

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8958 SENATE RESOURCES

Table 3. Commission Members: Appointments and Qualifications (continued)

State	Governor Appointed	Geographic Selection	Legislative Approval	Must be Affiliated Party	Academic or Experience Qualification	Knowledge or Interest Qualification	Other Qualification
VA	*	o	o				
VI	*	o	o				
WA	*		o			o	o
WI		o**					
WV	*	o	o				
WY		o		o		o	

* Shall not hold other office; must represent a State; offering all aspects of wildlife management

** The person may be appointed, or receive a contract, to serve as a significant portion of income, knowledge or industry from private business or agriculture (as defined by the Department)

STATE OF WISCONSIN

DEPT. OF NAT. RESOURCES

ALASKA BOARD OF FISHERIES

Present Structural/Administrative/Action Practices and Problems

I. BOARD ADMINISTRATION

A. STRUCTURE

PROBLEM: ACTION OF THE BOARD AND ITS REPUTATION HAS BEEN COMPROMISED AND WEAKENED THROUGH THE APPOINTMENT OF MEMBERS WITH DIRECT FINANCIAL TIES TO THE STATE'S FISHERIES INDUSTRIES.

ANALYSIS: Financial involvement by members or their families in any commercial endeavor related to state fisheries has been ruled a conflict of interest by the Attorney General. It is difficult to separate one's interest in one segment of the industry from one's interest in the overall industry for the purposes of making sound, rational and objective decisions on management and allocation under existing legal constraints.

SOLUTION: Replace those members with personal or family financial interests in fisheries with individuals having no financial ties to fisheries.

BENEFIT: Persons with no financial ties to fisheries should be better able to make objective decisions based upon available data and the board's mission given their lack of personal financial concern in the resource. Decisions will then be made by the entire board rather than only by those members not conflicted out.

B. SUPPORT

PROBLEM: ADMINISTRATIVE SUPPORT FOR THE BOARD IS INADEQUATE TO PROVIDE THE FULL ADMINISTRATIVE SUPPORT NEEDED FOR THE VOLUME OF WORK REQUIRED IN THE BOARD PROCESS.

ANALYSIS: Past reduction of the Board's Support Section has left an inadequate number of personnel to provide needed administrative assistance such as public information (press/media relations), data collection, liaison with other agencies, and administrative tasks required or assigned by the board.

SOLUTION: Enhance the Support Section to provide an adequate number of personnel for efficient, effective board administration and support.

BENEFIT: The board's workload can be distributed to allow more efficient use of both board and staff time. Productivity and effectiveness of the board will provide better responsiveness to resource needs and allow for a more pro-active approach to the board's management functions.

C. ADMINISTRATIVE PRACTICES

*What about
constitution?*

PROBLEM: THE BOARD LACKS A MISSION STATEMENT AND BY-LAWS NECESSARY TO DIRECT ITS ACTIONS AND ENABLE EVALUATION OF THE BOARD AND ITS EFFECTIVENESS.

ANALYSIS: Fundamental to organizational effectiveness is the establishment and recognition of the board's mission, formal structuring of the organization to achieve that mission and development of evaluation criteria to measure success in accomplishing its mission. Without these basic organizational elements the board's purpose, functions, effectiveness, and decisions come into question.

SOLUTION: Either through board members, support staff or outside contract services, establish a Board of Fisheries mission statement, by-laws, and organizational chart to provide formal structure to the board's functions and provide evaluation criteria and validation of the board's powers and actions.

BENEFIT: Adoption of by-laws and a mission statement will provide the board with necessary structure and direction for decision making processes, will validate the decisions of the board relative to its mission, will provide evaluation capability enhancing board effectiveness and will allow the public to better understand the purpose and process relating to the Board of Fisheries.

(Proposed) BOARD MISSION STATEMENT

To guide the development, management and utilization of this state's marine and fresh water resources toward the constitutionally mandated goals of sustained yield, common use, and the wisest and best use for the people of the state of Alaska using scientific, economic, demographic and social data provided by related state and federal agencies, outside expertise, and public testimony.

D. PLANNING

PROBLEM: THE CURRENT SCHEDULING OF BOARD OF FISHERIES MEETINGS ALLOWS LITTLE TIME FOR THE BOARD TO ADDRESS ITS ADMINISTRATION AND PRO-ACTIVE CONCERNS FOR FISHERIES RESOURCE MANAGEMENT. AT PRESENT, MEETINGS ARE SCHEDULED FULLY TO ADDRESS ONGOING FISHERIES ISSUES.

ANALYSIS: Regularly scheduled board meetings are presently fully scheduled to address ongoing fisheries issues. Special meetings are scheduled to address emergency issues. Board administration issues and concerns are being neglected or conducted via telephone two members at a time (open meetings law requirements must be considered here). This method precludes the board's ability to work together on important administrative matters (i.e. by-laws, mission statement, evaluation, direction, planning) thus the board maintains an inefficient, cumbersome method of administration and a reactive attitude toward fisheries management.

SOLUTION: Incorporate into the board's meeting schedule an annual administrative meeting devoted exclusively to board administrative, not fish management, issues, per se. This will allow the board time to organize administratively, network with support and agency staff, and develop plans, goals and objectives for future work.

BENEFIT: By scheduling an annual "business meeting" the efficiency and effectiveness of the board will be increased to the benefit of all.

II. BOARD ACTIONS

A. DATA AVAILABILITY

PROBLEM: RELEVANT DATA IS PRESENTLY NOT BEING INCLUDED FROM ALL AVAILABLE SOURCES PRIOR TO BOARD DELIBERATIONS RESULTING IN QUESTIONABLE DECISIONS OR THE DECISION MAKING PROCESS.

ANALYSIS: Presently the board receives detailed information only from ADF&G, the Department of Law, and the public. In cases of allocation ADF&G input is minimal. The board needs information from other agencies (University of Alaska, AK Departments of Commerce and Economic Development, Community and Regional Affairs, Environmental Conservation, and federal agencies such as: National Marine Fisheries Service, USFS, USF&WS), as well as outside expertise in some cases to make objective, sound decisions.

SOLUTION: Board staff should work with the board to determine all needed information prior to deliberations and should solicit same from appropriate sources. This information can then be provided to the board prior to meetings for study and needed testimony can be requested for the meeting.

BENEFIT: Board members will be able to base important decisions on deliberation of all relevant data providing well rounded decisions made in the best interest of both the resource and the public and in accordance with its mission and constitutional mandates.

B. DATA RELIABILITY

PROBLEM: ACCURATE, VERIFIABLE SCIENTIFIC DATA IS UNAVAILABLE OR CONFLICTING DATA IS PRESENTED BY VARIOUS "EXPERTS" OR SOURCES RESULTING IN DELIBERATION AND DECISIONS WHICH ARE CHALLENGED SCIENTIFICALLY OR LEGALLY IN THE COURTS.

ANALYSIS: ADF&G organization of biologists/research for some species has been divided into commercial vs sport fish categories. These Divisions differ greatly in funding levels, personnel and areas of responsibility even though the same species of fish may be involved. This pits the various divisions against one another in their stated mission, their interpretation of data, their ability to do research and and in their relationship with the board and the public.

SOLUTION: Reorganize the Department to provide a unified Research Division with sections for specific species (i.e. shellfish, finfish, aquaculture, etc.) as necessary to provide accurate data, encourage research, minimize conflicts between staff, and provide an ecosystem approach to scientific study.

BENEFIT: The board will benefit in its decision making from accurate, objective, verifiable data. The Department will benefit from the same information, cooperation between staff and increased efficiency. The public will benefit from sound decision making and the resource will benefit from increased understanding and an ecosystem wide approach to management.

E. TRAINING

PROBLEM: BOARD MEMBERS RECEIVE NO "TRAINING" TO ALLOW THEM TO BETTER UNDERSTAND FISHERIES MANAGEMENT ISSUES, STUDY METHODS, OR THE REGIONS AND PEOPLE AFFECTED BY THEIR DECISIONS.

ANALYSIS: Members are appointed to the board with varying degrees of understanding of the geography and people of the state and its fisheries resources. They then attend meetings to make decisions based on information of which they may only have a rudimentary understanding and which will affect regions and people existing largely on a map in their minds. This can lead to considerable mistrust in the public's mind and confusion on the part of the board member.

SOLUTION: A board member training program should be implemented which will introduce the new member to the types of information available and its sources, the board's mission and bylaws, methods of commonly used scientific research and its limitations, and an overview and introduction to the various regions and peoples affected by board decisions. This program, at a minimum should include:

1. The State Board/Commission Member Handbook.
2. Alaska State Constitution
3. Current State statutes and Alaska Administrative Codes pertaining to the sphere of the board's power and responsibility.
4. Technical Manual addressing currently used research methods, data sources and contacts, information formats and interpretation guidelines, brief geopolitical/geophysical description of involved regions of the state, historical overview of state fisheries resources and critical regional fisheries background.
5. Scheduled annual field training for all members involving "in-season" regional visits with agency personnel, community leaders, and the general public. These visits would be conducted in pairs with members attending one field training session each year.

BENEFIT: By providing training as outlined above board members will be better equipped to make objective, informed decisions based upon first hand understanding of a wider variety of factors. In addition, board credibility will be heightened by increased public contact and exposure to on-going fisheries. Finally, deliberations will be enhanced through a more thorough understanding of data presented, its sources and limitations, and knowledge of where and what additional information is necessary to make an informed decision.

*Other than Cook's report
+ Area M. Linn's report*

C. EVOLVING FISHERIES

PROBLEM: THE BOARD IS ASKED TO MAKE REACTIVE ALLOCATIVE AND FISHERIES DEVELOPMENT DECISIONS BASED ON MINIMAL SCIENTIFIC DATA FOR EVOLVING FISHERIES (i.e. little neck clams, sea cucumbers, sea urchins).

ANALYSIS: The growth of the seafood industry and interest in previously under or unutilized species has placed new demands on the resource as a whole. Given this demand and the lack of baseline data (i.e. basic stock, sustained yield levels, harvest effort impact upon other species, upon the food chain, etc.) the board has allowed development of fisheries and increased harvests in reaction to harvest demand with little information needed to assure sustained yield of these species and minimize impacts of harvests on other reliant species.

SOLUTION: Establish within ADF&G a Development Division charged with assimilating data from a Research Division, industry representatives, and outside expertise prior to opening or expanding commercial exploitation of new species. This information will then be provided to the board prior to deliberations on issues affecting these species.

BENEFIT: Sound, objective decision making based on this structuring and information will allow for rational development of marine resources while assuring minimal impact on other species and decision making in accord with constitutional and biological concerns for fisheries resource protection, sustained yield, common use and highest and best use.

D. PLAN DEVELOPMENT

PROBLEM: MANAGEMENT PLANS PRESENTLY ARE DIRECTED PRIMARILY UPON SINGLE DISCRETE SPECIES RATHER UPON THE ECOSYSTEM WITHIN WHICH THE SPECIES EXIST. MANAGEMENT PLANS ARE ALSO CONFINED TO GEOGRAPHIC BOUNDARIES WHICH FAIL TO RECOGNIZE THAT SOME SPECIES TRAVEL OR ARE DEPENDENT UPON ADJACENT OR DISTANT BODIES OF WATER.

ANALYSIS: All species of fish depend upon the full range of the ecosystem within which they travel throughout their life. They also depend upon other species for food and in many cases also influence factors within the ecosystem upon which the other species depend. In addition to the direct impact that the harvest of a single species may have upon the ecosystem the impact of the gear used for fishing may have significant and long range implications for other species and the ecosystem as a whole.

SOLUTION: All management plans must be comprehensive plans within the context of the ecosystem involved. Only after consideration of the impact of single species harvest upon the ecosystem can decisions and judgements be made about seasons, allocation, methods and means. It may be possible within a detailed ecosystem management plan to then differentiate harvest of a discrete species with some degree of safety.

BENEFIT: The most significant beneficiary of the ecosystem approach is the ecosystem itself. Secondary all species will individually benefit. Last but not least, people will benefit from a healthy ecosystem and its rewards to those who recognize and honor the elements critical to its survival. Without such recognition Alaska's waters will soon be depleted as have been the highest productive waters of much of the rest of the world.

E. PLAN REVIEW

PROBLEM: THE ROTATIONAL BASIS FOR REGIONAL MANAGEMENT PLAN REVIEW PRECLUDES TIMELY ADJUSTMENTS TO PLANS IN RESPONSE TO RAPIDLY CHANGING FISHERIES.

ANALYSIS: To reduce demands on the board a rotational basis is used to schedule evaluation and adjustment to regional management plans. Past board decisions regarding discussion of plans in reaction to changing demands have held that "opening plans" out of rotation will only be allowed under a biological emergency. This has greatly encumbered the board's ability to address changing socio-economic conditions affecting specific fisheries.

SOLUTION: Develop further alternative methods of enabling management plans to be revisited out of rotation based upon pertinent information on changing biological or socio-economic conditions.

BENEFIT: Allowing review and adjustment of plans in relation to the mission of the board, when conditions merit, will provide sensitivity to changing social, economic, and biological impacts. The dynamic nature of fisheries resources requires dynamic management alternatives.

F. DATA TIMELINESS

PROBLEM: BOARD DECISION MAKING ON HIGHLY SEASONAL FISHERIES (i.e. anadromous species) IS HINDERED BY AN UNDULY SLOW, CUMBERSOME, AND INEFFICIENT METHOD OF ACCUMULATING HARVEST AND ESCAPEMENT DATA.

ANALYSIS: Presently harvest information on anadromous species, specifically salmon, is generated through analysis of commercial fish tickets and through sport fishing creel and mail out surveys. Typically information on commercial harvest is available shortly after the commercial season ends. Sport harvest data, however, is not available for up to eighteen (18) months after the season. This time lag in compiling complete data greatly reduces the board's ability to react to changing harvest conditions in a timely manner and detracts from the ability to meet goals mandated by Alaska's Constitution.

SOLUTION: Implementation of a punch card system for reporting sport catches of salmon with mandatory reporting deadlines will greatly reduce the lag time between seasons end and the development of necessary data. This will allow the board more sensitivity to changing conditions and support more soundly made decisions.

BENEFIT: More efficient collection of harvest data and its positive effect on the board's decision making processes will provide sound decision making based upon current data information benefiting all users and the resource in general.

G. ADDITIONAL DATA NEED

PROBLEM: There presently is no institutions commitment or mechanism for obtaining annual feedback on successes, failures and recommendations for changes or improvements to management strategies or regulations during or following a fishing season.

ANALYSIS: Those persons directly involved in direct and indirect fishing related activities often possess a strong commitment to both the protection of the resource as well as its best utilization. They have direct knowledge of factors which could be of inestimable value to fisheries managers as they do preseason planning, inseason adjustment, and post season evaluation.

SOLUTION: By specifically opening effective lines of communication in season, during, and post season with both commercial and non-commercial sources and users it will be possible to achieve improved management and establish a stronger relationship with these users and the general public. Person to person critiques with the major processors should be scheduled and the findings consolidated by ADF&G staff and resulting decisions or changes then communicated back to the source.

BENEFIT: The fisheries resource will profit from changes which may prevent adverse impacts to continue. The department will profit from additional data and the perspective enhanced by other experiences and opinions. The department will also benefit from the understanding and respect possible through this sharing of information. The public will benefit both from improved management and the opportunity to become part of the process about which many now have little or no information or knowledge.

H. BIOLOGICAL DECISIONS vs. POLITICAL DECISIONS

PROBLEM: Research and field biologists are now placed in direct relationship with the public on political, economic and allocative issues. Most biologists have minimum or no training in the political, behavioral or social sciences and are not now given such training in connection with assuming such responsibilities.

ANALYSIS: In many instances the above results in their involvement in highly controversial and emotional battles often leading to a loss of respect and confidence. It is the responsibility of administrative and management personnel to make decisions on these issues. It is also the responsibility of these persons to obtain information and support data and recommendations from the biologists, other scientists, and other sources by which they can both make decisions and assume responsibility in their regard.

SOLUTION: Biologists can be shielded from non scientific controversy by being placed in a more scientific arm of ADF&G such as the Research Division previously recommended. Not only will their working environment be improved but also their ability to do their primary job now often sacrificed to the demands of other tasks not directly related to the fisheries resource.

BENEFIT: The Department will profit from a more stable and efficient scientific arm and the ability to expand efforts into research and scientific areas now so sadly lacking. The general public will profit from having persons fully prepared to handle the often controversial issues which are growing more complex every day.

I. STAFF MEETINGS

PROBLEM: To most fully utilize all persons available in making management decisions within the Department teleconference Staff Meetings are often utilized to link staff across the state. It is now evident that some offices involved in this process have permitted members of the general public and/or persons with specific special interests to sit in on these administrative sessions. In some highly charged controversial decisions the managers responsible for making decisions have been subsequently openly challenged by these non staff persons who cite being present during the discussions or exchanges of opinions on the part of various personnel during the teleconferences.

ANALYSIS: The use of telephones and teleconferences is a widely used method of communication in the conduct of management and administrative business. The ability to link together persons from widely dispersed sites in this fashion saves countless dollars and hours of the staff so involved. It also permits more people to be involved in the decision making process. However, some have apparently believed that such administrative uses fall under the open meetings requirements. These uses are no different than having a staff meeting within the walls of an agency building.

SOLUTION: The general public or non-staff personnel should not be present for a teleconference unless their presence is requested or approved by the person directly in charge of the teleconference. Expression of opinions, ideas or recommendations by individual staff members and disagreements often resulting in such discussions are confidential in nature and should remain in-house unless released by the persons in charge.

BENEFIT: Managers and decision makers will profit from the most productive exchange of data and ideas from the widest range of staff members possible. All professionals within the Department will benefit by an opportunity to freely exchange opinions and openly disagree or challenge potential options based upon their knowledge or experience.

Dear Governor Knowles:

May I express my delight with the positive and public based philosophy represented by your mission statements for the new administration. In my short tenure with the Board of Fisheries and our responsibility to interface with the North Pacific Fishery Management Council I feel an even greater sense of urgency regarding our fishery resources than at the time I was nominated to the Board of Fisheries.

I am enclosing a copy of some observations of the Board of Fisheries which I developed following your election, and based upon your statements of the philosophy that you will follow in your leadership of the state. I have sent this information to Larry Engle, Chair of the Board of Fisheries, and to Ben Ellis, as a member of your Transition Team.

There are two issues which I would like to emphasize:

I - PHILOSOPHY AND POLICY: The first is establishing a sound and strong statement of philosophy and policy regarding Alaska's fisheries resources. Probably no other state in the nation has a constitution which speaks so specifically about its natural resources and their importance. Certainly, no other state in our nation, indeed, no other region in the world, has the vast untapped marine resources of the state of Alaska and its adjacent waters. Yet some of these resources are in jeopardy because of haphazard utilization and shortsighted management in recent years.

At the present time we find all manner of "management plans" which appear to have no central mission or goal and fail to relate to the many common factors which should guide such plans. All management plans should have, as their very first section, the same succinct statement of this commitment of the state of Alaska.

II - COMPREHENSIVE ECOSYSTEM PLAN: The second issue is that of a need for comprehensive plans which are developed around an ecosystem approach rather than single species and/or administratively established geographical boundaries. Whether viewing actions of the Board of Fisheries or the North Pacific Fishery Management Council it is clearly evident that the broad, and sometimes critical, impact of some decisions upon other than the targeted species creates problems far greater than those "solved" by the action taken.

I shall be happy to expand upon these issues or provide other thoughts at any time. Little did I know that upon "retirement" I would find myself more involved in some of the critical issues facing our state than I was during my employment. I am still very optimistic that we can find some answers while there are still resources around to benefit from our effort.

Please do not hesitate to call upon me if there is any way in which I can contribute, as a volunteer, in carrying out your mission.

Enclosure:

bcc

December 22, 1994

Dear Ben,

Congratulations on your appointment to the Knowles administration policy transition team. I am certain that you will be able to make a valuable contribution to the transition process. You asked for my impression of the effectiveness of the Alaska Board of Fisheries and for suggestions for improving the manner in which fisheries policy is developed and implemented in Alaska. I'd be happy to offer you a number of constructive comments based on the twenty years that I have spent working with the Alaska Department of Fish and Game.

The way I see it there are three potential starting positions for my comments, they are, 1) The Board of Fisheries process is just fine the way it is; 2) The Board of Fisheries process is so seriously flawed that it should be scrapped in favor of a professional board or some other new process; or 3) The Board of Fisheries process is essentially sound but it could and should be improved to make it more responsive to the issues of the 90's and beyond. My choice as a starting point is number 3. In addition to spending twenty years with the Alaska Department of Fish and Game, during the past five years I have had the privilege of working with the Western Association of Fish and Wildlife Agencies, the International Association of Fish and Wildlife Agencies, the U.S. Fish and Wildlife Service Management Assistance Team and the fish and game agencies in Minnesota, Wyoming and Delaware. I've observed numerous other state's systems for allocating fish and wildlife resources, setting seasons, methods and means and limits and I have concluded from that experience that Alaska's fisheries boards process is a basically good public process and one that should be retained.

I try to keep this fairly short and to the point, you will undoubtedly be getting plenty of advise on this subject. The Board process is very good at implementing fisheries policy. In my opinion, where the Board runs into trouble is when they attempt to develop policy in the absence of statutory guidance. When this happens, the Board usually winds up in court, on the losing end. Title 16 makes for some fascinating reading to us eccentrics interested in the rational development of our state's fisheries resources. In Title 16 you will find most of the policy upon which our management plans and regulations are based. Check the dates of adoption for the Chapters, Articles and Sections in Title 16 and you will find that they have been adopted piecemeal over time since statehood. No one has ever sat down and looked for the obvious contradictions and obsolete and outdated directions these laws provide.

Most of the major fisheries issues that I'm aware of are addressed in some fashion in Title 16 including, subsistence, allocation criteria, mixed stock management, management of wild and enhanced stocks, finfish farming, limited entry, cost recovery and so on. All of this policy level guidance was developed by the legislature and signed into law by some passed governor. It

seems to me that if there is a growing dissatisfaction with the manner in which the Board of Fisheries is operating that at least part of the cure need to come in the form of clarification of existing policy or development of new policy. The Board shouldn't be charged with the responsibility of developing the policy that it will in turn be required to implement. I believe that there needs to be a commitment to broad based comprehensive planning for our state's fisheries. I see the planning process as being agreed to by the Board, the Legislature and the Governor, facilitated by the Department of Fish and Game and conducted with our state's best interest in mind.

If we can not mount an effort such as I have suggested, then we must at least look carefully at the guidance that Title 16 currently gives the Board with respect to the most volatile fisheries issues. I would suggest that the mixed stock policy, the allocation criteria and the management of wild and enhance fish stocks could all benefit from further legislative guidance. The present lack of a comprehensive approach toward fisheries management benefits the status quo and in my opinion, guarantees that we will never realize the true economic or social benefit that can be derived from our fisheries resources.

Sincerely,

The Alaska Sportfishing Association, Alaska's largest sport fishing group, would like to provide the Knowles/Ulmer Transition Team on Fisheries the following comments:

The comments will attempt to be in a format which follows the mission of the team which, we understand is to examine the structure and access to the Board of Fisheries (BOF).

The BOF is the regulatory body established by the Alaska Legislature to manage the fishery resource which belongs to all the people of Alaska. The Legislature has the statutory responsibility to manage the resources of the State and has delegated to the BOF the management of the State's fishery resources. Constitutionally, the BOF must manage for SUSTAINED YIELD of the resource. In doing so, it sets numerous management guidelines that should result in the management of the resource for a) sustained yield, b) reasonable access for each user group, and c) allocation of the resource that best meets the seven criteria set up by the Legislature.

The BOF utilizes the expertise of the Alaska Department of Fish and Game during its deliberations and uses the agency as the vehicle to execute its management schemes. Therefore, the two are closely intertwined. Additionally, the BOF seeks advice from the Attorney General's offices amongst other State agencies.

In private industry, we are constantly being challenged by the charges - to be creative, to seek continuous improvement, to be best in class and I would expect no less from any agency of the State. We feel that the BOF has periodically accomplished (?) its mission but could be a much better manager of the people's resource if it broke away from some of its current ways of doing business. The world of fisheries management has evolved to become a complex animal requiring an incredible amount of knowledge not only of the fishery being managed but also of the other commingled species. Not only are there a preponderance of Mixed Stock fisheries on the harvest side but also mixed stocks on the rearing/grazing side of the fish's life span. We called it a world of fisheries management because the fish know no national borders and roam wherever they chose. It is admirable that the BOF members attempt to understand and use all the data that is available. But is that enough? Could they do a better job? We can all do a better job, whatever our mission!

The BOF's current management style of traditional management needs to be updated. Lets agree first that the decisions must be made based on sustained yield of the species and that the traditional tools of seasons, methods and means, escapements, commercial economics, bag limits, etc. have served the BOF reasonably well (?) in the past. What's missing? Where's the improvement? Lets recognize that the traditional model of management is outdated. The BOF must begin to utilize today's management philosophies which use additional approaches and theories, in concert with the traditional style, to best manage the fishery resource. Among additional types of information that need to be used when making decisions are resource economics, biological trends analysis, and state of the art survey data. ADF&G is, in our eyes, the premier fishery agency in the world. They have the people and skills to provide the BOF such additional information. Lets use these top notch people to help better the process.

Does the BOF efficiently and effectively manage the resource? The answer usually depends on the level of your user group's satisfaction with the BOF decisions. That's bunk!!! We must transcend our personal desires and look at how the resource is managed for everyone because we all own the fish.

Since we all own the fish, do we all get a fair opportunity to participate in this public process. We don't think so. The improvement lies in several new directions:

- a) improve access for all users by scheduling management meetings where the fishery takes place (assuming adequate lodging and meeting places are available). Why aren't A-Y-K or False Pass management meetings held in Western Alaska where the fishery is? Why can't the meetings for the Yukon be held in Western or Central Alaska? This minor change would make it easier for all users to participate equally, not just those with the money to fly to Anchorage for meetings.
- b) take a hard look at the local advisory committees to redetermine not only what their function is but also that they reasonably represent the user groups of the area and not the local political strength of any particular user group. If they don't, lets require that a change be made. Once that's done, we need to make sure that the committees are performing their assigned mission. If not, they must change or the BOF must change to allow them to accomplish their job.

c) the two prominent agencies advising the BOF are the Attorney General's Office and ADF&G. How can we improve these interactions? The AG's office is, in our opinion, driving many of the decisions made by the BOF. The BOF has, in the past, been a very poor risk taker in that if the AG's office says that there is a 'gray area', the BOF rarely pursues that line of reasoning because they might be sued. In private business, the largest rewards frequently go to those who take the biggest chances. (The skipper with the better gear which costs more money frequently catches more fish.) The reality is that the BOF has felt that if they went against the advise of the AG's office that the AG would not vigorously defend them in any litigation. This thought serves no one but the AG and the people controlling the AG's office. Another area that we must reexamine is the AG recommendations on conflict of interest. The AG has been more and more frequently advising the BOF that members should desist from participation because of a conflict of interest. We agree that no voting should be permitted should the member or a member of his/her immediate family have a meaningful financial interest in the fishery being reviewed. However, one of the reasons, the other being political, for the BOF's members hailing from different regions of our State is to be able to provide a local knowledge of the fishery for the other members of the Board. Perhaps naively, what wrong with that? This conflicting out is becoming a way to eliminate adverse votes by special interest groups. Its quite possible that a majority of the BOF could be conflicted out of some fisheries discussions.....so could the BOF function without a quorum? Don't think its legal. Are we trending towards a full-time paid professional BOF? That's certainly an option that several states have gone to. Is it Alaska's turn?

The ADF&G staffers are exceptional. However they need to provide more and different information to the BOF as we noted above. Additionally, the respective divisions should be able to present their thoughts at the meetings even if they disagree with another division's. The current practice of having the BOF rely exclusively on the division that manages the fishery for the user group taking the largest proportion of the fish needs to be addressed. The other user groups deserve to have the experts that manage their portion of that fishery able to present their views as well. This will provide the BOF with more information with which to make decisions.

d) please look at the three year cycle of regional management reviews. In the world of dynamic fisheries management, is the three

years between reviews harming the efficiency and productivity of the BOF? Does the three year cycle place decision making requirements on ADF&G that the BOF has not formally delegated? Should we go back to a two year cycle?

Regarding your recommendations: Changes made just for the sake of saying that you've made a change is just as pitiful as making no change. Management of the change is more important than the change itself. Lets be proactive in providing the Governor with some realistic meaningful recommendations for improving the BOF process including some ideas as to how to manage the changes and some measurement tools to help determine that the changes are being accomplished and are beneficial to the overall mission of the Board.

One last comment, please. The members of your team hardly reflect the constituency of the citizens of the State. There are NO personal use representatives, only five sport fishers, only eight subsistence users, but twenty one commercial fishers. This implies that there are four times the number of commercial fishers in Alaska than sport fishers and that subsistence users number less than one third of the number of commercial fishers. And we guess that the personal use regulations should be repealed as there is apparently no one in Alaska who qualifies.

Thank you for the opportunity to provide our comments.

Phil Cutler, President

REPORT TO THE GOVERNOR
ON THE BOARD OF FISHERIES

Board of Fisheries Review Committee
February 23, 1988

STEVE COWPER, GOVERNOR

OFFICE OF THE GOVERNOR
OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF AUDIT & MANAGEMENT SERVICES

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February 22, 1999

The Honorable Steve Cowper
Governor of Alaska
Pouch A
Juneau, Alaska 99911

Dear Governor Cowper:

As Chairperson of the Board of Fisheries Review Committee, I have the pleasure of submitting to you our report with its recommendations. In choosing committee members, you succeeded in selecting persons who are highly knowledgeable of the fishing industry in the State of Alaska and with a great concern to improve its regulatory processes. I believe that the given recommendations represent sound advice which will eliminate many of the problems currently associated with operations of the Fisheries Board.

Sincerely,

A. Mathisen
Ale A. Mathisen, Chairman
Board of Fisheries Review
Committee

GM/lmy/lcb
dm760/dams7

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1. INTRODUCTION

The effective management of Alaska's fisheries resources is a matter of considerable public concern. Many state residents depend on the harvest of fish stocks for subsistence needs, while commercial fishing is one of the most important segments of the Alaskan economy.

The regulatory system designed and implemented by the Alaska Legislature upon statehood was purposely crafted to provide substantial opportunities for fishermen and other interested members of the public to participate in the regulatory process. This was largely in response to a legacy of federal management, resource depletion, and special-interest bias during the territorial period.

Over the years this commitment to open participation has become an integral part of the regulatory process which the public strongly supports. To quote from the 1997 Senate Advisory Council report on fisheries management:

"It is difficult to emphasize just how strongly many believe that 'participatory democracy' is the essence of Alaska's fisheries management regime. They speak very critically of other systems, such as Canada's Department of Fisheries and Oceans and of the management agencies in California and Washington as bureaucracies which limit or essentially exclude public involvement. The legacy of territorial days during which Congress and federal regulators routinely ignored the concerns of local fishermen is strong."

While public participation is an essential part of the regulatory process, in recent years the virtually unlimited opportunity for such participation, combined with ever-increasing complexity of fisheries issues, has created an almost impossible working situation for the board. To again quote from the Senate Advisory Committee report:

"...many fishermen, past and present board members, and others expressed the conviction that some action to either control the agenda or to enhance the ability to cope with the workload was necessary. They referred to the present system as verging on chaos."

In response to public concern, Governor Cowper appointed a nine-member review committee in October 1997 to evaluate the structure and procedures of the Board of

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1. INTRODUCTION

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In response to public concern, Governor Cowper appointed a nine-member review committee in October 1987 to evaluate the structure and procedures of the Board of

Fisheries and to recommend changes necessary to facilitate effective management. Members of this committee are:

Ole Mathisen (Chair)	Pete Schaeffer
John Garner	Larry Edfelt
John White	Hank Pennington
Cheryl Sutton	Don Mitchell
Dick Jacobson	

Staff Assistance and support from the Office of the Governor was provided by John Halterman and Sam Stoker. This report was drafted by Sam Stoker based on the committee's deliberations.

In his charge to the committee, the governor instructed the members to address the following questions:

- a. Is the present system of fisheries regulations well suited to meet the challenges posed by an increasing complex utilization of valuable resources?
- b. Is the current Board of Fisheries regulatory process fair, efficient, and responsive? If not, what changes should be made to make it so?
- c. Does the current process integrate all available data, including the most recent biological information, economic considerations, and state fisheries policy, in considering regulatory decisions? If not, what changes are required?
- d. How should board members be selected? Should they represent different gear groups, geographic areas, or knowledge and expertise? What other qualifications should be considered? Should membership to the board require divestiture of a personal economic interest in fisheries regulations? Should membership be a full-time paid occupation?
- e. Does the current process provide for sufficient input from all user groups and regions without discrimination or bias, and does the process promote orderly and efficient review of regulatory proposals? If not, what improvements can be made?

On November 6-13, 1987, the committee met in Anchorage for initial deliberation and for receipt of public testimony through a statewide teleconference. On February 4-5 the committee reconvened in Juneau to finalize its discussion and recommendations. The content of these hearings and deliberations are summarized in the following report.

2. IDENTIFICATION OF PROBLEMS

The number and diversity of problems, real or perceived, which have been attributed to the board and its processes over the years are myriad and nearly all-inclusive. Many of the present problems with the board derive from the increasing value of the resource, consequent competition for that resource, acknowledgement and definition of competitive user-groups, and better organization and lobbying pressure on the board from these user groups.

The following outline of problems and suggestions relating to the board is summarized from written comments received by the Governor's Office, a recent public teleconference in Anchorage, deliberations of this committee, and recent reports from the Board of Fisheries and the Senate Advisory Council.

a. Policy:

- o Inadequacy of statewide fisheries policy, resource assessment documents and area management plans for use by the board.

b. Regulatory Process:

- o Relationship of the board to relevant agencies.
 - (1) ADF&G
 - (2) Local advisory committees and regional councils
- o Accountability and documentation.
- o Criteria and guidelines for regulatory decisions.
- o Reliability, applicability and consistency of information supplied to the board.

c. Structure of and appointment to the board:

- o Full-time "professional" versus part-time "lay" board concept.
- o Creation of regional boards.
- o Division of boards by resource category.
- o Process of and criteria for appointment to the board.

o Conflict of interest and special interest bias by board members.

- (1) divestiture of financial interests
- (2) disclosure of financial and other interests

d. Staff support for the board.

e. Proposal submittal and review.

- o Length of board meeting.
- o Criteria for submittal and screening of proposals.
- o Role of advisory committees and regional councils.
- o Public access to the regulatory process
- o Level of autonomy and authority of advisory committees and regional councils.

3. RECOMMENDATIONS OF THE COMMITTEE

The following were approved by the committee as recommendations to the governor. Many of these recommendations may also apply to or affect the Board of Game.

3.1 Policy:

(a) To a large extent the Board of Fisheries has been delegated the task of regulating the take of fish stocks without specific guidance in the form of comprehensive fisheries policy adopted by the legislature, which has the authority and responsibility to provide such guidance, pursuant to Article 3, Section 2 of the Alaska Constitution. The committee recommends therefore that the legislature and the governor develop more specific fisheries policy in order to direct and assist the Board of Fisheries in its decision making process.

(b) Objectives of the board should be to prepare, in cooperation with staff of the Department of Fish and Game, resource assessment documents (RADS) and develop and implement area management plans (MPs) for geographic areas which represent ecological systems or entities in so far as such can be defined by available data. The timing and priority for development of these RADS and MPs should be consistent with state fishery policy as defined by the legislature and/or the governor. Biological data contained in the RADS and MPs should have confidence limits or at least degrees of reliability clearly delineated so that all parties understand the biological risks associated with particular management and allocation decisions by the board. Ultimately, all regulatory proposals should be offered as amendments or revisions to management plans and considered against the objectives of those plans.

RADS and MPs should be updated on a biannual basis to incorporate new information, and should be made available to all segments of the regulatory system. Management plans should be promulgated for the purpose of developing both short-term and long-term sustained harvest and allocation policy addressing subsistence, commercial, sport and personal use needs as well as incidental catch.

The authorship of RADS and MPs and amendments to them should be noted and dated.

3.2 Regulatory Process

(a) The committee supports the board's return to a two-year cycle for proposal submittal and review, by alternate area, except as otherwise provided for.

(b) The board should address each section of the regulations as advertised, and should provide timely and public notification in the event of reconsideration or change of schedule.

(c) The location of board meetings should be determined by the board, based upon considerations of cost and efficiency, with the provision that adequate and timely notification of such decisions be made public.

(d) In addition to the biannual cycle for proposals by area, all regulatory proposals should be submitted sufficiently in advance of board meetings to accommodate adequate review according to an established schedule similar to the following:

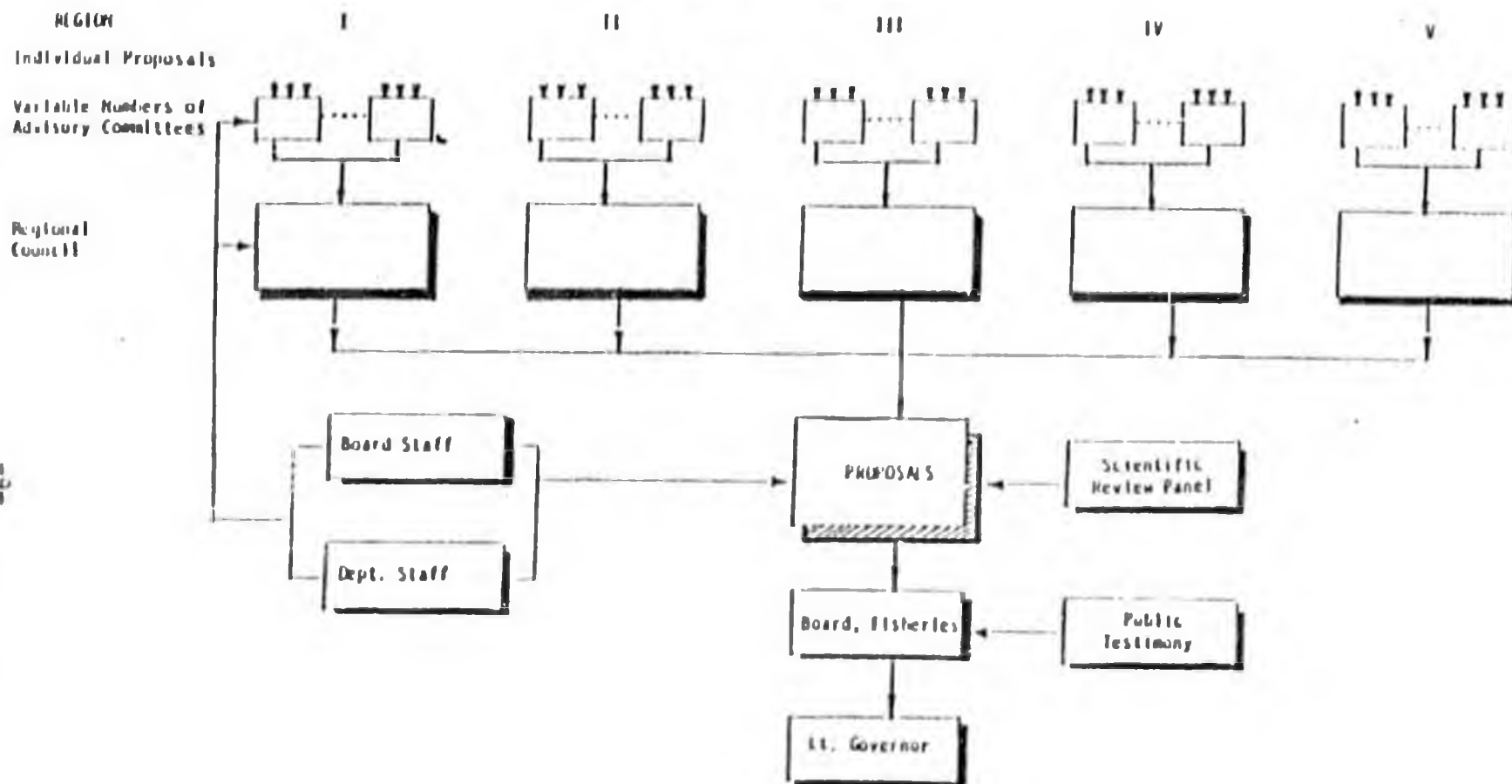
<u>Finfish</u>		<u>Shellfish</u>
January 1	Department proposed RADs and MPs should be published and distributed	January 1
February 1	deadline for submittal of proposals	May 1
March 1	deadline for publication and distribution of proposals	June 1
March 15	deadline for submittal of written comments relating to proposals, and meetings of Local Advisory Committees to discuss RADs and MPs	June 15
April 15	deadline for written comments on RADs and other proposals	September 15
May 15	meetings of regional councils for debate and comment on proposals	October 15
September 1	regional council meetings to review proposals for which new information has been acquired, with participation by the board and Department staff	November 1
October 1	deadline for submittal of recommendations by the regional councils	February 1
November 1	Board meeting	March 1

3.3 Appointment to the Board:

(a) The governor should appoint persons to the board who concur with and agree to implement state fishery policy. Such persons are expected to be knowledgeable and

ALASKA DEPARTMENT OF FISH & GAME

Flow Chart of Regulatory Process



experienced concerning aquatic renewable resources and their uses in Alaska.

3.4 Structure and Composition of the Board:

(a) After lengthy deliberation the majority view of the committee was that a full-time professional board is not necessary at this time and that the present lay board system should be retained. Other recommendations relating to this decision are as follows:

(b) Board of Fisheries appointments should be salaried, part-time positions within the state employee system.

(c) Appointment to the board should not require divestiture of financial interests in fisheries or fishery-related businesses. Board members, however, should not hold concurrent positions as officers or directors, paid or unpaid, of professional fisheries organizations.

(d) Members of the Board of Fisheries should be required to provide full public disclosure of interests, financial or otherwise, in fisheries related businesses or organizations. The board's current abstention policy should be maintained.

(e) Any member of the Board of Fisheries convicted of a violation of fish and game regulations should be subject to automatic removal. A minority of the committee felt a board member should be removed only for an intentional violation.

3.5 Ex parte Communication:

(a) Members of the Board of Fisheries may not have ex parte communication relating to regulatory proposals during meetings of the Board of Fisheries which they are attending, including periods of recess. Board members have the obligation to inform the public of this prohibition if improperly approached, and to disclose such approaches as soon as the board reconvenes. Failure to do so should be considered grounds for automatic removal of the board member. A minority of the committee felt that automatic removal was too severe.

In recognition of limitations which this places on the board and the public for information exchange, the committee recommends that chairpersons of advisory committees be allowed to participate in deliberation of issues relating to their areas at the discretion of the Board chairperson.

3.6 Documentation:

(a) The Board should provide written documentation which identifies evidence in the

administrative record upon which it relied in arriving at all decisions, along with a summary of reasons for such decisions. This administrative record should also include the voting record of board members on each decision.

3.7 Support Staff

(a) The executive director of the Board of Fisheries should be a partially exempt position, and should be hired and fired by mutual consent of the Board of Fisheries and the Commissioner of the Department of Fish and Game.

(b) The board should prepare and submit its own budget to the Governor for staffing and annual expenses.

(c) A professional staff, serving exclusively the board, should be hired and fired by the executive director of the board and should consist of partially exempt positions within the state employee system.

(d) Staff needs of the Board of Fisheries, as determined by its executive director, should be consistent with the recommendations of this report and the statutory duties of the board. The committee recognizes the need for both full and part-time staff to provide biological and socioeconomic advice as required.

(e) In addition to salaried staff, there should be appointed a non-salaried scientific review panel representing socioeconomic as well as biological, statistical and oceanographic areas of expertise. Funding for travel and expenses should be provided as necessary by the Board of Fisheries.

3.9 Criteria and Policy for Allocation:

The board should regulate personal use, subsistence, sport and commercial fisheries for long-term sustained utilization and with sufficient regulatory stability to facilitate efficient management and fair and reasonable utilization of such resources. In this context it is recognized that changes in biological, ecological, social and economic conditions may necessitate corresponding changes in allocation among the various user groups. In order to facilitate rational decisions by the board affecting such allocation, it is recommended that the following policy and criteria be adopted:

Management plans and regulations which allocate fishery resources among personal use, sport and commercial interests should:

- o Be based on the best scientific information available and be calculated to achieve conservation of the resource addressed,
- o Be designed to achieve fair and reasonable opportunities for the taking of fishery resources by user groups identified in the plan or regulation, be based on the best social and economic information available, and be consistent with sustained yield management and subsistence priorities as established by the legislature. Such plans and regulations should take into consideration natural fluctuations in resource standing stock and should be reasonably enforceable.

If the Board of Fisheries determines that it is necessary to restrict opportunities for the taking of fisheries resources, decisions should be based upon the following factors as appropriate to each particular decision:

(a) Ecological considerations, including:

- o The biological stock description of the resource addressed and,
- o Factors affecting the carrying capacity of the region or area for the resource addressed.

(b) Economic impact, including:

- o Losses or benefits which may accrue to relevant user groups,
- o An assessment of the dependency of affected users on the resource for their livelihood,
- o Alternative fishery resources available to affected users, and the cost to the affected user for switching to the alternative resource,
- o The importance of the affected fishery to state, local and regional economies.

(c) Social impact, including:

- o The history of the affected fishery and historic levels of utilization by various user groups.

- a The capacity of the area in terms of physical facilities available to resource users,
- b The importance of the fishery for personal use by local residents,
- c The importance and capacity of the affected fishery for providing recreational opportunities to residents and non-residents.

3.9 Future Actions:

(a) The committee recommends that the governor continue this evaluation process, either through this committee or a new committee. It is particularly important that representatives of Local Advisory Committees, Regional Councils, and the Board of Fisheries be included in such further evaluation in order to better define the role and responsibility of the advisory committees and regional councils in the regulatory process.

(b) Some of the preceding recommendations of the committee will require legislative action. Members of the committee could be available to assist in the drafting and review of such legislative proposals.

4. DISCUSSION

The following discussion relates by topic to recommendations presented earlier in this report.

4.1 Policy:

The committee agreed that a major problem in arriving at either conservation or allocation decisions derives from the fact that the state has no well-defined and comprehensive fisheries policy in place and that resource assessment documents (RADs) and area management plans (MPs) are often deficient or non-existent. The committee strongly recommends that the board, the department, the administration, and the legislature make every effort to develop a coherent statewide fisheries policy as soon as possible in order to provide structure and guidelines for the formulation and submittal of management plans and proposals, and to provide focus and direction to the board.

It is the committee's recommendation that the board be provided with adequate staff, independent of the department, in order to effectively review and summarize for the board relevant information received from the department and other sources, to work with the department in the formulation of RAD's and MP's, and to inform the department as to informational needs of the board. The board should, with the help of its staff and the department, construct over time a record of stock statuses for all major species, and should work with the department to summarize RAD's and MP's on file for use by the board, the advisory committees, and the regional councils. Whenever lacking, the board and the department should cooperate in formulating RAD's and MP's as consistent with the priorities of state fisheries policy, and should establish better sustainable yield estimates, with confidence limits, for major stocks and species whenever possible.

It is also the recommendation of the committee that the board and the department interact closely with each other and with the local advisory committees and regional councils as appropriate for formulation of resource assessment documents (RADs), area management plans (MP's) and regulations. In this regard it is recommended that representatives of the department and the board attend and participate in meetings of advisory committees and regional councils whenever possible and appropriate. The department should also make sure that RAD's and MP's are made available to the board, advisory committees, and regional councils for use in evaluation and deliberation of regulatory proposals.

4.2 Regulatory Process:

A major concern regarding the board process is the increasing number of proposals submitted to the board, the resultant work load on the board, and the need to somehow limit or screen the input of such proposals. However, while almost everyone agrees that there is a problem in this regard, there is no general consensus on how such screening or limitation should be accomplished. As discussed in the recent report by the Senate Advisory Council:

"The value of much of what the board must consider is questionable. Many proposals are nearly identical in intent or are trivial in content. Others are ghosts of proposals past, having suffered numerous previous rejections. There are usually several "pay back" proposals, the purpose of which is primarily to exact revenge on a user group by which the proposer feels it has been wronged. Still others concern actions clearly outside the authority of the board. No formal controls or screening to separate these proposals from the legitimate, thoughtful, articulate variety exists. All must be considered in one way or another by the board at its public meetings."

Suggestions as to methods for screening proposals include appointment of an independent committee to perform that function, screening and approval by the advisory committees and/or regional councils, and requiring multiple sponsorship for proposals.

After due consideration, the decision of the committee is that none of these methods are acceptable or appropriate, and would not serve to alleviate the problem. Screening of proposals by a committee or panel would not result in overall savings in either time or money, would probably not be effective, and would very likely lead to further criticism of the process. Similarly, screening by advisory committees and/or regional councils would be overly time-consuming and costly, would be of minimal benefit, and might make the process more vulnerable to special-interest pressure. As outlined in the section dealing with formal recommendations, the committee does suggest earlier submittal of proposals and more involvement of the advisory committees and regional councils in proposal review and evaluation.

And again, the recommendation of the committee is for board staffing to review, consolidate and evaluate proposals and to make appropriate recommendations regarding

them. It is felt that this in itself will greatly improve efficiency and reduce demands on the board.

The committee agrees with the decision of the board (November 9, 1987), to review proposals from each of two areas (Kodiak/Western and Cook Inlet/Gulf of Alaska/Southeast) on an alternate year basis. This plan will reduce to some extent the annual work load faced by the board, will allow more considered review of proposals, and will provide for increased regulatory stability. Protection of the resource can be accomplished in alternate years through emergency orders or regulations by the department, or the advisory committees can themselves undertake closures of threatened fisheries.

Several complaints were received by the governor's office and the committee about the process, or lack of such, used by the board to schedule debate on issues and regulations. Some complain that the board has at times dealt with an issue during the period scheduled for public testimony and then reconsidered that decision at a later time without adequate public notification.

The committee agrees that the board needs to incorporate new information as it is received, and may find it appropriate and necessary to undertake last minute reevaluations. When this occurs the board should be required to serve timely notification and should make public the reasons for such reconsideration.

Present law (AS 16.05.300b) requires the board to hold at least one meeting or hearing a year in each of four areas of the state. On the other hand, the same statute says that "Each board shall select the time and place in the state for the transaction of business".

Not surprisingly, this rule has been variously interpreted. Those living in outlying areas frequently feel disadvantaged by having to travel long distances (generally to Anchorage) to participate in board meetings, and are inclined to interpret this statute to mean that the board must hold full meetings in each region each year.

For the board to move meeting locations to regional centers would, of course, provide increased access for residents of that region. On the other hand, it would increase considerably the cost and time commitments of the board, and would not improve and might hinder access by residents of other regions. In addition, limitations on physical and communication facilities in some of the outlying regions would very likely complicate the process and reduce effectiveness and efficiency.

The consensus of this committee is that the board should not be constrained to hold full meetings in locations other than those it decides upon as practical and cost/time effective. On the other hand, it is recommended that board members, along with board and department staff, schedule and attend regular meetings on at least an annual basis in each region for purposes of explaining decisions and receiving testimony. It is also felt that better definition of the role of advisory committees and regional councils, and increased participation of these organizations in the regulatory process, will go far to improve public participation.

Local advisory committees were authorized and institutionalized by passage of AS 16.05.260, while regional councils resulted from the Alaska National Interest Lands Conservation Act (ANILCA). The number of advisory committees has increased greatly in recent years, from about 50 early in this decade to 76 at present. The roles of regional councils and advisory committees, however, and criteria for creation of advisory committees, have never been clearly defined. The recent (1987) report of the Senate Advisory Council states that:

"Fish and Game Advisory Committees are mandated by 5 AAC 96.050 to develop regulatory proposals, evaluate proposals, provide a "local forum" for fish and wildlife matters, to work with the appropriate regional councils regarding conservation and harvest strategies, and to interact with other interested parties. The department has interpreted that role as "committees are intended to provide a local forum for the collection and expression of opinions and recommendations on the management of fish and game" (ADF&G, 1981). Congress, in ANILCA, expressed a broader orientation and purpose for the advisory committee/regional council system (Gorsuch, 1983):"

The public participation system described in ANILCA section 305 and incorporated into state law was viewed by Congress as essential. The findings in ANILCA section 301 (5) reflect that assessment:

"[T]he proper regulation, protection and conservation of fish and wildlife...and the continuation of the opportunity for a subsistence way of life...require that an administrative structure be established for the purpose of enabling rural

residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses...in Alaska."

The intent of the advisory committees and regional councils was to draw upon the expertise of local residents and insure that local interests were represented in the regulatory process.

Some local advisory committees seem to function quite well and are effective organizations for providing local input to the regulatory process; others are essentially non-functional and are seldom if ever heard from. In some instances there is criticism that the local advisory committees are merely forums for special-interest groups, and that committees are in fact not representative of the resident population. As discussed in the Senate Advisory Council Report (1997).

"There has been considerable criticism of the advisory committee process and composition. Many assert that certain advisory committees are or have been formed around special interest groups and have not been representative of a community's entire user spectrum or are single issue in scope."

In southeast Alaska nearly every community, regardless of size, has its own advisory committee. In western Alaska four committees represent the forty some villages of the Calista region. Anchorage, with nearly half the state's population, has one advisory committee with a voice equal to that of any other committee.

And, while the stated role of the advisory committees is, among other things, "to develop regulatory proposals", the committees have been minimally effective in this regard. The report of the Senate Advisory Council (1997) states:

"Although the source of proposals is not always clear, the annual number of proposals noted as originating with advisory committees or regional councils has remained relatively unchanged since 1975; about 16% of the total voted on during the period 1975-1997."

Proposals regarding the role and function of advisory committees range from suggestions to reduce or limit the number of committees to suggestions that committees and/or regional councils be authorized to pass

local regulations or to veto regulations passed by the Board.

The recommendation of this committee is that participation by local advisory committees and regional councils in the regulatory process in formulation of resource assessment documents, area management plans, and statewide fisheries policy statements should be encouraged and that the format for such participation should be more clearly defined.

4.3 Appointment to the Board:

The recommendation of the committee is to retain the present process of appointment and removal, with the stipulation that certain specific causes for removal should be defined.

The committee recognizes that the present process of appointment of board members by the governor, subject to majority approval by the legislature in joint session, is by nature a political process. It is the responsibility of both the governor and the legislature, and ultimately the electorate, to see that the appointment system functions efficiently and fairly. Moreover, the committee agrees that the goal of the appointment process is to appoint board members who will direct and implement state fisheries policy as formulated by the administration and legislature, and that it is appropriate for the administration, with legislative concurrence, to control such appointments.

The committee strongly reaffirms that appointments to the board should not be representative of or accountable to narrow regional or user group interests, as has often been the case in the past, but should be responsible and responsive to the best interests of the resource and the state as whole.

A proposal was entertained to select board members from a list of nominations submitted by the local advisory committees and/or regional councils. The consensus of the committee was that such a process would only increase the vulnerability of the system to special-interest pressure and would remove much of the responsibility from where it rightly belongs--with the administration and the legislature.

Another proposal considered was that board members be elected from their region of residency. The decision of the committee was that election of board members, whether on a statewide or regional basis, would only increase special-interest pressure and would compromise the administration's ability to direct statewide fisheries policy.

Consideration was also given to the problem of removal of board members, including a proposal that members serve strictly at the pleasure of the governor, subject to removal for failure to follow and implement administration policy. The decision of the committee is that to so liberalize the process of removal would create further instability in the system. The majority of the committee did agree, however, on two specific causes for removal. These include violation of fish and game regulations and violation of ex parte communication prohibitions.

4.4 Structure and Composition of the Board:

The majority view of the committee was that, for the present at least, employment of a full-time board is not necessary and would not solve problems attributed to the present process. There was unanimous agreement that the board should be provided with increased and adequate staffing, and that this, along with other measures to be discussed, would increase efficiency and reduce the work load and time demands on the board members to a reasonable level. It was felt by some that formation of a full-time board might result in increased complexity and special-interest bias. The tendency could be for the board itself, if employed full-time, to expand and complicate issues to justify such a time commitment. In any case, a full-time board would very likely find itself under increased lobbying pressure from special interest groups. The North Pacific Fisheries Management Council operates under a system comparable to that proposed for the Board, with a part-time lay council augmented by strong professional staff and advisory committees support.

The committee also decided not to recommend the creation of regional boards with regulatory authority over local or intra-regional issues. It was felt that such a division of responsibility and authority would very likely result in increased regulatory complexity and inconsistency, and would heighten frustration and confusion among users whose interests cross regional boundaries. Also, local autonomy would probably result in increased inter-regional conflict and competition. Since most resources currently regulated by the board, as well as resource users, are not confined to a single region, local autonomy would very likely lead to increased complication and difficulty in management of inter-regional resources.

Also, the committee agreed that the tendency would be for regional boards to be even more susceptible to special-interest pressure and bias than is the case with the statewide board. The creation of regional boards would further complicate the appointment process and would make it difficult to find and appoint board members with statewide perspective.

Another proposal considered and rejected by the committee was to split the present board into two boards--one to deal with salmon and herring or anadromous and freshwater finfish, the other to deal with marine fish and shellfish. The committee agrees with concerns that salmon interests have tended to dominate the board process, sometimes to the neglect of other fisheries. It feels, however, that to split the board would complicate management of resources and would not be in the best interests of the state or the resources.

The committee concensus is that the board should be structured to provide a comprehensive assessment of fisheries and fishery resources as a whole, and that fragmentation of this responsibility would increase the difficulty of designing and implementing a cohesive statewide and resource-wide fisheries policy. The feeling is that better staff support to the board will permit appropriate attention to non-salmon concerns as well as reduce time and effort demands on the board.

Other major concerns voiced in regard to conduct of the board relate to conflict of interest, special-interest bias, and influence on board members by special-interest advocates.

While it is recognized by the committee that conflict of interest and special-interest bias can be and has at times been a problem with board members, the unanimous view of the committee, and the majority view received from the public, supports appointment to the board of persons with hands-on knowledge of and experience with fisheries resources and sport, commercial, subsistence and personal use fisheries. The feeling of the committee is that even with a full-time board divested of financial interest in the industry, persons of sufficient knowledge and experience to qualify for appointment will bring with them, by definition, certain views commensurate with their experience and background.

Conflict of interest and special interest bias is not necessarily limited to commercial or financial interests, but also extends to sport fishing, subsistence and personal use. Any broad interpretation of conflict of interest or special interest would, therefore, tend to severely limit the number of qualified and knowledgeable persons available for appointment to the board. This does not mean, however, that both the governor and the legislature should not use reasonable care in avoiding the appointment of persons perceived as advocates of special interest groups.

Divestiture of fisheries interests by persons appointed to the board was carefully considered and ultimately rejected by the majority of the committee. Part

of the problem lies in the definition of financial interest and to what lengths this definition should be taken. In many cases financial involvement in the fisheries industry involves heavy investment of capital for gear and equipment, with demanding payment schedules which cannot easily be divested. To require such divestiture would, again, seriously limit the number of qualified persons available for appointment.

In addition, the majority view of the committee is that it is possible to conceal financial interests, and that to require divestiture would not prove meaningful.

But while the majority of the committee did not feel it necessary to require divestiture of financial interest for appointment to the board, it did unanimously reaffirm the necessity for full and clear disclosure by appointees of any and all financial investments in fisheries or fishery related businesses as well as membership in organizations.

The committee also considered a proposal which would require board members to abstain from discussing or voting on issues in which the member has any economic interest, including subsistence or personal use. It was decided that such a requirement would seriously hinder the board's ability to function, and that, while laudable in principle, abstention should be at the discretion of the board itself. Currently, the board chairperson has the authority to decide whether or not a member has a conflict of interest which might influence their position and which should preclude his or her discussion or vote on a given issue. The committee recommends that the chair diligently exercise this authority.

The committee does recommend that board members be compensated by an appropriate salary while on board business. The primary concern is that recent time demands on the board make it financially difficult for persons to accept appointment, and that this difficulty may compromise appointment of the most qualified persons to the board. Salaries for board members should be comparable to those received by members of the North Pacific Fishery Management Council for their service.

4.5 Ex parte Communication:

In regard to inappropriate or undue influence on a board member by special interest representation, the committee has drafted formal recommendations which expressly forbid ex parte communication with and lobbying of board members during board meetings. The purpose of this recommendation is not to forbid or curtail discussion of issues, but rather to ensure that such discussion takes place on the public record.

A minority of the committee, while sharing the concern that ex parte communications have at times presented the appearance of impropriety, believes that ex parte communications are frequently a valuable contribution to the board process. The ability of the unrepresented, unsophisticated public to have access to and influence on the rule makers is what in fact makes the board process so unique and advantageous in the view of many.

4.6 Documentation:

This issue is closely related to that of board conduct and special-interest bias. Board decisions are frequently made for reasons which are not made clear in the record, which fosters the perception that board members are "making deals" with each other or with special interest groups or are voting to further their own interests.

Consequently, the committee recommends that all information relied upon by the board in making a decision be identified in the administrative record, and that board members provide a summary of the reasons for decisions, including economic and other impacts of that decision. It is also recommended that the Board keep an accurate record on how each member votes on each issue and that such be public information. It is hoped that such documentation will serve to define and clarify, for both the board and the public, the criteria and process employed to reach decisions.

4.7 Support Staff:

There was unanimous agreement that the board should be provided with increased and adequate staffing.

The conclusion of this committee is that the present staff needs of the board are not being adequately met, and that the board must have the authority and funding to hire and fire its own research and advisory staff. This is not intended as a negative reflection on the department or its staff and their efforts to supply information to the board. It is absolutely essential, however, that in addition to department support the board establish its own staff, including socioeconomic, biological, and biostatistical expertise for the review, evaluation and summation of information acquired from the department and other sources, and to interact with the department year-round.

The committee also recognizes that many of the decisions the board is called upon to make, particularly those involving allocation, require socioeconomic information and advice which the department, except for subsistence issues, is poorly equipped to provide. It is

essential that the board have appropriate staff to supply such advice if it is expected to make informed allocative decisions.

In this context it is the committee's recommendation that biologists in the department should not deal with issues having socioeconomic implications, and that both the board and the department should retain appropriate staff to address those matters.

Another recommendation of the committee is that the executive director of the board be appointed and dismissed by mutual consent of the Board of Fisheries and the commissioner of the department. The board research and advisory staff should be hired and fired by this executive director and should be salaried, partially exempt positions within the state employee system. Funding for executive director and staff positions should be the responsibility of the board rather than the department, and will require that the board prepare its own budget, in consultation with the governor's office, for submittal to the legislature. This will place responsibility for funding and performance of the board more directly on the administration and the legislature, where it should properly reside, and will allow the board to structure its staff and budget requirements in response to demands placed on it.

In addition to salaried staff, the committee recommends that a non-salaried review panel be appointed to assist and advise the board. This committee would consist of persons of appropriate scientific and statistical background and expertise, and would be appointed by the board from the university system and the private sector. Primary duties of this committee would be to review and evaluate resource assessment documents, management plans, stock assessments, and other information supplied to the board for use in its deliberations. The committee would serve without salary, but would be reimbursed for expenses associated with its duties.

The committee also considered recommending an industry advisory panel, such as is also employed by the North Pacific Fisheries Management Council, but decided that this is not necessary given the composition of the board and the use of advisory committees and regional councils.

4.9 Criteria and Policy for Allocation:

It is the opinion of this committee that many of the difficulties experienced by the board in the past are attributable to the fact that allocation decisions should be based on socioeconomic considerations, which neither the board nor the department are adequately equipped to evaluate

and for which neither the legislature nor the executive have provided adequate standards or criteria.

It is clear that responsibility for allocating surpluses in fisheries resources fall to the Board of Fisheries. As these allocative decisions become more complex, which they are bound to do as our population expands and increasing competition develops for the fisheries, the more need there is for definitive criteria.

The Board of fisheries was mandated by the legislature to adopt criteria for the allocation of fishery resources among personal use, sport and commercial interests. In April, 1987, the board adopted seven criteria suggested by the legislature (AS 16.05.251). The Senate Advisory Council Report (1987) states, however, that:

"The failure to develop more specific criteria may result in inconsistencies in those (allocation) decisions and more legal problems for the board."

This same report goes on to say that:

"There has been widespread agreement among the industry, science, and public figures interviewed for this report that the allocation decisions and general management of fisheries by the board of fisheries would be improved significantly if relevant, timely socioeconomic data were routinely available to it."

In order to facilitate the meaningful utilization of these data, the board must have definitive criteria to apply, and must have adequate staff to evaluate and summarize such information.

In order to assist the board in developing allocation criteria, the committee has drafted formal recommendations as presented in an earlier section of the report.

5. HISTORY AND BACKGROUND OF THE BOARD

The first Alaska Fisheries Board was created in 1949 by the Territorial Legislature as part of the Alaska Department of Fisheries. Board members were appointed by the governor and confirmed by the legislature to serve staggered five-year terms. Membership consisted of one commercial fisherman from each of three regions, a processor, and one member at large. The board appointed its own executive director and was empowered to:

determine and promulgate reasonable rules and regulations not in derogation of restrictions imposed by the U.S. Fish and Wildlife Service...police the fisheries and investigate matters pertaining to the fisheries for fact-finding purposes...maintain, improve and extend the fisheries resources of Alaska in the interest of the economy and general well-being of Alaska (CH 68, SLA 1949).

In 1957, preparatory to statehood, the legislature created the Alaska Department of Fish and Game and the Alaska Fish and Game Commission. This commission consisted of seven members, including three commercial fisherman, a sport fisherman, a fish processor, a hunter, and a trapper appointed by the Governor and confirmed by the legislature. Appointments were for staggered terms of seven years. The mandate to this commission was "... to supervise the Department in maintaining, improving, and extending the fish and game resources of Alaska". After Statehood, in 1959, the new State Legislature created the Alaska Board of Fish and Game to replace the commission in response to charges of special interest bias.

The present Board of Fisheries was created by the state legislature in 1975, along with its counterpart the Board of Game. As defined in AS 16.05.221, "For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence...". In effect, however, appointments to the board have continued to be made along lines of both regional and industry or user group representation, as provided for in the original territorial Fisheries Board.

The procedural process for selection of board members has varied from administration to administration, and has

always been a political process. In all cases, a pool of potential candidates has been developed by the governor's staff, from which members are selected by the governor. Board members are appointed for three-year staggered terms. Members may be removed from the board for inefficiency, neglect of duty, or misconduct in office.

The board staff includes an executive director appointed by the commissioner of the Department of Fish and Game, an assistant executive director, six regulatory specialists, and a clerk typist.

Duties and authority of the board are established in the Administrative Procedure Act and AS 16.05.251. Duties include establishing seasons and areas, quotas and bag limits, and ways and means of taking fish. The board is also charged with classification of species as commercial, sport or predator for management purposes, promulgation of regulations regarding fisheries management, regulation of entrance into research agreements, regulations regarding harvest of aquatic plants, and regulation of licensing activities. Additionally, AS 16.05.251 mandates that the board should establish criteria for the allocation of fishery resources among personal use, sport, and commercial fisheries along statutory guidelines.

The present advisory committee system was established under AS 16.05.260, while regional councils resulted from the Alaska National Interest Lands Conservation Act (ANILCA), section 805. In addition, AS 16.05.300 requires that the board either meet or hold hearings in each of five regions of the state each year, further expanding and facilitating public participation in the board process.

The board currently meets twice yearly, in the spring to consider shellfish regulations and in the winter to consider finfish regulations. In most sessions, statewide regulatory proposals have been considered. In 1983 the board adopted for the first time a system whereby the state is divided into two regions, with regulatory consideration by region in alternate years. The present board has reaffirmed that it will adhere to that approach. In years when an area is not open to regulatory consideration by the board, or when the board is not in session, management authority to open and close harvests and adjust their time or area, or to regulate ways and means of harvest, is delegated to the Department as provided for under AS 16.05.060. The intent is that the use of such emergency orders or emergency regulations be invoked only as necessary to protect the biological base of a stock if an unforeseen event occurs which threatens that stock, or to resolve unexpected conflicts over allocation. In addition, the advisory committees have the authority under statute to close seasons, though this authority has never been applied.

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When the advisory committees were established, part of their function mandated by AAC 96.050 was to develop and evaluate regulatory proposals to the board. In practice, however, only about 16% of the proposals voted on by the board between 1975 and 1987 originated with advisory committees or regional councils, while 49% have originated with individuals or interest groups and 35% with the Department or the board itself.

It is clear that the number of proposals submitted to the board and its consequent workload has increased dramatically in recent years (since about 1975). In the sixties and early seventies meetings of the joint board consumed about 10-15 days total for the year, with 100 to 125 proposals considered. Since 1975 fisheries board meetings have occupied from 17 to 31 days per year, with as many as 395 proposals for consideration. In large part this expanded work load is a reflection of the increased value of and competition for fisheries resources themselves. For instance, ex-vessel values have increased from \$70 million in 1965 to nearly \$900 million in 1986, and wholesale values from \$166 million to \$1.6 billion (Senate Advisory/Council, 1987). The volume and complexity of conservation and allocation issues to which the board has been subjected have increased accordingly, though its capacity to deal with such volume and complexity, in terms of funding and technical assistance, probably has not.

Other major factors contributing to this increased work load include (1) the delineation of subsistence and personal use categories, (2) revitalization of the state's salmon fishery and, concurrently, increased harvests of non-salmonoid species, (3) lack of comprehensive state fisheries policy within which to formulate management and allocation guidelines and (4) generally increased public participation and access to the board process. The increased quantity, if not quality, of proposals with which the board must contend are described in a recent (1987) report of the Senate Advisory Council, as quoted below:

"The mushrooming quantity of information and proposals thus presented to the board and the time consumed in public testimony before it has constrained the board's ability to carefully and reasonably consider all of the proposals and issues before it.

The options, in light of such an increased and increasing work load, would seem to be: (1) limit the number of proposals submitted to the board or (2) increase the efficiency of the board. Due to 1988 budget limitations, the board is constrained to 27-30 meeting days this year, which is probably insufficient to deal with the issues facing it (Senate Advisory Council, 1987).

While problems with the board, either in terms of appointments or function, and public criticism of the board are nothing new, the recent unscheduled adjournment of the board in Anchorage last December (1986) has resulted in unprecedented criticism of the board and loss of confidence in the process. This adjournment served notice in a fairly dramatic way that the process was in trouble and badly needed attention. Several measures were undertaken by the legislature and the Governor in response to this situation.

One such response, originating with Senator Hensley, was proposed Senate Bill No. 199, which would establish a full-time, salaried, Alaska Fisheries Management Commission to replace The Board of Fisheries.

The legislature also authorized and budgeted a review of the board of fisheries by the Senate Advisory Council. This review, prepared by Sheila Helgath and Richard Rainery, is referred to and was used extensively during preparation of the present report.

A third response was appointment by the governor of a Board of Fisheries Review Committee, the determinations of which are presented in this report.

5. MINORITY VIEWS
(Prepared by Don Mitchell)

The recommendations of the Board of Fisheries Review Committee reflect a high degree of unanimity. All committee members agreed that board decisions should be based exclusively on information in the public record, that the board should identify the information in the record upon which it relied in making a particular decision, and that board members should not participate in ex parte communications during board meetings about matters related to regulatory proposals pending before the board. Committee members also unanimously agreed that, with the exception of its enactment of the 1978 and 1986 subsistence statutes, the Alaska Legislature has, in large measure, abdicated its responsibility pursuant to section 2 of article VIII of the Alaska Constitution to provide for the utilization, development and conservation of Alaska's fish stocks. To remedy the latter problem, the committee recommended that the Governor and the Alaska Legislature develop a fishery management policy which included standards for the allocation of fishing opportunities between commercial fisheries and among commercial, sport and personal use fishermen, and that the board implement the policy through the adoption of fishing regulations that are based on Resource Assessment Documents (which assess the biological status of fish stocks) and Management Plans (which identify the allocative goals the regulations are intended to advance).

However, despite the aforementioned unanimity, the committee's recommendation on the most important issue considered during its deliberations was not unanimous. While a majority of the committee agreed that the board should continue to be composed of part-time members who have "hands-on knowledge of and experience with fisheries resources and sport, commercial, subsistence and personal use fisheries," a minority did not. Based on the information acquired during the committee's deliberations, and for the reasons set forth below, the minority recommends that the Alaska Legislature amend the statute which establishes the Board of Fisheries to establish a board composed of full-time, rather than part-time, members who are salaried employees of the State of Alaska who have no economic or political interest in the fisheries they regulate.

A. The Workload Requires A Full-Time Board of Fisheries.

In 1960 when President Eisenhower transferred to the State of Alaska authority to regulate fishing inside its territorial boundaries, Alaska had a population of 226,167. Today, the population has almost doubled. Even more

Importantly, fishing has become a labor and capital intensive industry of immense importance. Tens of thousands of Alaskans, most of whom live in rural villages, depend upon the harvest of salmon, herring and other fish stocks for their sustenance. In addition, since 1960 the economic importance of Alaska's commercial and sport fisheries has grown exponentially. In 1965 the ex-vessel value of the commercial fishery was \$70,000,000. In 1986 the ex-vessel value was \$890,000,000. The economic value of the sport fishery has grown at a similar pace. In 1987 the Alaska Department of Fish and Game estimated that the sport fishery annually contributes \$150,000,000 to the Alaska economy.

Unsurprisingly, the increase in population and in the economic value of Alaska fisheries has had two results: it has increased the number of allocation conflicts that must be resolved at each board meeting and it has generated an ever increasing amount of biological, social and economic information in the form of reports, statistical tables, graphs and oral testimony which board members must absorb and evaluate before they can cast informed votes.

During its deliberations, the committee received testimony from numerous persons who have observed or participated in board meetings each of whom attested to the fact that these two factors have increased the board's workload to a level approaching the intolerable. In 1975 the board met 17 days. In 1985 it met 56. Although the board's decisions to consider regulatory proposals bi-annually and to prevent advisory committee chairmen from participating in board debate are reforms intended to reduce the workload, they have not solved the problem. At the December 1987 meeting, for example, board members worked weekends and late into the night, but failed to complete the agenda. An even when the work gets done, when board members are required to work 10 to 12 hours a day, seven days a week, to absorb, synthesize and apply complex biological, economic and social data to resolve esoteric problems, marathon meetings frequently result in board decisions of questionable quality.

Although the procedural reforms the committee recommends are intended to reduce the board workload, if adopted, the recommendation that advisory committee chairman again be allowed to participate in board debate will offset a substantial portion of the gain. More importantly, in the years ahead the amount of biological, social and economic information that will be generated about particular fisheries can only be expected to increase.

Consequently, no matter what changes in board procedures are adopted, the regulation of Alaska's fisheries is a responsibility which can no longer be adequately discharged by part-time volunteers, even if they are paid a

fair wage. The committee report acknowledges this reality, albeit begrudgingly, by concluding that a full-time, salaried board is not necessary "at this time." For the reasons set forth above, the minority believes that a full-time, salaried board is not only necessary, it is at least half a decade past due.

In addition to ensuring that board decisions are made in a timely fashion after a thorough consideration of all available information, a full-time, salaried board would have a second benefit. The opportunity to testify orally and to answer questions from board members is an important part of the regulatory process. During its deliberations, the committee heard considerable testimony that the board's disinclination to meet at locations other than Anchorage and Juneau has prevented fishermen affected by board decisions, particularly fishermen who live in rural areas, from presenting oral testimony. A full-time board would have time to conduct meetings and hearings in communities located closer to the fisheries being regulated and to visit fisheries during their operation to observe the effect of regulatory decisions firsthand.

B. A Part-Time Board Composed Of Persons Who Participate In The Fisheries They Regulate Is Unlawful.

In the eyes of too many members of the public, the Board of Fisheries is entangled in a web of bias and conflict of interest that frequently results in unfair regulatory decisions that adversely affect fishermen who are dependent upon access to Alaska's fisheries for their sustenance, their livelihood or their recreation. Although reasonable minds may differ as to the truth of the allegation, everyone familiar with the situation agrees that the perception of bias and conflict of interest is real.

In response to the problem, the committee report recommends that ex parte communications be prohibited and that board members be required to publicly announce their biases and conflicts of interest. However, whatever their merit as policy, the committee's recommendations ignore the fact that the present composition of the board is unlawful. Not only does the appointment of individuals to the board who represent (either explicitly or implicitly) specific interest groups or fishermen who live in specific geographic areas violate the statute which governs the Governor's power of appointment, allowing board members with biases or conflicts of interest to vote on regulatory proposals violates the right to due process of law of fishermen who are adversely affected by the outcome of the votes.

In anticipation of statehood, in 1957 the Alaska Legislature enacted a statute which established a seven

member Fish and Game Commission composed of three commercial fishermen representing specific geographic areas, one hunter, one trapper and one sportfisherman. (ch 63 SLA 1957.) In other words, the Legislature purposely delegated its authority to regulate hunting and fishing to a group of individuals who would be appointed because they had substantial vested interests in, or prejudgments about, the regulations they were empowered to adopt.

The Congress was so appalled by this result that it amended section 6(e) of the Alaska Statehood Act to prevent the State of Alaska from regulating the taking of fish and game until such time as the Secretary of the Interior certified that the Alaska Legislature had made adequate provision for the administration, management and conservation of Alaska's fish and game resources. Subsequent to the enactment of the Statehood Act, Secretary of the Interior Fred Seaton informed Hugh Wade, the Acting Governor of Alaska, that, with respect to the composition of the Fish and Game Commission, section 6(e) required that:

[T]he policy-making officials should be selected for their ability and their dedicated interest in the resource, and no identification should be made between a policy-making official and any particular segment of the population; likewise, no official should be bound to represent the interests of a specific geographical region.

In response to Secretary Seaton's admonition, in 1959 the Alaska Legislature enacted a new statute which established a Board of Fish and Game composed of eight members "having a general knowledge of the fish and game resources of the State and selected without regard to political affiliation or special interest." (ch. 94 SLA 1959.) Secretary Seaton then certified that Alaska was in compliance with section 6(e), and on January 5, 1960, President Eisenhower transferred authority to regulate the taking of fish and game. Executive Order No. 10857. In 1975 the Legislature enacted a new statute which split the Board of Fish and Game into a Board of Fisheries and Board of Game, the members of which must be appointed by the Governor and confirmed by the Legislature "without regard to political affiliation or geographical location." ch. 206 SLA 1975.

However, despite the explicit aforementioned statutory prohibitions, for more than a quarter of a century Alaska Governors, aided and abetted by the Legislature, have appointed individuals to the board because of their identification with special interests or geographic areas. Three recent examples should suffice to make the point.

In 1983 the Alaska Legislature refused to confirm Governor Sheffield's board appointments because a majority of the Legislature was of the opinion that the Governor had not appointed an adequate number of persons who sportfishermen identified as representatives of their user group. In response, Governor Sheffield publicly promised to appoint a Fairbanks sportfisherman to the board, and then did so by appointing Ernie Carter.

When Chris Goll, a professional sportfisherman who had been appointed by Governor Hammond, left the Board of Fisheries, Governor Sheffield appointed Bix Bonney, an officer of the Kenai River Sportfishermen's Association, to take his place. When Mr. Bonney resigned from the Board in 1987, Governor Cowper appointed Bud Hodson, the owner of a sportfishing lodge, to the seat.

Lastly, as of the date of the filing of this report, Governor Cowper is seeking a replacement for Mike Haggren, a commercial fisherman from Kodiak. If tradition is a precedent, the Governor will appoint a Kodiak resident to fill Mr. Haggren's seat.

As these examples demonstrate, it is little wonder that many fishermen believe that controversial board decisions are frequently made based on bias or personal or special interest. However, whenever the impropriety of a part-time board composed of individuals who have obvious economic or political interests in the fisheries they regulate is challenged, the proponents of the present system, including a majority of this committee, answer that the appearance of bias and conflict of interest is an unavoidable by-product of a board composed of individuals who have "hands-on" fishing experience, and that such experience is somehow more important than eliminating the appearance of impropriety. Whatever the merit of this argument during the years immediately succeeding statehood, in 1988 it is a rationalization which is both morally and constitutionally bankrupt.

If a Governor attempted to appoint the president of the Chugiak Electric Association to a seat on the Alaska Public Utilities Commission and then attempted to justify the appointment by arguing that the commission needed members with "hands-on" experience in the public utility industry, the public outcry would be deafening. But for 29 years Governors have appointed processors, commercial fishermen, professional sportfishing guides, officers of fishing organizations, and persons appointed to represent the interests of fishermen who reside in specific geographic areas to the Board of Fisheries as a matter of course.

But no matter how strong the tradition, a board composed of part-time members who have vested interests in

the fisheries they regulate violates the statute which controls their appointment.

It is also unconstitutional.

The right to have regulatory decisions made by an impartial decision-maker is an elemental tenet of due process of law. However, it is a right which Governors and the Alaska Legislature have historically honored in the breach. Two, by no means exclusive, United States Supreme Court cases invalidating statutes which established regulatory boards composed of individuals with biases and conflicts of interest demonstrate the constitutional infirmity of the present system.

In Carter v. Carter Coal Co., 298 U.S. 238 (1936), the Court struck down a statute which established a regulatory board composed of coal producers who were empowered to regulate other coal producers. In doing so, the Court stated:

The difference between producing coal and regulating its production is, of course, fundamental. The former is a private activity; the latter is necessarily a governmental function, since, in the very nature of things, one person may not be intrusted with the power to regulate the business of another, and especially of a competitor. An a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment, that it is unnecessary to do more than refer to decisions of the court which foreclose the question.

And in Gibson v. Berryhill, 411 U.S. 564 (1973), the Court affirmed a District Court decision which struck down a regulatory board composed of optometrists who were empowered to revoke the licenses of other optometrists. The case is of particular relevance to an analysis of the constitutionality of the Board of Fisheries because the District Court opinion makes unequivocally clear that the perception of bias or conflict of interest can be as violative of the right to due process of law as actual bias or conflict of interest.

According to the District Court:

The question of possible bias of the Board members in this case is not whether the members are actually biased but whether, in the natural course of events, there is an indication of a possible temptation to an average man sitting as a judge to try a case with bias for or against any issue presented to him. A basic element of justice in America is that the court must avoid, not only evil, but the appearance thereof.

Nevertheless, despite the clear constitutional command that the State of Alaska regulate fishing in a manner which, in both perception and deed, is truly impartial, in order to acquire the purported benefit of "hands-on" fishing experience, a majority of this committee is prepared to continue to allow members of the Kenai Sportfishing Association to regulate Cook Inlet commercial fishermen, to allow Bristol Bay drift net fishermen to regulate Bristol Bay set net fishermen and to allow processors who buy salmon caught in the False Pass fishery to vote on proposals to close that fishery so long as board members identify their biases and conflicts of interest on the public record before voting.

However, while requiring public disclosure of bias and conflict of interest is certainly a laudable reform, requiring board members to announce on the record what the fishermen who may be adversely affected by their votes already know cannot transform a biased, conflict-ridden regulatory board into an impartial decision-maker.

Consequently, for the reasons set forth above, the present Board of Fisheries should be replaced by a three to five member board composed of full-time, salaried members, none of whom have an economic, political or geographic interest in Alaska fisheries.

The Alaska Board of Fisheries
Fisheries Management Alternatives

Senate Advisory Council

Alaska State Legislature

October 1987

THE ALASKA BOARD OF FISHERIES
Fisheries Management Alternatives

Senate Advisory Council
Alaska State Legislature
P. O. Box V
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INTRODUCTION

Management of Alaska's fisheries resources has once again achieved prominence in the public eye. Although this current public prominence is primarily due to a single newsworthy incident, the collapse of the December 1986 Board of Fisheries meeting, a number of fundamental and enduring concerns underlie the renewed call for a reappraisal of the board structure and process. The urge to address perceived shortcomings of the system began shortly after the State of Alaska assumed management of its fish and wildlife resources. This report considers some of the pertinent issues central to fisheries management in Alaska in terms of the effectiveness of the Board of Fisheries as presently organized. Its substance is an analysis of some of the significant implications and considerations associated with various conceptual reorganizations of the board. A brief discussion of the importance of fisheries to Alaskans and why the state is involved in fisheries management and allocation is presented first. The historic development of Alaska's Board of Fisheries is presented as a background to understanding why the current entity is shaped as it is and operates as it does. The broad variety of issues that affect the management process today and the burden they represent for regulators are next analyzed. An outline of alternative organizational structures for fisheries management follows, culminating in a discussion of some options for revising the Board of Fisheries structure and process. These options are presented in the context of identifying the best means of accomplishing a variety of possible public objectives which may ultimately be identified as appropriate for the board.

* * * * *

SUMMARY

I) Alaska's Fisheries: Dollars and More

Alaska's fisheries are the backbone of its renewable resource economy. The value of commercial fisheries harvests is now in the billion dollar range annually, with processed value approaching twice that. It is one of the state's largest private sector employment sources. Sport fishing generates several hundreds of millions of dollars in local and tourist trade. Subsistence use of fisheries resources has immense unmeasured economic value. Alaska's fisheries are also an intrinsic element of the society and culture of the state. Over 160,000 Alaskans hold sport fishing licenses and 15,000 residents and non-residents operate the small businesses that characterize commercial harvesting. Fishing is a lifestyle within a trade, or perhaps the reverse, for most adherents. For those who rely upon subsistence fisheries, the framework of their traditional culture is bound up in that pursuit.

III) Public Stake in Fisheries Management

The state's constitution provides that fisheries will be utilized, developed, and conserved for the maximum benefit of the people. The Board of Fisheries must translate that mandate into regulation. Fish are unique among natural resources in that they remain common property until harvested. As such, fish stocks are susceptible to damage or depletion as a consequence of the collective harvest efforts of individuals acting in their own best interests, thus requiring state regulation.

The two major functions of the board are the conservation of fisheries stocks and the allocation of harvestable surpluses among user groups. A separation of these two functions is

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INTRODUCTION

Management of Alaska's fisheries resources has once again achieved prominence in the public eye. Although this current public prominence is primarily due to a single newsworthy incident, the collapse of the December 1986 Board of Fisheries meeting, a number of fundamental and enduring concerns underlie the renewed call for a reappraisal of the board structure and process. The urge to address perceived shortcomings of the system began shortly after the State of Alaska assumed management of its fish and wildlife resources. This report considers some of the pertinent issues central to fisheries management in Alaska in terms of the effectiveness of the Board of Fisheries as presently organized. Its substance is an analysis of some of the significant implications and considerations associated with various conceptual reorganizations of the board. A brief discussion of the importance of fisheries to Alaskans and why the state is involved in fisheries management and allocation is presented first. The historic development of Alaska's Board of Fisheries is presented as a background to understanding why the current entity is shaped as it is and operates as it does. The broad variety of issues that affect the management process today and the burden they represent for regulators are next analyzed. An outline of alternative organizational structures for fisheries management follows, culminating in a discussion of some options for revising the Board of Fisheries structure and process. These options are presented in the context of identifying the best means of accomplishing a variety of possible public objectives which may ultimately be identified as appropriate for the board.

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The authors gratefully acknowledge the frank and concerned comments of the various members of Alaska's fishing community who consented to be interviewed for this project. We would have liked to have been able to have considered the insights of many more people, for each individual offered something unique, but we also found that by the time we had talked to those people identified in the appendix, the significant issues had been firmly identified and the range of proposals for reform were also apparent. We also wish to acknowledge the contribution of Sarah Bibb, who was involved in the early stages of research and composition and Kathy Hathaway who provided assistance in the legal analysis section. Errors and omissions are, of course, the responsibilities solely of the authors.

SUMMARY

I) Alaska's Fisheries: Dollars and More

Alaska's fisheries are the backbone of its renewable resource economy. The value of commercial fisheries harvests is now in the billion dollar range annually, with processed value approaching twice that. It is one of the state's largest private sector employment sources. Sport fishing generates several hundreds of millions of dollars in local and tourist trade. Subsistence use of fisheries resources has immense unmeasured economic value. Alaska's fisheries are also an intrinsic element of the society and culture of the state. Over 160,000 Alaskans hold sport fishing licenses and 15,000 residents and non-residents operate the small businesses that characterize commercial harvesting. Fishing is a lifestyle within a trade, or perhaps the reverse, for most adherents. For those who rely upon subsistence fisheries, the framework of their traditional culture is bound up in that pursuit.

II) Public Stake in Fisheries Management

The state's constitution provides that fisheries will be utilized, developed, and conserved for the maximum benefit of the people. The Board of Fisheries must translate that mandate into regulation. Fish are unique among natural resources in that they remain common property until harvested. As such, fish stocks are susceptible to damage or depletion as a consequence of the collective harvest efforts of individuals acting in their own best interests, thus requiring state regulation.

The two major functions of the board are the conservation of fisheries stocks and the allocation of harvestable surpluses among user groups. A separation of these two functions is

deemed ideal by many; in Alaska there is a de facto separation as the board nearly always defers to the Alaska Department of Fish and Game (ADFG) on conservation issues. Allocation issues have mushroomed in complexity and number over time and a variety of social, cultural, and economic factors must be considered, whereas conservation decisions are more narrowly focussed on the biological factors. The board's focus has shifted to allocation, as conservation practices have matured. Recent legislation has stressed the importance of socio-economic aspects of regulation.

III) The Formative Years

The basic structure and process of fisheries management is the product of historical forces stirred up by federal management policies during Alaska's territorial days and still powerful today. Alaska's commercial salmon fisheries were the major component of the territorial economy, far outweighing the early gold mining industry and only in the last few decades displaced by public spending and the petroleum industry. For the bulk of the federal period, the industry was controlled by absentee packing interests, regulation was aimed at maximizing harvest, and the conservation and economic concerns of local fishermen and others went unheeded. The teeming fisheries eventually collapsed from overfishing, with 1959 harvests dropping to the lowest level in nearly 60 years, leaving Alaska with a legacy of anger and economic disaster from the federal era.

IV) The Board after Statehood

At statehood the Board of Fisheries as it now exists was created; the principle changes have been the split of the single board into separate boards for fish and game in 1975

and the emphasis on public participation begun in the late seventies. The board is located within ADFG and conducts regulatory activities at two annual public meetings. Members have been selected by a political process from user groups and from specific regions (despite a statutory prohibition) by the governor and confirmed by the legislature. The board's composition has prompted the question of whom it represents, specific interests or the public as a whole.

The public involvement process is the single most prominent feature of the board process, dictating issues and spurring action by the board. Local advisory committees and regional councils were supposed to be the focus of public participation, channeling local expertise and concerns to the board, but fishing groups and individual fishermen now dominate the process, possibly as a consequence of doubts about the efficacy, authority, and representativeness of the committees and councils. In any case, the emphasis on public participation changed the essential character of the board process and public expectations, opening it up to anyone and everyone with a regulatory proposal. The time consumed in the process and the workload of the board multiplied. Fervent debate swirls around the ability of the board to rationally handle that burden and whether it should have the ability to control it by limiting public access or providing it with the ability to perform more work between meetings.

In-season regulatory activity has been relatively successful as a result of the delegation of authority for emergency orders to ADFG. Much of the economic information provided to the board is developed by the Commercial Fisheries Entry Commission (CFEC) and the Subsistence Division of ADFG. The CFEC's ability to provide data has lately been curtailed by budget cuts.

V) Fisheries Management: Complex Scope and Expectations

In recent years fisheries allocation issues have expanded in number and complexity. In Alaska, legal challenges to board regulations have become commonplace, based on failings to record the decision process, conflict of interest allegations, and an absence of decision standards. The board now must pay added attention to cultural and socio-economic implications of decisions. Only limited information in this area is available and the board does not have the capability to independently gather or analyze additional data. The board needs more information to truly assess regulatory impacts and to design regulation to maximize benefits to the citizens of the state. Part of the problem in this respect may be the lack of specific policy to guide the board's actions. The statutory charge of the board is broad and unsupported by explicit policy incorporating specific conservation and socio-economic goals. The fishing industry is rapidly evolving, both in terms of target species and the "fishing power" of participants. The power and mobility of fleets is such that the sustainability of stocks can quickly be threatened. There is sharp division over whether the present board process can keep pace with these changes. Regulation now severely retards the industry's efficiency. Management of Alaska's fisheries has been complicated in the last decade by the advent of a variety of federal and international management regimes with jurisdiction overlapping the state's own.

The collapse of the December 1986 board meeting brought to the public eye questions of conflict of interest which have been latent for some time. Public concern over the avoidance of even the appearance of conflict of interest can be expected to crystallize around a lay board composed of user interests. It seems likely that, given this concern over conflicts, the non-inclusive user group composition of the

board, and the economic stakes involved, allegations of unethical conduct, substantiated or not, will persist so long as there are winners and losers in an allocation process lacking defined standards.

VI) Management Goals and Responsibilities

The goals of management and the structures best suited to achieve those goals should be judged by an explicit set of criteria:

1) Management flexibility: Fisheries management must have the flexibility to respond quickly to unexpected situations, as well as to routine matters. The ability to identify problems immediately, the time to consider all relevant issues, and the resources to adequately analyze all matters are vital. The board does not appear to have the ability to study and resolve serious allocation disputes in a timely manner.

2) Public accessibility and influence: Public input to the board at present can overwhelm the system. The inability to coherently organize or manage input prevents the board from focussing on its relevant aspects. The board lacks the resources to analyze independent information. Explicit definition of the responsibilities of participants and of the objectives of the process are needed.

3) Structural and ethical integrity: The integrity of a board whose primary purpose is the distribution of economic opportunity will always be open to question when its members are competitors for those opportunities. Conflict of interest may be alleviated in a variety of ways, most effectively by prohibiting economic or institutional interests in any fishery for some or all board members.

4) Accountability and Stability: To whom the board must answer for its actions is not clear. The resultant confusion manifests itself in the collapse of meetings and legal challenges to decisions. There are means of insulating the board from political and interest group pressures, without sacrificing responsiveness. Stability is a concern in an industry as capital intensive as commercial fishing. A lay board suggests instability simply because faces change with some regularity, but actual management has been conservative.

VII) Meshing Management Alternatives and Alaskan Reality

The two most common fisheries management structures in the U.S. vest regulatory power in either a lay board or an executive agency head. Alaska's needs are unique and may require a different approach, however.

1) Part-time board: Most jurisdictions which operate under this structure do have a membership drawn totally from user groups, as does Alaska. For the current system to regain control of the process and fulfill the expectations of the public changes will have to be made in internal management, public participation, staff capabilities, and composition of the board membership, at the very least.

2) Full-time board: A paid full-time board is the object of divided opinion. Those opposed to it believe that it would add a layer of bureaucracy with attendant inefficiencies, lack direct expertise in and commitment to fisheries, and carry with it an agenda that may conflict with public goals. The hoped for strengths of a professional board, however, lie in just these same areas. A full-time board would be better able to completely and rationally deal with the current work load. The expertise of the board, if not in the membership, could be provided by staff. The opportunity for conflicts

will be greatly diminished by the absence of economic interests.

3) Agency Management: Arguments for vesting regulatory authority with an executive agency rest on the ability for quick response, the existence of defined lines of authority, and the separation of regulators from the regulated. The philosophy behind this system, that it is the duty and responsibility of government to govern, is markedly in contrast with that of the lay board. Ensuring meaningful public participation would be a necessity in such a system.

4) Regional Boards: The concept of regional boards was debated in Alaska during the late seventies. The primary motivation was to increase local influence by giving regional management authority to independent boards. The system would require a master board to settle inter-regional disputes and inconsistencies. It is likely that a master board would end up functioning much as does the present board.

Depending upon the ultimate objectives agreed upon as appropriate for the Board of Fisheries, the structure chosen will vary. If maximum public involvement is desired, then the present basic process is a paradigm. If relief of the stress on the system is the goal, then internal management changes and increased staff resources and/or a full-time board should be instituted. If the objective is to fully consider socio-economic issues, decision processes and criteria must be enunciated and analytic capability provided. If total avoidance of even the appearance of conflict of interest is sought, then the board's association with user groups must be loosened and its conservation authority eliminated. These are not mutually exclusive options and would be most effective if utilized as pieces of a comprehensive mechanism.

Chapter VII

MESHING MANAGEMENT ALTERNATIVES AND ALASKAN REALITY

A variety of basic management structures embody different features appropriate to the task of resource allocation. Four alternatives, with variations, are reviewed with specific references to how well each fulfills the particular needs of Alaska and the criteria of the previous chapter. Nationwide, two basic types of organization of fisheries management are most common: 1) the commission or board form and 2) the departmental head form. The major problem with comparing Alaska's fisheries management regime to that of other states, or nations for that matter, is that few fisheries elsewhere are of the social and economic importance of those in Alaska. Often fishery issues in other states are primarily recreational in nature, while in Alaska the commercial, subsistence, and personal use fisheries are also of signal importance.

a) Part-time Board

Part-time lay boards are usually composed of five to nine commissioners appointed by the governor and confirmed by the senate. Political partisanship is generally mitigated by appointing commissioners to staggered terms and sometimes by statutorily requiring a bipartisan balance on the board. On a voluntary or lay board, members are compensated with a nominal fee or honorarium; expenses often are also paid. "The functions normally assigned to a commission are: to employ a director for the agency, establish policy, and approve budgets, programs, and regulations" (CSG, 1975). The

duty of the board director is to administer the approved policies and programs of the commission and to recommend policies, programs, and other appropriate action to the commission. The director's responsibilities include the hiring of personnel and the direction of the day-to-day operations of the agency.

The rationale for this board structure is that it is more responsive to public needs and is neutral or bipartisan in approach. This approach predominates nationally, of the 53 fish and game organizational structures surveyed by the Wildlife Management Institute in 1987, 44 were guided by lay boards, with varying degrees of authority. However, the character and agenda of individual appointees can frustrate the intent of appointing a lay board. Careful attention must be paid to the character and interests of appointees. Most states do not appoint a board composed entirely of user group representatives as does Alaska. Where this is done, in Tennessee and Kentucky, for example, the resource is of marginal economic value. Missouri, which has a nationally recognized resource management system, has a board of lay people prohibited from having an interest in any resource, which successfully governs a wide variety of resources including fish.¹ Boards with jurisdiction over other sectors often include representatives of the wider public and officials from relevant management agencies (for example, the Alaska Power Authority).

It is the value of Alaska's fisheries economy that makes the board the target for reform. There is no public outcry for the reform of the Alaska Board of Game (although some

¹The Missouri system was recommended to Alaska's Constitutional Convention by Dr. Ira Gabrielson, a widely respected wildlife management expert.

concerned observers believe that it too should be examined, particularly if the state ever assumes management of marine mammals). It is the fact of the economic importance of our fisheries that has caused the stress breaking down the internal management mechanism of the Board of Fisheries. If Alaska's fisheries continue to grow in overall worth, this stress will intensify. Reform of the internal system is necessary before the failings of the management system threaten the resource. The areas on which the effort for reform should focus are:

1) The public participation and hearing system: the current workload of the board is unmanageable and expectations of its abilities are unrealistic. The board should have the capacity to review and evaluate all proposals prior to its public meetings and the authority to consider only those it deems relevant and justified at its main public hearings.

2) The board should address coherent and comprehensive management plans and reasonable alternatives, rather than individual, unrelated proposals. The plans should include a formal analysis of socio-economic impacts of allocation decisions as part of the regulatory process.

3) There should be some kind of separation between the conservation and allocation decisions. This is possible probably only if the board is relieved of its conservation duties.

In brief, for the Board of Fisheries to achieve such internal reforms, the following changes to the structure and process will be necessary:

1) Much of the board's workload will have to be assumed by subordinate entities. First, there should be some

type of advisory group of interested industry and public members, the NPFMC advisory panel provides a model. An alternative suggested by several observers is the establishment of a schedule of regional public hearings, each presided over by staff hearing officers and one or more board members. Thus local testimony could be collected in the region, rather than bringing regional representatives to board meetings. It could result in a broader representation of local interests than the current process and aid in reducing the pressure and congestion experienced at meetings now. In either case, a forum for presentation of public testimony prior to a full board meeting and the opportunity for review and evaluation of proposals and plans prior to a full meeting is provided. Public participation should be governed by reasonable, clear criteria for the acceptance of proposals, including relevance, justification, and analysis of impacts.

2) The board should be provided adequate staff to assist in the previous processes and also to gather and analyze the socio-economic data necessary to informed allocation decisions.

3) Placing the conservation decision making authority within the ADFG should be considered, to rid the board of the dual pressure of both elements.

B) Full-time Board

The workload of the board of fisheries, under the current process and with the level of public expectation is far greater and more complex than any other state fisheries

management agency. It is also more complex than any of the regional management councils established by the MFCMA. The expectations of the board are high, with multiple seasons, fisheries, and gear groups to be considered in its annual regulatory round. Other regulatory regimes faced with comparable complexities and workload are under the jurisdiction of full-time boards with staff at their direction, such as the Alaska Oil and Gas Conservation Commission, Commercial Fisheries Entry Commission, and Alaska Public Utilities Commission.

The management of complex public resources and services, with great economic value, presents the potential for conflict of interest, particularly if a variety of parties are contending for the opportunity to utilize resources or provide services. The economic stakes are extremely high and the temptation to influence the process is a well-known human trait. Whether such activity actually takes place, has been deemed nearly irrelevant by modern public opinion, which holds that even the appearance of a conflict of interest is improper. The most direct means of eliminating such opportunity or appearance is by placing decision power into the hands of individuals without an economic interest in the outcome of the decision process. That may mean a board of people with no prior interest in fisheries or it may mean that appointees would relinquish previous interests.

The idea of a full-time, professional board to manage our fisheries is anathema to many of the user groups such a board would regulate (see, for example, Alaska Fisherman's Journal, October 1987). They assert that such a board would be no improvement over the present system of user representation and would result in a decline in efficiency and expertise:

- 1) A professional board would simply add another layer of bureaucracy, with its attendant inefficiencies and

tendencies to invent work, formalize and impede the process, and unnecessarily intrude into situations which do not warrant regulatory action.

2) A professional board could not duplicate the wide scope of expertise found on the current user board. The type of people willing to serve on the board would be those who lacked personal commitment to the fishing lifestyle or were unsuccessful as fishermen, and thus would be unqualified for service. Eminently qualified people who were unwilling to relinquish their interests would be unavailable.

3) A professional board would not eliminate conflict of interest, since any member appointed would certainly bring with him or her an agenda and perspective developed as a result of previous experience, regardless of whether any economic or institutional ties to the resource existed. Certain perspectives, such as the regulatory or academic, would assume unjustified precedence over those of user groups.

These charges were repeated by virtually everyone who voiced opposition to the professional board concept. Few would acknowledge that these problems could be overcome. However, other concerns do suggest that a professional board should be considered.

1) The workload of the board now is unmanageable and strongly supports the increased resources for the board to address it. Hundreds of proposals must be considered annually. Long term disputes over general and specific allocation policies persist without definitive statements of policy on the part of the board. The legal system is being relied upon to settle regulatory conflicts. The board has additional

responsibilities as a consequence of the subsistence and allocation laws passed by the legislature in 1986.

2) The question of expertise of the board is one that can be answered in two different ways. It is not patently correct to assume that knowledgeable, concerned participants in various fisheries would not give up that participation in order to serve the public. It happens in many economic sectors, on many other boards and commissions throughout the nation. While the passionate dedication of the majority of fishermen to their avocation or business is undeniable, public spirited individuals can be found in all walks of life. The loss of livelihood, incidentally, would be most severely felt by commercial fishermen. Representatives of the subsistence, personal use, or sport categories would have another view, as would potential representatives of non-consumptive uses. Alternatively, the selection of intimately expert board members is not necessarily a precondition. If the board is supplied with adequate staff resources, the board members will be "brought up to speed" on issues. In terms of allocation decisions, the important information is socio-economic in nature and comprehension of it does not necessarily depend on voluminous direct knowledge of the fishing industry.

3) The perspective of non-industry board members may or may not be tinged by their experience, but to suggest that conflict of interest will persist is not reasonable. In specific, the objective is to eliminate the potential for economic conflicts. Paid board members, barred from holding economic interests in any fishery, certainly would have an advantage, particularly in the perception of the public at large. No accusations of conflict of interest have been

directed at any CFEC commissioners, although great economic stakes ride on their decisions. It is inconceivable that so long as the board is composed of user groups, but not all user groups, that it will escape further allegations of conflict of interest. The economic stakes are just too high now that value of Alaska's fisheries is measured in the billions of dollars.

C) Agency Management

A third approach is to vest full management responsibility in an agency chief appointed by the governor. Nine states have such departments with commissioners appointed by their governors. The fisheries of Canada, the largest exporter of fish in the world, are regulated by such a system. These commissioners have comprehensive regulatory authority, both for conservation and allocation. Arguments for this structure center on the ability of the regulator to respond quickly, the existence of direct lines of authority and responsibility, and the separation of regulators from the regulated.

Such regulatory processes have a different philosophical foundation than does the citizen board. The basis is the belief that it is responsibility of government to govern, as it was elected to do. That essence was probably most succinctly stated by the commission charged with formulating reforms for the management of Canada's Pacific fisheries:

...governments have the responsibility to govern and they cannot delegate their responsibilities to private groups...the allocation of rights to use public resources is a question of high public policy, which

must be settled with reference to legal, social and political considerations (Pearse, 1987).

There is no doubt that a proposed fisheries management structure centralized in the ADFG would encounter a storm of resistance. The effectiveness of public participation in management regimes in which executive agencies have ultimate authority has been a prime area for criticism. Canada's Department of Fisheries and Oceans (DFO) has been strongly taken to task for its diffuse and directionless public participation process (Pearse, 1982). Alaska's commercial fishing industry would not acquiesce to such a system, because of the feebleness of public participation. Although public testimony on regulatory packages may be invited and considered, the commercial sector's perception of the agency management process is that the decisions are made before public review occurs (this view holds true for professional boards also). The same opinion of Alaska's present system may be elicited, however, from sport fishing interests.

The obvious checks against the "wiring" of regulatory decisions are the existence of explicit rules of procedure, established decision criteria, and decision documentation requirements. Agency centered management in Alaska would have to be governed by such strictures and, additionally, ensure meaningful public involvement. The definition of "meaningful" would have to be different than it is at present, however. Perhaps most importantly, the joining of both the conservation and allocation powers into one agency, not immediately accountable to anyone except the governor, is not likely to be greeted with enthusiasm by either the agency or the interested public.

There are those that believe that systems directed by a department executive can successfully manage fisheries of complexity and controversy comparable to Alaska's. There are great expectations for the recently reorganized and

redirected DFO regime overseeing British Columbia's ocean fisheries. Many of the practices being implemented there hold great promise for the development of long term policy that should greatly improve the productivity of the resource and the efficiency and value of the associated economy. The flexibility and simplicity of the system, based on a constantly renewing cycle of review and adaptation of management goals and plans by both regulators and users, is expected to bring both near term and long term improvements.

D) Regional Boards

During the Hammond Administration, the notion of restructuring the Boards of Fisheries and Game into a system of regional boards with independent regulatory authority achieved some currency. This movement was sparked by a number of forces, primary among them the subsistence debate and support for increased public participation. Many rural Alaskans, in particular, did not believe that the advisory committee system was providing them with an effective voice in resource management. The concept was studied by the department, the Alaska Growth Policy Council, and the legislature's committee on subsistence.

While the movement eventually resulted in the formation of the present regional councils, much greater authority for individual regional boards was considered at the time. Full jurisdiction over regionally based resources and direct accountability to local residents were the significant features of the proposals. As many as twelve boards were suggested (to coincide with ANCSA corporation regions) with regional ADFG staff and election of members among the issues debated. A master board with oversight authority was deemed

necessary by some. The unresolved issues then, which helped to deflate the concept, still remain today, including:

1) The lines of authority of such a system would be the primary difficulty in its operation. Many species could not be managed regionally, since their habitat in Alaska waters would likely cross most conceivable artificial boundaries. It is unlikely that a system such as this would resolve disputes, but would engender disputes between the fishermen of different regions (Picture the False Pass dispute with two regional boards claiming jurisdiction). Would any master board be immune from the controversy prompted by the situation under the present system? How would the role of the master board differ from the present board?

2) How would regional boundaries be determined? Would social, economic, political or biological factors be paramount?

3) How could such a system prevent suspicions of conflict of interest by non-local fishermen if a regional board gave strong consideration to local factors in its fishery regulation as present law indicates is appropriate? What would legally prevent a regional board from restricting gear and openings to exclude all but local fishermen? There would have to be some requirements concerning consistency of regulation of the same species in different regions. Otherwise chaos and inefficiency would result as fishermen with permits in fisheries across the state tried to respond to regulations based on strictly local concerns.

The principal objective of such a system would be the enhancement of the effectiveness of local public

participation in guiding management. The other problems it would present could far outweigh this advantage.

E) Conclusions

The Alaska Board of Fisheries, like other fisheries regulatory agencies, has evolved both structurally and procedurally throughout its history. Since the establishment of the Territorial Fish Commission in 1919, the body has rarely retained any particular form for more than a decade or two without relatively significant modifications. Conditions and motivations dictating the structure of the board fifty years ago and even as recently as twenty or ten years ago have changed, multiplied, and become increasingly complex. As a result, the board structure and process are not as effective or as efficient as they were not long ago. The principles or criteria by which this structure and process should be evaluated, as outlined in Chapter VI, are:

- 1) Does the structure keep the board politically insulated but responsive to enduring public concerns?
- 2) Is the process flexible enough to respond to emergency situations?
- 3) Does the process provide for public involvement that meets Federal requirements and collection and consideration of appropriate information?
- 4) Does the structure require members to be neutral and act in the best interests of all Alaskans?
- 5) Is the division of roles and responsibilities between the ADFG and the board clearly defined and free of conflict?

In general, our analysis of the board suggests that the efficiency and effectiveness of the Board of Fisheries could be improved by addressing five major areas:

- 1) Additional staff resources should be provided to facilitate the fulfillment of the board's mandate or expectations of the board must be reduced;
- 2) More explicit statements of regulatory decision criteria and better documentation of the decision process are necessary;
- 3) Formal means of defining and directing meaningful public involvement must be initiated;
- 4) The issue of the representativeness and interests of the board should be laid to rest.
- 5) The roles and responsibilities of participants in the process should be explicitly defined.

* * * * *

How the Board of Fisheries should go about its business and what should be the essential elements of that business are matters of some subtlety and complexity. Much of this judgement revolves around legal questions and much, perhaps most of it, revolves around a far more difficult and contentious nucleus. In essence, the values of society as a whole and of certain segments of society, determine what is expected of the Board of Fisheries and how it should achieve those expectations. There are conflicting, sometimes mutually exclusive, goals which can be appropriately attached to fisheries allocation. The permutations are endless, but some ideas stand out.

I. If the objective is to retain the maximum public involvement in the allocation process, then the basic structure of the current board should be retained.

If this approach is followed, some minor changes to the board process already being pursued by the board, such as the alternating area regulatory schedule and improved proposal format, could help to lessen somewhat the burden on it. Attention should also be given to a clarification of the role of advisory committees and measures taken to ensure their representativeness.

The outstanding feature of the board process, as it now exists, is the access that the public has to the regulatory process. It is as open as such a system could be, and it would be difficult to overstate the fervency of opposition that any attempt to substantially change that situation would engender. It is obvious that public participation constitutes an important component of the process and should be retained as a significant element in it. The changes now being applied to the board process may have some affect, but have yet to demonstrate any efficacy in reducing the burden or stress on the system². To this point, no formal, specific decision criteria or process have been established, so legal challenges to regulation, on the basis of the failure to consider relevant information and to document the decision process, are likely to continue. The ability of the board to collect and analyze socio-economic data remains nonexistent, despite recent legislation directing the board to consider such information. The integrity of the process still remains directly linked to the integrity of individual board members. Seven board members selected from user groups will never be

²As this is written the Board of Fisheries is meeting to consider further improvements to the process.

able to directly represent all fisheries interests, so groups on the outside will have every reason to dispute the integrity and representativeness of the body when allocations are not to their liking. The economic stakes are so high that no less should be expected.

II. If the objective is to relieve the board of some of the burden and pressures that exist at present, the workload can be eased by implementing some internal management changes within the current structure.

It should be possible to significantly reduce the board's workload, within the basic structure as it exists now. In this case, in addition to the changes noted above, the board should be provided with increased analytical and administrative resources. The board should establish procedures (screening and evaluation of proposals based on explicit criteria for consideration) and structures (advisory panels and/or additional staff) which would enable it to control its agenda, conduct significant review and analysis prior to public hearing, and allow it to concentrate attention on the significant proposals at public hearings. A formalized process for decision making should also be adopted.

While this approach would substantially limit direct public participation, it could be designed in such a way that all proposals at least receive some consideration and a written response based on established standards. If the board is expected to continue to address all pertinent proposals as its public meeting time shrinks, then the capacity to conduct regulatory work in the interim between meetings is essential. This means the addition of staff resources to perform the bulk of regulatory groundwork. While it is unlikely that this approach will mollify those whose proposals would not

receive a direct hearing by the board, the depth of consideration given proposals would likely be greater. The adoption of specific decision making processes and allocation criteria would help to reduce challenges to decisions that were properly and fully documented. These internal management changes, however, would not help the board to fully consider socio-economic information or to collect and analyze such data itself. While the establishment of decision making standards and the application of allocation criteria should lessen conflict of interest concerns, if the board retains its traditional composition, questions about representation would persist. So long as that question endured, conflict of interest questions would be likely to linger also.

How advisory committees and regional councils fit into the regulatory process should be more formally defined as a focal point for local input. The means by which this input is gathered and presented to the board is sure to be a point of interest to committee members and others. Some means of insuring that the committees represent all local user groups and the broader public is necessary. Appointment by the board is one possibility. A revamping of the structure, with board members and/or staff taking advisory committee input locally in the interim between board meetings, could streamline the process.

III. If the objective is to enable the board to formally and rationally consider the socio-economic impacts of allocation decisions, then the decision process and criteria must be specifically enunciated and staff capabilities enhanced.

The explicit consideration of socio-economic factors could be enhanced from two directions. First, the State should develop a comprehensive, long term policy for the