

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7159 HOUSE RESOURCES

Voluntary Agreement concerning Liability for Oil Pollution) and CRISTAL (Contract Regarding a Supplement to Tanker Liability for Oil Pollution) — met at the end of October in Norway and agreed to extend these agreements for two years to February 20, 1994. These agreements are voluntary commitments to pay cleanup and compensation costs promptly to spill victims. TOVALOP, whose member companies represent 97% of the world's total tank-vessel tonnage, makes available a maximum of \$70 million for any one incident. CRISTAL, comprised of about 750 oil companies, raises that figure to \$135 million. According to a spokesman for the International Tanker Owners Pollution Federation, members chose to revisit the issue in no more than two years because of these "uncertain times given the new Oil Pollution Act of 1990 (OPA 90) and the debate over the protocols."

The protocols that he referred to are 1984 International Maritime Organization (IMO) protocols to the 1969 Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage. At a recent diplomatic conference in London, participants asked the IMO to adopt new protocols in place of the 1984 protocols, which have been ratified by only two of the eight countries needed for enactment (OPA 90 discouraged any hope of the US ratifying these protocols). The International Oil Pollution Compensation Fund Assembly recommended that the

IMO reduce the number of countries required to adopt the protocols to make it easier for the protocols to go into effect. The assembly had earlier rejected a suggestion that the liability limits be raised to \$283 million (currently the limit is \$80 million; the 1984 protocols would have raised the limit to \$191 million).

Five States Discuss the Need for Cooperation in the Gulf of Mexico

Kicking off the Clean Gulf '91 conference in Austin, Texas, on October 29, representatives from the five Gulf states — Texas, Louisiana, Mississippi, Alabama, and Florida — began talks on drawing up a memorandum of understanding (MOU) to "pool their resources" regarding oil spill preparedness and response. They discussed the need for a "good communications network," which would include sharing data and coordinating training, research, contingency planning, and other requirements to avoid unnecessary duplication. In discussing what form this cooperation should take, the representatives ruled out a formal compact, since such an agreement would require congressional approval. And, as was evident on the West Coast, where a similar compact gained little support, it would be faced with too many obstacles (see "Outlook for Western States' Compact Looks Bleak," *OSLR*, June 1991). Representatives instead voiced their support for an MOU and possibly a task force that could meet on a regular basis.

Hotline: On October 29, the US Senate consented to the ratification of two IMO treaties: the International Convention on Oil Pollution Preparedness, Response, and Cooperation, 1990; and the International Convention on Salvage, 1989 (see *OSLR*, August 1991) . . . The US Coast Guard (USCG) has received more than 120 comments on the advance notice of proposed rulemaking concerning vessel response plans, but one USCG officer reviewing the comments said that they were not as specific as the USCG had hoped (see *OSLR*, October 1991) . . . Around the first of October, Washington State Governor Booth Gardner appointed Barbara Herman as the new administrator of the state's Marine Safety Office. Herman was formerly the chief litigator for the state of Alaska in the Exxon Valdez case . . . For more information on any article in this issue, contact the Oil Spill Hotline: (617) 641-5110 or 648-8700; Fax: (617) 648-8707.

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 When changing your address, please include both old and new addresses with ZIP code numbers, accompanied by mailing label from a recent issue.

Oil Spill US Law Report is published monthly by Cutter Information Corp., 37 Broadway, Arlington, MA 02174-5539, USA; Tel: (617) 648-8700, Fax: (617) 648-8707, Telex: 650 100 9891.
 Subscriptions: \$887 per year; \$727 outside North America. ISSN 1055-9175.
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Statement of the
Alaska Forest Association
to the
House Resources Committee on HB 135

April 9, 1992

STATUS OF LEGISLATION

The Pacific Ocean Resources Compact was proposed in the wake of the Exxon Valdez grounding. The Alaska State Legislature directed most of its attention and energy to bills affecting Alaska only in the latter part of the 1989 session and during the 1990 and 1991 sessions. HB 135 and SB 102 were introduced in 1991, but both were held in their respective committees of first referral until the last two weeks when both were reported out. PORC is being considered by the Western States Legislative Council, primarily being pushed by Senator Bradbury of Oregon.

The Pacific Ocean Resources Compact as interpreted by both the Senate and House versions would establish an interstate compact presently suggested to include the states of Alaska, Hawaii, Washington, Oregon and California. British Columbia would be allowed to join if permitted by treaty, other federal law or Canadian law. Oregon has adopted authorizing legislation. Washington's legislature has adjourned its session without acting on the proposal and California has indicated that it will not become a party to the compact because it would probably be assessed about half of the cost of operating the compact. Washington legislators are, apparently, viewing PORC as not in that state's best interest. Legislators in Hawaii are expressing interest.

Oregon's legislation provides that the compact would become effective upon adoption by three states. HB 135 provides that the compact becomes effective as to Alaska upon ratification by two or more of the states of Hawaii, Washington, Oregon and California. SB 102 contains a similar provision.

CONCERNS OF MINING AND FORESTRY INDUSTRIES

Of primary concern to both the mining and forestry industries will be the shipment of bulk petroleum products and chemicals. PORC would affect the industries in the same ways that Alaska's existing oil and hazardous substance spill and response legislation and federal law do with respect to the marine transport of commodities. If the costs of the compact must be borne by the maritime industry, the impact will be of concern.

A point that apparently has not been addressed is the involvement of the coastal zone management program. The CZM program has sought a decisive role in the regulation of the

transport of crude petroleum, but the advisory committees established under the Oil Pollution Act of 1990 (OPA 90) seem to have occupied the field. If PORC were to take over regulation, rather than become a multistate advisory body, the CZM issues may emerge as preeminent.

Another issue of concern to all industries is that without the participation of either California or Washington, the need to impose the terms upon Alaska at this time is not apparent. A major influence on the enactment of Alaska's oil spill response legislation has been Congressman George Miller of California, chairman of the House Interior Committee, and his staff. Whether or not Congressman Miller plays a role in the proposed Alaska legislation cannot be answered at this time.

PURPOSE AND AUTHORITY OF THE COMPACT

The Pacific Ocean Resources Compact in HB 135 proposes that PORC address and resolve "prevention of oil and hazardous substance spills; transportation of oil and other hazardous substances; oil and hazardous substance spill response planning; and environmental monitoring and research." Its purposes would include, among others, "to provide uniform regulation of the transportation of oil or hazardous substances within the compact zone (includes the Exclusive Economic Zone (EEZ) which extends 200 miles seaward of the coast); regulate "certain" ocean activities; direct federal agencies to act in the best interest of the region; recommend uniform safety standards for routes, crews and equipment; and promote more coordinated management of ocean resources that are of mutual concern."

UNRESOLVED ISSUES

A number of questions arise that neither the House nor the Senate has as yet answered that may have implications for the mining and forestry industries. The extraordinary lack of information makes it difficult to predict the impact of the provisions of either bill. PORC would either regulate or advocate regulation of shipment of hazardous substances in addition to oil and petroleum products. The Coast Guard presently may set standards for the carriage of hazardous substances, and does, and it is unclear from either bill the extent to which that regulatory effort would be expanded under PORC. Some of the issues causing concern to shippers and carriers, and probably affecting the mining and timber industries, are as follows:

1. Funding. Each state is responsible for its proportionate share of the costs. There has been no definition of what those costs may be, what proportions will be used, nor the source of funds. Funds may be procured through fees payable by vessels, from the "470" fund or some other mechanism not yet adopted. The "470" fund's source of revenue is primarily the

\$0.05/barrel tax on each barrel of crude from Alaska. If the "470" fund is used to finance Alaska's participation in PORC, the crude producers will be primarily responsible for support. They would, of course, object to having to bear the full burden. If fees are the primary source of funding, all vessels required to submit contingency plans will be required to pay for the state's participation.¹

2. Contingency plan standards. Neither house has indicated what standards would be adopted for contingency plans. If Oregon and Alaska are the only members--Hawaii's interest may arise because of the expansion of authority into the territorial sea and the EEZ--standards for contingency plans could be even more stringent than Alaska's. Alaska's liability laws governing response action contractors appear to be a major obstacle to entry of the MSRC into Alaska. Without MSRC participation, Alaska's ability to respond to oil spills is diminished. If Oregon adopts Alaska's standard, for example, the availability of MSRC assistance in a spill on either coast is doubtful. Passage of HB 540 may change the attitude of MSRC, something that would be of significance to all areas of the state except Prince William Sound.

3. Financial responsibility. Alaska has stringent requirements for financial responsibility. We do not have information as to Oregon's requirements, if any.

4. Standards to be chosen. There has been some concern that PORC members will pick the most stringent standard now in place by any of the members and apply that standard without consideration of the implications.

5. "Ocean resources" to be regulated. The findings and purpose stated in Article I of the House version refer to the "migratory nature of many important living marine resources," "the economic reliance on renewable resources," "a regional interest in providing a stable environment for those communities dependent on ocean resources and ocean trade," and contain a disclaimer of interest in regulating fisheries. It is unlikely, however, that fisheries would not be a focus of primary attention, at least as far as Alaska is concerned.

6. Implications for foreign-bottomed vessels. Neither Alaska law nor the provisions of the compact deal with the issues arising out of trade using vessels of foreign registry. At the

¹Most chemicals shipped by industry are soluble in water or sink. Petroleum products are among the few that would remain on the surface of the marine environment long enough to warrant a spill response. Because of this, costs to shippers and carriers of hazardous substances that will not float may be determined through fines and penalties, rather than response costs.

present time, all of the ore and timber shipped to foreign markets are carried on foreign bottoms. One oil company, Amerada Hess, has authority to use foreign bottoms to carry North Slope crude from Valdez. All of the cruise lines use foreign bottoms exclusively in the Alaska trade.

LEGAL STATUS OF COMPACTS

The U.S. Constitution permits the formation of interstate compacts. Article I, Section 10 provides:

Restrictions upon powers of states.***No state shall, without the consent of Congress...enter into any agreement or compact with another state, or with a foreign power...

Alaska belongs to several compacts, including the Multistate Tax Compact and the WICHE compact. The usual purpose for an interstate compact is to solve purely state problems of mutual concern. For example, the Multistate Tax Compact performs audits of multistate corporations for the use of the members, thus sparing both the states and the corporations multiple audits. WICHE permits students of certain states to attend institutions of higher education in other member states upon the same financial footing as residents.

Congress gives relatively perfunctory attention to compacts that do not implicate federal jurisdiction. When compacts impinge on federal law, Congress is loathe to divest itself of its authority to regulate commerce among the several states. When international law is implicated, Congress seldom accedes to the request of the compact members. A question that has never been fully and finally answered is whether or not Congress could cede its Constitutional authority to "regulate commerce with foreign nations..." (Article I, Sec. 8) It is unlikely, although not impossible, that Congress would approve the provision permitting British Columbia to join PORC because of its reluctance to permit the states to regulate foreign commerce and because of the exclusive jurisdiction granted by the Constitution over admiralty and maritime matters. Some question exists as to whether or not Congress could Constitutionally delegate treaty-making powers to the states. This question arises because there are treaty-making implications in PORC.

When a compact is approved by Congress, it becomes federal law and is federally enforceable. The procedure used is that upon ratification of enough members of the compact to make the compact effective, the compact is submitted to Congress for approval. Congress may make any changes it wishes to make in the compact. Many compacts have been proposed that have never been approved.

Alaska presently has authority to regulate matters within its borders which include waters seaward 3 miles from the mean high water mark, that are not preempted by federal law. The House version would push that boundary, not just to the territorial sea (12-mile limit), but also to the limits of the EEZ.

The focus of the Senate and House committees considering the bills has been the oil industry. Very little information has been made available to the committees on the implications for other exporting industries or for the domestic coastwise trade involving other commodities.

**REASONS WHY THIS LEGISLATION SHOULD
RECEIVE ADDITIONAL WORK**

1. There remain too many unresolved issues (see page 2).

2. Alaska should not enact legislation until Washington and California have expressed a desire to join the compact.

Alaska, through Governor Cowper and Commissioner Kelso, was an early, if not the first, proponent of a compact. The effectiveness of a compact depends, however, on the participation of Washington and California as all but a small percentage of Alaska's crude production is transported to Washington and California ports. The issues of scope of authority and cost should be more fully resolved before Alaska undertakes, with its fragile economic base, the support of an organization over which it will have limited control.

3. Costs and sources of funding should be determined before enactment.

The avoidance of any serious discussion of how the compact would be funded has obviously caused California to resist joining. Fiscal concerns may well be the influencing factor for Washington. It is fundamentally unfair to Alaska industries to enact legislation for which they must bear the burden without providing cost information.

4. The scope of regulatory authority or advocacy should be explained.

The House version would empower the compact to regulate contingency plans and spill response. The inclusion within the bill of "other ocean resources" suggests that it is the desire of the House proponents to establish a regulatory environment on an interstate basis similar to that contemplated in HB 355, the in-stream flow bill, which authorizes allocation of all water resources in lakes, rivers, streams and ground for fish and wildlife habitat.

While the Senate version does not contemplate actual regulatory effort, its advocacy of marine regulations could assume importance on an interstate basis that advocacy of the in-stream flow/water reservation provisions of HB 355.

The opportunities for broad regulation, potentially very harmful to Alaska industries, exist within the provisions of either bill. Alaskans are entitled to a full explanation of the intended activities of the compact before it becomes effective in Alaska.

CONCLUSION

The Alaska Forest Association urges most strongly that these concerns be addressed fully and that Alaskans be given ample opportunity to consider them before enactment. The consequences of a less than prudent decision on this bill can be very damaging to Alaska's economic future.

STATEMENT OF
EXXON SHIPPING COMPANY
TO THE
HOUSE RESOURCES COMMITTEE

ON HB 135
APRIL 9, 1992

Exxon Shipping Company appreciates the opportunity to provide comments on House Bill 135.

The proposed legislation seeks to have Alaska ratify the creation of a multi-state Pacific Ocean Resources Compact. The Compact has various stated purposes. They range from very specific regulatory provisions to broad, undefined regulatory provisions to coordination of mutual interest activities of Compact parties. A key aspect of the Compact would provide for the extension of states' jurisdictional authorities out to 200 miles offshore. The compact would vest comprehensive authority to its appointed administrative body regarding activities, regulatory powers, staffing and funding.

There is some merit associated with an interstate advisory group to work with state and federal governments to improve coordination in oil spill response planning, environmental monitoring, and research activities. However, Exxon Shipping Company opposes the proposed legislation due to the specific marine regulatory provisions and the broadly worded regulatory provisions for undefined ocean activities. The Company also opposes the broad authority which the Compact would have to adopt other regulations. In addition, we have concerns regarding what we believe will be the likely jurisdictional constitutional and regulatory conflicts arising from the proposed Compact territorial expansion.

This statement will address the reasons for our position and concerns.

The Compact specifically provides for uniform regulation of oil and hazardous substance transportation, including the establishment of standards for routes, crews, and equipment for vessels and for vessel contingency plans. Comprehensive oil spill prevention and response legislation was passed in 1990 at the federal level (Oil Pollution Act of 1990) and in Alaska through a package of laws in 1989, 1990, and 1991. Implementation of these legislative efforts is well underway at both the federal and state levels through the development of extensive regulations. Compact provisions for development of an additional layer of regulations for these purposes is both unnecessary and inappropriate. At best, such an effort would be duplicative of Alaska and federal work; at worst, it could result in totally confusing layers of regulations under various authorities. It seems logical to allow the industry and states to operate under the statutes being developed before deciding whether additional or modified regulations are needed.

The Compact also provides for regulation of certain ocean activities within the Exclusive Economic Zone, and for adoption of all regulations necessary to exercise its authority. This broadly worded authority to regulate, without definition or limitation of the activities/areas to be regulated, is inappropriate, especially for an appointed body. Such regulatory authority would likely duplicate or conflict with existing federal and state agencies roles, responsibilities and regulatory powers.

The U.S. Coast Guard has primary authority for marine transportation in U.S. waters and is responsible for establishing vessel safety and design standards, training and manning requirements, routing, and traffic control. Exxon Shipping Company firmly supports the concept of uniformity of maritime law and regulations throughout the United States. Adding other regulatory authority for marine transportation through the proposed Compact could lead to confusion among domestic and international shippers as to which agency has primary jurisdiction over safety standards for vessels transporting oil or hazardous materials.

We understand that over 200 compacts have been adopted by states and approved by Congress. These compacts generally tend to facilitate uniformity of law and regulation associated with interstate commerce and cooperation. The proposed Compact seeks to extend the geographic scope of states' jurisdiction into federal jurisdictional domain. We are concerned that this Compact would not have the intended effect of greater uniformity, but would rather result in significant constitutional disputes over admiralty and maritime jurisdiction with disruptive impacts on national and international shipping.

The proposed Compact would be authorized to conduct hearings, promulgate regulations, negotiate with the federal government, provide technical assistance, conduct environmental monitoring and research, and apply sanctions and penalties for violations. Its liberal wording grants, to an appointed board, extensive authorities equal to or exceeding those generally delegated to elected state and federal legislative bodies. With all this apparent authority, there is no clear indication or direction as to how these powers are to be exercised or implemented, or how the funding to enforce the authority would be developed.

The premise that there are no effective means for adjoining states to address mutual concerns related to the transport of oil and hazardous substances is not accurate. Such concerns can be addressed by state governments and through the federal government agencies (U.S. Departments of Transportation and State) which, in turn can represent appropriate concerns to international bodies such as the International Maritime Organization.

In conclusion, Exxon Shipping Company supports the concept of uniformity of maritime law and regulations throughout the United States. Our industry is multi-state and international in scope, and therefore we believe uniformity of approach to such issues is absolutely critical.

The Compact would move away from this concept by creating a regulatory body with the authority to impose an unnecessary layer of regulations. Exxon Shipping Company cannot support the regulatory provisions encompassed by the legislative language. These regulatory provisions are inappropriate - especially in view of the recent state and federal legislation now being implemented.

Accordingly, Exxon Shipping Company urges this Committee to oppose the passage of HB 135.

MEMORANDUM

State of Alaska
Department of Law

TO: Deborah Behr
Legislative Attorney
Department of Law -- Juneau

DATE: April 8, 1992

FILE NO:

TEL NO 269-5274

SUBJECT SB 102 - Pacific Ocean
Resources Compact

FROM: Breck C. Tostevin ^{BCT}
Assistant Attorney General
Environmental Section

This memorandum reviews the legal impact of SB 102 on the State of Alaska's ability to regulate the transportation of oil and hazardous substances on its navigable waters.

SB 102 would approve a Pacific Ocean Resources Compact between California, Hawaii, Oregon, Washington and potentially the Province of British Columbia. The Compact would take effect after one or more of the above states ratify the compact in substantially the same form and the Compact receives the consent of the United States Congress.

The consent of Congress is required by the federal Constitution for such compacts between the States that might alter the political power of the states affected, and thus expand into an area of federal concern, or compacts that involve foreign governments. U.S. Const. Art. I, Sec. 10; Texas v. New Mexico, 462 U.S. 554, 568 (1983); Seattle Master Builders Ass'n v. Pacific Northwest Elec. Power and Conservation Planning Council, 786 F.2d 1359 (9th Cir. 1986). Once approved by Congress, a compact becomes federal law, can be enforced in federal court and supersedes state law. See Cuyler v. Adams, 449 U.S. 433, 439-40 (1981); Vacation &

Deborah Behr
Legislative Attorney
Department of Law -- Juneau

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Holiday Fund v. New York Waterfront Comm'n, 732 F.2d 292 (2d Cir. 1984); State ex rel Intake Water Co. v. Board of Nat. Res. & Conserv. of the State of Montana, 645 P.2d 383, 387 (Mont. 1982), cert. denied, 459 U.S. 969 (1982).

In general, the Compact established in SB 102 would simply establish a forum for cooperative efforts of the party states and would not limit the internal regulatory powers of the member states. However, three provisions in Article V of the Compact have the potential to significantly alter the State of Alaska's regulation of oil and hazardous substance transportation in state waters. In particular, Article V(a)(2) would create an unified "Compact region" in which the Compact would establish and enforce oil and hazardous substance contingency plans for vessels. Pursuant to this article, the Compact would adopted uniform regulations for the region that are "consistent" with response plan requirements established under the federal Oil Pollution Act of 1990.¹ Once in place, the "compact contingency plans" would supersede individual state plans. Individual state contingency plans approved prior to the adoption of compact plan regulations would remain in effect until their expiration, at which point they would be subject to the compact plan regulations. Article V(a)(10) would allow the compact to establish sanctions for violations of

¹ These federal response plans will not be in place until the U.S. Coast Guard adopts regulations establishing the planning standards applicable to these vessels and barges.

Deborah Behr
Legislative Attorney
Department of Law -- Juneau

April 8, 1992
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the rules and regulations of the Compact and impose those sanctions pursuant to standards of review established in the federal Administrative Procedures Act.

The Compact provides that the Compact will "work closely with officials of the [member States] to assure that the vessel contingency plans required under this compact include all subject areas included by the member parties." However, there is no assurance that the requirements of Alaska's Oil Spill Contingency Law ² will be fully included in the Compact's contingency plan regulations. It is worth noting that the Oil Pollution Act of 1990 does not preempt state law in the area of vessel contingency planning. See 33 U.S.C. § 2718. However, once adopted, these Compact plans would preempt state individual requirements. See Art. V(3), p. 8 lines 8-9.

Second, Article V(b)(6) would empower the Compact to enter into an agreement with the United States Coast Guard to administer compliance with the federal government's proof of financial responsibility under the Oil Pollution Act of 1990. However, once delegated to the Compact these federal requirements would supersede individual state financial requirements. Again, it should be noted that Congress in the Oil Pollution Act of 1990 specifically granted the States authority to impose their own unique financial responsibility requirements. See 33 U.S.C. §

² AS 46.04.030 and the implementing regulations at 18 AAC 75.

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Legislative Attorney
Department of Law -- Juneau

April 8, 1992
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2718. The State would be giving up its right to impose requirements different from the federal provisions and would not necessarily gain a more uniform tougher standard along the Pacific Coast.

Finally, article V(b)(9) would allow the Compact to grant variances from compact rules or regulations. A variance would be based upon a showing that the activity allowed will have no regional affect and that the variance is economically necessary. The variance would not be allowed if the result would be less stringent requirements than those imposed under federal law. However, under the above standard a variance could be granted or denied when the affected state disagrees and when the activity only affected that one member state. Thus, a variance could be granted to a requirement of Alaska law that is more strict than federal law but that would not affect Washington or California. Such a result would clearly present a major departure from existing law under which each coastal state controls its own destiny in the absence of explicit federal preemption. The federal Oil Pollution Act of 1990 confirms that the State of Alaska can maintain its own individual oil pollution liability, contingency planning and financial responsibility requirements. 33 U.S.C. §§ 1321(o), 2718.

BCT:bkn

cc: Craig Tillery

32910 -14.19

MAR 25 1991

Ms. Christine Gregoire, Director
Washington Department of Ecology
Mail Stop PV-11
Olympia, Washington
U.S.A., 98504-8711

B.C. ENVIRONMENT

MAR 26 1991

ENVIRONMENTAL EMERGENCY
SERVICES BRANCH
VICTORIA, B.C.

Dear Ms. Gregoire:

Re: Proposed Interstate Compact

I have now had a chance to review the proposed Compact and have the following comments.

It appears that British Columbia cannot become a Party to the proposed Interstate Compact. The Compact makes assumptions and statements with respect to the jurisdiction of the Parties that are not correct as a matter of law when applied to British Columbia.

One of the main purposes of the Compact, "providing uniform regulation of the transportation of oil or hazardous substances within the compact zone" is beyond the Province's constitutional and territorial authority. The differences between our constitutional division of powers and that of the United States makes it difficult if not impossible to join with the states in an effort to jointly (co-operatively) exercise this regulatory authority.

Further, the proposed Compact creates a legal entity which has actual law making authority as well as enforcement authority. While such Compacts are recognized and authorized by the U.S. Constitution, they do not have such recognition in the Canadian Constitution. The Government of Canada has authority over External Affairs and would be the only order of government which could enter into an agreement creating an entity such as this.

Paragraph (2) of Section 1 of the draft Act refers to B.C. becoming an "associate party to the compact", and to the possibility of B.C. requesting full party status. For the reasons given above, B.C. could not request such membership. Therefore it may be appropriate to remove the references to British Columbia from the draft Act.

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We are, however, still interested in continuing cooperative work with the other states on matters of mutual concern such as protection of marine and coastal resources. This includes attending as observers any meetings of the Western Legislative Conference to which we are invited.

By copy of this letter I am informing other Task Force members of our position on the Compact.

Yours truly,

ORIGINAL
SIGNED BY

2
Richard L. Dalon
Deputy Minister

cc: Mr. John Sandor, Alaska
Mr. Fred Hanson, Oregon
Mr. Michael Kahoe, California

Secretaries
holson
1
WOLFERSTAN/dj

bcc: Dr. Sheila Wynn, ADM
Director, Environmental Emergency Services
Mr. Vick Farley, Intergovernmental Relations



Province of
British Columbia

Office of the
Premier

MEMORANDUM

JB

Mr. Richard Dalon
Deputy Minister
Ministry of Environment

March 7, 1991

B.C. ENVIRONMENT

MAR 08 1991

ENVIRONMENTAL EMERGENCY
SERVICES BRANCH
VICTORIA, B.C.

Re: Proposed Interstate Compact

004955

Bill Wolferstan of your Ministry has asked our Branch to review the Interstate Compact proposed by Washington for consideration by the States/B.C. Oil Spill Task Force. John Bones has forwarded a copy of the proposed Compact and related correspondence from the Washington Department of Ecology.

It is my understanding that officials in your Ministry, the Ministry of Energy, Mines and Petroleum Resources and the Ministry of Regional and Economic Development do not support full membership for B.C. in the Interstate Compact. They support observer status for B.C. as the appropriate alternative.

Our Branch agrees that B.C. should participate only as an observer. Indeed, it is my opinion that B.C. could not become a Party to the Compact even if we wished to do so. Without entering into an exhaustive analysis here, the Compact makes assumptions and statements with respect to the jurisdiction of the Parties that are not correct as a matter of law when applied to B.C. (eg. Article I. A. (4)). Further, one of its main purposes, "providing uniform regulation of the transportation of oil or hazardous substances within the compact zone" is beyond the provinces constitutional and territorial authority. That is, B.C. does not have constitutional authority to regulate navigation and shipping, and it does not have authority (beyond the boundary of the Province) over Canada's territorial sea or Exclusive Economic Zone. The differences between our constitutional division of powers and that of the United States makes it difficult if not impossible to join with the States in an effort to jointly (co-operatively) exercise this regulatory authority. The Province does not have the necessary jurisdiction.

.../2

Mr. R. Dalon

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March 7, 1991

Further, the proposed Compact creates a legal entity which has actual law making authority as well as enforcement authority. Article V confers on the Pacific Ocean Resources Compact the ability to create regulations and to establish sanctions and civil penalties. While such Compacts are recognized and authorized by the U.S. Constitution, they do not have such recognition in the Canadian Constitution. The Government of Canada has authority over External Affairs and in my view would be the only order of government which could enter into an agreement creating an entity such as this.

Paragraph (2) of Section 1 of the draft Act refers to B.C. becoming an "associate party to the compact, without voting power", and to the possibility of B.C. requesting full party status. For the reasons given above, B.C. could not request such membership. Therefore, it may be appropriate to remove the second sentence of that paragraph from the draft Act. If it remains in the Act, it probably should be amended to include a reference to the approval of the Government or Parliament of Canada if not actual federal membership. In any event, the draft Act and Compact should be sent to External Affairs Canada for review, together with an indication of what the Province's position is on the matter.

I realize that you are well aware of these jurisdictional differences and difficulties as is indicated in your memorandum of December 17, 1990, to Chris Watts. I forward the above comments in response to the request for our review of the proposed Compact and to record our Branch's view of the matter.

I am advised that Cabinet approved your Ministry's Cabinet Submission on the B.C. Action Plan for Implementation of the Recommendations of the Report of the States/B.C. Oil Spill Task Force. Two points in that Submission apparently addressed this issue. It recommended on page 6 (#6) that Cabinet endorse pursuing Report Recommendation 42 on the Interstate Compact. Recommendation 42 was for cooperative work with the Western Legislative Conference to evaluate the advantages and disadvantages of such a Compact. I assume that the cooperative work can continue without B.C. becoming a full Party to the Compact.

Point 2 of your Submission recommended that B.C. not join the Western Legislative Conference as a member, but attend, when invited, as an observer. The descriptive paragraph regarding the WLC and the "proposed compact agreement" seems to combine the proposed Compact under consideration here with the invitation to B.C. to join the Western Legislative Conference. As I understand it, the two issues are separate.

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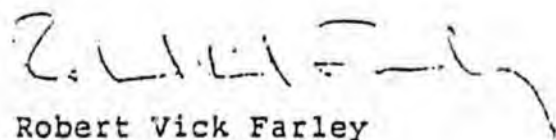
Mr. R. Dalon

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March 7, 1991

In conclusion, it is my view that B.C. cannot become a full Party to the proposed Interstate Compact. Further, in my opinion, the draft Act should be amended to remove the reference to B.C. possibly being a full Party to the Compact. Further the Act should be forwarded to External Affairs for their review, even if B.C. only intends to participate as an observer. Finally, B.C. should obtain clarification of what is intended by Washington officials by the term "associate member", including what obligations that would place on the Province.

I hope that this will be of assistance. Should you have any questions, please do not hesitate to contact me.



Robert Vick Farley
Senior Advisor
Constitutional Affairs
Intergovernmental Relations

cc: Mr. Jack MacDonald
Mr. Bill Wolferstan
Mr. John Bones

ATTACHMENT 1

OIL SPILL
MEMORANDUM
OF
CO-OPERATION

Between the
Province of British Columbia
the
State of Washington
the
State of Oregon
the
State of Alaska
and the
State of California

June 1989

OIL SPILL

MEMORANDUM OF CO-OPERATION

Whereas the Province of British Columbia (the "Province") and the States of Washington, Alaska, Oregon and California (the "States") have a mandate to enhance the environment and protect it from oil spills; and

Whereas the Province and the States share and manage common transboundary fish and wildlife particularly in and near the waters of the Pacific Ocean; and

Whereas the Province and the States concur that such fish and wildlife and the supporting environment must be given the fullest protection from damage caused by spills and other discharges of oil; and

Whereas it is paramount to maintain and improve a co-ordinated response to prevent, reduce, or overcome the effects of an oil spill in our respective waters, within the framework of the Canada-U.S.A. Joint Marine Pollution Contingency Plan; and

Whereas the future requires continued need for co-operation in preventing or abating oil spills in the aforementioned waters, including the participation of the Federal Governments of Canada and the United States;

Now therefore, in recognition of the spirit of co-operation which has characterized their efforts thus far, the Province of British Columbia, through its Premier, the Honourable W. N. Vander Zalm, and the State of Washington, through its Governor, the Honourable Booth Gardner, the State of Oregon, through its Governor, the Honourable Neil Goldschmidt, the State of Alaska, through its Governor, the Honourable Steve Cowper, and the State of California, through its Governor, the Honourable George Deukmejian, join together in this memorandum of co-operation pertaining to the resolution of mutual problems of oil spill pollution in the aforementioned waters. In this regard the Province and the States have formed an Oil Spill Task Force to develop co-ordinated programs for oil pollution prevention, abatement and response.

The Task Force is chaired jointly by the British Columbia Deputy Minister of Environment, the Washington Director of Department of Ecology, the Oregon Director of Department of Environmental Quality, the California Environmental Affairs Agency, and the Alaska Commissioner of Department of Environmental Conservation. To ensure future effective co-ordination of intergovernmental efforts, representatives of each government will be appointed to maintain this memorandum. This responsibility will be included in the job descriptions of these representatives and written notification of their appointment will be provided to all other parties to this memorandum. These representatives will meet annually to review progress and plan future co-operation. Four subcommittees have been established to address:

- (1) Prevention Alternatives
- (2) Technology Sharing
- (3) Emergency Response
- (4) Financial Recovery.

Issues addressed by the subcommittees will include:

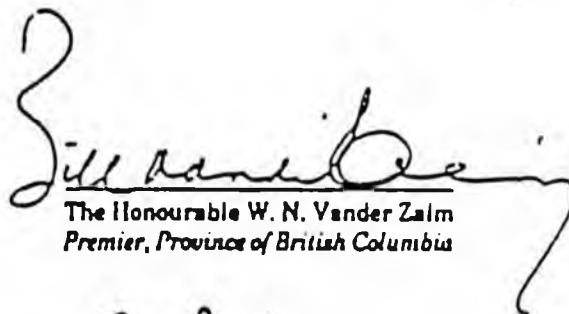
- (1) the creation of a joint emergency response plan;
- (2) an evaluation of capabilities and technologies for spill prevention, response and containment;
- (3) a review of tanker safety, routes and operating requirements;
- (4) an inventory of equipment, material, and personnel available to either the Province or the States for use in oil spill control and clean-up operations;
- (5) joint spill response drills and training.

The duration of this memorandum is intended to be perpetual, but each party may terminate at will its agreement by giving written notice to the other parties.

The parties do not intend by this memorandum to create any separate legal or administrative entity.

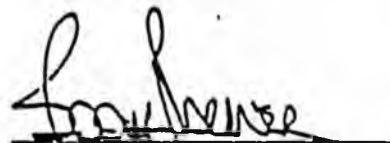
Each party shall bear its own expenses of co-operating pursuant to this memorandum.

Signed this 16th day of June 1989.




The Honourable W. N. Vander Zalm
Premier, Province of British Columbia

Signed this 16th day of June 1989.



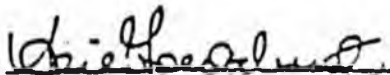
The Honourable Booth Gardner
Governor, State of Washington

Signed this 3rd day of August 1989.



The Honourable Steve Cowie
Governor, State of Alaska

Signed this 5th day of July 1989.



The Honourable Neil Goldschmidt
Governor, State of Oregon

Signed this 9th day of November 1989.

George Deukmejian
The Honorable George Deukmejian
Governor, State of California

STATES/B.C. TASK FORCE

Membership includes Alaska, British Columbia, Washington, Oregon and California. Commissioner Sandor serves as Task Force member representing State of Alaska. Staff needed to complete Task Force functions provided voluntarily from all jurisdictions if available.

Task Force organized in aftermath of Nestucca barge spill and Exxon Valdez disaster. Organization formalized by a Memorandum of Cooperation completed in November, 1989. During formation of the Task Force, meetings at the Commissioner level were held quarterly. The Task Force now holds an Annual Meeting, scheduled this year for Portland, Oregon on May 28. Staff meetings occur quarterly.

Immediate goal of Task Force was realized with completion of Final Report in October, 1990. Report includes 46 joint recommendations requiring implementation at the State, Provincial and federal levels. To date many of these recommendations have been implemented in Alaska.

Current focus of Task Force centers on implementing Annual Action Plan through four subcommittees: Prevention, Rules Coordination, Technology, and Emergency Response. Subcommittees serve as important clearinghouses for information sharing and rulemaking consistency.

Prevention remains the primary goal of Task Force, requiring continuous re-evaluation of preventative lessons learned from recent spills (such as the Tenyo Maru and the Kenai Pipeline spills) and identification of specific technology and research needs.

Rules coordination also receives significant emphasis from the Task Force. Recent efforts have focused on providing consolidated input into federal rulemaking pursuant to OPA 90. The Task Force's goal is to provide a level regulatory playing field and the best possible regulatory standardization, not only for benefit of industry, but for public and the environment. The present Task Force structure dictates that this is to be achieved voluntarily through existing legal mechanisms within individual jurisdictions.

Technology efforts have focused on developing standards for geographic information systems and to serve as a clearinghouse for coordinating the multitude of research and development efforts of Task Force members among each other and the federal governments. In this way, individual member efforts can be "leveraged" for greater common benefits.

Emergency response efforts are concentrating on upgrading mutual aid agreements, terms and conditions among individual members. Alaska has much to gain from aid agreements to provide emergency response resources, and from sharing information of mutual concern, such as providing departing tank vessel inspection reports in return for ballast water shipment information.



Four Pacific coast states and the Province of British Columbia have combined resources to form the States/B.C. Oil Spill Task Force. The map shows important transboundary marine transportation routes for crude and refined oil that may potentially impact Task Force members.

States / British Columbia Oil Spill Task Force

John Sandor
Alaska

Dept. of Environmental
Conservation

Gerry Armstrong
British Columbia

B.C. Environment

Michael Kahoe
California

Office of Environmental
Protection

Fred Hansen
Oregon

Department of
Environmental Quality

Christine Gregoire
Washington

Department of Ecology

August 15, 1991

Honorable Walter J. Hickel, Governor, State of Alaska
Honourable Rita Johnston, Premier, Province of British Columbia
Honorable Pete Wilson, Governor, State of California
Honorable Barbara Roberts, Governor, State of Oregon
Honorable Booth Gardner, Governor, State of Washington

Dear Sirs and Mesdames:

We are pleased to announce the inauguration of the 1991-1992 Action Plan for the States / British Columbia Oil Spill Task Force. This plan is intended to maintain and expand the Task Force's leadership in marine oil spill prevention and response. It will also guide us in working together with industry, our federal governments, and others to avert the serious environmental and economic consequences of major marine oil spills. A copy of the Action Plan is enclosed for your information.

The Task Force was established in the spring of 1989 and was formalized by the *Oil Spill Memorandum of Cooperation*, signed by the Premier of British Columbia and Governors of Washington, Alaska, Oregon and California. It is charged with the resolution of mutual concerns related to pollution caused by marine oil spills, and the coordination of our individual efforts in order to achieve a consistently high level of protection and response capability for the Pacific Coast of North America.

The Task Force has been very successful in addressing its first phase agenda. During 1990, we accomplished a major milestone with the publication of the *Final Report of the States / British Columbia Oil Spill Task Force*, and we have received national attention for our leadership in the arenas of spill prevention and response. Moreover, the "final report" and its many supporting technical studies have been used successfully, in every one of the Task Force members' jurisdictions, as a resource and point of departure for significant new legislative, policy and technical initiatives.

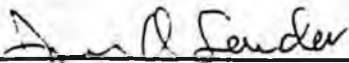
We are now embarking on another major step forward as we begin a second phase of Task Force activities. This challenging phase will focus on cooperation between the member governments to ensure consistency in our individual marine oil spill prevention and response policies and regulations, in order to minimize the burdens placed on industry without compromising the scope and effectiveness of the standards. Despite the progress we have made in the past two years, much more work also remains to be done to fully address the recommendations presented in our "final report". Pursuant to the goals expressed in the recommendations, we have incorporated a list of priority activities into our Action Plan.

The United States Congress passed the *Oil Pollution Act of 1990* (OPA) last summer; and in Canada, the report of the Brander-Smith inquiry on oil spills was released. These initiatives are changing the federal regulatory climates for oil spill prevention and response, in part by acknowledging the vested interests and inherent prerogatives of the state/provincial governments. These developments are particularly important to us since the implementation of a Pacific Ocean Resources Compact, which requires passage of enabling legislation by at least two of the member states' legislatures, will not occur this year. The Task Force will advance many of the objectives of the Compact and will collaborate in representing our interests to federal agencies.

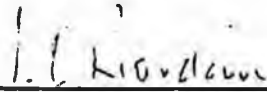
In view of the Exxon Valdez disaster and other major oil spills in recent years, we and our mutual federal governments must never again become complacent about the potential for environmental catastrophe. Prevention measures provide by far the most effective means of protecting our valuable waters, shorelines, and natural resources, and the contributions they make to our economies. Our Action Plan therefore emphasizes coordination with our federal governments to ensure that their efforts in the prevention of oil spills are pro-active and provide an adequate level of protection.

With your continued leadership and support, the States / British Columbia Oil Spill Task Force will execute our 1991-1992 Action Plan and further our fundamental objective of preventing oil spills through inter-governmental cooperation and concerted advocacy. We will report to you next year on our progress in this second phase of our effort. Please let us know of any other issues you would like us to address.

Yours sincerely,



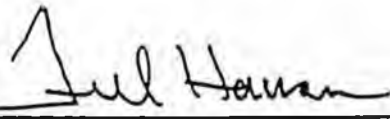
John A. Sandor, Commissioner,
Alaska Department of
Environmental Conservation



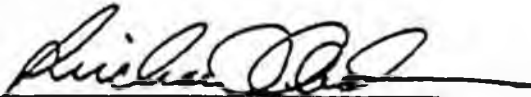
Gerry Armstrong, Deputy
Minister, British Columbia
Ministry of Environment



Christine Gregoire, Director,
Washington Department of
Ecology



Fred Hansen, Director,
Oregon Department of
Environmental Quality



Michael Kahoe, Assistant
Secretary, California Office of
Environmental Protection

enclosure: Task Force Action Plan

States/British Columbia Oil Spill Task Force 1991 - 1992 Action Plan

The States/British Columbia Oil Spill Task Force was created in response to the December 1988 Nestucca oil spill off the Washington coast and the Exxon Valdez disaster in Prince William Sound. As fate would have it, the first meeting of the Task Force was on March 23, 1989, the day before the Exxon Valdez spill. The group's membership now incorporates the four Pacific West Coast States of the United States and the Province of British Columbia, Canada.

The Final Report of the State/British Columbia Oil Spill Task Force was published in October 1990. This report adopted a comprehensive set of recommendations which, if implemented, would minimize the probability of major and catastrophic spills and help assure an effective response to such incidents.

With the recent change in 4 out of 5 of the west coast State/Provincial Administrations, the passage of major spill related legislative packages, and the completion of the final report, the Task Force is taking this opportunity to review its mission and renew its commitment to be an advocate for effective oil spill prevention and response under the Oil Spill Memorandum of Cooperation (1989).

The theme for activities in 1991 will be cooperation and information sharing among the members in an effort to improve regulatory consistency and efficiency. This theme is particularly important at this juncture given the large number of state/provincial and federal rules which are currently being developed. This rule development process provides an unusual opportunity for the Task Force members to share expertise and coordinate individual actions to achieve consistency, and to provide unified input into federal rule making. Input into federal rules will assure that they address West Coast needs and that these rules are effectively integrated with state/provincial initiatives. The Task Force has also reaffirmed its commitment to focusing on spill prevention, recognizing that response efforts can not effectively eliminate the impact of large oil spills. Although the Task Force has decided not to address hazardous substances as part of its mission, many of the findings may prove applicable to the prevention and response to this type of spill event.

The Action Plan will be implemented primarily through the efforts of the four Task Force subcommittees. The subcommittees have completed their original tasks, and have therefore been restructured. During 1991 - 1992, the Task Force subcommittees will also place particular emphasis on institutionalizing coordination among the Task Force members.

The membership and objectives of subcommittees are slightly modified and the Chairs have been rotated. The Task Force will establish one set of key Task Force "advisors" who will be available to consult with the subcommittees and review draft reports prepared by the Task Force. The advisors will be: the Canadian and United States Coast Guards, the United States Environmental Protection Agency, and Environment Canada. In the event that subcommittees need additional input, the chairs may ask a philosophically balanced group of representatives from industry, environmental organizations, local

government, native peoples, or other appropriate entities to provide the benefit of their expertise and valuable experience. Mexico and the state of Hawaii will be invited to participate as observers.

The Task Force public involvement process will continue to be addressed through existing mechanisms in each state/province, in conjunction with normal public review and rule adoption processes. Wherever possible, subcommittees will meet concurrently to minimize travel and other costs.

A new Rules Coordination and Review subcommittee is being established to coordinate the development of regulations and provide consistency. This subcommittee will replace the Financial Recovery subcommittee which completed its final report last fall. Coordination between subcommittees will be facilitated by the fact that the same staff are generally working on each subcommittee. The subcommittees will report on their accomplishments at the Task Force meeting next spring. The new structure of Task Force subcommittees is outlined below.

Prevention Subcommittee (California Chair)

MEMBERSHIP:

Roger Dunstan, CA - Chair
Bruce Sutherland, OR
Bill Wolferstan, BC
Chris Pace, AK
Jon Neel, WA

OBJECTIVE AND SCOPE OF ACTIVITIES:

- The Prevention Subcommittee will serve as the mechanism to evaluate new technologies/systems which may be effective in preventing oil spills. The Subcommittee will focus on policy issues and utilize the following sources of information to evaluate the need for preparing new draft recommendations:

- A. Evaluations of the causes of major oil spills;
- B. The findings of the Technology and Research Subcommittee;
- C. Special studies by the Task Force; and
- D. Other sources of information.

TASKS AND MAJOR MILESTONES:

- Develop a list of potential key Task Force advisors for review and approval by the Task Force. (Schedule for completion - August 1991).
- Provide a mechanism for States and British Columbia to coordinate on prevention policy issues. (Schedule for completion - Ongoing).
- Evaluate the need for prevention related studies in specific geographic areas.
- Serve as a focal point for evaluating and drafting additional Task Force spill prevention recommendations. This task will be accomplished in part through participation in the debriefing process after major spills have occurred. (Schedule for completion - January 1992).
- Review and provide coordinated input into the International Maritime Organization's (IMO) deliberations by providing comments to the respective Coast Guards and State Departments. (Schedule for completion - dependent upon IMO addressing key issues).

Emergency Response Subcommittee (B.C. Chair)

MEMBERSHIP:

Dean Monterey, BC - Chair
Bruce Sutherland, OR
Chris Pace, AK
Jon Neel, WA
Roger Dunstan, CA

OBJECTIVE AND SCOPE OF ACTIVITIES:

- The Emergency Response Subcommittee will continue to assure the rapid notification of Task Force members during major interjurisdictional spills and facilitate mutual aid. In order to accomplish this objective, the Subcommittee will revise and update the Task Force Emergency Response Guide. The Subcommittee will also develop a mutual aid plan to facilitate rapid interjurisdictional deployment of equipment and response personnel during catastrophic spills. The Emergency Response Guide and equipment lists will be updated as new response techniques are identified by the Technology and Research Subcommittee and response capabilities change.

TASKS AND MAJOR MILESTONES:

- Review the capability of the Marine Spill Response Organization (MSRC- the replacement for PIRO), Burrard Clean and other industry spill response cooperatives and their ability to provide adequate spill response coverage. (Schedule for completion of final report - Spring 1992 Task Force Meeting).

Milestone 1: Develop a standardized process and criteria for the review of the capability and effectiveness of industry sponsored cleanup cooperatives. (Schedule for completion - September 1991).

Milestone 2: Review the capability of MSRC (MS), Burrard Clean (BC), Clean Sound (WA), Clean Seas (Clean Seas Coopers (OR/WA), Clean Coastal Waters (CA), Clean Bay (CA), Humboldt Bay (CA), SE AK Petroleum Resource Organization (AK), Cook Inlet Spill Prevention and Response Inc (AK), Alaska Clean Seas (AK), and the Alyeska Response Organization (AK). (Tentative schedule for completion - December 1991).

- Update and revise the Task Force Spill Response Plan's equipment list and response guide, and upgrade it to a formal mutual aid plan. (Schedule for completion - January 1992).

Milestone 1: Update response equipment lists. (Schedule for completion - August 1991).

Milestone 2: Prepare and distribute a draft mutual aid plan.
(Schedule for completion - December 1991).

- Serve as a focal point to report on joint spill drills and the results of major spill responses. (Ongoing activity).

Rules Coordination and Review Subcommittee (Washington Chair)

MEMBERSHIP:

Lin Bernhardt, WA - Chair
Bruce Sutherland, OR
John Bones, BC
Lynn Kent, AK
Roger Dunstan, CA

OBJECTIVE AND SCOPE OF ACTIVITIES:

- This Subcommittee will serve as a forum to assure consistency in the development of oil spill related regulations on the West Coast. The focus will be to coordinate contingency planning, prevention and natural resource damage assessment rules, policies and studies. The subcommittee will ensure that the rules and policies developed by the states and province are as consistent as possible.

TASKS AND MAJOR MILESTONES:

- Develop a list of state/provincial rules proposed for development and a companion list of EPA, USCG, and Canadian federal (e.g. implementation of the Brander-Smith Inquiry) regulations with their respective schedules. (Schedule for completion - August 1991).
- Exchange all draft and final state/provincial oil spill related rules among members that directly relate to the committee mission statement. (Schedule for completion - Ongoing).
- Evaluate Task Force member's respective rules for consistency and work to minimize differences while emphasizing federal consistency. (Schedule for completion - ongoing activity).

Milestone 1: Alaska's and Washington's rule will be reviewed for consistency. (Schedule for completion - August 1991).

Milestone 2: Other milestones to be established by subcommittee.

- Develop a streamlined protocol for developing consensus comments on draft federal documents among the members on technical and policy issues (including consideration of input from advisors), and forwarding them to the key decision makers. This protocol should have application to other subcommittees especially Technology and Research. (Schedule for completion - August 1991).

- Evaluate and provide unified input on draft USCG, EPA, and OSHA regulations required under OPA/OSHA, and on draft Canadian federal regulations. (Schedule for completion - dependent on federal outputs; consolidate and forward comments within 60 days of receipt of regulations).
- Prepare an annual report which describes the Task Force's progress and evaluates how well it has met its objectives. (Schedule for completion - February 1992).
- Review the existing Task Force Memorandum Of Agreement and recommend changes where appropriate. (Schedule for completion - February 1992).
- Identify and evaluate alternatives for providing additional funding for Task Force spill prevention and response activities including the possibility of Federal grants and specific state legislative / provincial parliament appropriations.

Technology and Research Subcommittee (Alaska Chair)

MEMBERSHIP:

Chris Pace, AK - Chair
Jon Neel, WA
Bill Wolferstan, BC
Roger Dunstan, CA
Bruce Sutherland, OR

OBJECTIVE AND SCOPE OF ACTIVITIES:

- The Technology and Research Subcommittee will evaluate oil spill prevention and response reports and studies, and provide coordinated input into the development of these documents. The Subcommittee will forward information on effective technologies to the Task Force members for individual action; and forward recommendations as appropriate to the Prevention and Emergency Response Subcommittees. The Subcommittee will also address emerging technologies of benefit to Task Force members such as geographic information systems and will use this opportunity to encourage the Federal Governments to expedite the review and approval of new technologies.

TASKS AND MAJOR MILESTONES:

- Develop a list of state/provincial technical reports proposed for development and a companion list of EPA, USCG, and Canadian federal technical reports with their respective schedules. (Schedule for completion - August 1991).
- Ensure information developed as a result of these studies is immediately forwarded to all Task Force members. (Schedule for completion - dependent on schedule developed in above task).
- To the extent possible, provide unified and coordinated input into the Federal studies regarding spill prevention and response (several reports and studies are required by the USCG, EPA and Science Advisory Board as a result of OPA 1990). (Schedule for completion - dependent on schedule developed in task 1 above).
- Share information on the development of oil spill environmental sensitivity computer information systems. (Schedule for completion - British Columbia, March 1992; Oregon, August 1991; and Washington, September 1991).

HB

137



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.

1.00

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 fisheries 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 own 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

TESTIMONY ON HB 137

by

Larry Cotler
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. 88, CFEC 90-5) Ninety percent of the total dungeness catch since 1981-82 was harvested by vessels less than 50 feet.

	<u>1989/80</u>	<u>1988/89</u>	<u>1987/88</u>	<u>1986/87</u>
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 resident and non-resident participation appears directly related to the health of West Coast dungeness stocks. According to the CFEC Briefing Report, "[t]he number of non-residents in the... fishery was highest 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):

	<u>1985/86</u>	<u>1986/87</u>	<u>1987/88</u>	<u>1988/89</u>	<u>1989/90</u>
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.

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

RULES COMMITTEE
LEGISLATIVE COUNCIL

DISTRICT 3
ELFIN COVE
REPUBLICAN
PORT ALEXANDER
SITKA
TENAKEE

Alaska State Legislature



WHILE IN JUNEAU
PO Box V
JUNEAU, ALASKA 99811
(907) 465-3824
(907) 465-3720

House of Representatives
SPEAKER OF THE HOUSE

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-LS(0479) ✓
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

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

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

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

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

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

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

1 state;

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

6 (b) It is the purpose of this Act to

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (7) issue entry permits to qualified applicants;
- 2 (8) issue interim-use permits as provided in AS 16.43.210, [AND] 16.43.220, and
- 3 16.43.225;
- 4 (9) establish, for all types of gear, the optimum number of entry permits for each
- 5 administrative area;
- 6 (10) administer the buy-back program provided for in AS 16.43.310 and 16.43.320
- 7 to reduce the number of outstanding entry permits to the optimum number of entry permits;
- 8 (11) provide for the transfer and reissuance of entry permits to qualified
- 9 transferees;
- 10 (12) provide for the transfer and reissuance of entry permits for alternative types
- 11 of legal gear, in a manner consistent with the purposes of this chapter;
- 12 (13) administer the collection of the annual fees provided for in AS 16.43.160;
- 13 (14) administer the issuance of commercial fishing vessel licenses under
- 14 AS 16.05.490;
- 15 (15) issue educational entry permits to applicants who qualify under the provisions
- 16 of AS 16.43.340 - 16.43.390;
- 17 (16) establish reasonable user fees for services;
- 18 (17) issue landing permits under [IN ACCORDANCE WITH] AS 16.05.675 and
- 19 regulations adopted under that section; [AND]
- 20 (18) establish and collect annual fees for the issuance of landing permits that
- 21 reasonably reflect the costs incurred in the administration and enforcement of provisions of law
- 22 related to landing permits; and
- 23 (19) establish a moratorium on entry into commercial fisheries as provided
- 24 in AS 16.43.225.

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

26 (a) The commission shall adopt regulations providing for the temporary emergency

27 transfer of entry permits and interim-use permits when illness, disability, death, required military

28 or government service, or other unavoidable hardship prevents the permit holder from

29 participating in the fishery. To alleviate hardship pending a final determination of the permit

30 holder's eligibility for an entry permit, the commission shall adopt regulations providing for the

31 temporary emergency transfer of an interim-use permit issued under AS 16.43.210(b) or

1 16.43.225.

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

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

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

9 Sec. 16.43.225. MORATORIUM ON NEW ENTRANTS INTO CERTAIN FISHERIES.

10 (a) Subject to (b) of this section, the commission may establish a moratorium on new entrants
11 into a fishery that has12 (1) experienced recent increases in fishing effort that are beyond a low, sporadic
13 level of effort; and14 (2) achieved a level of harvest that may be approaching or exceeding the
15 maximum sustainable level for the fishery.16 (b) The commission may establish a moratorium on new entrants into a fishery described
17 in (a) of this section if18 (1) the commissioner of fish and game petitions the commission under
19 AS 44.62.220 to establish a moratorium on new entrants into the fishery; and

20 (2) the commission finds that

21 (A) the fishery has reached a level of participation that may threaten the
22 conservation and the sustained yield management of the fishery resource and the
23 economic health and stability of commercial fishing; and24 (B) the commission has insufficient information to conclude that the
25 establishment of a maximum number of entry permits under AS 16.43.240 would further
26 the purposes of this chapter.27 (c) The commission may establish a moratorium under this section for a continuous
28 period of up to four years. A fishery that has been subject to a moratorium under this section
29 may not be subjected to a subsequent moratorium under this section unless five years have
30 elapsed since the previous moratorium expired.

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

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

3 (1) conducting research into conditions in the fishery;

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

5 and

6 (3) consulting with participants in the fishery.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 * 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 observers 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.

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.

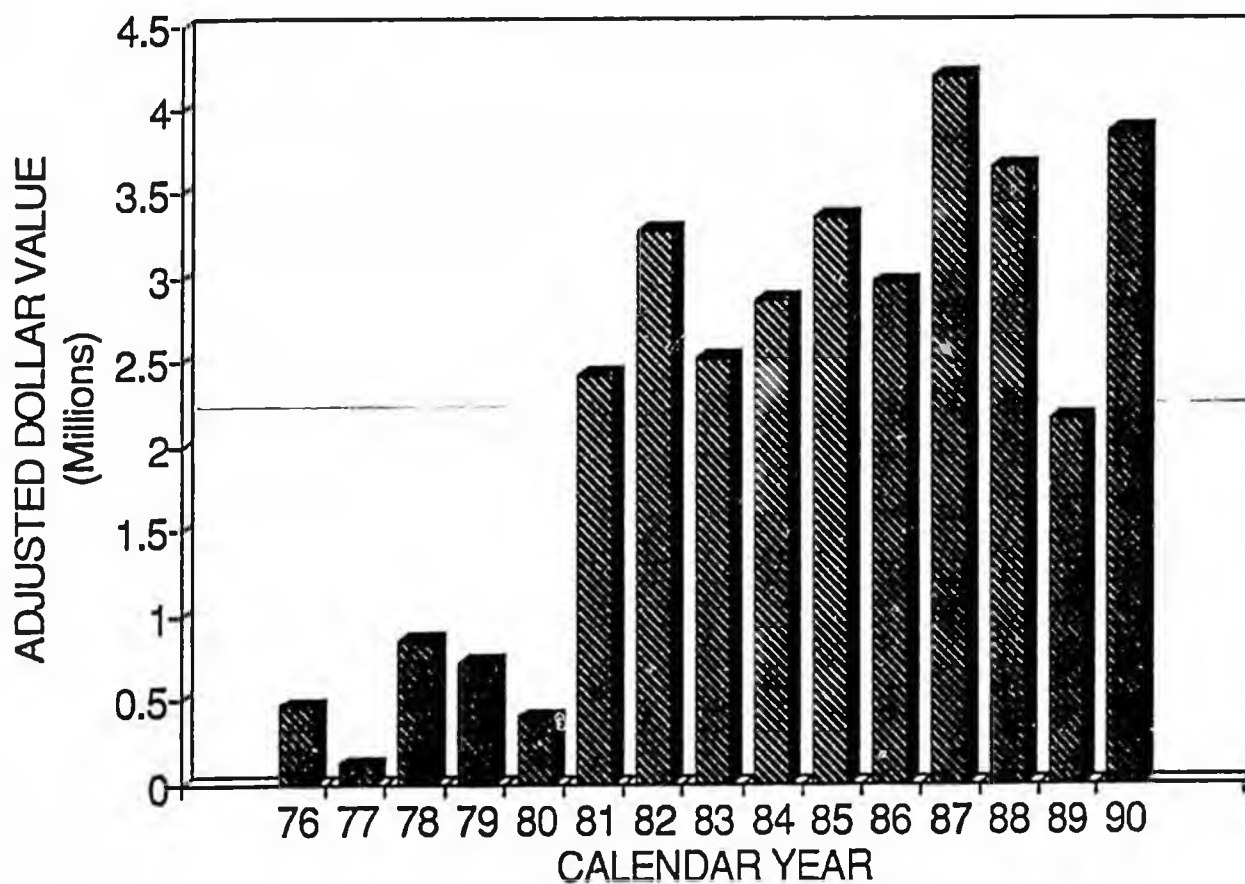
WHY NOT ADDRESS THE THREAT TO THE DUNGENESS FISHERY
THROUGH THE BOARD OF FISH?

- * 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

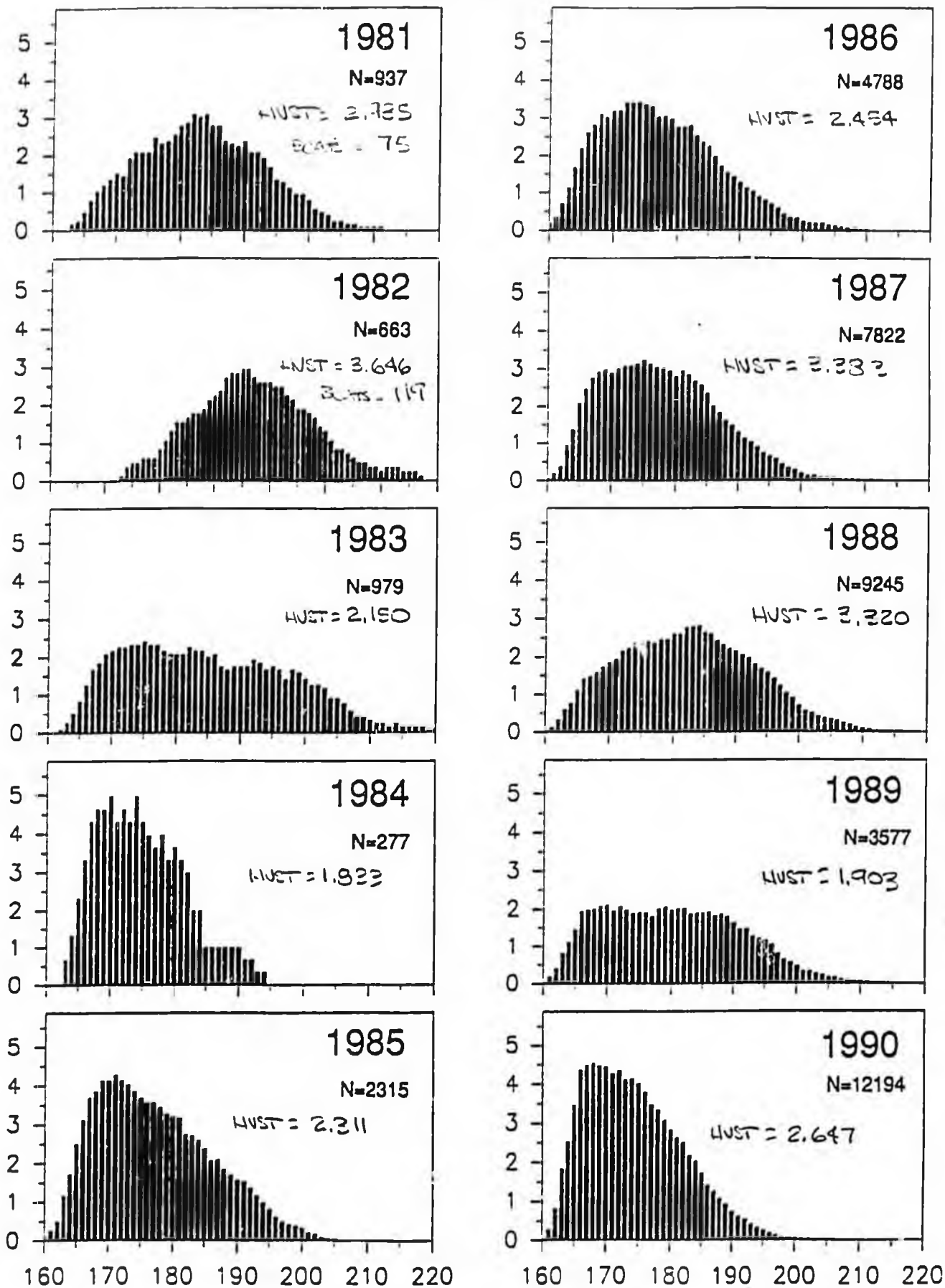
Dungeness is similar to emerging fisheries in their lack of department funding and hence biological data. Pressure from out of state also threatens these resources of our Southeast coastal communities.

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



Size Frequency of Dungeness Crabs (new shell) All of Southeast Alaska

Percent of Crabs



Shoulder Width (mm)

MEMORANDUM

STATE OF ALASKA

TO: Doug Rickey

DATE: April 25, 1991

FILE NO:

TELEPHONE NO:

FROM: Susan Shirley
CFECSUBJECT: 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.

<u>Year</u>	<u>Residents</u>	<u>Non-Residents</u>
1990	352	30
1991	348	55

cc: R. Listowski
K. Schelle

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: BILL FLOR
 TITLE: PRES. S.E. DUNGENESS CRAB ASSOC.
 ADDRESS: BOX 262
 CITY: PETERSBURG
 PHONE: N/R-

ZIP: 99833

BILL NO:
 SUBJECT: DUNGENESS CRAB MORITORIUM
 MESSAGE: MUST INCLUDE ENDANGERED SPECIES IN LEGISLATION. DUNGY CRAB IS SIMILAR
 TO EMERGING FISHERIES IN LACK OF ADF&G STUDIES. ALSO EXTREME EFFORT BEING
 APPLIED TO RESOURCE AS IN EMERGING FISHERIES.

POMID: 15145916
 DATE: 91/04/19
 TIME: 14:59:16
 LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

C.DAVIS	JONES
TAYLOR	COTTEN
LINCOLN	MEHARD
IVAN	HALFORD
MOYER	ELIASON
FINKELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: DUFF W. MITCHELL
 TITLE: S.E. DUNGENESS CRABBER
 ADDRESS: BOX 21938
 CITY: JUNEAU
 PHONE: 789-1697

ZIP: 99802

BILL NO:
 SUBJECT: DUNGENESS CRAB MORITORIUM
 MESSAGE: IT IS IMPERATIVE FOR THE LONG TERM HEALTH OF THE SOUTHEAST DUNGEN
 FISHERY THAT SB 241 PASS WITH NO CHANGES TO ELIMINATE THIS FISHERY FROM THE
 BILL. YOU CANNOT ALLOW THE DUNGENESS RESOURCE TO BE WIPED OUT BECAUSE OF
 POLITICS. YOU HAVE THE POWER TO SAVE A RESOURCE, PLEASE USE IT.

POMID: 15151911
 DATE: 91/04/19
 TIME: 15:19:11
 LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

TAYLOR	JONES
C.DAVIS	COTTEN
LINCOLN	MEHARD
IVAN	HALFORD
MOYER	ELIASON
FINKELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: JEFF ERICKSON
 TITLE: FISHERMAN
 ADDRESS: BOX 53
 CITY: PETERSBURG
 PHONE: 772-9237
 ZIP: 99033

BILL NO:
 SUBJECT: DUNGENESS CRAB MORITORIUM
 MESSAGE: PLEASE PUT A MORITORIUM ON DUNGENESS CRAB FISHING TO LIMIT THE PARTICIPANTS AND SAVE THE SPECIES FROM CERTIAN OVER FISHING IN THE FUTURE. IT IS A RENEWABLE RESOURCE BUT ONLY IF MANAGED CORRECTLY. THANK YOU

POMID: 15145250
 DATE: 91/04/19
 TIME: 14:52:50
 LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

TAYLOR	JONES
C.DAVIS	COTTEN
LINCOLN	MENARD
IVAN	HALFORD
MOYER	ELIASON
FINKELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: DAN KOWALSKI
 TITLE:
 ADDRESS: BOX 477
 CITY: PETERSBURG
 PHONE: N/R-
 ZIP: 99033

BILL NO:
 SUBJECT: DUNGENESS CRAB MORITORIUM
 MESSAGE: ENDANGERED FISHERIES MUST BE INCLUDED IN THESE BILLS. ENDANGERED AND EMERGING ARE SIMILAR IN LACK OF RESOURCE STUDIES AS WELL AS HEAVY EFFORT ON RESOURCES.

POMID: 15151134
 DATE: 91/04/19
 TIME: 15:11:34
 LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

C.DAVIS	JONES
TAYLOR	COTTEN
LINCOLN	MENARD
IVAN	HALFORD
MOYER	ELIASON
FINKELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: LADD R. NORHEIM
 TITLE: SKIPPER
 ADDRESS: P.O. BOX 935
 CITY: PETERSBURG, ALASKA
 PHONE: 772-3671

ZIP: 99833

BILL NO:

SUBJECT: HB 137 / SB 241

MESSAGE: I HAVE BEEN A DUNGENESS FISHERMAN FOR 11 YEARS. WHEN I STARTED THERE WERE THREE BOATS IN MY AREA, LAST YEAR THERE WERE SIXTEEN. WE HAVE FISHED ON EVERY CYCLE OF CRAB. FOR THE FIRST EIGHT OR NINE YEARS WE HAD LARGE CRAB. THEY SEEM TO BE GONE FOR THE LAST TWO YEARS. ALL THAT'S LEFT ARE THE RECRUITMENT AB. WHAT IF THEY DISSAPPEAR. I STRONGLY SUPPORT HB137 & SB241.

POMID: 15135638

DATE: 91/04/23

TIME: 13:56:30

LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

C. DAVIS	JONES
TAYLOR	COTTEN
LINCOLN	HEARD
IVAN	HALFORD
HOYER	ELIASON
FINKELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: LANE OLSEN
 TITLE: FISHERMAN
 ADDRESS: BOX 433
 CITY: PETERSBURG
 PHONE: 772-3272

ZIP: 99833

BILL NO:

SUBJECT: DUNGENESS CRAB MORATORIUM

MESSAGE: I WOULD LIKE TO SEE SOME FORM OF RESTRICTION ON THE NUMBER OF BOATS AND GEAR BEING BROUGHT INTO ALASKA TO FISH ON DUNGENESS CRAB, BEFORE A STUDY OF THE IMPACT THE GEAR AND BOATS WILL HAVE ON THE FISHERY.

POMID: 15143111

DATE: 91/04/23

TIME: 14:31:11

LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

C. DAVIS	JONES
TAYLOR	COTTEN
LINCOLN	HEARD
IVAN	HALFORD
HOYER	ELIASON
FINKELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: JERRY DAHL
 TITLE: CAPTAIN
 ADDRESS: BOX 128
 CITY: PETERSBURG
 PHONE: 772-3647
 ZIP: 99833

BILL NO:
 SUBJECT: DUNGENESS CRAB MORATORIUM
 MESSAGE: THIS RESOURCE WILL BE A BIG HURT IF SOMETHING ISN'T DONE QUICKLY.
 WE WILL END UP LIKE OTHER FISHERIES 1 OR 2 DAYS YEAR. I'VE FISHED CRAB FOR AT
 LEAST 16 YEARS AND I CAN SEE IT COMING. I SURE HOPE YOU ACT NOW OR WE WILL
 BE HURTING.

POMID: 15145658
 DATE: 91/04/23
 TIME: 14:56:58
 LICHNAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

C.DAVIS	JONES
TAYLOR	COTTEN
LINCOLN	MENARD
IVAN	HALFORD
MOYER	ELIASON
FINKELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: PAUL KORCHAK
 TITLE: SKIPPER/ F/V SHOOTING STAR
 ADDRESS: BOX 1256
 CITY: PETERSBURG
 PHONE: 772-3647
 ZIP: 99833

BILL NO:
 SUBJECT: DUNGENESS CRAB MORATORIUM
 MESSAGE: REMEMBER KING CRAB? ANOTHER FISHERY IS IN DANGER. FORESIGHT AND
 ACTION NOW WILL HELP US AVERT GOVERNMENT BY CRISIS LATER. SOCIAL DARWINISM IS
 NOT THE ANSWER. TOO MANY PARTICIPANTS WILL CAUSE THE FISHERY TO COLLAPSE.
 DEPRESSED DUNGENESS POPULATIONS MAY NOT REBUILD. IMPOSE A MORATORIUM. THEN
 PURSUE LIMITED ENTRY FOR DUNGENESS.

POMID: 15150318
 DATE: 91/04/23
 TIME: 15:03:18
 LICHNAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

C.DAVIS	JONES
TAYLOR	COTTEN
LINCOLN	MENARD
IVAN	HALFORD
MOYER	ELIASON
FINKELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: ROCKY C. LITTLETON
 TITLE: CONCERNED FISHERMAN
 ADDRESS: BOX 1373
 CITY: PETERSBURG
 PHONE: 772-4521
 ZIP: 99833

BILL NO:
 SUBJECT: DUNGENESS CRAB MORATORIUM

MESSAGE: HAVING FISHED DUNGENESS 15 YEARS I FEEL THE MORITORIUM IS THE ONLY CHANCE OF SAVING THAT FISHERY. I DON'T UNDERSTAND WHY LIMITED ENTRY COMMISSION, RECOGNIZING THE PROBLEM REFUSES TO TAKE ACTION BECAUSE THEY DON'T HAVE A SIMPLE SOLUTION. INSTEAD THEY WILL SIT BACK AND LET THE FISHERY GET EVEN MORE CROWDED.

POMID: 15152753
 DATE: 91/04/23
 TIME: 15:27:53
 LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

C.DAVIS	JONES
TAYLOR	COTTEN
LINCOLN	MENARD
IVAN	HALFORD
MOYER	ELIASON
FINDELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: MICHAEL D. SHELDON
 TITLE: OWNER / OPERATOR
 ADDRESS: BOX 1205
 CITY: PETERSBURG
 PHONE: 772-3746
 ZIP: 99833

BILL NO:
 SUBJECT: DUNGENESS CRAB MORATORIUM

MESSAGE: AS A LONG TIME FISHERMAN I EXPRESS MY CONCERN ON DUNGENESS FISHING. I CAN SEE AN EVER BUILDING FLEET AND THE DEPLETION OF OUR RESOURCES, THROUGH EXTREME PRESSURES. WITH RUMORS GOING AROUND ABOUT LIMITED ENTRY AND HIGHER PRICES FOR DUNGENESS CRAB THE RESOURCE WILL BE CARPET BOMB WITH NEW ENTRIES THAT WILL CAUSE EVER LASTING DESTRUCTION OF THE FISHERY. THANK YOU.

POMID: 15154847
 DATE: 91/04/23
 TIME: 15:48:47
 LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

C.OAVIS	JONES
TAYLOR	COTTEN
LINCOLN	MENARD
IVAN	HALFORD
MOYER	ELIASON
FINDELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: DAVID M SOMERVILLE
 TITLE: DUNGENESS FISHERMAN
 ADDRESS: BOX 163
 CITY: PETERSBURG
 PHONE: 772-4557

ZIP: 99033

BILL NO:
 SUBJECT: DUNGENESS CRAB MORITORIUM

MESSAGE: PLEASE IMPOSE A MORITORIUM ON THE DUNGENESS CRAB FISHERIES. THE SPECIES IS ON THE VERGE OF OVERFISHING. SINCE MOST FISHERIES ARE LIMITED ENTRY PEOPLE ARE GETTING INTO DUNGENESS CRABBING BECAUSE IT IS NOT. WE NEED YOUR HELP TO PROTECT THE RESOURCE AND OUR LIVELIHOODS.

POMID: 15144442

DATE: 91/04/19

TIME: 14:44:42

LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

C.DAVIS	JONES
TAYLOR	COTTEN
LINCOLN	MEHARD
IVAN	HALFORD
MOYER	ELIASON
FINKELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: DAN KOWALSKI
 TITLE: OWNER/OPERATOR SUE ANH
 ADDRESS: BOX 447
 CITY: PETERSBURG
 PHONE: N/R-

ZIP: 99033

BILL NO:
 SUBJECT: DUNGENESS CRAB MORITORIUM

MESSAGE: SB241 AND HB 137 SHOULD INCLUDE ENDANGERED DUNGENESS CRAB FISHERY BECAUSE OF THE LACK OF RESOURCE DATA. THE FISHERY IS CURRENTLY UNDER EXTREME GEAR PRESSURE AND AS A CRABBER OF 10 YEARS I CONITEND THE RESOURCE CANNHOT HOLD UNER SUCH PRESSURE.

POMID: 15113939

DATE: 91/04/22

TIME: 11:39:39

LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

TAYLOR	JONES
C.DAVIS	COTTEN
LINCOLN	MEHARD
IVAN	HALFORD
MOYER	ELIASON
FINKELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: JOE SHORT
 TITLE: SELF EMPLOYED FISHERMAN (OWNER/OPERATOR)
 ADDRESS: BOX 1224
 CITY: PETERSBURG ZIP: 99033
 PHONE: 772-3585

BILL NO:

SUBJECT: DUNGENESS CRAB MORITORIUM

MESSAGE: I FEEL THE DUNGENESS RESOURCES AND ECONOMIC VIABILITY IS ENDANGERED BY HIGH PARTICIPATION (EFFORT). WE NEED TO MAINTAIN THE 300 POT LIMIT FOR ECONOMICS AND STOP ENTRY FOR BOTH THE RESOURCE & ECONOMICS. I FAVOR LIMITED ENTRY WITH THIS ONE OF THE ONLY UNLIMITED FISHERIES. WE ARE FEELING EXTREME PRESSURE TO RESOURCES & ECONOMIC VIABILITY.

POMID: 15142514

DATE: 91/04/19

TIME: 14:25:14

LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

C.DAVIS	JONES
TAYLOR	COTTEN
LINCOLN	MEHARD
IVAN	HALFORD
MOYER	ELIASON
FINKELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: BOBBIE A ANDERSON
 TITLE: F/ V AERIE
 ADDRESS: BOX 1672
 CITY: PETERSBURG ZIP: 99033
 PHONE: 772-4845

BILL NO:

SUBJECT: DUNGENESS CRAB MORITORIUM

MESSAGE: NEED MORITORIUM AND LIMITED ENTRY PROGRAM. PUSHED ASIDE LONG ENOUGH A SECOND RATE FISHERY STATE OF ALASKA STAND BEHIND YOUR FISHERMEN. LIMITED ENTRY FOR EVERONE OR THROW OUT ALL LIMITED ENTRY PERMITS STOCK IS GOING DOWN 1000'S OF POTS COMING INTO 91 SEASON WE NEED HELP NOT MORE FISHERMEN IN THE CRAB FISHERIES.

POMID: 15140713

DATE: 91/04/19

TIME: 14:07:13

LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATORS

C.DAVIS	JONES
TAYLOR	COTTEN
LINCOLN	MEHARD
IVAN	HALFORD
MOYER	ELIASON
FINKELSTEIN	ZHAROFF
CARNEY	FRANK
HUDSON	
LEMAN	
ZAWACKI	

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 plan 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

\$160,000 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 Koy 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 shut-down 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 get 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. □

WESTPAC

Entry Commission Scuttles Dungeness

Cotter Fears More Outside Effort

Alaska
Fishermen Journal
3-91

by Bob Tkacz



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 any

where 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 limited-entry systems 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 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 Alaska. But Dungeness stocks in Lower 48 waters were believed to be rising then.

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

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, give a license to everybody who's fished in the last four years,'" Cotter said.

These arguments haven't put 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 fishery suggest a possible legislative solution may be in the works.

Twomley also said the CFEC is 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.

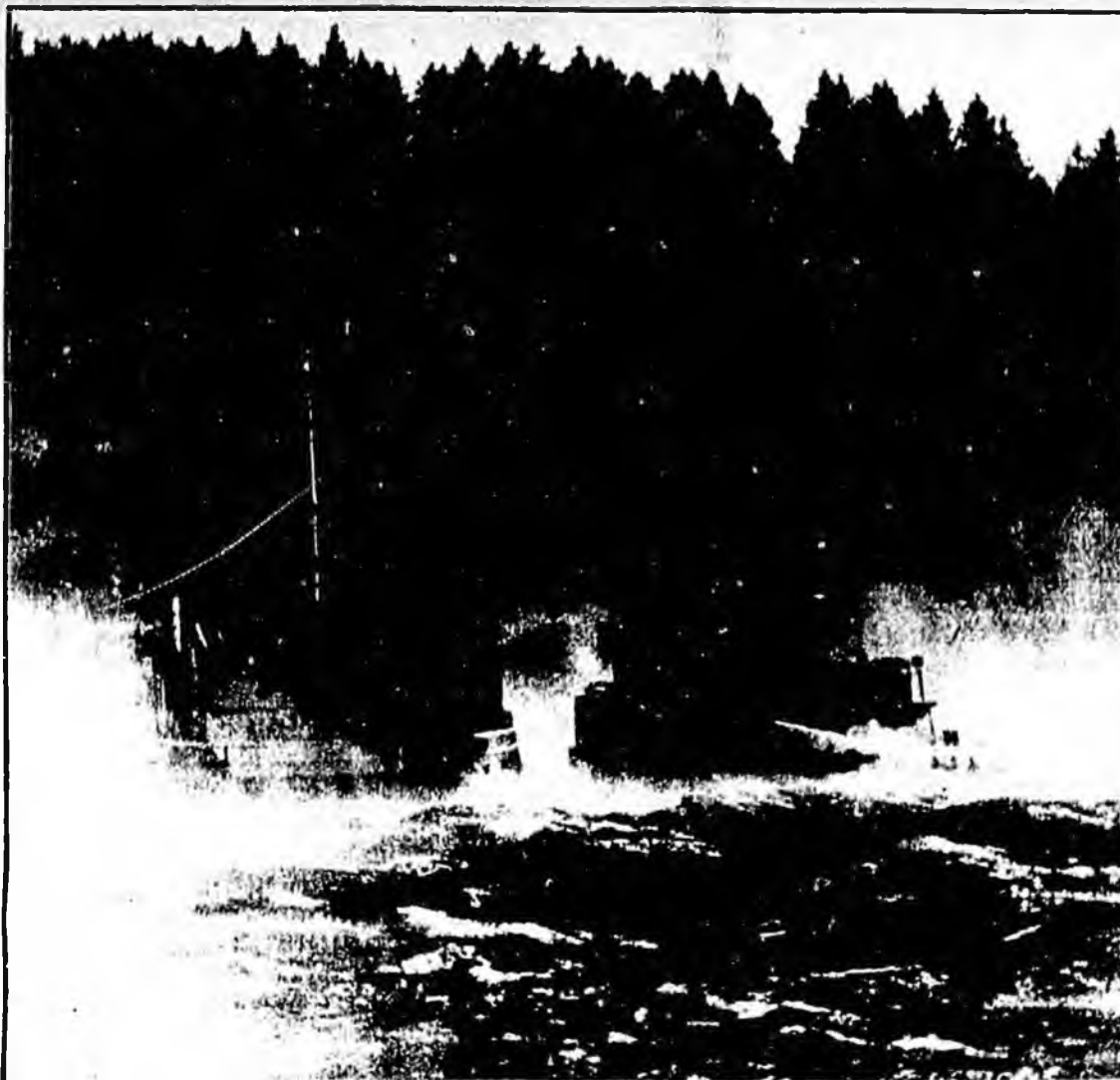
Rep. Ben Grussendorf, Speaker of the Alaska House of Representatives, has introduced

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 Kodlak King takes the vessel in tow to assist it back to a safe moorage. (Photo by Cat Klinkert)

Kodlak
M.P.K.
3-15-71

FAX COVER SHEET

FROM: Glenn Wilber, President
Alaska Underwater Harvesters' Association
Sitka, Alaska 99835

TO: House Resources Committee Members
c/o Rep. Davidson, Chairman
Alaska State Legislature
Seventeenth Legislature - First Session

DATE: March 5, 1991

MESSAGE: Please kindly see that each member of the House Resources Committee receives a copy of this letter for their prompt attention. Thank you very much.

Glenn A. Wilber, President
Ak Underwater Harvesters' Assoc.

Glenn Wilber, President
Alaska Underwater Harvesters' Association
3311 Halibut Point Road
Sitka, Alaska 99835

Alaska State Legislature
Seventeenth Legislature - First Session
House Resources Committee Members
Rep. Davidson, Chairman

March 5, 1991

Dear Distinguished Representatives:

There are always lags in the profitability of any fishery between California, Washington, Oregon, British Columbia, and Alaska. This period of time makes it possible for the Southerly fleets to capitalize into boats and equipment while it is still not profitable to target the same fishery in Alaska. Then, when the resource becomes scarce or the entry into Southern fleets is limited, the boats displaced by entry restrictions or the ones that feel the pressure due to reduction of the resource available for harvest move North to their only logical alternative, Alaska.


The scarcity of product in the southern states usually directly correlates with a rise in price. This situation makes a fishery in Alaska viable at the same time the fishermen are looking for alternative areas for harvest. When this scenario takes place as I have outlined, we have well equipped professionally manned vessels from Washington in direct competition with our under-capitalized and newly emerging fleet of local boats. It doesn't sound like such a bad problem. One might just say "We'll learn", but the truth is over quotas and areas are filled and seasons closed before local boats are able to profit sufficiently to capitalize back into the fishery. Our local boats are delegated to a permanent 2nd Class Status, while the vessels that were able to participate in the Southern fisheries have had the time to develop their systems. They gain investment, train personnel and thus, keep growing larger and more efficient.

House Bill #137 is an idea, and an attempt to slow entry into emerging fisheries to give our local fleets time to gain the expertise and the investment to at least give us a fighting chance. It may not be perfect, but if there is a better way, I and the Alaska Underwater Harvesters' Association are willing to listen.

The biological advantages of House Bill #137 are very apparent. I believe you all have no problem visualizing the benefits gained from managing prior to a problem, rather than waiting until the biomass becomes depleted and regulating through emotion rather than planning. It may also work out to be much more politically acceptable to restrain entry from the beginning, rather than to take away the right with Limited Entry after investments in boats and gear have been made.

In our hearts and souls as well as our minds, we know this is a very necessary Bill. If someone has a better idea that would alleviate the problems which make this Bill necessary, we're ready to listen.

Sincerely,



Glenn A. Wilber, President
Alaska Underwater Harvesters' Association

FAX cc: House Judiciary Committee Members,
c/o Representative Halford, Chair

cc: Rep. Ben Grussendorf
Commissioner Rozier, Ak Dept. of Fish & Game
Governor Walter Hickel
Senator Eliason

GAW/gj



Alaska State Legislature

Please enter into the record my testimony to the House Resources
 committee name
Monatorium on Fisheries
 committee on HB 137, dated 2-28-91 teleconference 3:30-5:30pm
 bill/subject

*Please Attached (4) four
 pages of Testimony*

Signed: Duff W. Mitchell
 Testifier

Tuneau Dungeness Crabber
 Representing (Optional)

Box 214.38, Tuneau, AK 99802
 Address

907-789-1697
 Phone No.

TO THE HONORABLE MEMBERS OF THE 1991 ALASKA LEGISLATURE

I AM A SMALL SOUTHEAST ALASKA DUNGEON CRAB FISHERMAN. I AM WRITING TO YOU TO SO THAT YOU WILL VOTE ON AND PASS H.B. 137 AS IT HAS BEEN INTRODUCED.

CURRENTLY OUR FISHERY RESOURCES ARE MANAGED AND ACCESS IS LIMITED THROUGH THE LIMITED ENTRY PROVISIONS OF THE STATE CONSTITUTION. THE DECISION TO PLACE A FISHERY UNDER LIMITED ENTRY IS BASED ON THE PURPOSES OF RESOURCE CONSERVATION, AND TO PREVENT ECONOMIC DISTRESS AMONG FISHERMEN AND THOSE DEPENDENT UPON THEM FOR A LIVELIHOOD.

IN MANY NEW AND UNRECOGNIZED FISHERIES THERE IS LIMITED OR NO DATA ON THE RESOURCE TO ADEQUATELY DETERMINE WHAT THE PROPER SUSTAINED YIELD CAPABILITY OF THE RESOURCE IS. IT IS UNKNOWN WHAT THE CURRENT STOCK SIZE IS, WHAT THE OPTIMUM SUSTAIN YIELD IS, WHAT THE REPRODUCTIVE CYCLES AND CAPABILITIES ARE, AND WHAT THE ENVIRONMENTAL AND BIOLOGICAL FACTORS AND PATTERNS ARE THAT AFFECT THE RESOURCE. HOWEVER, IN MANY FISHERIES THE EFFORT IS EXPANDING AND IN SOME CASES EXPLODING EXPONENTIALLY. THE FISHERY BECOMES POTENTIALLY ENDANGERED AS RECRUITMENT STOCKS MIGHT BE UNKNOWINGLY FISHED AND THE LONG TERM HEALTH OF THE FISHERY IS CONCEIVABLY IMPAIRED. HOWEVER, THE SAME FISHERY FOR THE MANAGEMENT AREA MAY IN FACT ONLY HAVE BURST OUT BONDS DUE TO INCREASED EFFORT IN REGIONAL AREAS. WHEN CONSIDERED IN THE WHOLE, THE FISHERY MAY ACTUALLY BE ABLE TO SUSTAIN INCREASED PARTICIPATION. IN THESE CASES WHERE THE RESOURCE DATA IS UNKNOWN IT IS PREMATURE TO IMPOSE LIMITED ENTRY UPON THE FISHERY.

A TEMPORARY MORATORIUM ON ACCESS ON THESE UNKNOWN FISHERIES WOULD PRECLUDE FURTHER DAMAGE OF THE RESOURCE WHILE AT THE SAME TIME ALLOW THE RESOURCE TO BE STUDIED TO DETERMINE WHAT ITS SUSTAINABLE YIELD IS. FURTHERMORE, NO CURRENT PARTICIPANT WOULD BE DENIALIZED AS WOULD BE THE CASE IN A PREMATURE OR UNWARRANTED LIMITED ENTRY IMPOSITION. THIS MANAGEMENT TOOL WOULD INCREASE THE STATES ABILITY TO RESPONSIBLY CARRY OUT ITS CONSTITUTIONAL MANDATE:

- 1) THE NATURAL RESOURCES OF ALASKA ARE TO BE MANAGED AS A PUBLIC TRUST.
- 2) THE PUBLIC SHOULD HAVE THE BROADEST POSSIBLE ACCESS TO AND USE OF THE STATES NATURAL RESOURCES.
- 3) MANAGEMENT OF RENEWABLE RESOURCES MUST BE ON THE BASIS OF SUSTAINABLE YIELD.

IT IS IMPERATIVE FOR OUR FISHERY RESOURCES THAT ACTION BE TAKEN, BUT IT MAY BE PREMATURE TO IMPOSE LIMITED ENTRY UNTIL MORE IS KNOWN. THIS MORATORIUM WOULD OFFER FOR THE FIRST TIME A REASONED AND RESPONSIBLE APPROACH TO MANAGE THE RESOURCE IN A MANNER WHERE LIMITED ENTRY OF THE FISHERY WILL BE DETERMINED ON THE BASIS OF ALLOWING THE RESOURCE A SUSTAINABLE YIELD PERPETUALLY.

I PERSONALLY CANNOT BELIEVE THAT THERE WOULD EVEN BE ONE LEGISLATOR OR SENATOR THAT WOULD BE AGAINST THIS BILL. FISHERMEN DEPEND ON THE RENEWABILITY OF THE RESOURCE TO PROVIDE A LIVELIHOOD EVERY YEAR. THIS MORATORIUM WILL OFFER PROTECTION FOR THE RESOURCE AND FOR THE FISHERMAN'S LIVELIHOOD. THE ONLY PEOPLE WHO WOULD LOSE OR BE AGAINST THIS BILL ARE RESOURCE RABBITERS OR CARPETBAGGERS OUTSIDE FISHERMEN WHOSE ALLEGIANCE IS TO THEIR SEATTLE BANK WHO HOLDS THEIR CREDIT LINE. ALASKANS MUST GAIN CONTROL OVER OUR FISHERY RESOURCES TO PROTECT SMALL LOCAL FISHERMEN WHO ARE TRYING TO MAKE A MARKET ON NEW, NEGLECTED AND DEVELOPING FISHERIES.

JAPANESE CONTROLLED PROCESSERS AND LARGE OPERATORS WHO OWE NO ALLEGIANCE TO ALASKA OR TO THE UNDERSTANDING OF THE RESOURCE ARE MOTIVATED BY GREED. THEIR LARGE DOLLAR WAR CHESTS ARE WILLING AND WAITING FOR THE LITTLE GUYS TO DEVELOP A FISHERY BECAUSE THEY MOVE IN AND WIPE OUT THE FISHERY. THEY ARE WILLING TO RAPE A RESOURCE AND PERMANENTLY DAMAGE ITS RENEWABILITY SO THAT THEY CAN BUILD THEIR HOUSES IN SEATTLE AND SPEND THEIR WINTERS IN HAWAII. THIS MORATORIUM BILL IS IN THE LONG-TERM INTEREST OF SMALL LOCAL FISHERIES WHO DO NOT WANT TO WAKE UP ONE DAY TO SEE ALL THEIR GRAB AND SEA CUCUMBERS BEING HAULED OFF BY A SEATTLE BOAT. LOCAL FISHERMEN WILL BE LEFT WITH A DESTROYED RESOURCE FOREVER RUINED.

ALASKAN RESOURCES SHOULD BE DEVELOPED BY RISK TAKING AND INGENIOUS ALASKANS WHO SLOWLY AND METHODICALLY DEVELOP FISHERIES WITH CONCERN FOR THEIR LOCAL RESOURCES. IT IS HIGH TIME THAT PROTECTION BE GRANTED TO SMALL ALASKAN FISHERMEN WHO SPEND YEARS DEVELOPING THEIR FISHERY IN THE EARLY YEARS.

I AM CONFUSED, PERPLEXED AND QUITE CONCEIVABLY POLITICALLY NERVE TO UNDERSTAND WHAT ALASKANS WOULD BE OPPOSED TO THIS LEGISLATION. OUR UNDERDEVELOPED RESOURCES ARE VERY VALUABLE TO OUTSIDE DOMINATION AND EXPLOITATION. UNLESS ^{ALWAYS} OUR GRAB AND SEA CUCUMBER RESOURCES ARE DEPLETED THE OUTSIDERS WILL MOVE ON TO OTHER FISHERIES. ALL OF US WHO HAVE INVESTED OUR ALASKAN BLOOD, SWEAT, AND TEARS WILL BE LEFT WITH THE RESOURCE DEPLETED AFTERMATH.

THIS BILL FOR THE FIRST TIME WILL ALLOW A "TIME OUT" ON A FISHERY IN ORDER TO DETERMINE WHAT IS EXACTLY KNOWN ABOUT A RESOURCE. IT WILL ALLOW TIME TO STUDY THE RESOURCE SO THAT IT CAN BE MANAGED ON A SUSTAINABLE YIELD SO THAT FUTURE ALASKANS WILL BE ABLE TO FISH THIS RESOURCE YEARS FROM NOW.

THE WRITING IS ON THE WALL. THERE ARE NO COMMERCIALLY HARVESTABLE KINGNESS CRAB STOCKS LEFT IN COOK INLET. WE WOKED UP LAST YEAR AND FOUND OUT THAT WE HAVE DESTROYED A RESOURCE THAT MAY TAKE YEARS TO COME BACK. IT IS ALLOW TO PROACTIVELY MANAGE A RESOURCE RATHER THAN TELL OUR CITIZEN THAT WE ACCIDENTLY FAIL TO PROTECT A RESOURCE AND A WAY OF LIFE. IT IS TIME FOR THIS ELECTED BODY TO GRAPPLE WITH THIS ISSUE SO THAT WE CAN TOGETHER TACKLE THE PROBLEMS FACING OUR FISHERY DEVELOPMENT. YOU ELEGANT ALASKANS ARE AT THE HELM OF THIS GREAT SHIP OF OURS. FOR THE SAKE OF ALL THE PASSENGERS, PLEASE DO NOT NEGLECT YOUR RESPONSIBILITY AND ALLOW OUR SHIP TO RUN UNTO THE ROCKS.

LET US QUASH OUR PARTY DIFFERENCES SO THAT WE CAN MOVE FORWARD INTO THE FUTURE WITH ALASKANS DETERMINING HOW OUR FISHERY RESOURCES ARE MANAGED. IF WE FAIL TO CONTROL OUR OWN DESTINY THEN WE ALLOW OUTSIDE INTERESTS TO CONTROL OUR DESTINY BY REGRETTABLE DEFAULT.

SINCERELY


DUFF W. MITCHELL

JUNEAU KINGNESS CRABBER

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DEPARTMENT OF FISH AND GAME

POSITION PAPER

Bill No: H.B. 137

Sponsor: Rep. Grussendorf

Division: Commercial Fisheries

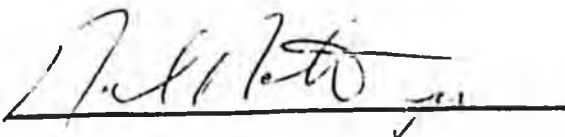
Bill Title: Moratorium on Commercial Fisheries Entry

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
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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
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REVENUE	0	0	0	0	0	0
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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).

CS FOR HOUSE BILL NO. 137 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:

Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing the Alaska Commercial Fisheries Entry Commission to establish a
2 moratorium on new entrants into the Southeast Alaska dungeness crab fishery and certain
3 other commercial fisheries, relating to petitions by the commissioner of fish and game for
4 the establishment of a moratorium, and relating to qualifications for entry permits; and
5 providing for an effective date."

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

7 * Section 1. FINDINGS. The legislature finds that

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

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

1 can support additional fishing effort;

2 (3) the provisions of the current commercial fisheries limited entry statutes, developed
3 for commercial salmon fisheries, may not be appropriate for certain new and emerging commercial
4 fisheries in the state;

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

9 * Sec. 2. AS 16.05.050 is amended by adding a new paragraph to read:

10 (20) to petition the Alaska Commercial Fisheries Entry Commission to establish
11 a moratorium on new entrants into certain commercial fisheries as provided in AS 16.43.225 if
12 the commissioner has requested and received approval of the petition from the Board of Fisheries
13 under AS 16.05.251(g).

14 * Sec. 3. AS 16.05.251 is amended by adding a new subsection to read:

15 (g) The Board of Fisheries shall consider a request of the commissioner for approval of
16 a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on
17 new entrants into a commercial fishery under AS 16.43.225 at the board's next regular meeting
18 that follows the receipt by the board of the request for approval of the petition and that allows
19 time for the notice required under this subsection. The board may consider the request of the
20 commissioner for approval of the petition only after 15 days' public notice of the board's
21 intention to consider approval of the petition. The board shall approve a petition of the
22 commissioner to the Alaska Commercial Fisheries Entry Commission for the establishment of
23 a moratorium on new entrants into a commercial fishery under AS 16.43.225 if the board finds
24 that

25 (1) the fishery that is the subject of the petition has experienced recent increases
26 in fishing effort that are beyond a low, sporadic level of effort and has achieved a level of
27 harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and

28 (2) there is insufficient biological and resource management information that is
29 necessary to promote conservation and sustained yield management of the fishery.

30 * Sec. 4. AS 16.43.100(a) is amended to read:

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

- 1 (1) regulate entry into the commercial fisheries for all fishery resources in the
2 state;
- 3 (2) establish priorities for the application of the provisions of this chapter to the
4 various commercial fisheries of the state;
- 5 (3) establish administrative areas suitable for regulating and controlling entry into
6 the commercial fisheries;
- 7 (4) establish, for all types of gear, the maximum number of entry permits for each
8 administrative area;
- 9 (5) designate, when necessary to accomplish the purposes of this chapter,
10 particular species for which separate interim-use permits or entry permits will be issued;
- 11 (6) establish qualifications for the issuance of entry permits;
- 12 (7) issue entry permits to qualified applicants;
- 13 (8) issue interim-use permits as provided in AS 16.43.210, [AND] 16.43.220, and
14 16.43.225;
- 15 (9) establish, for all types of gear, the optimum number of entry permits for each
16 administrative area;
- 17 (10) administer the buy-back program provided for in AS 16.43.310 and 16.43.320
18 to reduce the number of outstanding entry permits to the optimum number of entry permits;
- 19 (11) provide for the transfer and reissuance of entry permits to qualified
20 transferees;
- 21 (12) provide for the transfer and reissuance of entry permits for alternative types
22 of legal gear, in a manner consistent with the purposes of this chapter;
- 23 (13) administer the collection of the annual fees provided for in AS 16.43.160;
- 24 (14) administer the issuance of commercial fishing vessel licenses under
25 AS 16.05.490;
- 26 (15) issue educational entry permits to applicants who qualify under the provisions
27 of AS 16.43.340 - 16.43.390;
- 28 (16) establish reasonable user fees for services;
- 29 (17) issue landing permits under [IN ACCORDANCE WITH] AS 16.05.675 and
30 regulations adopted under that section; [AND]
- 31 (18) establish and collect annual fees for the issuance of landing permits that

1 reasonably reflect the costs incurred in the administration and enforcement of provisions of law
2 related to landing permits; and

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

5 * Sec. 5. AS 16.43.180(a) is amended to read:

6 (a) The commission shall adopt regulations providing for the temporary emergency
7 transfer of entry permits and interim-use permits when illness, disability, death, required military
8 or government service, or other unavoidable hardship prevents the permit holder from
9 participating in the fishery. To alleviate hardship pending a final determination of the permit
10 holder's eligibility for an entry permit, the commission shall adopt regulations providing for the
11 temporary emergency transfer of an interim-use permit issued under AS 16.43.210(b) or
12 16.43.225.

13 * Sec. 6. AS 16.43.210(a) is amended to read:

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

19 * Sec. 7. AS 16.43 is amended by adding new sections to read:

20 Sec. 16.43.225. MORATORIUM ON NEW ENTRANTS INTO CERTAIN FISHERIES.

21 (a) Subject to (b) of this section, the commission may establish a moratorium on new entrants
22 into a fishery

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

25 (2) that has achieved a level of harvest that may be approaching or exceeding the
26 maximum sustainable level for the fishery; and

27 (3) for which there is insufficient biological and resource management information
28 necessary to promote the conservation and sustained yield management of the fishery.

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

31 (1) the commissioner of fish and game, with the approval of the Board of

1 Fisheries, petitions the commission under AS 44.62.220 to establish a moratorium on new
2 entrants into the fishery; and

3 (2) the commission finds that

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

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

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

14 (d) While a moratorium is in effect, the commission shall conduct investigations to
15 determine whether a maximum number of entry permits should be established under
16 AS 16.43.240 by

17 (1) conducting research into conditions in the fishery;

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

19 and

20 (3) consulting with participants in the fishery.

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

27 Sec. 16.43.227. SOUTHEAST ALASKA DUNGENESS CRAB FISHERY. (a) The
28 commission may establish a moratorium on new entrants into the southeast Alaska dungeness
29 crab fishery for a continuous period of up to four years without complying with
30 AS 16.43.225(a) - (c). While the moratorium is in effect, the commission shall

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

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

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

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

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

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

12 * Sec. 8. AS 16.43.240(b) is amended to read:

13 (b) When the commission finds that a fishery, not designated as a distressed fishery under
14 AS 16.43.230 or not subject to a moratorium under AS 16.43.225, has reached levels of
15 participation that [WHICH] require the limitation of entry in order to achieve the purposes of
16 this chapter, the commission shall establish the maximum number of entry permits for that
17 fishery.

18 * Sec. 9. AS 16.43.240 is amended by adding a new subsection to read:

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

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

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

30 * Sec. 11. AS 16.43.260(d) is amended to read:

31 (d) Except as provided in (e) or (f) of this section, an applicant shall be assigned to a