ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6929 HOUSE JUDICIARY

173

WE THE UNDERSIGNED PETITION THE STATE OF ALASKA LIMITED ENTRY COMMISSION AS CONCERNED CITIZENS AND MEMBERS OF THE ALASKA UNDERWATER HARVESTERS ASSOCIATION. IN THIS PETITION WE ASK THAT THE COMMISSION ISSUE AN IMMEDIATE "MORATORIUM" ON THE ISSUANCE OF ANY NEW PERMITS FOR THE HARVEST OF SEA CUCUMBERS IN ALASKA AND THAT A STUDY BE CONDUCTED INTO THE POSSIBILITY OF FUTURE "LIMITED ENTRY".

PRINTED NAME	SIGNATURE	ADDRESS	DATE
Jack Woodel	Jack Woodel	Box 920	5/8/9
RANDY SPRIGGS	Randy Spriggs	110 EAGLE WAY	5/8-
Greta L Eliason	Greta L Eliason	207 Cedar Hts	5-8-
MITCH COWAN	Mitch Cowan	Box 6349	5-8
WILLIAM KUKERA	William Kukera	408 Lake St.	5-8-9
Boguslaw Fryze	Fryze	806 Lobe St	5.87
Glenn A Wilber	Glenn A Wilber	3311 HPR	
Joan N. Rucker	Joan N Rucker	3311 - HPR	5-8-9
Greg Meurs	Greg Meurs	P.O - Box 604	5-8-9
Clyde Comeskey	Clyde Comeskey	230 Kogwanton	9 May 9
Kris Hoffmann	Kris Hoffmann	10 1/2 Maksoutoff	5-9-9
D. Ford	D. Ford	Box 2351 Sitka AK.	5/9/9
Paul L Drake	Paul L Drake	1812 Sawmill Creek	5-9-9
Gh Keener	Gh Keener	470 Katlian Sitka	5/9/
L.T. Smotherman	L.T. Smotherman	Box 6270 Sitka AK	5.9.9
Paul B Mareno	Paul B Mareno	Box 2953 Sitka AK	5-
J.C. Loch	J C Loch	617 Katlian	M-
Deegan M. Reedir	Deegan M. Reedir	107 Shelikof Dr	
Brian G. Beloman	Brian G. Beloman	212 Lakeview Dr Sitka	
Gary Atkinson	Gary Atkinson	P.O. Box 1953 Sitka	5-9-9

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WE THE UNDERSIGNED PETITION THE STATE OF ALASKA LIMITED ENTRY COMMISSION AS CONCERNED CITIZENS AND MEMBERS OF THE ALASKA UNDERWATER HARVESTERS ASSOCIATION. IN THIS PETITION WE ASK THAT THE COMMISSION ISSUE AN IMMEDIATE "MORATORIUM" ON THE ISSUANCE OF ANY NEW PERMITS FOR THE HARVEST OF SEA CUCUMBERS IN ALASKA AND THAT A STUDY BE CONDUCTED INTO THE POSSIBILITY OF FUTURE "LIMITED ENTRY".

PRINTED NAME	SIGNATURE	ADDRESS	DATE
Larry Pearson		Box 1143	5-8-90
Jim Cushing	Jim Cushing	404 Lake St.	5/9/90
Terry Lindvall	Terry Lindvall	313 Lake	5/9/90
DIANNE LINDVALL	Dianne Lindvall	313 Lake	5/9/90
Thomas A Summers	Thomas A Summers	P.O Box 21	5-14-90
Jim Goddard	Jim Goddard	Box 1362	5/9/90
Jim Stewart	Jim Stewart	710 Katlian	5/9/90
Les Richardson	Les Richardson	214 Brady	5/9/90
STEPHEN C. SHAFFER	Stephen C Shaffer	315 Seward St.	5-9-90
Carl R Sargster	Carl R Sargster	101 Kuhnlein dr	5-10-90
Ron Heathman	Ron Heath	1511-3 SMC	5/10/90
Ross R. Brigham	Ross R Brigham	3102 HPR	5/10/90
William Frost	William Frost	3109 HPR.	5/10/9
Jerry S. Hoff	Jerry Sutton	4014 HPR.	5/11/9
Frank Loucks	Frank Loucks	Box 3154 SITKA	5/11/9
Brian Ormon		Box 2291 SITKA	5/11/90
George Kubik	George Kubik	1752 HPR Sitka	5/11/
Jan Kubik	Jan Kubik	713 Katlian Sitka	
Pat Miller	PAT MILLER	Box 1264 Sitka	
Byron Paul	Byron J Paul	102 LANCE DR #1	5/11/9

SEP 9 1990

WE THE UNDERSIGNED PETITION THE STATE OF ALASKA LIMITED ENTRY COMMISSION AS CONCERNED CITIZENS AND MEMBERS OF THE ALASKA UNDERWATER HARVESTERS ASSOCIATION. IN THIS PETITION WE ASK THAT THE COMMISSION ISSUE AN IMMEDIATE "MORATORIUM" ON THE ISSUANCE OF ANY NEW PERMITS FOR THE HARVEST OF SEA CUCUMBERS IN ALASKA AND THAT A STUDY BE CONDUCTED INTO THE POSSIBILITY OF FUTURE "LIMITED ENTRY".

PRINTED NAME	SIGNATURE	ADDRESS	DATE
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C-J MULKEY	C.J. Mulkey	P.O Box 1669	5-11-90
Ben Taylor	Ben Taylor	Box 965	5-10-90
MILTON HUNT	Milton J Hunt	Box 2355	5-11-9
SANDRA HUNT	Sandra L. Hunt	BOX 2355	5-11-90
Bradley F. Scrugale	Bradley F Scrugale	Box 6276	5-11-90
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MIKE ANGUS	Mike Angus	Box 3209 SITKA	5-11-
LAUREN ROGERS	Lauren Rogers	Box 6102	SITKA 5-11-9
TONI DEPUE	Toni E. DePue	Box 6102	SITKA 5-11-
Kirk Van Winkle	Kirk Van Winkle	P.O. 842	SITKA 5-11-9
Steve BRAICH	Steve Braich	Schubee #23	Sitka 5-11-9
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STUART DENSLOW	S Denslow	Box 6191	SITKA 5-11-
Carrell Campbell	Carrell Campbell	2604 Sawmill Creek	Sitka 5-11-9
Kelly L. White	Kelly L White	P.O Box 2402	Sitka 5/11/9
Beverly S. Brill	Beverly S. Brill	Box 1439	Sitka 5/11/9
JERRY D BOWEN	Jerry D Bowen	310 Seward	Sitka 5/11/9
EARL R. SHAFFER	Earl R Shaffer	Box 1421	Sitka 5/11/9
ED CAITY	Ed Caity	Box 423	Vastevia Ave. Sitka

MEMORANDUM **STATE OF ALASKA**

TO: Doug Rickey

DATE: April 25, 1991

FILE NO:

TELEPHONE NO:

FROM: Susan Shirley
CFEC

SUBJECT: Dungeness crab permits issued

The following table presents the number of people who purchased permits for the Dungeness crab fisheries in 1990 and 1991, categorized by purchaser's residence, as of April 19 of each year. These data include all permits for Dungeness crab (D09B, D91B, D99B, D12B). NOTE: These are statewide permits; there is no way to determine at this time where in the state these permits will be fished or if the permits will be fished. Please contact me if I can be of further assistance.

Year	Residents	Non-Residents
1990	352	30
1991	348	55

cc: R. Listowski
K. Schelle

Alaska State Legislature

Please enter into the record my testimony to the House Resources
committee name

committee on HB137 , dated May 10, 1991 .
bill/subject

See Attached (1 p.)

Signed: Glenn Wilber, President
Testifier

AK Underwater Harvesters Assn.
Representing (Optional)

3311 HPR, Sitka AK 99835
Address

Phone No.

REPRESENTATIVE
BEN GRUSSENDORF

1221 HALIBUT POINT ROAD
SITKA, ALASKA 99835
(907) 747-8458

RULES COMMITTEE
LEGISLATIVE COUNCIL

DISTRICT 3
ELFIN COVE
PELICAN
PORT ALEXANDER
SITKA
TENAKEE

Alaska State Legislature

House of Representatives

SPEAKER OF THE HOUSE

WHILE IN JUNEAU
PO Box V
JUNEAU, ALASKA 99811

(907) 465-3824
(907) 465-3720

MEMORANDUM

TO: Rep. Cliff Davidson
Chairman
House Resources Committee

FROM: Rep. Ben Grussendorf

DATE: May 9, 1991

RE: House Bill 137

Since the initial hearing on House Bill 137 by your committee, there have been numerous discussions among the parties interested in this legislation. Various legislators and staff, representatives of the Alaska Department of Fish & Game ("ADF&G"), Commercial Fisheries Entry Commission ("CFEC") members, and commercial fishermen have all offered their views on how this bill could be improved. In addition, the Senate Resources Committee held a hearing on SB 241, a measure similar to HB 137, sponsored by Senator Lloyd Jones.

As a result of these hearings and discussions, I have concluded the following:

1. There appears to be general agreement that the CFEC should be given the authority to impose a moratorium on new participants in those new or "emerging" fisheries that experience unusually high levels of participation and for which accurate biological data is unavailable.

2. There appears to be significant opposition to that portion of the bill which grants the CFEC moratorium authority over fisheries which aren't considered new or "emerging", those fisheries which have been in existence for a long period of time. Much of this opposition stems from the notion that good biological data should already be available for a long time fishery, and that the CFEC should already be in a position to know whether a "limited entry" program would be appropriate for such a fishery.

3. It appears that one fishery that has been in existence for a long time - the Southeast dungeness crab fishery - should be considered for inclusion among those fisheries for which the CFEC would be given moratorium authority. I have come to this conclusion after talking to Southeast dungeness crab fishermen and ADF&G biologists responsible for that fishery. It's my understanding that ADF&G has relatively little biological data on this fishery, due principally to the allocation of the department's research budget to other fisheries. The second problem is the strong indication that the fishery is about to experience a tremendous increase in participation. This increase could seriously impact the continued health of the fishery.

In order to accomplish the purposes for which I sponsored House Bill 137, and at the same time garner the support needed to pass the bill, I would very much appreciate it if the House Resources Committee would consider adopting the attached substitute in place of the original bill.

The major differences between the original HB 137 and the proposed substitute are as follows:

A. FISHERIES ELIGIBLE FOR A MORATORIUM.

As Sec. 5 [page 4, lines 9-15] of the substitute makes clear, only a fishery that has

1) **"experienced recent increases in fishing effort that are beyond a low, sporadic level of effort"** and

2) **"achieved a level of harvest that may be approaching or exceeding the maximum sustainable level"**

would be eligible to be considered for a moratorium. This new language was taken from a regulation recently adopted by the Board of Fish. The regulation (a copy of which is attached) deals with "High Impact Emerging Fisheries," the type of fisheries with which my bill is primarily concerned.

I believe this new language will give the Dept. of Fish & Game and the CFEC the necessary authority to deal with a fishery that is threatened by a sudden increase in participation, while at the same time ensuring that the grant of authority is not too broad.

B. THE MORATORIUM "TRIGGER" MECHANISM.

The proposed substitute [page 4, lines 16-19] requires the Commissioner of Fish & Game to petition the CFEC to establish a moratorium of the bill requires the Commissioner of Fish & Game to petition the CFEC for review of any fishery for which the Commissioner concludes a moratorium may be needed. The bill as introduced would have left the moratorium process entirely in the hands of the CFEC. This change is supported by the CFEC and the Department of Fish & Game, and should give some assurance to those who are concerned that the original bill granted too much authority to the CFEC. Because a moratorium on entrants is, in practical terms, a management tool, I believe it is appropriate that a moratorium trigger should be initially in the hands of the fishery managers (i.e., the Department of Fish & Game).

As with the original bill, the proposed substitute [page 4, lines 20-26] requires that, prior to the imposition of a moratorium, the CFEC must find that (1) "the fishery has reached a level of participation that may threaten the conservation and sustained yield management of the fishery resource and the economic health and stability of commercial fishing"; and (2) the CFEC does not have enough information to conclude that a full blown limited entry program is appropriate.

C. THE SOUTHEAST DUNGENESS CRAB FISHERY.

Although it is not a fishery that has "experienced recent increases in fishing effort that are beyond a low, sporadic level of effort," and would therefore not otherwise be eligible for a

moratorium, the Southeast dungeness crab fishery may very soon need the protection that a moratorium could offer. The proposed substitute [page 5, lines 13-28] specifically authorizes the CFEC to impose a moratorium on new entrants to the Southeast dungeness crab fishery, should the CFEC conclude that such an action is warranted. This is the only "long time" fishery for which a moratorium could be imposed. I believe that the members of the House Resources Committee, once they hear the testimony of the fishermen and biologists involved in the Southeast dungeness crab fishery, will agree that the CFEC should at least have the ability to impose a moratorium on this fishery should it become necessary.

You will also find attached to this memo a copy of a recent ADF&G press release announcing a closure of the dungeness crab fishery in Cook Inlet. I don't think anyone wants to see the same thing happen in Southeast.

I am aware of the fact that designating in statute a particular fishery for special treatment could lead to a court challenge of that statute on constitutional grounds. However, I am advised by our legal services division that such a designation will survive a court challenge if it is supported by legislative history indicating the potential need for special treatment. I believe that the testimony before the House Resources Committee will create such a record and defeat any court challenge. The bill merely authorizes (rather than directs) the CFEC to impose a moratorium if it finds that a moratorium is appropriate for the fishery. I would also note that HB 137 has a Judiciary Committee referral, and any issues regarding future court challenges will be dealt with in that committee.

Thank you for your consideration of House Bill 137. I hope the committee concludes, as I did, that this bill, while not a cure for all our fishery management problems, will be of great benefit to those fisheries which become threatened by the dangerous combination of over-participation and lack of adequate biological data.

cc: House Resources Committee members

Attachments

7-LS0479\J
Utermohle
5/8/91

CS FOR HOUSE BILL NO. 137 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GRUSSENDORF, Hudson, Koponen, Ulmer, Gruenberg, B.Davis, Mackie, C.Davis, Kubina, Taylor

A BILL

FOR AN ACT ENTITLED

"An Act authorizing the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into certain commercial fisheries and relating to qualifications for entry permits; and providing for an effective date."

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

*** Section 1.** FINDINGS AND PURPOSE. (a) The legislature finds that

(1) the continuation of a commercial fishery may be threatened by the lack of adequate biological and resource management information necessary to determine the amount of fishing effort that a fishery resource can sustain;

(2) the continuation of a commercial fishery may be threatened by an increase in fishing effort that is coupled with a lack of sufficient biological and resource management information necessary to ascertain, consistent with the principles of sustained yield, whether the fishery can support additional fishing effort;

(3) the provisions of the current commercial fisheries limited entry statutes, developed for commercial salmon fisheries, may not be appropriate for certain other commercial fisheries in the

state;

(4) the time consuming process required to consider, adopt, and implement a limited entry program for a fishery, coupled with public discussion of a proposal for limiting entry into the fishery, can stimulate a rush of new entrants into the fishery before the limited entry program can be implemented.

(b) It is the purpose of this Act to

(1) authorize the Alaska Commercial Fisheries Entry Commission to temporarily prevent additional participants from entering certain commercial fisheries in order to

(A) allow the fisheries to continue in an orderly and controlled manner until additional data can be gathered from the commercial harvest and from biological research;

(B) protect the fisheries and participating fishermen dependent upon the fisheries by lessening the risk of closure of the fisheries for lack of an effective management plan; and

(C) allow control of the development of the fisheries; and

(2) avoid potential risk to certain commercial fisheries, as well as a rush to limit entry into the fisheries, while allowing sufficient time for research and careful consideration and discussion of all management alternatives for regulating the fisheries and entry into the fisheries among interested parties, including the public, fishery managers, the Board of Fisheries, the Alaska Commercial Fisheries Entry Commission, and the legislature.

* Sec. 2. AS 16.43.100(a) is amended to read:

(a) To accomplish the purposes set out in AS 16.43.010, the commission shall [:]

(1) regulate entry into the commercial fisheries for all fishery resources in the state;

(2) establish priorities for the application of the provisions of this chapter to the various commercial fisheries of the state;

(3) establish administrative areas suitable for regulating and controlling entry into the commercial fisheries;

(4) establish, for all types of gear, the maximum number of entry permits for each administrative area;

(5) designate, when necessary to accomplish the purposes of this chapter, particular species for which separate interim-use permits or entry permits will be issued;

(6) establish qualifications for the issuance of entry permits;

(7) issue entry permits to qualified applicants;

(8) issue interim-use permits as provided in AS 16.43.210, [AND] 16.43.220, **and** 16.43.225;

(9) establish, for all types of gear, the optimum number of entry permits for each administrative area;

(10) administer the buy-back program provided for in AS 16.43.310 and 16.43.320 to reduce the number of outstanding entry permits to the optimum number of entry permits;

(11) provide for the transfer and reissuance of entry permits to qualified transferees;

(12) provide for the transfer and reissuance of entry permits for alternative types of legal gear, in a manner consistent with the purposes of this chapter;

(13) administer the collection of the annual fees provided for in AS 16.43.160;

(14) administer the issuance of commercial fishing vessel licenses under AS 16.05.490;

(15) issue educational entry permits to applicants who qualify under the provisions of AS 16.43.340 - 16.43.390;

(16) establish reasonable user fees for services;

(17) issue landing permits **under** [IN ACCORDANCE WITH] AS 16.05.675 and regulations adopted under that section; [AND]

(18) establish and collect annual fees for the issuance of landing permits that reasonably reflect the costs incurred in the administration and enforcement of provisions of law related to landing permits; **and**

(19) establish a moratorium on entry into commercial fisheries as provided in AS 16.43.225.

* Sec. 3. AS 16.43.180(a) is amended to read:

(a) The commission shall adopt regulations providing for the temporary emergency transfer of entry permits and interim-use permits when illness, disability, death, required military or government service, or other unavoidable hardship prevents the permit holder from participating in the fishery. To alleviate hardship pending a final determination of the permit holder's eligibility for an entry permit, the commission shall adopt regulations providing for the temporary emergency transfer of an interim-use permit issued under AS 16.43.210(b) or

16.43.225.

* **Sec. 4.** AS 16.43.210(a) is amended to read:

(a) Pending the establishment of the maximum number of entry permits under AS 16.43.240 and the issuance of entry permits under AS 16.43.270, the commission shall issue interim-use permits under regulations adopted by the commission for each fishery, **not subject to a moratorium under AS 16.43.225,** to all applicants who can establish their present ability to participate actively in the fishery for which they are making application.

* **Sec. 5.** AS 16.43 is amended by adding new sections to read:

Sec. 16.43.225. MORATORIUM ON NEW ENTRANTS INTO CERTAIN FISHERIES. (a) Subject to (b) of this section, the commission may establish a moratorium on new entrants into a fishery that has

(1) experienced recent increases in fishing effort that are beyond a low, sporadic level of effort; and

(2) achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery.

(b) The commission may establish a moratorium on new entrants into a fishery described in (a) of this section if

(1) the commissioner of fish and game petitions the commission under AS 44.62.220 to establish a moratorium on new entrants into the fishery; and

(2) the commission finds that

(A) the fishery has reached a level of participation that may threaten the conservation and the sustained yield management of the fishery resource and the economic health and stability of commercial fishing; and

(B) the commission has insufficient information to conclude that the establishment of a maximum number of entry permits under AS 16.43.240 would further the purposes of this chapter.

(c) The commission may establish a moratorium under this section for a continuous period of up to four years. A fishery that has been subject to a moratorium under this section may not be subjected to a subsequent moratorium under this section unless five years have elapsed since the previous moratorium expired.

(d) While a moratorium is in effect, the commission shall conduct investigations to

determine whether a maximum number of entry permits should be established under AS 16.43.240 by

(1) conducting research into conditions in the fishery;

(2) consulting with the Department of Fish and Game and the Board of Fisheries; and

(3) consulting with participants in the fishery.

(e) The commission shall establish by regulation the qualifications for applicants for an interim-use permit for a fishery subject to a moratorium under this section. The qualifications must include the minimum requirements for past or present participation and harvest in the fishery. The commission may not issue an interim-use permit for a fishery subject to a moratorium under this section unless the applicant can satisfy the qualifications established under this subsection and establish the present ability and intent to participate actively in the fishery.

Sec. 16.43.227. SOUTHEAST ALASKA DUNGENESS CRAB FISHERY. (a) The commission may establish a moratorium on new entrants into the southeast Alaska dungeness crab fishery for a continuous period of up to four years. While the moratorium is in effect, the commission shall

(1) conduct the investigation required under AS 16.43.225(d);

(2) establish by regulation the qualifications for an interim-use permit for the fishery, including minimum requirements for past or present participation and harvest in the fishery; and

(3) issue interim-use permits for the fishery to applicants who satisfy the qualifications established under (2) of this subsection and who establish the present ability and intent to participate actively in the fishery.

(b) Notwithstanding AS 16.43.225, for the purposes of this chapter

(1) an interim-use permit issued under this section shall be treated as an interim-use permit issued under AS 16.43.225;

(2) a moratorium established under this section shall be treated as a moratorium established under AS 16.43.225.

* **Sec. 6.** AS 16.43.240(b) is amended to read:

(b) When the commission finds that a fishery, not designated as a distressed fishery under AS 16.43.230 **or not subject to a moratorium under AS 16.43.225,** has reached levels of

participation **that** [WHICH] require the limitation of entry in order to achieve the purposes of this chapter, the commission shall establish the maximum number of entry permits for that fishery.

*** Sec. 7.** AS 16.43.240 is amended by adding a new subsection to read:

(c) When the commission finds that a fishery subject to a moratorium under AS 16.43.225 has reached levels of participation that require the limitation of entry in order to achieve the purposes of this chapter, the commission shall establish the maximum number of entry permits for that fishery.

*** Sec. 8.** AS 16.43.260(a) is amended to read:

(a) The commission shall accept applications for entry permits only from applicants who have harvested fishery resources commercially while participating in the fishery as holders of gear licenses issued under AS 16.05.536 - 16.05.670 **or** [AND] interim-use permits under AS 16.43.210(a) **or 16.43.225** before the qualification date established in (d), [OR] (e), **or (f)** of this section. The commission may specify by regulation the calendar years of participation that will be considered for eligibility purposes.

*** Sec. 9.** AS 16.43.260(d) is amended to read:

(d) Except as provided in (e) **or (f)** of this section, an applicant shall be assigned to a priority classification based solely upon the applicant's qualifications as of January 1, 1973.

*** Sec. 10.** AS 16.43.260(e) is amended to read:

(e) **Except as provided in (f) of this section, when** [WHEN] the commission establishes the maximum number of entry permits for a particular fishery under AS 16.43.240 after January 1, 1975, an applicant shall be assigned to a priority classification based solely upon the applicant's qualifications as of January 1 of the year during which the commission establishes the maximum number of entry permits for the fishery for which application is made.

*** Sec. 11.** AS 16.43.260 is amended by adding a new subsection to read:

(f) When the commission establishes the maximum number of entry permits under AS 16.43.240 for a fishery that is subject to a moratorium under AS 16.43.225, an applicant for an entry permit for the fishery shall be assigned to a priority classification based solely upon the applicant's qualifications as of the effective date of the regulation establishing the moratorium.

*** Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).

5AAC 39.210. MANAGEMENT PLAN FOR HIGH IMPACT EMERGING FISHERIES. (a) Many of Alaska's fishery resources are not yet commercially harvested to a significant extent. However, changes in catching and processing technology or in markets, coupled with fisheries that are open-to-entry, can precipitate rapid expansion of a fishery. When new fisheries are small, they can be successfully managed under the department's existing statutory and permitting authorities. However, rapid development of a fishery can proceed faster than the department's ability to manage, protect, and maintain the resource. The consequences include resource depletion, boom-bust development, and de facto reallocation among users. When these circumstances develop, only total closure of the fishery or the implementation of a very conservative management plan, that discourages large effort, can ensure that newly exploited stocks are conserved. This can hinder the orderly development of the state's under utilized resources. Compliance with the department's statutory responsibilities, to manage commercial fisheries, makes it reasonable to differentiate high impact emerging fisheries commercial fisheries from other new or small scale commercial fisheries based upon evaluation of recent growth in participation, purpose of fishery, impact on existing users, conservation concerns, and status of management programs. A plan is needed to guide management of high impact emerging commercial fisheries that ensures resource conservation, minimizes impacts on existing users, and provides orderly development of new fishery resources.

(b) A commercial fishery may be regulated as a high impact emerging fishery if the commissioner determines that any of the following conditions apply to a species or species group in an area or region:

(1) harvesting effort has recently increased beyond a low sporadic level;

(2) interest has been expressed in harvesting the resource by more than a single user group;

(3) the level of harvest may be approaching what may not be sustainable on a local or regional level;

(4) the board has not developed comprehensive regulations to address issues of conservation, allocation, and conduct of an orderly fishery.

(c) The commissioner shall notify the board when a determination is made to manage a fishery as a high impact emerging fishery.

(d) The department shall close a high impact emerging fishery once it is designated as such by the commissioner and may not reopen the fishery until an interim management plan and associated regulations have been developed. If an interim management plan and regulations have been adopted, the commissioner

may allow the fishery to continue.

(e) The department shall develop interim management plans for high impact emerging commercial fisheries. Interim management plans shall contain at least the following information:

(1) a review of the history of commercial exploitation of the species in Alaska and other relevant jurisdictions;

(2) a review of the life history of the organism;

(3) identification of specific management goals and objectives;

(4) an evaluation of potential impacts on existing users;

(5) designation and justification of the preferred management measures;

(6) an evaluation of the conservation impacts of the preferred management approach on non-target species and on non-target individuals of the same species;

(7) a plan for determining the productivity of the species and impact of the fishery;

(8) a listing of proposed interim regulations;

(9) a cost estimate for plan implementation;

(10) analysis of customary and tradition subsistence use patterns.

(f) The commissioner may adopt regulations and open the fishery consistent with measures identified in the plan; the regulations would remain in effect until the board adopts regulations under section (g).

(g) The department, upon completion of a draft interim plan, shall petition the board under 5AAC 96.625 to consider adoption of the management plan and associated regulations at its next regularly scheduled meeting.

(h) The department may require onboard observes aboard fishing vessels, catcher/processor, and floating processors, as specified in 5AAC 39.141 and 5AAC 39.645, that participate in high impact emerging fisheries. (Effective __/__/91, Register) Authority: AS 16.05.251

COMMERCIAL FISHERIES

NEWS RELEASE

ALASKA DEPARTMENT
OF FISH & GAME

State of Alaska
Department of Fish and Game
Carl L. Rosier, Commissioner

Central Region
3298 Douglas Street
Homer, AK 99603

Denby Lloyd, Director
Division of Commercial Fisheries

Al Kimker
Regional Shellfish Biologist

and

Norval Netsch, Director
Division of Sport Fish

Dave Nelson
Area Sport Fish Biologist

NEWS RELEASE April 1, 1991

1991 COOK INLET SPORT, PERSONAL USE AND COMMERCIAL DUNGENESS CRAB SEASON

Based on the decline of the Dungeness crab stock in the Southern District (Kachemak Bay) of the Cook Inlet Management Area, there is a very limited probability of a sport, personal use or commercial Dungeness crab fishery in 1991. Since full development of the commercial fishery in 1978 the average annual harvest has been one million pounds. The catch however declined severely in 1989 to a level of 178 thousand pounds. The commercial harvest further declined in 1990 to 29,000 pounds.

The goal of the closure will be to re-establish an abundance of adult crabs which will not only enhance the reproductive capabilities of the stock but also once again provide for both quantity and quality in the sport, personal use and commercial fisheries. The department will charter a commercial vessel to conduct test fishing in both the waters east and west of Homer Spit to determine molt timing, female reproductive condition and a relative index of abundance. The test fishing will begin in early June and extend on a monthly basis through early September.

Emergency orders will be issued in late May canceling the openings for all types of Dungeness fisheries that normally open by regulation in June. The department/industry test fishing in part is designed to identify recruitment into both the adult and legal segments of the stock. If an unexpectedly significant number of crabs appear throughout the gear, a limited opening of all fisheries will be evaluated.

Alaska State Legislature
House of Representatives
Rep. Cliff Davidson, Chairman
House Resources Committee

May 10, 1991

Hello:

The arguments for and against HB 137 and SB 241 are well known to all of you I believe, but the new emerging fisheries that this Bill will help to manage more effectively are possibly not as familiar to all of you.

Sea Cucumbers are the most well known dive fishery in S.E., but may soon take a back seat to several other emerging fisheries. Sea Urchins are probably the most promising emerging fishery considering the potential capital, and the quantity of resource, but there are also geoducks, a potential hard-shell clam fishery, and several lesser potential fisherics that could benefit from this legislation.

I know that all of you can see the potential value of being able to manage a fishery prior to a problem rather than manage from a reactionary position.

Thank you,

Glenn Wilber, President
Alaska Underwater Harvesters Assn.
3311 HPR Sitka, Alaska 99835

P.S.: The first House Resources telethon was called during the Sea Cucumber opening when most divers were out; the last was the day following the Halibut opening when most of us were trying to off-load, still out of town, or possibly just trying to recuperate. We all realize the necessity for the legislature to schedule committee meetings at their won convenience, but please take these factors into consideration when taking notice of the poor turnout for the telethons.

cc: Rep. Ben Grussendorf
Sen. Lloyd Jones, Sponsor of SB 241

GW/gj

3-91

AK FISHERMAN'S JOURNAL

Board Agrees to Manage Cukes

by Bob Tkacz

It took more than two full days to put together, and a pending lawsuit didn't seem to slow it down. Alaska's Board of Fisheries wrote a sea-cucumber management plan allowing the lucrative harvest of one of the most unusual creatures in the sea.

The new management plan, which won't take effect until a Department of Law and lieutenant governor's review, will increase both the weekly and the annual duration of the cuke season.

Under the new plan, openings take place for two 48-hour periods per week: Saturday 12:01 a.m. to Sunday 12:59 p.m., and the same times Wednesdays to Thursdays. The season will run from Oct. 1 through March 31.

The existing "interim" sea-cucumber plan allows only 36-hour fisheries, which vary slightly between northern and southern Southeast. Previously, the season ran from Oct. 14 to March 31.

Hand-picking sea cukes using SCUBA or "hookah" submersion gear or by skin diving are the only legal means of harvesting under the plan. In order to provide refuge for sea cucumbers below 18 meters of water, the plan prohibits the use of mixed gases or saturation diving.

As with other fisheries and ADF&G activities in general, the state budget will play an influential role in sea cucumber management.

The Board requires a biomass assessment to be conducted before any area can be opened for commercial harvest.

Robert Larson, developing fisheries project leader for the Department, told the Board that without a budget increase, few harvest areas would probably be opened in the next budget year.

"It will depend entirely upon funding," Larson explained.

In the past year the Department surveyed 13 areas at a cost of about $50,000. Dives on the more than 100 harvest areas will cost an estimated $150,000 that the Department is not scheduled to receive under the fiscal 1992 budget submitted by Gov. Walter J. Hickel.

Potential fishing areas are spread throughout Southeast from the Icy Strait to Lower Clarence Strait. Large sectors in another 14 legal descriptions are designated as sea-cucumber refuge areas and closed to commercial harvest.

Some of the refuge areas will never be open to any harvest and will be used to study sea cucumbers. Others will be used in a three-year cycle outlined by the plan. Each fishing area opened for a year will be closed for the next two.

One local diver became upset when some of the visitors dove the same area he was harvesting. The unnamed diver surfaced, returned to his boat and began lobbing seal bombs into the water, Dennis said.

The plan also provides for emergency order closures as the Department finds necessary.

Those precautions may not have been enough for the Central Council of the Tlingit and Haida Indian Tribes. The Council in April sued the state and ADF&G in state Superior Court seeking to have the fishery closed until the sea-cucumber stock can be assessed.

Department biologists admitted during the Board meeting that they have little general knowledge about sea cucumbers in Southeast Alaska, and not much reliable data on their life cycle.

Most controversial, according to David Crosby, the attorney representing the Central Council, is the so-called surplus production computer model used to compute catch quotas.

Before and after the Board meetings Crosby called the model "a formula for disaster."

The actual formula says the harvest quota is equal to $3 \times CF \times GF \times M \times P_0$.

CF is equal to the scaling factor relating to maximum sustainable fishing mortality to unexploited population. GF is a correction factor to allow for errors in assumptions the model is based upon. M is the estimated instantaneous mortality rate for sea cucumbers using specified methods. P_0 is, of course, "the virgin population size taken as the lower bound of the one-sided 90 percent confidence-interval."

Clear as a sea cucumber in a mud bath to some, perhaps, but even the Department's own report to the Board said, "The model structure is overly simplistic, the parameters required are sometimes difficult to estimate accurately and there is an attendant risk of fishery collapse."

"This is not a model for sustained yield. This is a smoke screen for a return to the gold rush," Crosby told the Fish Board. Fisheries in British Columbia and the Lower 48 came near to collapse using the same formula, he charged.

The attorney explained, after his testimony, that the Central Council suit was on hold, pending the Board's action. He also noted that the Department had been cooperating with the Council to that point.

Other proposals seeking a shutdown of the fishery around Prince of Wales Island and throughout Section 3B received no action from the Board.

The week after the meeting, Crosby hadn't yet decided on his plan of action, but indicated there was room for resolution.

"If we were a conservation organization as opposed to folks who are concerned with subsistence, we might be concerned with any fishery. We just wanted to make sure they don't experiment in the areas that are critical for subsistence use," Crosby said.

However, he remained critical of the quota formula. "They will soon enough find that the sustained production model could very well lead to the same kind of crash they experienced with abalone, and we want to make sure they don't."

Chairman Bud Hodson indicated the suit played no part in Board deliberations. "We ges sued all the time," he said, explaining that the Board just follows the laws as they exist on the state's books at present.

Crosby also noted that dive fisheries are difficult to enforce. Testimony from a diver who worked the past season suggested they could be difficult to survive as well.

Jim Dennis, from Craig, described a meeting of local divers and others from elsewhere in Southeast and from Outside.

"There were some fireworks, literally," Dennis said. One local diver became upset when some of the visitors dove the same area he was harvesting. The unnamed diver surfaced, returned to his boat and began lobbing seal bombs into the water, Dennis said.

In another incident, a second local diver "punched the guy out under water," Dennis said.

Asked what regulations the Board could enact to bring order to the fishery, Dennis said they couldn't do much. He said the young fishery would develop its traditions and courtesies over time as others have before it.□

Entry Commission Scuttles Dungeness

Cotter Fears More Outside Effort

by Bob Tkacz

Commissioners don't believe a limited-entry system would promote better management and the economic health of the Dungeness fishery.

For the third time in six years, the Alaska Commercial Fisheries Entry Commission (CFEC) is telling Southeast fishermen it won't order limited-entry rules for the Dungeness crab fishery.

While the latest effort to shut the entry door has not yet been presented as a formal petition, the relatively new Southeast Alaska Dungeness Crabbers Association (SADCA) has retained an attorney and a consultant to help their cause succeed.

"Our initial response to the petition was to say no," said Bruce Twomley, chairman of the Commission.

A CFEC representative told the state Board of Fisheries the same thing at its Juneau meeting and was scheduled to visit Petersburg, home of the limited-entry movement, to deliver the same message Jan. 30.

"The problem for us at the outset is that we can't rationalize the initial decision that we have to make to go forward with this limited-entry system," Twomley said.

To order a limited-entry regime, Alaska law requires the CFEC to find that a limitation system would promote better management and the economic health of the fishery, he explained.

The current status of the fishery, and regulations controlling it, could result in "a tremendous opportunity for expansion of effort even after limitation," he added.

Dungeness fishermen now are limited to no more than 300 crab pots, but very few of the more than 200 fishermen now participating in the fishery run that much gear. And only an estimated five to 10 percent of those fishermen work Dungeness anywhere close to full time, according to Larry Cotter, SADCA's consultant and a member of the North Pacific Fishery Management Council.

The Commission's concern is that a limited-entry system would result in more of the participating fishermen putting more effort into the fishery and using more of the 300 allowable pots.

"What we face there is if we limit the number of participants, we really haven't constrained the fishery," said Kurt Schelle, CFEC manager of research and planning.

That sounds logical, but actually is kind of "begs the question," responded Cotter.

"As long as that 300-pot limit is in effect and they don't impose limited access, what's to stop the [participating] fishermen or new ones that are going to come up, from increasing effort and having the same detrimental effect?" Cotter asked.

Cotter also complained that the Commission is talking out of two sides of the argument it used in 1984 to reject a limited-entry request.

In 1984 the CFEC did get a formal petition.

In its 1985 response, the Commission wrote, "Limiting participation at these historically unprecedented levels would convey no relief or benefits, particularly if effort by the transient [Lower 48] fishermen is expected to decline in the near future."

At the time, the "unprecedented level" numbered about 140 fishermen, with an estimated 60 percent coming from Canada. But Dungeness stocks in Lower 48 waters were believed to be rising then.

continued on page 14

The Commission expected Dungeness effort to drop. As fishermen chased more bountiful waters down south, the need for limited entry as a conservation measure would be removed.

By 1989, however, the number of fishermen participating in the fishery had risen to 255, from 35 or less in the 1980-81 season, according to a CFEC report.

At the same time the number of Alaska residents in the fishery has risen to about 80 percent. But now Dungeness stocks off the Lower 48 are apparently declining.

The SADCA, Cotter said, "is afraid that we're going to see an increased nonresident effort" resulting in more competition and less income per boat.

Unlike the North Pacific Fishery Management Council, the CFEC can, under its enabling statute, consider economic impact to involved fishermen in addition to conservation questions.

SADCA members "are concerned about the future of their fishery. They've worked hard to develop it, and the Dungeness fishery has become viable," Cotter said.

And while he conceded the group is concerned with its pocketbooks, it isn't trying to stop anyone who has been crabbing from continuing.

"They're approaching this from an inclusive perspective as opposed to exclusive. When it comes to those who have participated in the fishery in the past four years, the approach of this group is, 'Heck, I give a license to everybody who's fished in the last four years,'" Cotter said.

These arguments haven't cut any ice with the CFEC. Twomley said that imposition of a limitation system would require identification of a maximum number of permits based on the highest level of participation in the three years before a decision to impose limitations.

That requirement and the possible increase in pots per fisherman combine to dissuade the CFEC that limited entry would be beneficial.

"It would be so open to further effort that we can't see a control on this basis would be of much merit," Twomley said.

But Cotter said SADCA is open to other approaches such as a decrease in the number of pots per fisherman if it could grandfather those members of the fleet who do run 300 pots.

Rumors in the state capitol suggest a possible legislative solution may be in the works.

Twomley also said the CFEC is not closed to new suggestions.

"It's still open to people to persuade us that there are facts and trends to support limitations," he said, adding, "That's not what we see."□

Commission studies moratorium for emerging fisheries

By SUZANNE HANCOCK
Staff Writer

Every action has a reaction. Especially in fishing. Once any species is fished, regulating that fishery is not far behind.

Commissioner Richard Listowski of Commercial Fisheries Entry Commission was in Kodiak during ComFish.

One of the topics he was discussing with members of the local fishing industry is House Bill 137 which is an act authorizing the CFEC to establish a moratorium on new entrants into certain commercial fisheries and relating to qualifications for entry permits.

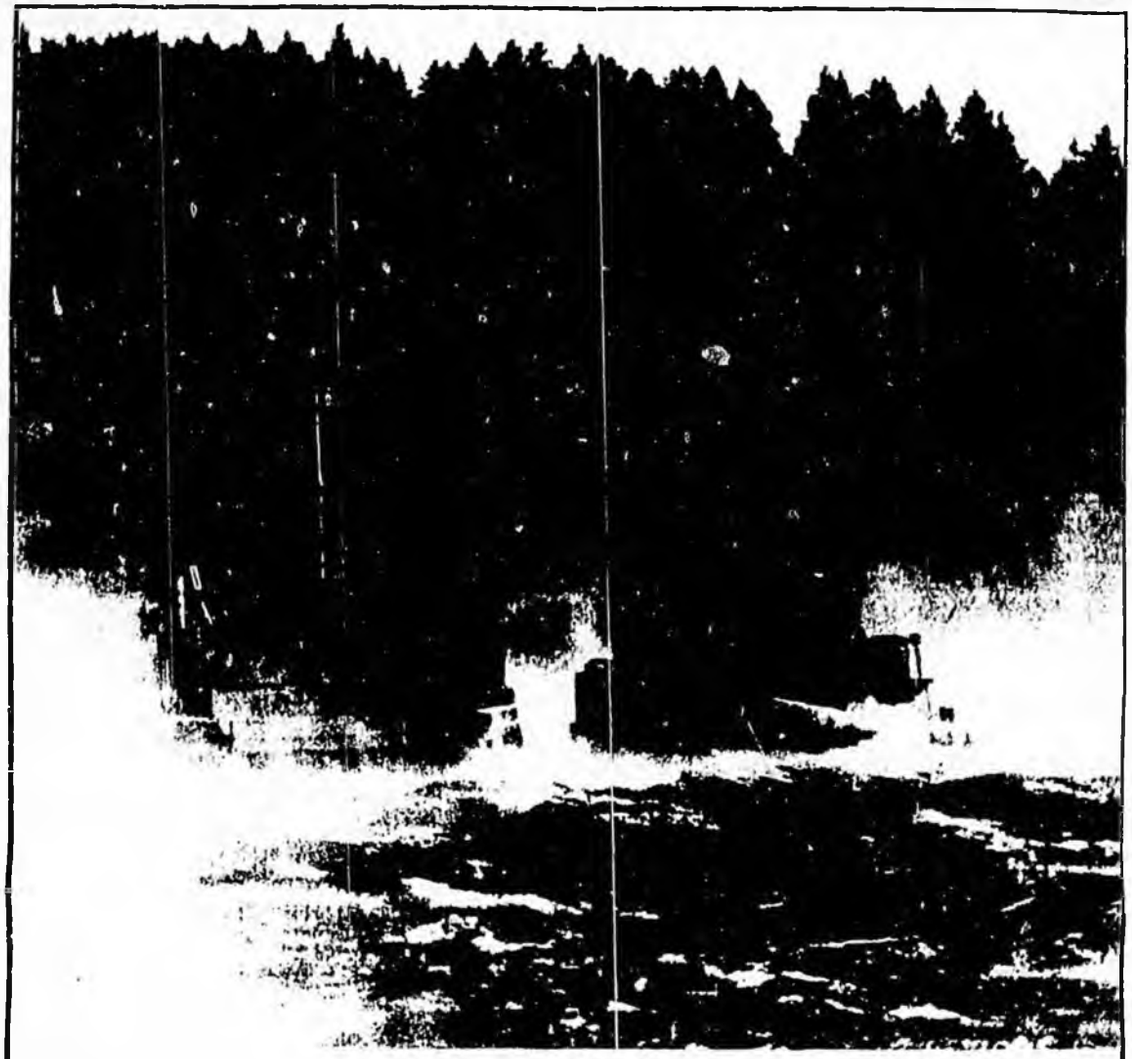
Rep. Ben Grussendorf, Speaker of the Alaska House of Representatives, has introduced legislation that would authorize the CFEC to establish a moratorium in certain commercial fisheries. Since the proposal was introduced, a number of questions have been asked.

Listowski said merging fisheries and established fisheries create some of the problem. Until the addition of established fisheries such as Dungeness crab, no one had much problem with new fisheries such as sea cucumbers or sea urchins.

The Dungeness issue was brought forward by southeast fishermen who have twice petitioned the entry commission to limit that fishery.

With a 300-pot limit, 272 permits, and 464 vessels involved

See Limited entry, Page 3



High winds

Wind gusts as high as 110 mph were recorded Friday afternoon about the time the 140-foot FV Lady Patricia broke loose from the mooring buoy in the channel and was blown against the small boat harbor breakwater. Here the tug Kodiak King takes the vessel in tow to assist it back to a safe moorage. (Photo by Cat Klinkert)

Limited entry—

Continued from Page 1

in Dungeness fishing to date, Listowski says limited entry is not the panacea fishermen think it is.

Costly and unwieldy, the end result of limited entry in that fishery could mean increased capitalization. Vessels which now fish a hundred pots would think they had to fish the limit, for example.

The bill has a sunset clause. The sunset on the moratorium means that at the end each one, a fishery is looked at individually to determine how it will be managed. Under one alternative when the moratorium ends is a new management plan. A new management plan can mean individual fishing quotas as one potential outcome for a particular fishery, he said.

Two other options after the moratorium ends is an open entry fishery and limited entry.

A "moratorium" is a simple way to temporarily stop new people from entering a fishery. It does not directly affect anyone who is already actively participating in the fishery.

Under the terms of HB 137, during the time that a moratorium is in effect, the CFEC would be required to work with the Department of Fish and Game, the Board of Fisheries, and representatives of the industry to examine conditions within the fishery to devise an appropriate management plan.

This management plan could or could not include the establishment of a maximum number under the current limited entry authority.

No moratorium would remain in place for longer than four years. No fishery would be place under a moratorium more than once.

Rather than risking a total closure of the fishery while the necessary data are gathered, a moratorium could allow the fishery to continue by establishing a temporary cap on the number of persons fishing to control growth and to provide an orderly fishery.

In new, emerging fisheries, experiencing a rapid growth in participation, there may not be enough information available on the biology of the resource to make informed decisions on how much effort the fishery can sustain and how to manage the fishery under the sustained yield principle.

In existing fisheries, where the conservation of the resource and the economic viability of the fishery is threatened by increased effort, but where the current limited entry program may not be an appropriate management alternative, a moratorium would give managers, biologists and the industry time to develop an alternative management solutions.

There is frequently an increase in the number of persons buying interim-use permits when there is discussion of limited entry in a fishery.

But, just buying an interim-use permit would not qualify someone for an interim-use permit during the time that a moratorium is in effect, or qualify someone to apply for a permanent limited entry permit.

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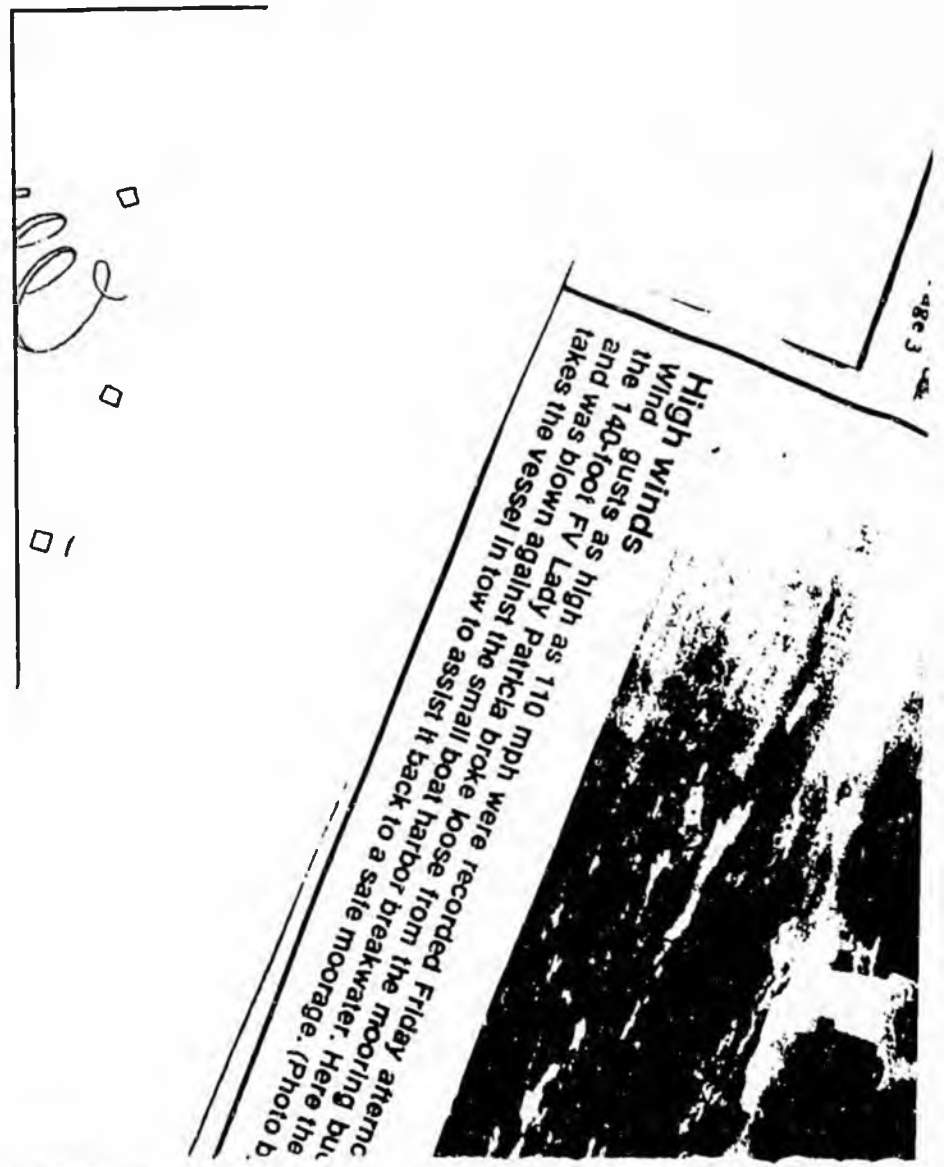


High winds wind the 140-foot FV Lady Patricia and was blown against takes the vessel in tow to assist it back to a safe mooring. Here the

TESTIMONY ON HB 137

by

Larry Cotter
Southeast Alaska Dungeness Crab Association

May 10, 1991

Mr Chairman, Members of the House Resources Committee:

I appear today on behalf of the Southeast Alaska Dungeness Crab Association in support of the proposed Committee Substitute for HB 137. The Southeast Alaska Dungeness Crab Association is an organization of dungeness crab fishermen from throughout Southeast who fear for the future of the dungeness crab resource and their ability to derive a living from the commercial harvest of that resource.

The Southeast dungeness crab fishery is a fairly unique fishery in Alaska. The fishery occurs totally in the relatively sheltered inside waters, and is the only crab fishery in Southeast which has not been limited. The fishery is prosecuted predominantly by small boat, resident Alaska fishermen. According to the Commercial Fishery Entry Commission Briefing Report 90-5 (CFEC 90-5), less than 1% of the vessels in the fleet since 1986 have exceeded 60 feet in length. In fact, during the 1988-89 season, "the predominant vessel size class was 29 feet or less (45%), and over 75% of the fleet was smaller than 40 feet". (pg.70, CFEC 90-5) Seven vessels were between 50 and 59 feet, and only 2 were larger than 70 feet. (pg. 83, CFEC 90-5) Ninety percent of the total dungeness catch since 1981-82 was harvested by vessels less than 50 feet.

	1989/80	1988/89	1987/88	1986/87
Less than 50 foot boat:	222	312	373	428
More than 50 ft. boat:	13	16	21	32

The fishery is also one in which new participants have been entering at a rapid pace. 86% of current participants have fished dungeness for less than 5 years. Sixty-six persons entered the fishery for the first time in 1989-90. (CFEC 90-5) Anecdotal information indicates substantial new entrants for 1991, including several large boats from West Coast Dungeness crab fisheries.

In terms of residency, the most recent year for which information is available, the 1988-89 fishing year, showed that 91% of the participants in the Southeast dungeness fishery were Alaskan residents. This is a dramatic shift from the early 1980's when 30% of the participants were non-residents. (pg. 12, CFEC 90-5) The level of resid[illegible] and non-resident participation appears directly related to the health of West Coast dungeness sto[illegible] According to the CFEC Briefing Report, "[t]he number of non-residents in the... fishery was highe[illegible] in 1982, historically one of the lowest harvest periods in the Pacific Coast fishery". The high level of non-resident participation continued through 1985/86 when it dramatically dropped. This coincided with substantially increased harvest levels of dungeness off the coast of Washington State.

One of the concerns of Southeast dungeness fishermen is that West Coast Dungeness stocks are once again declining and we will experience a large influx of non-resident fishermen with large vessels entering the Southeast fishery during the next few years. Dungeness crab populations in northern California, Oregon and Washington have exhibited cyclic variations in abundance during the past several decades. The period of the cycle has been fairly regular at about ten years, with very large harvests occurring toward the later part of a decade followed by very low harvests the remainder of the decade. The following table shows West Coast dungeness landings since 1985 (in thousands of pounds):

	1985/86	1986/87	1987/88	1988/89	1989/90
Wash.	5,430	4,806	17,858	23,892	6,700*
Oregon	7,171	4,747	8,685	11,154	N/A
Calif.	5,990	8,597	8,754	9,552	N/A

Source: Pacific Marine States Fishery Commission/Wash. Dept. of Fisheries
* Does not include Puget Sound landings which were approx. 1 million pounds.

There is little dispute the West Coast dungeness stocks are currently entering their cyclical downturn. Washington State Dept. of Fisheries reports that total landings to date for the 1990/91 dungeness season are 6 million pounds. They do not expect the total harvest to exceed 7 million pounds. Typically, the Washington State harvest occurs during December and January (approx. 55% of total harvest) with most of the remainder taken early in the spring. (personal communication)

Southeast dungeness crab fishermen fear these vessels will move north to Alaska and displace them from their fishery and adversely affect the overall health of the stocks.

A substantial increase in effort may adversely affect the biological health of the stocks as well as cause social and economic harm to participants. The CFEC Briefing Report states: "...Significant changes in effort in the southeast Alaska fishery may affect biological interpretation of population abundance and may mask cycles of abundance". In other words, increases in effort may result in a larger overall harvest which may indicate a large and healthy legal age population. If, however, the amount of effort (or numbers of pots) used in the harvest is inaccurately accounted, the reason for the increased harvest may not be due to a large and healthy population but to increased effort. This could lead to misinterpretation by the managing biologists of the overall health of the stocks.

The CFEC Briefing Report continues: "An additional problem for management... is the overlap of part of the dungeness crab season with the sensitive molting and mating periods of the crab. An intense fishery such as this can inflict substantial handling mortality on newly molted crab". (pg. 87)

Most crab fisheries are scheduled to avoid the molting period in order to minimize adverse impact upon the sensitive crab. Southeast dungeness, however, does overlap the molting period (at least in some areas) due to the positive economic benefit derived from the sale of dungeness during the summer tourist season. Allowing effort to continue increasing in this fishery, particularly if the increased level of effort stems from several large vessels intensely fishing 300 pots, will likely result in increased handling mortality which could adversely affect the overall health of the stocks. An alternate choice would be to close the commercial fishery during the molting period, but this would have severe adverse economic impacts upon the small boat fleet that depends upon the summer trade.

Finally, this is the only crab fishery in Southeast Alaska which is not currently subject to limited entry. As a result, there is no method currently available to control new entry to this fishery. We know that new entrants are increasingly entering the fishery. We fear additional entrants on a scale we haven't seen before. There are legitimate reasons for concern for the resource, and legitimate reasons for concern for the social and economic impact upon existing Dungeness participants. We believe the future of our fishery is at stake, and urge you to provide CFEC with the ability to address our problems in the event the evidence warrants action.

Thank you.

SOUTHEAST DUNGENESS CRAB ASSOCIATION
P.O. BOX 935
PETERSBURG, ALASKA 99833

April 25, 1991

WHY IS THE DUNGENESS RESOURCE IN TROUBLE?

* Over saturation of gear on the fishing grounds.

* More efficient gear, and sophisticated electronics.

* Ever increasing Non-resident participants.

* Greater mobility and experience in the present fleet.

WHY WOULD A MORATORIUM BE MORE APPROPRIATE NOW THAN TRADITIONAL LIMITED ENTRY?

* Limited entry was designed for the salmon fisheries and has been successful. However, CFEC is adamant that this form of Limited Entry is dangerously inappropriate for crab. Therefore, time is needed to develop the appropriate Limited Entry program.

WHY NOT ADDRESS THE THREAT TO THE DUNGENESS FISHERY THROUGH THE BOARD OF FISH?

* Pot limits: ineffective without first limiting the number of participants.

* Quota: At the present there is insufficient data due to lack of funding.

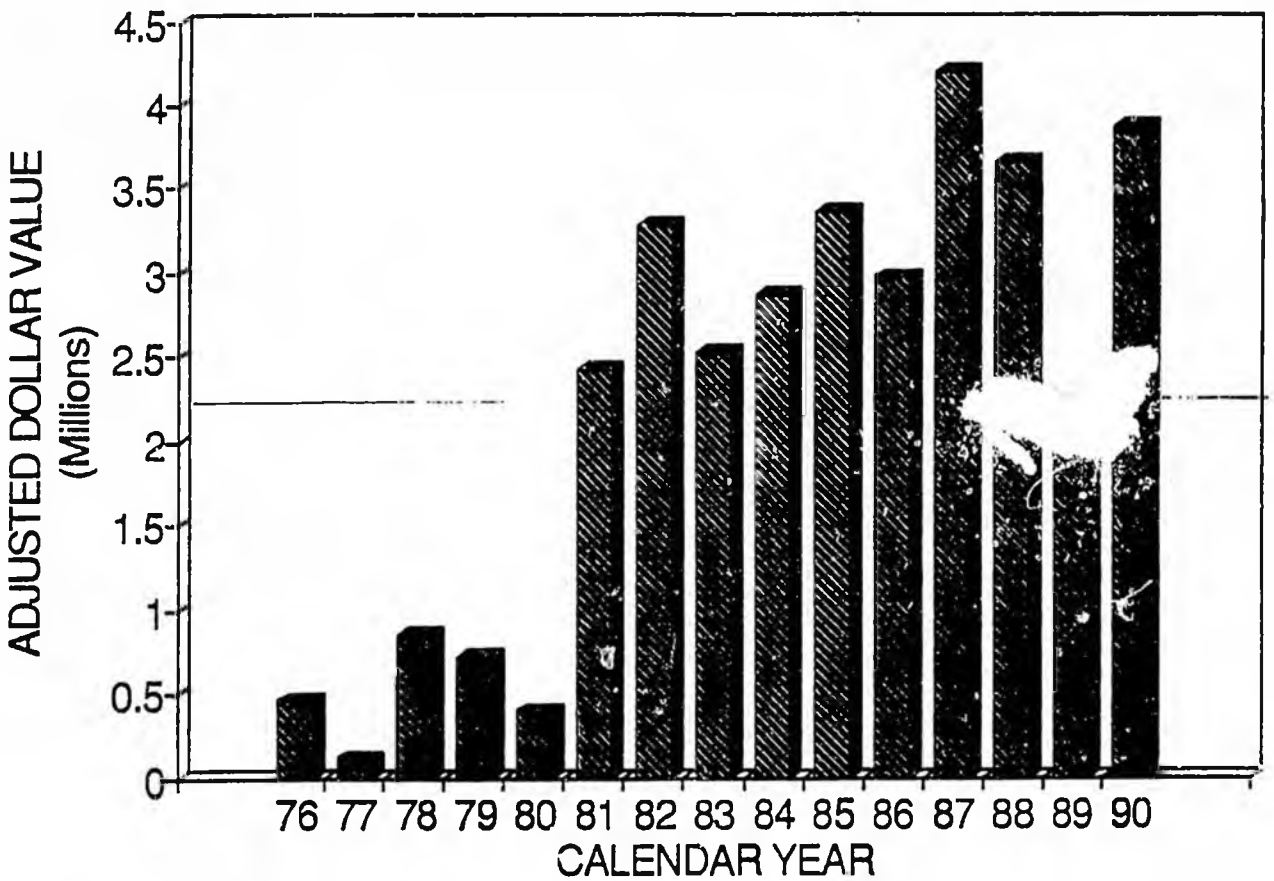
* Shorter season: Creates derby mentality which is extremely dangerous to the resource in the name of efficiency and greed, i.e. Halibut and Black Cod.

* Present 3 S Management: It provides the Department a simplified management approach to a complex resource - By definition "management by default".

SUMMARY

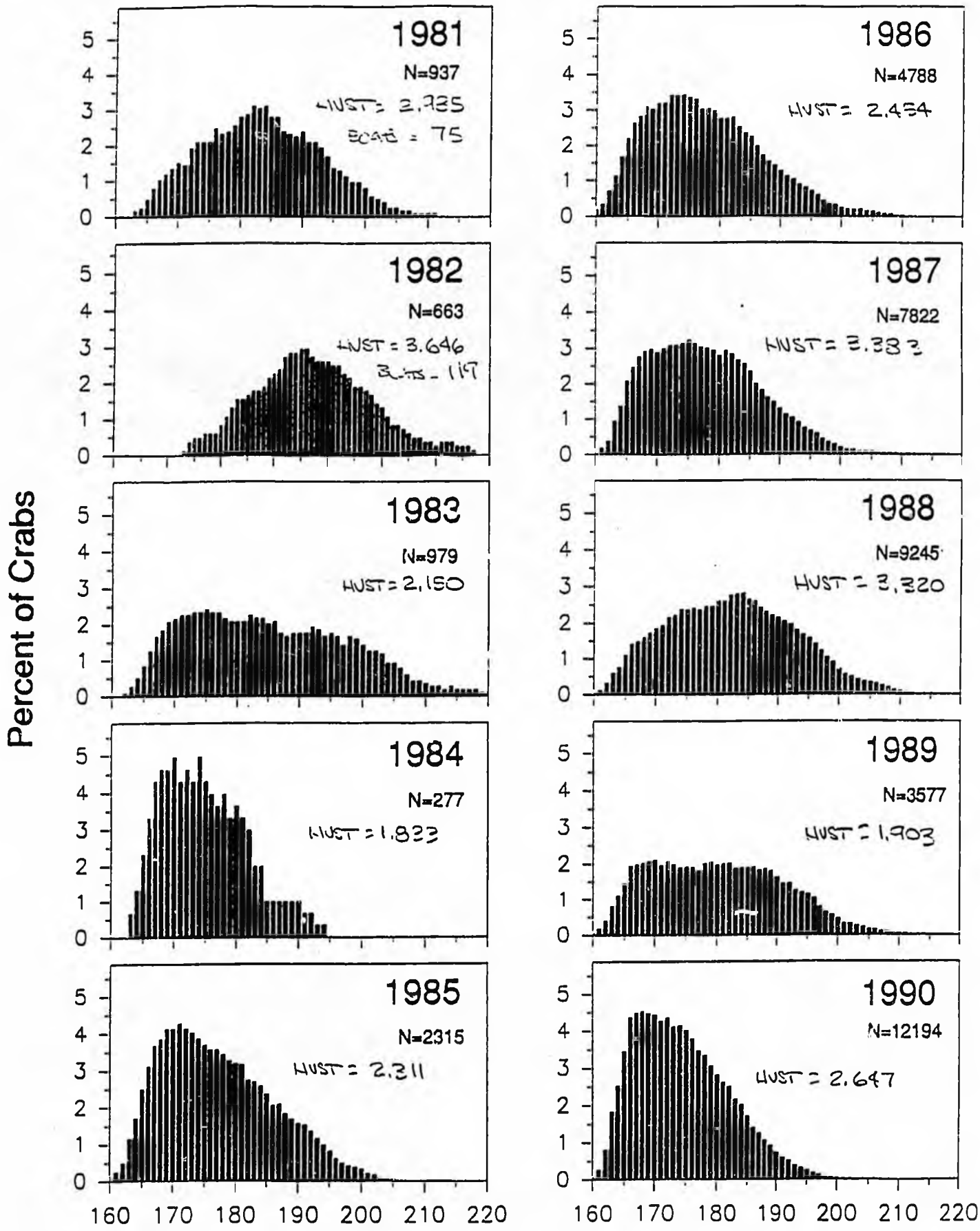
Dungeness is similar to emerging fisheries in their lack of department funding and hence biological data. Pressure from out of state also threatens these resources of our Southeast coastal communities.

VALUE OF SE ALASKA DUNGENESS FISHERY BASED UPON DOLLARS ADJUSTED TO 1990 CPI



Size Frequency of Dungeness Crabs (new shell)

All of Southeast Alaska



DEPARTMENT OF FISH AND GAME

POSITION PAPER

Bill No: H.B. 137

Sponsor: Rep. Grussendorf

Division: Commercial Fisheries

Bill Title: Moratorium on Commercial Fisheries Entry

Department Position: Support

The ability of CFEC to place a moratorium on new entrants to a fishery will be of benefit to the Division of Commercial Fisheries management programs. It will be of particular benefit when applied to new developing fisheries for which the division has little or no biological resource data, effort is growing rapidly, and funds for management of the fishery are lacking or inadequate.

The institution of a moratorium would stop the growth of effort in a fishery at a level that would most likely allow a continuance of the fishery at some harvest level which would provide an economic return to the industry and the state. The moratorium would provide an opportunity for the department to work with the public in development of a management plan for the fishery. That plan would then be presented to the Board of Fisheries for their consideration. The moratorium would also provide a time period during which the department and the industry could seek the funds needed for management of the fishery.

Commissioner's Signature _____ Date 2/26/91

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 137

Revision Date: 2-26-91
Department Affected: Fish and Game
Title: Moratorium on Commercial Fisheries Entry
BRU: Commercial Fisheries
Component: Commercial Fisheries
Sponsor: Rep. Gussendorf
Requestor: Governor
COMPONENT SERIAL NO. | | 4 | 5 | 9 |

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0					
TRAVEL	0					
CONTRACTUAL	0					
SUPPLIES	0					
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS, CLAIMS	0					
MISCELLANEOUS	0					
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER	0					
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Bob Clasby
Phone: 465-4210
Division: Commercial Fisheries
Date: 2/25/91
Approved by Commissioner:
Agency:
Date: 2/26/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

FISCAL NOTE

No. 1

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: CSHB 137(RES)
(H) Publish Date: 5/13/91

Revision Date: 2-26-91
Department Affected: Fish and Game
Title: Moratorium on Commercial Fisheries Entry
BRU: Commercial Fisheries
Component: Commercial Fisheries
Sponsor: Rep. Gussendorf
Requestor: Governor
COMPONENT SERIAL NO. | | 4 | 5 | 9 |

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0					
TRAVEL	0					
CONTRACTUAL	0					
SUPPLIES	0					
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS, CLAIMS	0					
MISCELLANEOUS	0					
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER	0					
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Bob Clasby
Phone: 465-4210
Division: Commercial Fisheries
Date: 2/25/91

Approved by Commissioner: [signature]
Agency:
Date: 2/26/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

COMMITTEE COPY

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 137
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: Authorizing ADF&G to Implement Moratorium in Cook Inlet Fisheries
Sponsor: Rep. Gruenberg
Requestor: Rep. Davidson

Agency Affected: Fish & Game
BRU: Commercial Fisheries Entry Commission
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES				0	0	
TRAVEL				0	0	0
CONTRACTUAL				0	0	0
SUPPLIES				0	0	0
EQUIPMENT				0	0	0
LAND & STRUCTURES				0	0	0
GRANTS, CLAIMS				0	0	0
MISCELLANEOUS				0	0	0
TOTAL OPERATING				0	0	0
CAPITAL				0	0	0
REVENUE				0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME				0	0	0
PART-TIME				0	0	0
TEMPORARY				0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Phil Smith **Phone:** 789-6160
Division: Commercial Fisheries Entry Commission **Date:** 5/13/91

Approved by Commissioner: **Date:** 5/13/91
Agency: Commercial Fisheries Entry Commission

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 13, 1991 FURTHER REFERRALS: Judiciary

Date of Committee Action: 3/20/91

The RESOURCES Committee considered: HB 137

HOUSE BILL NO. 137 MORATORIUM ON COMMERCIAL FISHERIES ENTRY

"An Act authorizing the Commercial Fisheries Entry Commission to establish a moratorium on new entrants into certain commercial fisheries and relating to qualifications for entry permits."

RECOMMENDATIONS: be replaced with CS HB 137(RES) [ ] the same title [✓] ~~a new~~ title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[ ] no recommendations

[✓] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

SIGNING DO PASS: SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
HUDSON	DAVIDSON	✓		
	CARNEY	✓		
	LINCOLN		✓	
	MOYER		✓	

Clyde Davidson

Chairman's Signature

(7)

HOUSE COMMITTEE REPORT

Date Referred: May 13, 1991 FURTHER REFERRALS:

Date of Committee Action: 5-13-91

The JUDICIARY Committee considered: HB 137

HOUSE BILL NO. 137 MORATORIUM ON COMMERCIAL FISHERIES ENTRY

"An Act authorizing the Commercial Fisheries Entry Commission to establish a moratorium on new entrants into certain commercial fisheries and relating to qualifications for entry permits."

RECOMMENDATIONS: [ ] the same title
be replaced with CS HB 137 (Jud) [X] a new title

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

ADOPTS: _____ letter of Intent

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

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

[ ] zero fiscal note _____ [X] zero fiscal note(s) Fish & Game 5-13-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Terry Martin	✓				
Kevin Pat Parnell	✓	Kevin Pat Parnell		✓	
J. Ellis	✓	Mark Hanley		X	
Bettye Fahnhorst	✓				
Dave Donley	✓				

Dave Donley
CHAIRMAN'S SIGNATURE

HB

1411

Alaska Court System
State of Alaska
OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 25, 1991

The Honorable Dave Donley
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

Thank you for scheduling a hearing on House Bill 141, relating to the introduction of bills by the Alaska Supreme Court.

At the present time, the judicial branch of government has no explicit right to have legislation placed before the legislature for consideration. This situation is in contrast to that facing the executive branch; article III, section 18 of the Alaska Constitution authorizes the governor to "recommend the measures he considers necessary." This gubernatorial right to introduce legislation is recognized in AS 24.08.060(b), which describes the form and manner of introduction of such legislation.

Each session, in keeping with its constitutional mandate to administer the judicial branch, the supreme court approves legislation for submission to the legislature. Over the years, such legislation has been introduced as a courtesy by individual legislators or committees who are approached for assistance. However, even when a legislator or committee has agreed to provide this service, the Division of Legal Services has ruled that the legislation may not be introduced "by Request of the Alaska Supreme Court."

HB 141 resolves this situation by giving the supreme court the ability to introduce legislation similar to the governor's existing authority; one significant difference is that as drafted, HB 141 does not give the court the governor's apparent power to introduce resolutions, including resolutions proposing amendments to the constitution. Legislation would be inscribed

"Rules Committee by Request of the Alaska Supreme Court." Compared with the current system of introduction, this would better inform legislators and the public who was behind a particular measure.

Thank you for your courtesy in this matter. Please feel free to contact me if you have any questions or comments.

Very truly yours,

C.S. Christensen III
Staff Counsel

CSC:bh

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB 141

Revision Date:
Title: An Act relating to bills of the supreme court
Sponsor:
Requestor: Judiciary

Department Affected: Alaska Court System
BRU: All
Components:

COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
Division: Alaska Court System Date: 02/25/91

Approved by: Arthur H. Snowden, II, Administrative Director Stephanie Cole, for
Agency: Alaska Court System Date: 02/25/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 19, 1991 FURTHER REFERRALS: Rules

Date of Committee Action: 2-25-91

The JUDICIARY Committee considered: HB 141

HOUSE BILL NO. 141 INTRODUCTION OF BILLS BY SUPREME COURT

"An Act relating to introduction of bills by the supreme court; and providing for an effective date."

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

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

ADOPTS: _____ letter of Intent

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

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

[X] zero fiscal note AK. Court System, LAA [ ] zero fiscal note(s) _____

SIGNING DO PASS: SIGNING OTHER RECOMMENDATIONS:

Dave Donley	*Check appropriate column:*	*Do Not Pass*	*No Rec*	*Amend*
Kevin Pat Parnell				
Mike Stanley				
Al Lemenberg				

Dave Donley
Chairman's Signature

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO: HB 141

Revision Date:
Title: "An Act relating to introduction of bills by the supreme court...
Sponsor: House Judiciary
Requestor: House Judiciary by request

Department Affected: Legislative Affairs Agency
BRU: Legislative Council
Component: Session Expenses

COMPONENT SERIAL NO: 782

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Pamela A. Stoops, Director — Phone: 465-3850
Division: Administrative Services — Date: 2/25/91

Approved By: Warren W. Endicott, Executive Director
Agency: Legislative Affairs Agency — Date: 2/25/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HB

142

HB 142

Superior Court
State of Alaska

FIRST JUDICIAL DISTRICT

DIMOND COURTHOUSE, BOX U
JUNEAU, ALASKA
99811-4100

Chambers of
Walter L. Carpeneti, Judge

(907) 463-4741

December 6, 1990
(dictated 12/5/90)

Honorable Fran Ulmer
Alaska House of
Representatives
P.O. Box V
Juneau, AK 99811

Dear Fran:

Enclosed please find copies of the two cases which I mentioned to you during your visit yesterday.

Simply put, I cannot believe that the legislature would not have intended that the conduct of the defendants in these cases be prosecutable as escape. Mr. Jacobson was apprehended by a police officer under extremely suspicious circumstances in a darkened building after the officer had received a report of a burglary in progress. He ran from the officer when he realized, on a darkened stairway, that he was speaking to an officer of the law and not to a confederate. He was caught by the officer some hundred yards or so from the building. He feigned illness in an attempt to break away, which was momentarily successful, until tackled by the officer again. Brought back to the building by the officer, he was placed in handcuffs, which handcuffs were run around a post so as to secure Mr. Jacobson to the post. The officer left him under the guard of an armed officer. By tricking the officer and by pulling one hand through the handcuff, Mr. Jacobson was able to escape from the police. He was again caught, this time about 20 minutes later.

The narrow question in Jacobson was whether the defendant was "under official detention for a felony" when he fled. The legislature defined official detention to include "custody,

arrest, surrender in lieu of arrest, or confinement under an order of a court." I think it is clear that Mr. Jacobson was in custody. The court of appeals held that he was not. Its reasons are set out on page 393. They are wholly unpersuasive to me. (Briefly, it makes no sense to categorize these definitional terms according to whether they describe continuing circumstances or those which are fixed in time, and it does violence to legislative intent to effectively interpret away a term.) More importantly, I simply cannot believe that the legislative intended the kinds of distinctions found at page 393 when it passed this statute.

The Hubbard case is even more baffling. There, the defendant, in a courtroom, was ordered by a judge to remain in the courtroom while a bail hearing was set on. The defendant had previously been arrested, was out on release, had allegedly violated the conditions of release, and was released again. While the defendant was subsequently in court, the judge said "Mr. Hubbard will be remanded", which I take to mean that he would be remanded to custody while a bail hearing was scheduled. The judge requested the defendant to take a seat in the jury box, and he instead left the courtroom, ignoring a further call by the judge to remain.

Without sounding like a broken record, I simply cannot believe that the legislature, when it defined "official detention" as including "custody" (as well as "arrest, surrender in lieu of arrest, or confinement under an order of a court") did not intend that a person in Mr. Hubbard's situation be considered as being in custody.

In defense of the court of appeals, I believe that it is concerned about the policy implications of contrary decisions in these cases. The Jacobson court says as much at the top of the right-hand column on page 393. With due respect to the court, however, I believe it is for the legislature to weigh and then make those policy decisions, and for the courts to effectuate those decisions (short of a constitutional violation, which no one has argued here).

I hope this information is helpful to you. I would be happy to discuss it further with you.

Sincerely,

Bud Carpeneti

Walter L. Carpeneti

Enclosures

Superior Court
State of Alaska

FIRST JUDICIAL DISTRICT

DIMOND COURTHOUSE, BOX U
JUNEAU, ALASKA
99811-4100

Chambers of
Walter L. Carpeneti, Judge

(907) 463-4741

January 25, 1991

Honorable Fran Ulmer
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Re: Draft legislation concerning escape

Dear Representative Ulmer:

Thank you for your letter of January 23, 1991, received here yesterday, concerning draft legislation addressing the opinions of the court of appeals in the Jacobson and Hubbard cases. You asked for my opinion or comments.

re HB142

First, I believe that the proposed legislation clearly defines as criminal the conduct in question, and in that regard addresses the concerns raised by those two cases.

Second, note that the proposed changes would make the defendant's actions in Jacobson prosecutable as a misdemeanor, but not a felony. (I make this observation because the defendant's conduct in Jacobson arguably was felonious, although, of course, the court of appeals ruled that there was no violation of the statute.) It is a legislative decision as to whether the conduct should be a misdemeanor or a felony, but I wanted to make sure that you were aware that the draft provided that removing oneself from restraint placed by a peace officer prior to arrest would be only a misdemeanor, even if the person had been placed under restraint for a felony.

Re: Rep. Barnes bill on stealing police cars

On January 17th I received from you a note regarding House Bill No. 21 and your requests for comments. I would make the following general observations:

1. The proposed legislation does not address at all the problem raised in the Jacobson and Hubbard cases. That is, it does not change or clarify the definition of "official detention".

2. The proposed legislation basically has the effect of creating a felony when one escapes from official detention for a misdemeanor (or from official detention in connection with a valid warrant), and during the escape takes a police vehicle or an emergency medical vehicle. That seems to me to be a policy decision for the legislature, and I do not believe that I can offer too much which would be helpful to that policy determination.

I hope these comments are helpful to you. Thank you for offering me the chance to comment. Please do not hesitate to contact me if you have any other questions.

Sincerely,

Bud Carpeneti

Walter L. Carpeneti

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

REPLY TO:

☑ *CRIMINAL DIVISION CENTRAL OFFICE*
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

☐ *OFFICE OF SPECIAL PROSECUTIONS AND APPEALS*
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

January 18, 1991

The Honorable Fran Ulmer
Alaska State Representative
P.O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

Last week, your legislative assistant, Margaret Pugh, asked that we provide assistance in drafting a bill relating to the crime of escape. In particular, she indicated that you are interested in responding to the court of appeals opinions in Jacobson v. State, 786 P.2d 388 (Alaska App. 1990), and Hubbard v. State, ___ P.2d ___ (Alaska App. 1990) (Op. No. 1092).

In Jacobson, the defendant escaped the scene of a crime after having been handcuffed by a police officer, but before being arrested on a specific charge. The court of appeals reversed the defendant's subsequent conviction for escape, holding that the crime of escape as set out in AS 11.56.310 cannot be committed unless and until the defendant has been arrested on an identified charge. 786 P.2d at 393.

In Hubbard, the defendant was in court on a bail hearing, having been previously released on a theft charge. The superior court ordered the defendant remanded to custody but, before an officer could physically restrain the defendant, the defendant fled the courtroom. The court of appeals held that the defendant could not be charged with the crime of escape under these circumstances because he had not "been physically placed under arrest" at the time he fled. Op. No. 1092 at 7. The court noted "no indication of any legislative intent to adopt a doctrine of 'constructive restraint.'" Id.

Attached, please find a draft bill containing two sections. Section 1 amends AS 11.56.330 by adding a subsection that makes it the misdemeanor offense of escape in the fourth degree for a person who has been placed under actual restraint by an officer to remove himself or herself from that restraint without lawful authority. Section 2 amends the definition of "official detention" to include "actual or constructive restraint" under a court order. These two provisions will close the loopholes created by Hubbard and Jacobson by providing criminal sanctions, first,

when a person flees after having been handcuffed or otherwise physically restrained by a peace officer, even if the person has not been charged with a crime yet, and, second, when a person flees the courtroom after having been ordered into custody by a judge.

If you have any questions, or if I have misinterpreted your request, I would be happy to discuss the matter with you further. Also, we would very much appreciate the opportunity to review any work draft of the bill prepared by legal services.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot Knuth
Margot O. Knuth
Assistant Attorney General

MOK:me-009

1/15/91

D R A F T---ESCAPE

For an Act entitled: "An Act relating to the crime of escape."

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

* Section 1. AS 11.56.330 is amended to read:

Sec. 11.56.330. ESCAPE IN THE FOURTH DEGREE. (a) One commits the crime of escape in the fourth degree if, without lawful authority, one

(1) removes oneself from official detention for a misdemeanor; or

(2) having been placed under actual restraint by a peace officer prior to arrest, one removes oneself from the restraint.

(b) Escape in the fourth degree is a class A misdemeanor.

* Sec. 2. AS 11.81.900(b)(34) is amended to read:

(34) "official detention" means custody, arrest, surrender in lieu of arrest, or actual or constructive restraint [CONFINEMENT] under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

David W. JACOBSON, Appellant,

v.

STATE of Alaska, Appellee.

Nos. A-2217, A-2218.

Court of Appeals of Alaska.

Jan. 26, 1990.

Defendant was convicted in the Superior Court, First Judicial District, Juneau, Walter L. Carpeneti and Rodger W. Pegues, JJ., of theft in the second degree, burglary in the second degree, escape in the second degree, and misconduct involving a weapon in the first degree. Defendant appealed. The Court of Appeals, Bryner, C.J., held that: (1) an inventory of defendant's items did not impermissibly encroach on his privacy rights; (2) the police properly continued to inventory defendant's items even after they decided to seek a warrant; and (3) the term "official detention," as used in the escape statute, does not apply to investigative stops.

Affirmed in part, and vacated and remanded in part.

1. Searches and Seizures ⇐58

Police were authorized to open various closed containers for purposes of conducting inventory of defendant's property; only containers police opened were those that they themselves had packed and closed while seizing defendant's belongings from motel room, and those containers contained items that were in plain view when they were seized. U.S.C.A. Const.Amend. 4.

2. Searches and Seizures ⇐58

Police properly continued to inspect defendant's belongings after deciding to apply for warrant; police continued to have legitimate interest in performing inventory even after they decided to seek warrant. U.S.C.A. Const.Amend. 4.

3. Weapons ⇐4

Butterfly knife is not "switchblade or gravity knife" and therefore does not qualify as prohibited weapon. AS 11.61.200(a)(3), (e)(1)(D).

4. Escape ⇐1

"Official detention," for purposes of escape in second-degree statute, does not apply to investigative stops. AS 11.56.310, 11.81.900(b)(34).

See publication Words and Phrases for other judicial constructions and definitions.

5. Escape ⇐1

"Custody," for purposes of escape in second-degree statute, begins upon arrest or surrender in lieu of arrest. AS 11.56.310, 11.81.900(b)(34).

See publication Words and Phrases for other judicial constructions and definitions.

Margaret W. Berck, Asst. Public Defender, Juneau, and John B. Salemi, Acting Public Defender, Anchorage, for appellant.

W.H. Hawley, Asst. Atty. Gen., Office of Sp. Prosecutions and Appeals, Anchorage, and Douglas B. Baily, Atty. Gen., Juneau, for appellee.

Before BRYNER, C.J., and COATS and SINGLETON, JJ.

OPINION

BRYNER, Chief Judge.

David W. Jacobson was convicted of theft in the second degree, burglary in the second degree, escape in the second degree, and misconduct involving a weapon in the first degree. Superior Court Judge Rodger W. Pegues sentenced Jacobson to an aggregate term of seven years. Jacobson appeals, contending that the superior court erred in failing to suppress evidence that resulted from an unlawful search and seizure, in failing to dismiss the charges of escape and misconduct involving weapons, in denying his motion for a mistrial, and in admitting evidence of prior misconduct. Jacobson also challenges his sentence as excessive. We affirm the convictions for theft and burglary, reverse the conviction for misconduct involving a weapon, and remand for additional find

cape charge.

FACTS

On November 1, 1986, tl
were called to investigate
glary at an office building.
the building, a police offi
Jacobson. Jacobson ran
prehended a short distance
officer led him back, Jacob
flee. He was subdued, h
carport post outside the bu
Miranda warnings. Jacob
he was charged with and v
police were "considering l

A short time later, Jacob
extricate one of his hand
avoided capture by swin
creek. Pursuing officers l
in a nearby motel room. T
room and placed him unde

The police seized Jacobs
longings from the motel
arrested him. After taking
the police station, they
items that had been in o
motel room but did not o
knapsack and bank bag
closed. When the inve
items of jewelry that appea
the police obtained a warra
search of all of Jacobson's
ings. Various stolen item
the course of the search.
police seized a butterfly
been in Jacobson's posses
room.

Jacobson was charged
theft, and escape. For h
the butterfly knife, he w
misconduct involving a we
received separate jury tria
or Court Judge Rodger W
theft and burglary charg
and weapons misconduct
joined for trial without a j
rior Court Judge Walter C
being convicted on all co
cases were consolidated
Judge Pegues imposed p
tive sentences totaling sev

remand for additional findings on the escape charge.

FACTS

On November 1, 1986, the Juneau police were called to investigate a possible burglary at an office building. Upon entering the building, a police officer encountered Jacobson. Jacobson ran but was apprehended a short distance away. As the officer led him back, Jacobson attempted to flee. He was subdued, handcuffed to a carport post outside the building, and given *Miranda* warnings. Jacobson asked what he was charged with and was told that the police were "considering burglary."

A short time later, Jacobson managed to extricate one of his hands. He fled and avoided capture by swimming across a creek. Pursuing officers located Jacobson in a nearby motel room. They entered the room and placed him under arrest.

The police seized Jacobson's personal belongings from the motel room when they arrested him. After taking the property to the police station, they inventoried the items that had been in open view at the motel room but did not open or search a knapsack and bank bag that had been closed. When the inventory disclosed items of jewelry that appeared to be stolen, the police obtained a warrant authorizing a search of all of Jacobson's personal belongings. Various stolen items were seized in the course of the search. In addition, the police seized a butterfly knife that had been in Jacobson's possession at the motel room.

Jacobson was charged with burglary, theft, and escape. For his possession of the butterfly knife, he was charged with misconduct involving a weapon. Jacobson received separate jury trials before Superior Court Judge Rodger W. Pegues on the theft and burglary charges. The escape and weapons misconduct charges were joined for trial without a jury before Superior Court Judge Walter Carpeneti. After being convicted on all counts, Jacobson's cases were consolidated for sentencing. Judge Pegues imposed partially consecutive sentences totaling seven years' imprisonment and specified that Jacobson would not be eligible for early release on parole.

SEARCH AND SEIZURE

On appeal, Jacobson contends that the superior court erred in denying his motion to suppress evidence, which challenged the warrantless police inventory of his personal property. After conducting an evidentiary hearing, Judge Carpeneti upheld the inventory, finding that it was performed for legitimate purposes and did not exceed the permissible limits set out in *Reeves v. State*, 599 P.2d 727, 736–38 (Alaska 1979).

[1] The court's decision must be upheld unless clearly erroneous. *State v. Bianchi*, 761 P.2d 127, 129–30 (Alaska App. 1988). Jacobson argues that the police were not authorized to open various closed containers for purposes of conducting the inventory. However, the only containers the police opened were those that they themselves had packed and closed while seizing Jacobson's belongings from the motel room. Those containers, such as Jacobson's shaving kit and grocery bags of clothing, contained items that were in plain view when they were seized. The police had a legitimate interest in protecting themselves against potential claims for loss by inventorying these items. The inventory did not impermissibly encroach on Jacobson's privacy rights. *See, e.g., Griffith v. State*, 578 P.2d 578, 580 (Alaska 1978).

[2] Jacobson also complains that the police continued to inventory his property even after they recognized items that were apparently stolen. In Jacobson's view, the fact that the police persisted in inspecting his belongings after deciding to apply for a warrant casts doubt on whether their actual purpose was to conduct an inventory. As correctly recognized by the superior court, however, even after the police decided to seek a warrant, they continued to have a legitimate interest in performing an inventory. Their continuation of the inventory does not establish an improper motive.

The superior court did not err in denying Jacobson's motion to suppress.[1]

MISCONDUCT INVOLVING WEAPONS

[3] Jacobson next challenges his conviction for misconduct involving a weapon in the first degree. Jacobson was convicted of the offense under AS 11.61.200(a)(3), which prohibits, *inter alia*, possession of a "prohibited weapon." The term "prohibited weapon" is defined in AS 11.61.200(e)(1)(D) to include a "switchblade or gravity knife." The state's theory in charging Jacobson was that the butterfly knife found in his motel room was a gravity knife. On appeal, Jacobson argues that the statutory prohibition against possessing "prohibited weapons" is impermissibly vague. We need not decide this issue. In *State v. Strange*, 785 P.2d 563, (Alaska App.1990), we held that a butterfly knife is not a "switchblade or gravity knife" and therefore does not qualify as a prohibited weapon. Our *Strange* holding requires that Jacobson's conviction for misconduct involving a weapon must be vacated.

ESCAPE

[4, 5] Jacobson was convicted of escape in the second degree in violation of AS 11.56.310. The statute provides, in relevant part, that "[o]ne commits the crime of escape in the second degree if, without lawful authority, one removes oneself from ... official detention for a felony...." As defined in AS 11.81.900(b)(34), "official detention" means "custody, arrest, surrender in lieu of arrest, or confinement under an order of a court...."

At trial, Jacobson maintained that he had not yet been formally arrested when he removed his handcuffs and eluded the police. Jacobson argued that he was therefore not under "official detention for a felony." In finding Jacobson guilty of escape, Judge Carpeneti did not find it necessary to determine whether Jacobson had been arrested. Instead, the judge found that a person who has been subjected to an investigative stop is in "custody" and therefore under "official detention" for purposes of the escape statute, even if the stop did not rise to the level of a full arrest. Finding that, at the very least, Jacobson had been subjected to an investigative stop for a possible burglary, Judge Carpeneti concluded that he was "under official detention for a felony" when he eluded the police.

The issue presented on appeal is thus whether "custody" as used in the statutory definition of "official detention" occurs when an individual is subjected to an investigative stop that falls short of a full arrest. Jacobson argues, as he did below, that he could not have been in "custody" for purposes of the escape statute without first being placed under arrest. Jacobson's argument finds support in *Beckman v. State*, 689 P.2d 500 (Alaska App. 1984). In *Beckman*, we adopted a narrow reading of the word "custody" as used in connection with Alaska's escape statute:

> "Custody" is not expressly defined in the provisions of Alaska law dealing with escape. However, definitions of "custody" contained in escape statutes from other jurisdictions suggest that, in context, the word is intended to have a narrow meaning, essentially synonymous to "arrest."

Id. at 502 n. 3 (citations omitted).

In considering the applicability of *Beckman* to the present case Judge Carpeneti noted that *Beckman* appeared to be incorrect in pinpointing the source of Alaska's escape statute. In our discussion of the term "custody" in *Beckman*, we mistakenly indicated that Alaska's definition of "official detention" was derived from Missouri Revised Statute § 556.061(3) (1979). This error stemmed from the fact that the derivation table of the Alaska Department of Law's Criminal Law Manual (Manual) listed the Missouri statute in connection with Alaska's definition of "off Judge Carpeneti correctly the Manual's derivatio meant to reflect the act statutes included in Alask inal Code. Rather, the ta after the adoption of the was intended only as a g provisions in other juris similar to those in Alaska actual derivation of provis the revised code, the deriv its readers to the Tentat Revised Criminal Code th by the Criminal Law Rev sion (Subcommission).[3] R his conclusion that *Beckm* as to the source of Alaska Judge Carpeneti declined row interpretation of "c adopted in that case.

Beckman's mistake in origin of Alaska's escape souri law has no bearing, validity of the narrow read to the word "custody" in ing in the actual history of statute points to the appr broader reading of the w contrary conclusion seems

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1. Jacobson further challenges as impermissible the warrantless seizure of property from his motel room. He did not raise this argument below, however, and we find no exceptional circumstances to justify consideration of the issue as a matter of plain error. *See Moreau v. State*, 588 P.2d 275, 279–81 (Alaska 1978).

2. *See* Alaska Department of L Manual, derivation table at

3. *Id.* at 6—1–2 (emphasis in It should be noted that t was compiled by the crim Department of Law *after*

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Alaska's definition of "official detention."[2] Judge Carpeneti correctly recognized that the Manual's derivation table was not meant to reflect the actual derivation of statutes included in Alaska's Revised Criminal Code. Rather, the table was compiled after the adoption of the revised code and was intended only as a guide to statutory provisions in other jurisdictions that are similar to those in Alaska's code. For the actual derivation of provisions contained in the revised code, the derivation table refers its readers to the Tentative Draft of the Revised Criminal Code that was prepared by the Criminal Law Revision Subcommission (Subcommission).[3] Relying in part on his conclusion that *Beckman* was mistaken as to the source of Alaska's escape statute, Judge Carpeneti declined to follow the narrow interpretation of "custody" that we adopted in that case.

Beckman's mistake in attributing the origin of Alaska's escape statute to Missouri law has no bearing, however, on the validity of the narrow reading that we gave to the word "custody" in that case. Nothing in the actual history of Alaska's escape statute points to the appropriateness of a broader reading of the word. In fact, the contrary conclusion seems indicated.

Alaska's escape statute was adopted almost verbatim from the escape provision proposed by the Subcommission in its Tentative Draft. *See* Alaska Criminal Code Revision, Part IV, 46–49 (Tent. Draft 1977). The Subcommission, in turn, indicated that the Tentative Draft provision was based largely on then existing Alaska law. *Id.*

When the Subcommission issued the Tentative Draft, Alaska's escape statute provided, in relevant part, that "a person commits an escape if without lawful authority he ... wilfully removes himself from official detention...." *See* former AS 11.30.-090 (ch. 171, § 1, SLA 1976). The term "official detention" was defined in former AS 11.30.100(2) (ch. 171, § 3, SLA 1976) as follows:

> "Official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or to be delinquent, detention for extradition or deportation or any other detention for law enforcement purposes; but "official detention" does not include supervision on probation or parole, or constraint incidental to release on bail.

Under this statutory definition, it seems clear that "official detention" did not include the type of restraint inherent in a pre-arrest investigative stop.

Although the definition of "official detention" contained in the Tentative Draft differed somewhat from that set out in former AS 11.30.090, nothing in the Tentative Draft's commentary indicated that the changes in wording were intended to alter the substance of the existing definition in any way material to this case. In its commentary, the Subcommission described three significant ways in which the Tentative Draft's proposed escape provisions differed from then existing law. The description contains no mention of broadening the concept of "official detention" to include pre-arrest investigative stops. At least in the Subcommission's view, the definition of "official detention" embodied in the Tentative Draft (which was ultimately adopted as AS 11.81.900(b)(34)) was in substance identical to that contained in former AS 11.30.100(2).

Subsequent legislative commentary is also relevant. As enacted by the legislature in 1978, the Revised Criminal Code's second-degree escape statute made it unlawful to remove oneself from "official detention *on a charge of* a felony...." Former AS 11.56.310(a)(1)(B) (ch. 166, § 6, SLA 1978) (emphasis added). This language

2. *See* Alaska Department of Law, Criminal Code Manual, derivation table at 6—41 (1985).

3. *Id.* at 6—1-2 (emphasis in original):

> It should be noted that the derivation listing was compiled by the criminal division of the Department of Law *after* enactment of the revised code. Statutes from other jurisdictions that were actually considered by the criminal law revision subcommission are set out in a table appearing as an appendix to each volume of the six part tentative draft of the code published by the subcommission.

drew verbatim from the Tentative Draft, as well as from former AS 11.30.090(b)(1)—the statute in effect when the revised Alaska Criminal Code was adopted. In 1980, however, the legislature amended the second-degree escape statute to its current form, making it unlawful to remove oneself from "official detention *for* a felony." AS 11.56.310(a)(1)(B) (emphasis added).

The legislature explained its substitution of "for a felony" for "on a charge of a felony" as follows:

> This amendment is required to make clear that escape and permitting an escape can occur when a person has been arrested for a crime, though not necessarily formally charged with a crime by way of complaint, indictment or information.

Commentary on the Alaska Revised Criminal Code, Senate Journal Supp. No. 44 at 13, 1980 Senate Journal 1436. This commentary is telling. In stating that the amended statute would permit the prosecution of persons "arrested for a crime, though not necessarily formally charged ...," the legislature clearly indicated its view that, even under the amended version of the statute, an arrest was still necessary before escape could properly be charged.

In the present case, the state has cited no escape statutes or cases from other jurisdictions defining "custody" or "official detention" to include an investigative stop falling short of an actual arrest. Nor are we aware of any such authority. Our own brief survey of escape statutes indicates that other jurisdictions uniformly construe custody to begin with arrest or surrender in lieu of arrest.[4] While some jurisdictions have specific statutory provisions expressly defining custody as beginning at the point of formal arrest, others appear to reach the same conclusion without any express statutory definition. For example, in *State v. Blaine*, 133 Vt. 345, 341 A.2d 16, 17–20 (1975), the Supreme Court of Vermont considered a case prosecuted under former 13 V.S.A. § 1501, which prohibited "escape from lawful custody of a police officer." *Id.* 341 A.2d at 18. Although Vermont's escape statute apparently did not expressly define custody, the court in *Blaine* rejected the prosecution's contention that "custody" could be found in situations involving detention or restraint falling short of actual arrest. The court concluded that "lawful custody does not exist until the arrest is made." *Id.* 341 A.2d at 20.

In short, there appears to be no support in the history of Alaska's escape statute or in the law of other jurisdictions for the conclusion that *Beckman* was incorrect in concluding that "custody" is "essentially synonymous to 'arrest.'" *Beckman*, 689 P.2d at 502 n. 3.

In rejecting the conclusion we reached in *Beckman*, Judge Carpeneti also reasoned that the statutory definition of "official detention" would not have separately included "custody" and "arrest" if both words meant precisely the same thing. The court's concern seems well-founded, since every word used in a statutory provision is presumed to have been intended to have some useful purpose. *See, e.g., Alaska Transportation Commission v. Airpac, Inc.*, 685 P.2d 1248, 1253 (Alaska 1984). However, the narrow interpretation of "custody" we adopted in *Beckman* does not render the word superfluous as used in the statutory definition of "official detention."

Alaska Statute 11.81.900(b)(34) uses four separate terms to define "official detention": "custody, arrest, surrender in lieu of arrest, or confinement under an order of a court...." Of the fo "arrest" and "surrend involve discrete event duration. The remain tody" and "confinemer a court," describe cir continuing in nature time.

Once the police have a person or once a per in lieu of being arrest cally remains in post-a ing the filing and disp release on bail. In son when an arrest is m outstanding warrant, will be in "confinemen court" from the time t ed. In other situation the police make a war scene of a crime, a p detention and confiner ing which no charge and no court order will confine the arrested pe tions, the arrested per still be in "custody" a tinue to be in "official ject to the penalties p cape statute.

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In deciding to adhere pretation of "custody" *Beckman*, we are pa

4. The Model Penal Code § 242.6 at 216 states that "'[o]fficial detention' means arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent...." *See also* N.Y. Penal Law § 205.00 (McKinney 1988), defining custody as "restraint by a public servant pursuant to an authorized arrest or an order of a court"; Or.Rev.Stat. § 162.135 (1987) defining custody as "the imposition of actual or constructive restraint by a peace officer pursuant to an arrest or court order...."; Tex.Penal Code Ann. § 38.07 (Vernon 1974), applying escape statute to "[a] person arrested for, charged with, or convicted of...."; Utah Code Ann. § 76-8-309 (1978), defines "official custody" to mean "arrest, custody in a penal institution...."; Wash. Rev.Code § 9A.76.120 (1988), applying second-degree escape statute to persons "charged with a felony."

5. Another concern voic was that *Beckman*'s r "custody" might encou subjected to investigati concern, however, see who resist or fail to co before being arrested a other than prosecution f 11.56.700 (resisting arr fusing to assist a police not whether such cond

court...." Of the four statutory terms, "arrest" and "surrender in lieu of arrest" involve discrete events of relatively brief duration. The remaining two terms, "custody" and "confinement under an order of a court," describe circumstances that are continuing in nature rather than fixed in time.

Once the police have completed arresting a person or once a person has surrendered in lieu of being arrested, that person typically remains in post-arrest detention pending the filing and disposition of charges or release on bail. In some situations, such as when an arrest is made pursuant to an outstanding warrant, the arrested person will be in "confinement under an order of a court" from the time the arrest is completed. In other situations, however, as when the police make a warrantless arrest at the scene of a crime, a period of post-arrest detention and confinement will ensue during which no charge will have been filed and no court order will have been issued to confine the arrested person. In such situations, the arrested person will nonetheless still be in "custody" and will therefore continue to be in "official detention" and subject to the penalties prescribed in the escape statute.

Thus, although "custody" and "arrest" are essentially synonymous insofar as they refer to the inception of "official detention" for purposes of the escape statute, "custody" is the broader of the two terms and encompasses post-arrest restraint. The legislature's use of the word "custody" in the definition of "official detention" is not inconsistent with the narrow interpretation we adopted in *Beckman*.[5]

In deciding to adhere to the narrow interpretation of "custody" that we adopted in *Beckman*, we are particularly concerned that serious practical problems might arise if our escape statute were extended to all persons who are subjected to investigative stops. All but the most casual encounters between citizens and police officers may be characterized as stops involving some degree of restraint or deprivation of liberty. *See, e.g., Waring v. State*, 670 P.2d 357, 363–66 (Alaska 1983); *Howard v. State*, 664 P.2d 603, 607–11 (Alaska App.1983). Under the view adopted by the trial court, most if not all such situations would involve "official detention" for purposes of the escape statute. In many cases, moreover, the stops would be based only on reasonable suspicion. The low quantum of evidence needed to effect an investigative stop would make it difficult to say with any degree of confidence whether the stop was "for a felony." Presumably, in all situations where the possibility of a felony had not yet been ruled out, the stop could be characterized as "official detention for a felony" and could serve as a basis for a second-degree escape charge.

We have found no authority to support such a sweeping interpretation of Alaska's escape statute. Accordingly, we conclude that the trial court erred in construing "official detention," as used in AS 11.56.310, to apply to investigative stops. In keeping with the position we adopted in *Beckman*, we hold that "custody," as used in AS 11.81.900(b)(34), begins upon arrest[6] or surrender in lieu of arrest.

In the present case, Judge Carpeneti found it unnecessary to decide whether Jacobson had actually been arrested at the time he fled. Our conclusion that an arrest was a necessary predicate for an escape conviction requires us to remand this case to Judge Carpeneti for specific resolution of the issue.

5. Another concern voiced by Judge Carpeneti was that *Beckman*'s narrow construction of "custody" might encourage persons who are subjected to investigative stops to resist. This concern, however, seems unfounded. Those who resist or fail to cooperate with the police before being arrested are subject to sanctions other than prosecution for escape. *See, e.g.*, AS 11.56.700 (resisting arrest); AS 11.56.720 (refusing to assist a police officer). The issue is not whether such conduct is encouraged, but rather the level of sanction that the legislature intended to apply.

6. By "arrest" we refer to the statutory definition of the term. Under AS 12.25.160, "[a]rrest is the taking of a person into custody in order that the person may be held to answer for the commission of a crime." *See also Nome v. Ailak*, 570 P.2d 162, 167–69 (Alaska 1977).

If, after considering the evidence presented at trial, the judge finds beyond a reasonable doubt that Jacobson was under arrest and acted with the requisite culpable mental state, the judgment of conviction for escape may be left intact. If, on the other hand, the judge finds a reasonable doubt as to whether Jacobson was actually under arrest or acted with the applicable culpable mental state, a judgment of acquittal must be entered. We will retain jurisdiction over the appeal pending the resolution of this issue on remand.[7]

The convictions for burglary and theft are AFFIRMED. The conviction for misconduct involving a weapon is VACATED. This case is REMANDED for further findings on the escape charge.

Second, Jacobson contends that the trial court erred in admitting evidence of other crimes during his burglary trial. Jacobson was charged with burglarizing one of several offices in an office building. The trial court allowed the state to admit evidence that property stolen from another office in the same building was found in Jacobson's possession. Jacobson contends that the challenged evidence was inadmissible under Alaska Rule of Evidence 404(b). We disagree. The challenged evidence was integrally related in time and circumstance to the crime with which Jacobson was charged and was highly relevant to discredit Jacobson's claim of mistake. Under the circumstances, the challenged evidence had legitimate relevance on an issue other than Jacobson's propensity to commit crime, and the trial court could readily find that its probative value substantially outweighed its potential for prejudice. *See Kugzruk v. State*, 436 P.2d 962, 966–68 (Alaska 1968). We find no abuse of discretion.

7. Because an acquittal on the escape charge would significantly affect Jacobson's composite sentence, we find it preferable not to address Jacobson's sentencing arguments until completion of proceedings on remand. In addition to his sentencing arguments, Jacobson has raised two issues that require only brief consideration.

First, Jacobson argues that the trial court erred in denying a motion for mistrial that he made because members of his jury saw him in the custody of an officer and in close proximity to uniformed guards during the trial. We have consistently held, however, that neither the presence of guards nor a brief, inadvertent view of the defendant in custody is necessarily so prejudicial as to require a mistrial. *See, e.g., Hines v. State*, 703 P.2d 1175, 1178 (Alaska App. 1985); *Dunn v. State*, 653 P.2d 1071, 1086 (Alaska App.1982). The decision whether to grant a motion for a mistrial is consigned to the sound discretion of the trial court. *Roth v. State*, 626 P.2d 583, 585 (Alaska App.1981). Our review of the record in this case convinces us that the court did not abuse its discretion in denying Jacobson's motion for a mistrial in this case.

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 19, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 2-27-91

The JUDICIARY Committee considered: HB 142

HOUSE BILL NO. 142 CRIME OF ESCAPE

"An Act relating to the crime of escape and the definition of official detention for the purposes of the criminal code and provisions governing prison facilities and prisoners."

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

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

ADOPTS: _____ letter of Intent

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

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

2 [X] zero fiscal note Pub. Safety - Law [ ] zero fiscal note(s) _____

SIGNING ~~DO~~ PASS: SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
David Duncan				
[illegible]				
[illegible]				
Terry Martin				
[illegible]				
[illegible]				

David Duncan
Chairman's Signature

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 142

Revision Date: _____
Title: An Act Relating to the Crime of Escape . . .
Sponsor: House Judiciary
Requestor: House Judiciary

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

COMPONENT SERIAL NO. | | 7 | 9 | 9 |

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

No distinct fiscal impact upon the AST is expected.

Prepared by: Gayle A. Horetski
Phone: 465-4322
Division: Commissioner's Office
Date: 2/25/91

Approved by Commissioner: Gayle Horetski for Richard L. Burton
Agency: Department of Public Safety
Date: 2/25/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 142

Revision Date: _____ Department Affected: Department of Law

Title: "An Act relating to the crime of escape..." BRU: Prosecution

Component: Criminal Justice Litigation

Sponsor: House Judiciary

Requestor: House Judiciary COMPONENT SERIAL NO. 8 9

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: February 25, 1991

Rich I. Pegues 1-02

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law Date: February 25, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 142

This bill reverses the effects of two recent Alaska Court of Appeals' decisions, in Jacobson v. State and Hubbard v. State, concerning the crime of escape and the definition of official detention.

First, AS 11.56.330(a) is amended to clarify that one commits the crime of escape in the fourth degree if, without lawful authority, having been placed under actual restraint by a peace officer before arrest, one removes oneself form the restraint.

Second, AS 11.81.900(b)(34) is amended to include actual or constructive restraint under an order of the court within the definition of official detention.

These amendments will not have a fiscal impact on the Department of Law because they are consistent with the law as it was interpreted prior to the recent decisions of the Court of Appeals.

THE COURT OF APPEALS OF THE STATE OF ALASKA

CHRISTOPHER HUBBARD, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-3025 Trial Court No. 3ANS-88-5537CR O P I N I O N [No. 1092 - November 16, 1990]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Joan M. Katz, Judge.

Appearances: Jacqueline Bressers, Assistant Public Defender, John B. Salemi, Public Defender, Anchorage, for Appellant. Nancy R. Simel, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, Douglas B. Baily, Attorney General, Juneau, for Appellee.

Before: Bryner, Chief Judge, Coats, Judge, and Cutler, Superior Court Judge.*

COATS, Judge.

Christopher Hubbard was convicted by a jury of escape in the second degree, a class B felony. AS 11.56.310(a)(1)(B). Hubbard appeals his conviction, arguing that the trial court erred by refusing to dismiss the indictment against him because the evidence which the state presented did not establish that he was

*Sitting by assignment made pursuant to article IV, section 16 of the Alaska Constitution.

"in custody" at the time of the alleged escape. We agree with Hubbard and reverse his conviction.

In September 1988, Christopher Hubbard was charged with theft in the second degree and was released on bail. On September 20, 1988, Hubbard appeared for a preindictment hearing before District Court Judge Elaine Andrews. Hubbard sat in the back of the courtroom; and his attorney sat at defense counsel's table.

At the hearing, the prosecutor alleged that Hubbard had violated the conditions of bail by not remaining within the custody of his third-party custodian. He explained that within hours of being released on bail, Hubbard was rearrested on city charges: driving without a valid operator's license, giving false information to a police officer, resisting arrest, and carrying a concealed weapon. At the time of the second arrest, Hubbard was not in the presence of a third-party custodian. Apparently he was re-released on bail after the second arrest. Hubbard's attorney claimed that Hubbard had not violated the conditions of his original bail -- he told the court that when Hubbard was rearrested, he was on his way to get married, and one of the third-party custodians had been driving the car behind him.

The court responded as follows:

> Well, I think at this stage Mr. Hubbard will be remanded and we can set on a bail hearing . . . Mr. Hubbard can take a seat in the jury box because he's gonna be in custody while we decide what happens here.

Judge Andrews then set bail at $10,000, and asked, "Mr. Hubbard, do you want to come forward and take a seat in the jury box?" Hubbard did not take a seat in the jury box; he instead left the

courtroom while the parties were scheduling his bail review hearing. Judge Andrews called out to Hubbard as he left, but he did not respond. Judge Andrews then issued an arrest warrant and set bail at $20,000.

Hubbard was indicted for escape in the second degree in violation of AS 11.56.310(a)(1)(B). The indictment charged that Hubbard

> knowingly and without lawful authority remove[d] himself from the State of Alaska Court Building while under official detention for a felony offense.

Hubbard moved to dismiss the indictment, arguing that he was not under "official detention" when he left the courtroom. The motion was denied. The case proceeded to trial before Judge Katz on the escape charge. The underlying charge for theft in the second degree, for which Hubbard had been released on bail, was dismissed.

At trial, after the state rested its case, Hubbard moved for judgment of acquittal on the ground that the state had not established that he was in "official detention" when he left the courtroom. This motion was also denied.

Hubbard challenges the indictment which charged him with escape in the second degree under AS 11.56.310(a)(1)(B). The statute states:

> (a) One commits the crime of escape in the second degree if, without lawful authority, one
>
> (1) removes oneself from
>
> (B) official detention for a felony. . .

Official detention is defined in AS 11.81.900(b)(34) as:

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> custody, arrest, surrender in lieu of arrest, or confinement under an order of a court in a criminal or juvenile proceedings, other than an order of conditional bail release.

The question which this case presents is whether Judge Andrews' statement, "Mr. Hubbard, do you want to come forward and take a seat in the jury box" was sufficient to create an "official detention" pursuant to AS 11.81.900(b)(34). Hubbard argues that the escape statute does not apply to him because he was never under any physical restraint before he left the courtroom. The state contends that Hubbard's construction of the statute is too narrow. The state concedes that some kind of physical contact is necessary to effectuate an arrest, but it argues that a mere order from the court can trigger "custody" and "confinement under an order of a court." The statutes do not define the terms, "custody" and "confinement under an order of the court."[1]

In previous decisions, we have held that before a person was in "official detention" for purposes of the escape statute, the state must establish that the defendant was clearly under some form of official restraint. Normally, before a defendant could be convicted of escape, we have required the state to show that the defendant was under arrest. In Maynard v. State, 652 P.2d 489, 492 n. 6 (Alaska App. 1982), we quoted with approval what appears to be the majority rule from R. Perkins, Criminal Law:

---

[1]. Hubbard argues that he was released on bail at the time of his alleged escape and therefore his actions were not covered by the escape statute. We assume, for purposes of this opinion, that Judge Andrews had revoked Hubbard's bail before he left the courtroom. We therefore assume that Hubbard did not fall within the "conditional bail release" exclusion of AS 11.81.900(b)(34).

> Escape and the kindred offenses are clearly in the nature of obstructions of justice but they have been dealt with so commonly as distinct crimes that it seems wise to treat them as such. And before any effort to explore this field is attempted a clarification of terms is needed. The word 'escape' is used in two different senses in regard to the factual occurrence indicated, and in two (or more) different senses in its use as the name of a crime. In the technical sense an 'escape' is an unauthorized departure from legal custody; in a loose sense the word is used to indicate either such an unlawful departure or an avoidance of capture. And while the word is regularly used by the layman in the broader sense it usually is limited to the narrower meaning when used in the law, -- although this is not always so. It is employed in this subsection exclusively in the technical sense. Thus if an officer approaches an offender for the purpose of making an arrest, which he is unable to do because the other eludes him by running away, there has been no 'escape' as the term is used here. It is necessary, however, to bear in mind that 'arrest' is also a technical term. If an officer having authority to make an arrest actually touches his arrestee, for the manifested purpose of apprehending him, the arrest is complete 'although he does not succeed in stopping or holding him even for an instant.' In such a case there is legal custody of the arrestee for an instant although the imprisonment is constructive rather than effective. Hence there would be an escape, if such an arrestee ran away after being touched by the officer with appropriate words of arrest and lawful authority for this purpose.

R. Perkins, Criminal Law at 500 (2d ed. 969)(citations omitted). In Maynard, we concluded that "[t]he offense of escape is complete when a person once in lawful custody, voluntarily removes himself from that custody without lawful authority." Maynard, 652 P.2d at 492.

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In Beckman v. State, 689 P.2d 500, 502 n. 3 (Alaska App. 1984), this court focused on the meaning of "custody" as it is used in the definition of "official detention" in the escape statute:

> "Custody" is not expressly defined in the provision of Alaska law dealing with escape. However, definitions of "custody" contained in escape statutes from other jurisdictions suggest that, in context, the word is intended to have a narrow meaning, essentially synonymous to "arrest."

In Jacobson v. State, 786 P.2d 388, 390-94 (Alaska App. 1990), we followed Beckman in interpreting the escape statute. In Jacobson, the defendant was stopped by the police and handcuffed at the scene of a possible burglary. The defendant managed to free himself from one of the handcuffs and fled from the scene. He was convicted of escape in the second degree. On appeal, we concluded that the court could find that the defendant was "under official detention for a felony" for purposes of the escape statute only if he was under arrest for a felony when he eluded the police. Id. at 393. We remanded to the trial court to determine whether the defendant was under arrest for a felony at the time that he fled.

The state asks us to conclude that Hubbard was in "confinement under an order of a court in a criminal . . . [proceeding]." The state points out that some jurisdictions have held that a defendant may be in "constructive custody" by order of the court. The state cites United States v. Peterson, 592 F.2d 1035 (9th Cir. 1979). See also Harrell v. State, 743 S.W.2d 229, 231 (Tex. Cr. App. 1987). In Peterson, the defendant appeared with his counsel for sentencing. The court imposed sentence and ordered that sentence to begin immediately. The court ordered Peterson's

counsel to take him to the marshal's office so that Peterson could begin his sentence. When Peterson's counsel stopped to talk to someone in the hall, Peterson slipped away. Peterson was convicted of escape under 18 U.S.C. § 751(a) which provides:

> Whoever escapes or attempts to escape . . . from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate. . . shall . . . be fined not more than $5,000 or imprisoned not more than five years or both.

On appeal, the Ninth Circuit held that Peterson's actions violated the escape statute when the government proved that he had willfully failed to comply with the court's order placing him in custody. Although the Peterson case provides authority in support of the state's proposition, it is distinguishable because the federal statute is different from the Alaska statute. The federal statute appears to be more broad than the Alaska statute.

We believe that Alaska cases such as Jacobson point in the direction of strictly defining the phrase "official detention for a felony." We have consistently followed the maxim of statutory interpretation that ambiguities in penal statutes must be narrowly read and strictly construed against the government. Kinnish v. State, 777 P.2d 1179, 1181 (Alaska App. 1989); 3 C. Sands, Sutherland Statutory Construction § 59.04 at 13 (4th ed. 1974). We see no indication of any legislative intent to adopt a doctrine of "constructive restraint." See State v. Sanchez, 701 P.2d 571 (Ariz. 1985). Furthermore, we believe that there are sound reasons for requiring the state to prove that a person has been physically placed under arrest before allowing that person to

be convicted of a felony. If the state were allowed to prove that a defendant was in custody without establishing that an arrest had been made, ambiguous situations might occur in which reasonable people could differ concerning the defendant's status. Such ambiguities could well result in a lack of notice. Adopting a bright-line rule for determining when a person is in custody will ensure objective, clear, and unambiguous notice to all concerned. See Model Penal Code and Commentaries, § 242.2 at 214 (1980) and Sanchez, 701 P.2d at 573.

We accordingly conclude that since Hubbard was never placed under arrest before he left the courtroom, he was never in custody or in confinement under an order of a court. Thus he was never under "official detention for a felony" as is required for violation of AS 11.56.310(a)(1)(B). We therefore conclude that the trial court erred in failing to dismiss the indictment against Hubbard. We accordingly reverse Hubbard's conviction and order the trial court to dismiss the indictment.

REVERSED.

HB

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FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 144 (JUD)

Revision Date: _____ Department Affected: Legislative Affairs Agency

Title: Legislative approval of suit settlements. BRU: _____

Component: _____

Sponsor: House Judiciary Committee

Requestor: House Judiciary Committee **COMPONENT SERIAL NO.** [ ] [ ] [ ] [ ]

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: House Judiciary Committee Phone: 465-4990

Division: Alaska State Legislatuure Date: March 8, 1991

Approved by Commissioner: Chairman Dave Donley Dave Donley

Agency: House Judiciary Committee Date: 3/8/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

HOUSE COMMITTEE REPORT

(7)
Date Referred: February 19, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 3-8-91

The JUDICIARY Committee considered: HB 144

HOUSE BILL NO. 144 LEGISLATIVE APPROVAL OF SUIT SETTLEMENTS

"An Act providing for legislative disapproval of certain proposed settlements of litigation by the attorney general."

RECOMMENDATIONS:
be replaced with CS HB 144 (Jud) [ ] the same title [X] a new title

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

ADOPTS: _____ letter of Intent

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

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

[X] zero fiscal note House Judic. - Leg. Affairs [ ] zero fiscal note(s) _____

SIGNING ~~DO~~ PASS: SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
	Mike Miller		✓	
	Terry Murphy		✓	
	Mark Hanley		X	

Daniel Doney
Chairman's Signature

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

THE STATE OF ALASKA, on its own behalf, and as public trustee and as parens patriae for the citizens of the State, Plaintiff, vs. EXXON CORPORATION, a New Jersey corporation; EXXON PIPELINE COMPANY, a Delaware corporation; EXXON SHIPPING COMPANY, a Delaware corporation; ALYESKA PIPELINE SERVICE COMPANY, a Delaware corporation; AMERADA HESS PIPELINE CORPORATION, a Delaware corporation; ARCO PIPE LINE COMPANY, a Delaware corporation; BP ALASKA PIPELINES, INC., a Delaware corporation; MOBIL ALASKA PIPELINE COMPANY, a Delaware corporation; PHILLIPS ALASKA PIPELINE CORPORATION, a Delaware Corporation; UNOCAL PIPELINE COMPANY, a California corporation, Defendants.	Case No. 89-06952 COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES, CIVIL PENALTIES AND INJUNCTIVE RELIEF

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The plaintiff, by and through its attorneys, State of Alaska Department of Law and Preston, Thorgrimson, Ellis & Holman, on behalf of itself and as public trustee and as parens patriae on behalf of all natural persons residing within the State of Alaska, brings this action and complains and alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action for compensatory and punitive damages, civil penalties and injunctive relief for

losses sustained by plaintiff arising out of, and resulting from, the unlawful and negligent discharges of crude oil and other hazardous substances into Prince William Sound by the T/V EXXON VALDEZ ("EXXON VALDEZ"), and from the intentional and negligent acts of defendants before or after the crude oil and other hazardous substances were discharged into Prince William Sound.

2. Subject matter jurisdiction is proper pursuant to Alaska statutory and common law including AS 22.10.020(a) and AS 09.05.015 and general maritime law.

3. Personal jurisdiction is proper because each defendant either transacts business in or has sufficient contacts with the State for purposes of personal jurisdiction.

4. Venue is properly laid in the Third Judicial District pursuant to AS 22.10.030 and Alaska Civil Rule 3(c) because the claims herein arose in the Third Judicial District and because defendants are present and doing business in this judicial district.

THE PARTIES

5. Plaintiff State of Alaska, (the "State") is a sovereign state of the United States. The State appears on its own behalf as the owner of lands, waters and resources of the State, on behalf of all administrative departments and agencies of the State, and as parens patriae and public trustee for the citizens of the State of all lands, waters and resources within the jurisdictional boundaries of the State. Under the common law and the common use clause of the Alaska

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Constitution, Article VIII, Section 3, plaintiff is the public trustee of and possesses sovereign interests in State lands, waters and resources. Plaintiff may maintain an action as parens patriae on behalf of its citizens and to protect and defend its sovereign interests. The public trust includes, but is not limited to, State navigable waters, submerged lands, tidelands and beaches. The interests protected by the public trust include, but are not limited to, providing scenic beauty, open space, air quality, food and habitat for birds and marine life, recreational experiences, scientific studies, functioning ecological systems and the various activities and management options enabled thereby. Unless otherwise expressly indicated herein, the term "State" means the State of Alaska in all its above-described capacities.

6. Defendant Exxon Corporation is a corporation organized under the laws of the State of New Jersey, that maintains its principal place of business in New York, New York. Through its subsidiaries and divisions, Exxon Corporation engages, among other things, in all phases and aspects of petroleum exploration, development, transportation, refining and marketing. On information and belief, it is an owner and/or operator of the EXXON VALDEZ, and it owned or controlled the crude oil cargo carried on the EXXON VALDEZ at the time the vessel discharged a substantial volume of its crude oil cargo into Prince William Sound.

7. Defendant Exxon Pipeline Company, a Delaware corporation, is a wholly-owned subsidiary of Exxon

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Corporation. It maintains its principal place of business at Houston, Texas. Defendant Exxon Pipeline Company is a party to the Right-of-Way Lease for the Trans-Alaska Pipeline System granted by the State on May 3, 1974 (the "State Right-of-Way Lease").

8. Defendant Exxon Shipping Company, a Delaware corporation, is a wholly-owned subsidiary of defendant Exxon Corporation. It maintains its principal place of business in Houston, Texas. Exxon Shipping Company is an owner and/or operator of the EXXON VALDEZ, and it owned or controlled the crude oil cargo carried on the EXXON VALDEZ at the time the vessel discharged a substantial volume of its crude oil cargo into Prince William Sound.

9. Upon information and belief, at all material times defendant Exxon Corporation so dominated Exxon Shipping Company and Exxon Pipeline Company as to render Exxon Corporation liable for the conduct of Exxon Shipping Company and Exxon Pipeline Company, more fully described below.

10. Defendant Alyeska Pipeline Service Company ("Alyeska") is a Delaware corporation and maintains its principal place of business in Alaska. Alyeska operates the Trans-Alaska Pipeline System ("TAPS") as an agent of the owners or assignees of the TAPS right-of-way lease granted by the State Right-of-Way Lease -- the Amerada Hess Pipeline Corporation, ARCO Pipe Line Company, Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Petroleum

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Corporation, BP Alaska Pipelines, Inc. and Unocal Alaska Pipeline Company (collectively the "Owner Companies").

11. Defendant Amerada Hess Pipeline Corporation, a Delaware corporation, is a subsidiary of Amerada Hess Corporation. It maintains its principal place of business in New York, New York. Defendant Amerada Hess Pipeline Corporation is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

12. Defendant ARCO Pipe Line Company, a Delaware corporation, is a wholly-owned subsidiary of Atlantic Richfield Company. It maintains its principal place of business at Independence, Kansas. Defendant ARCO Pipe Line Company is a party to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

13. Defendant Mobil Alaska Pipeline Company, a Delaware corporation, is a wholly-owned subsidiary of Mobil Corporation. It maintains its principal place of business at Dallas, Texas. Defendant Mobil Alaska Pipeline Company is a party to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

14. Defendant Phillips Alaska Pipeline Corporation, a Delaware corporation, is a subsidiary of Phillips Petroleum Corporation. It maintains its principal place of business at Bartlesville, Oklahoma. Defendant Phillips Alaska Pipeline Corporation is a party by assignment to the State Right-of-Way Lease for the Trans-Alaska Pipeline System.

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