depressed state of the king and coho stocks does not allow for potentially unlimited expansion of the hand troll effort in the FCZ at the expense of the resource for the sole purpose of obtaining data to satisfy other state agencies.

It goes without saying that hand trollers still fish intensively in inside waters in areas where stocks are more discrete. Management of discrete stocks is biologically more sound than a mixed stock fishery, since it allows managers a better chance to avoid overfishing specific stocks. (See Washington Kelpers' Association v. State 502 P 2d 1170, 1172 (Wash., 1972)).

Allegation No. 3: That the State regulation imposing the hand trolling ban in the Fishery Conservation Zone is illegal in light of the approval of the Federal Fishery Management Plan.

You are correct in stating that there is an inconsistency between the State regulation and the Fisheries Management Plan. It is not, however, the duty of the State or the Federal Government to give legal counsel to individual fishermen. Your statement that "clearly the Federal law pre-empts" is a legal conclusion unsupported by judicial application to the hand troll issue. There is no substitute for the informed legal counsel which a competent attorney can render to an individual citizen. (See AS 08.08.210). With that caveat in mind, I will comment on the personal opinions of your office staff relating to the pre-emption issue.

Your citation of 16 U.S.C. Sec. 1801 is well taken. However, your unexplained omission of 16 U.S.C. 1856(a) was unfortunate. That section (Sec. 306 P.L. 94-265) states the following: "except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any state within its boundaries. No state may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries unless such vessel is registered under the laws of such state." Naturally the State of Alaska regulations pertaining to hand trolling in the FCZ are meant to apply only to vessels registered under the laws of the State of Alaska and citizens of Alaska. Similar regulations of the State of Alaska exist for the king crab fishery in the FCZ. Since the Secretary of Commerce has not held a hearing in accordance with the Federal APA as mandated by subsection (b) of Section 306, the exception to State jurisdiction noted above in Section 306 does not apply. Your opinion, therefore, that federal pre-emption is "clear" and federal exclusivity is "clear", is fragile and appears to be unsupported by an understanding of the F.C.M.A. as a whole.

I agree with you that the area of State/Federal jurisdiction is murky and that the action taken by the Secretary of Commerce inures to the detriment of all fishermen concerned. Nonetheless, I am unable to control actions taken in Washington, D.C., and I cannot deliberately abuse Alaska's resources because of unwise action taken on the Federal level.

CONCLUSIONS

I concur with your opinion that the mushrooming of the hand troll fleet calls for increasingly restrictive regulation to protect salmon stocks and to diminish the unfairness to other fishermen who have been subjected to limited entry. I am sure you see the folly of attempting to completely separate regulations in the troll fishery into "economic" regulations and "non-economic" regulations. (See Legislative Audit Report, May 15, 1979, pages 37(g) - 37(i)).

The Board of Fisheries' statutory responsibilities include conservation and development of the State of Alaska's fisheries resources (AS 16.05.221(a)). It should be clear to even the most ingenuous observer that many actions taken for the purpose of conservation will have collateral economic results. In other words, conservation actions may affect the development or utilization of fisheries resources and vice versa. The regulations of the Alaska Board of Fisheries regarding hand trolling in the FCZ are founded on a rational basis. Extensive public testimony has been received over a period of years, forming a massive data base for their decision. The specific action taken by the Board of Fisheries is within their legitimate powers under AS 16.05.251(4), and is not ultra vires as you contend.

COMMENTS ON OMBUDSMAN'S RECOMMENDATIONS

1. The Administrative Regulation Review Committee should review 5 AAC 33.330 and 5 AAC 48.090.

No comment.

2. The Board of Fisheries should reconsider 5 AAC 33.330 and 5 AAC 48.090 at its next meeting.

The published deadline for submission of public proposals for consideration by the Board of Fisheries at its December 1979 meeting was September 14. It is now too late for you to submit a proposal regarding the referenced regulations. Nonetheless, to the extent public proposals have been submitted concerning those regulations, they will be legally advertised, and the Board may take regulatory action in those two areas (AS 44.62.190). I suggest that you may wish to offer oral or written testimony to the Board of Fisheries on the referenced regulations. The Board of Fisheries meeting will be held December 3-20, during which public testimony will be received. If you wish to submit written comments, those comments may be submitted directly to the Board's office in Juneau prior to November 23, 1979. Alternatively, you may wish to submit a petition to the Boards under AS 44.62.220.

3. The Commissioner of Fish and Game and the Regional Director of the National Marine Fisheries Service should announce the date that hand trolling pursuant to the Fisheries Management Plan will be permissible or offer negotiation or litigation plans resolving the inconsistencies

October 12, 1979

in the federal and state regulatory schemes.

I am not now working with NOAA or the National Marine Fisheries Service on the regional level to resolve the inconsistency. You should be aware, however, that the North Pacific Fishery Management Council is strongly in support of the State Board of Fisheries' regulation pertaining to hand trolling in the FCZ. The North Pacific Fishery Management Council is actively pursuing a change in orientation at the Washington, D.C., level, so that the federal Fisheries Management Plan will be brought into line with the state regulations. If you wish further information on the position of the North Pacific Fishery Management Council, I suggest that you contact Jim Branson, Executive Director of the NPFMC in Anchorage.

4. That Limited Entry of the hand troll fishery be undertaken expeditiously.

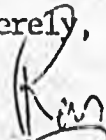
I agree strongly with this recommendation. The Commercial Fisheries Entry Commission stated to the Board of Fisheries at their 1978 Finfish Regulatory Session that it would take a minimum of two years to institute a limited entry program on the hand troll fishery. If you sincerely desire to expedite the application of a limited entry scheme on the hand troll fishery, I suggest that you contact the Commercial Fisheries Entry Commission.

OODA

Regulation of the Southeastern Alaska troll fishery is a massively complex matter. The issues are multifarious and the solutions are far from easy. The salmon resource is a highly valuable one and allocation of that scarce resource is bound to inflame volatile emotions. I appreciate your deep concern for the maintenance of Alaska's natural resources and fishery resources in particular. I look forward to hearing your testimony in Anchorage at the December 1979 Board of Fisheries meeting and anticipate that you will have specific constructive comments to make at that time. Achieving an equitable solution and a sound management scheme are in the interests of all Alaskans.

I thank you for this opportunity to comment.

Sincerely,



Ronald O. Skoog
Commissioner

Attachment



ombudsman

MEMO

Date: November 1, 1979
To: Handtroll Complainants
From: Judith Holden, Ombudsman Assistant 
Subject: Status of Handtroll Cases

Attached for your information are four documents:

- 1) September 21, 1979 letter from Frank Flavin to Commissioner Skoog
- 2) September 25, 1979 letter from Frank Flavin to Commissioner Skoog
- 3) October 12, 1979 response from Commissioner Skoog to Frank Flavin
- 4) November 1, 1979 response to the response from Frank Flavin to Commissioner Skoog.

As you will note in the last paragraph of document #4, we have forwarded copies of these enclosures to the Administrative Regulations Review Committee which may or may not take positive appropriate action. For this reason, we are going to leave all handtroll cases included in this investigation in a "pending" state. However, in view of the Commissioner's response (or non-response) the ball is now in another court. If we hear from the Regulation Review Committee, or if additional useful information is forwarded to us, I will be in contact.

Call me, collect, if you have questions and/or concerns after reading the attachments. We are sorry this exercise did not result in a reversal of the Board of Fisheries and Division of Commercial Fisheries actions. As you may know, under our statutes we can not force an action to take place. We can only recommend that it take place when investigation so indicates.

/jah
Enclosures as listed above



ombudsman

Frank Flavin

RECEIVED
NOV 03 1979

State of Alaska

Office of the Ombudsman
Reply to: 1000

840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

Pouch W0
Juneau, Alaska 99811
(907) 465-4970

P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

November 1, 1979

Mr. Ronald O. Skoog
Commissioner
Department of Fish and Game
Support Building
Juneau, Alaska 99801

Re: Ombudsman Complaints J79-0279
J79-0271, J79-0272, J79-0283
J79-0366, J79-0368, J79-0391,
and J79-0398

Dear Commissioner Skoog:

Without belaboring the obvious differences in opinion in this matter, we remain firm in our conviction that the ban on hand trolling in the "outside" waters is unfair, discriminatory, and illegal. Further, we still find questionable, actions of the Board of Fisheries and the Department of Commercial Fisheries regarding that ban.

We feel compelled to offer several brief comments.

1) The Board of Fisheries was created for the purpose of the conservation and development of the fishery resources of the state. We fail to see, for the purpose of conservation, how the banning of hand trollers would lead to an impact on the fishery sufficient enough to be termed an effective conservation effort. To wit, your statement, "It is the Department's and the Board's position that the lack of documentation of such 'traditional' effort is due to the fact that the effort has been so low as to be negligible in the past." Although the hand troll effort is expanding, that expansion has not yet been quantified. Therefore, how could the action in question be termed "sound" conservation management? It is obvious that a hand troll restriction is a limited entry measure.

You further stated, "The level of effort present in a particular fishery corrolates directly to the total number of fish which will be taken, and concomitantly affects total escapement." Again, how effective is the conservation effort if hand troll fishing in the FCZ "had been so low as to be negligible" and the increase is an unknown factor?

2) You state that, "The Board of Fisheries has not adopted any regulations which impose a maximum catch percentage on hand trollers." However, (in addition to the two documents cited in my 9/2/79 letter) a January 16, 1979 News release from the Department of Fish and Game

Ronald O. Skoog
November 1, 1979

Page two

states, "the Board believes hand trollers should be allowed to harvest 20 per cent of the commercial troll catch of coho salmon. Szabo also said the Board thinks that any future limited entry program for the hand troll fishery should be designed to maintain that 20 per cent level...As an interim measure until a limited entry program can be developed, the Board adopted regulations which will help protect coho salmon stocks in northern Southeast and will begin to reduce hand troll catches to the level the Board wants to maintain." The news release then went on to list regulations which were in effect during the 1979 fishing season. If, in fact, "No formal adoption of that figure has been made by the Board of Fisheries.", they should not be imposing it upon the fishery as is obviously the case at present.

3) As we previously stated, the Fishery Management Plan, under a section entitled "Limited Entry Moratorium" states that, "Under those regulations, (limited entry) this maximum number would be exceeded only to the extent necessary to ensure that no eligible person who has been dependent on this fishery would be precluded from harvesting salmon." (Emphasis added) The Board of Fisheries, has however, precluded 'traditional' fishermen from harvesting salmon in the waters covered under the Fishery Management Plan. You stated, "the use of the outside waters by the hand trollers... is less traditional than the use of the outside waters by power trollers." We do not believe the decision to eliminate fishing in those waters for any traditional fishery lies with the Board of Fisheries. Furthermore the FMP guidelines ^{are} to "traditional" in the sense of the individual fisherman ("no eligible person") and not a collective use.

4) We are, and have been, aware of the North Pacific Fishery Management Council's pursuance of a change in "orientation" and find it interesting that the federal plan should "be brought into line with state regulations." Until a change is accomplished the status quo does not favor state regulations which conflict with the federal standard (ie. handtrolling ban).

5) The "safeguards" which you have cited (AS 44.62.320 and AS 16.05.280) are after the fact and do not provide management standards by which agency action is to be measured. They are not on a scale with the legislatively imposed management and procedure safeguards under which the Commercial Fisheries Entry Commission is mandated to operate.

6) We are dismayed by your response to allegation No. 3 on page 5. Throughout this investigation no official, state or federal, seriously questioned federal preemption. It is a sorry system of governmental administration which foists the responsibility, and associated costs, of solving inter-governmental legal disputes onto private citizens. It is truly disheartening to see local federal and state officials "waffle", to buy time, at the expense of individual fishermen who are trying to figure out where they stand.

7) Limited Entry: It is not our function to make a decision