

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 86/2

8960 SENATE RESOURCES

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, 1997), 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 16.05.100b) 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 is 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 16.05.250, 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' (ADFG, 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 Galista 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.

4.1 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 inadromous 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 consensus 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 retain 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 tripper 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 16.05.250, while regional councils resulted from the Alaska National Interest Lands Conservation Act (ANILCA), section 305. 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.

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 1997 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 570 million in 1965 to nearly 5900 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 17-20 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 (1996) 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. 193, 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. MEMORANDUM ITEMS
(Prepared by Don Macdonell)

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 act, in large measure, abdicated its responsibility pursuant to section 2 of Article VIII of the Alaska Constitution to provide for the well-being, 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 fisheries 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, career staff members, 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 225,000. Today, the population has almost doubled. Even more

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 in fact a decided fact.

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 fishermen during their operation to observe the effect of regulatory decisions firsthand.

5. 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 reports 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 neither 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. 53 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:

(The 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. 10957. 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. 106 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 1993 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 1997, 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 entrusted 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

Research Report Number 1-001188

Prepared by:
State Fisheries
Department

October 1967

Department of Fisheries
P. O. Box 7
Alaska State Legislature
Senate Advisory Council

Fisheries Management Administration

THE ALASKA BOARD OF FISHERIES

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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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SUMMARY

II 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 Role 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

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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 Bizz, 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

1) 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.

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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 owners went unheeded. The teeming fisheries eventually collapsed from overfishing, with 1959 harvests dropping to the lowest level in nearly 50 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.

7) Fisheries Management: Complexity, 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.

VII: 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.

222) Fishing 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 is 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 1967, 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. 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

The 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

redirectioned 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.

3) 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.

5) 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.

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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.

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 effect, 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

conservation, development, and utilization of its fisheries resources. This policy should include relatively specific goals, in both the biological and socio-economic realms, and suggest operational approaches. Second, the board must develop specific regulations, governing both the decision process and what is considered in that process, to deal with the socio-economic issues pressed on it by statute. In order to do this, and to function efficiently and rationally once either or both of these are accomplished, the board must be provided with additional staff capacity to analyze these elements of the fisheries sector and to develop policy alternatives designed to achieve fisheries utilization consistent with the maximum possible benefit to Alaskans.

The ability of the board to meaningfully consider the socio-economic implications of regulation would require, as well as the addition of agency capacity to develop and analyze such information and the adoption of specific criteria and processes guiding its consideration, a significant dose of public participation. This latter would be significant source of socio-economic data and a review of the information considered by the board. This participation could be conducted under the process suggested in the immediately previous objective discussion. These capabilities and standards are essential if the board is to meet the intent of 1986 legislation establishing allocation criteria. The formal inclusion of such information into the system would provide the board the basis for resolving some long standing allocation disputes. The formal, explicit analysis of socio-economic factors would enhance the ability of the board to regulate with the maximum benefit of the people as a goal. Enunciating the specifics of this goal would be the purpose of a comprehensive policy on fisheries. The combination of these two elements would further strengthen the board process and decisions against legal challenge as noted above. While no system could hope to eliminate

disagreement, a process with clear standards, more complete information and specific goals would lessen their likelihood and fervor. There is little apparent dissent that the board and users would be well served by these enhancements to the process. Again, the issues of conflict and representation would be partially addressed by this approach, but not nearly eradicated by present ethical standards, since decisions will still be arrived at by the board, not by a formula.

IV. If the objective is to ensure that the potential for conflict of interest is eliminated to the extent possible, alternatives to the regulatory authority and membership composition of the board must be considered.

One area of latent conflict is the assignment of both conservation and allocation authority to the Board of Fisheries. Separation of those responsibilities would relieve the board of possible pressure to allocate resources beyond the sustainable capacity of stocks and recognize the virtually complete de facto cession of authority for conservation by the board to ADFG. A formal recognition of this fact should be considered. In order to effectively eliminate conflict of interest complaints prompted as a consequence of board composition, the membership of the board would have to be, in some way, divorced from economic or institutional interests in the resource. This could be accomplished either by a true lay board, meeting on a periodic basis like the current board, or a professional board in continuous operation.

An explicit division of conservation and allocation authorities is certain to cause some protest. User groups would be reluctant to give up the ability to intervene in conservation decisions. In a few instances the board has

gone its own way on conservation decisions, not always to the benefit of the resource. It is certain that any potential conflict presented by users of fisheries determining how many fish are available for their use would be eliminated by according conservation authority to ADFG. It may be that the separation would best be accomplished by making the board and its staff more autonomous from the department.

As for the potential conflict of interest created by delegating allocation authority to a non-inclusive body of resource users, the appearance of a possible conflict will persist in such a situation. However, user control of the board is an element of regulation that many strongly support because of the expertise and commitment of such interests. Ideally, at present the integrity of individuals and the checks provided by the presence of competing interests prevents conflicts. However, the most certain means in an imperfect world to avoid the appearance or actuality of a conflict is to remove the apparent incentive for conflict by placing regulation into the hands of parties without economic or institutional interests in any fishery. A lay board unassociated with the resource, a body composed of a mixture of interests including regulators, users, and the wider public, or a professional board required to be disassociated with the resource would accomplish that. The expertise needed in a complex arena should be provided both by staff and by board members. The complexity of the subject and the historic volume of work both suggest that a board operating full-time may be appropriate. In both areas, separation of powers and composition of the board, the aim is to replace the burden on the integrity of individual board members with institutional safeguards. In any case, a differently constituted board would require the procedural improvements and increased analytical capabilities outlined in preceding objective discussions in order to fulfill legislative and public expectations.

* * * * *

The objectives discussed above and the actions necessary to achieve them are obviously not mutually exclusive issues and alternatives. Comprehensive, efficient, and meaningful reform of the Board of Fisheries is accomplished in varying degrees by each approach discussed in this section. An effort to definitively address each of the major problem areas would include parts of each alternative. The Board of Fisheries is not a static model of resource regulation. Since the Territory of Alaska first attempted to manage its fisheries almost seventy years ago, the board has been constantly evolving. The historical imperatives which gave the board its basic shape at statehood, while still strong, no longer have the same meaning. The conditions defining fisheries allocation, biological, political, economic, and social, have been in ferment. The expectations of the public as a whole and user groups in particular have changed in the decades since statehood. Is the Board of Fisheries equal to the challenge of these changes, or must it too change to better meet them?

APPENDIX
AND
REFERENCES

Table A1
Board Of Fisheries Workload

Date	Place/ Subject	Length (Days)	-----Proposals-----				Comments	Miscellaneous Notes	
			Pub/Ind	AC/RC	Staff	Petition			
12/75	Juneau Finfish	n/a							
			120	78	n/a	n/a	93		
4/76	Kodiak Shellfish	5	Adopt Reject	3 34	5 6	44 1	n/a	32	25 bills considered
12/76	Soldotna Finfish	12	Adopt Reject	18 91	10 32	78 9	n/a	30	30 bills considered
Year's total		17		146	53	132		62	
3/77	Juneau Both	12	Adopt Reject	10 23	6 14	42 3		30	
12/77	Anchorage Fl.fish	14	Adopt Reject	23 127	12 28	112 10	4 1		
Year's total		26		183	60	167	6	30	
4/78	Anchorage Shellfish	9	Adopt Reject	12 56	12 8	50 5			
12/78	Juneau Both	22	Adopt Reject	26 135	8 63	122 6		11	
Year's Total		31		229	91	183	5	11	

4/79	Anchorage Subsistence Shellfish	10	Adopt Reject	10 58	5 12	122 13	2 5	25 proposals not acted on; 11 bills
12/79	Anchorage Finfish	22	Adopt Reject	45 128	10 38	148 12		141 proposals not acted on

Year's Total		32		241	65	295	7	166 no action
3/80	Anchorage Shellfish	11	Adopt Reject	16 25	5 5	37 6	2 36	6 proposals not acted on
12/80	Anchorage Finfish	44	Adopt Reject	42 128	17 38	87 10		Cook Inlet subsistence

Year's Total		55		211	65	140	2 36	6 no action
3/81	Anchorage Shellfish	21	Adopt Reject	7 29	8 11	51 1	2	
9,11/81	Juneau Finfish	29	Adopt Reject	15 62	14 33	46 4	3	12 bills considered

Year's Total		50		113	66	102	5	
3/82	Anchorage Shellfish	18	Adopt Reject	16 36	5 18	56 3		
12/82	Anchorage Finfish	26	Adopt Reject	29 59	16 12	61 6	5 81	53 proposals not acted on; 40 subsistence proposals deferred

Year's Total		44		140	51	126	5 81	93 no action

3/83	Anchorage Shellfish	16	Adopt Reject	19 51	16 14	34 4	4 4	60 proposals not acted on; area schedule
<hr/>								
Year's Total		16		76	30	38	4 4	60 no action
2/84	Anchorage Finfish	14	Adopt Reject	2 7	1 5	7 0	14 143	
3/84	Anchorage/ Kenai Both	21	Adopt Reject	29 51	11 9	33 5	3 2	2
9/84	Anchorage/ Ketchikan Both	8	Adopt Reject	0 6	0 0	12 1	3 1	9
11/84	Anchorage/ Fairbanks Finfish	38	Adopt Reject	47 112	25 19	84 4	2 3	154 183 proposals not acted on
<hr/>								
Year's Total		81		274	70	146	28 308	183 no action
2/85	Sitka SE Finfish	14	Adopt Reject	14 59	4 3	46 5	1 3	83 37 proposals not acted on; About 300 carried over proposals not acted on
3/85	Anchorage Shellfish	7	Adopt Reject	14 17	9 10	27 5	2 10	111 29 proposals not acted on
11/85	Anchorage W. Finfish	19	Adopt Reject	13 54	4 5	19 0	2	124 99 proposals not acted on
12/85	Petersburg SE Finfish	16	Adopt Reject	7 56	6 15	35 3	53	
<hr/>								
Year's Total		56		234	56	140	18 371	450 no action

3/86	Anchorage Shellfish	15	Adopt Reject	18 37	5 11	21 0		94	38 proposals not acted on
12/86	Anchorage Finfish	12	Adopt Reject	11 53	0 1	10 2	6 4	212	64 proposals not acted on; 550 proposals not considered when meeting abruptly adjourned
----- Year's Total		27		119	17	33	10	304	650 no action
4/87	Anchorage/ Juneau Finfish	10	Adopt Reject	6 6	1 0	5 0	0 7	191	33 proposals not acted on
----- Year's Total		10		12	1	5	7	191	33 no action

Notes: Numbers must be considered approximations due to differences in record keeping practices by board staff over time and otherwise incomplete or confusing records.
 Only meetings involving full board included.
 Pub/Ind = Member of general public, an individual fisherman, or an industry group.
 AC = Advisory Committee RC = Regional Council
 Staff = ADFG staff, board members, or DWP staff.
 n/a = not available or recorded.

Source: Division of Boards, ADFG, 1975 - 87.

Table A2

Division of Boards, Commercial Fisheries Entry Commission,
and Subsistence Division FY 1985-88 Budgets
(\$000 of nominal dollars)

	FY 1985	FY 1986	FY 1987	FY 1988
Fish and Game Boards				
Personnel	462.0	612.3	524.4	536.3
Travel	558.3	428.4	332.4	347.3
Contractual	238.2	118.2	226.0	253.4
Other	57.2	31.5	12.5	-
Subtotal*	1,315.7	1,190.4	1,095.3	1,137.0
CFEC	2,169.8	2,583.2	2,406.8	1,886.8
Subsistence*	3,194.6	3,297.9	2,832.9	2,229.0
TOTAL	6,680.1	7,071.5	5,335.0	5,252.8

Source: Legislative Finance Division, 1987; ADFG, 1987; CFEC, 1987.

* Approximately \$500.0 are federal matching funds, the remainder are State of Alaska General Funds.

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Cohen, Norman. Deputy Commissioner, ADFG. September 16, 1987.

Cook, Greg. Attorney; former Executive Director, Division of Boards, ADFG. August 26 and September 10, 1987.

Dearborn, Ron. Director, SeaGrant Program, University of Alaska Fairbanks. October 2, 1987.

Dlugokenski, Kris. Federal Aid Division, United States Fish and Wildlife Service. September 14, 1987.

Elias, Tom. President, Alaska Sportfishing Association. August 14, 1987.

Evans, Dale. Fisheries Management Supervisor, NMFS. August 14, 1987.

Foster, Jesse. Member, Board of Fisheries. September 4, 1987.

Garner, John. Past Board of Fisheries Member. August 14, 1987.

Goll, Chris. Past Board of Fisheries Member; Alaska Professional Sportfishing Association. September 1, 1987.

Gottelrer, Sheila. Director of Boards and Commissions. Governors Office. August 11, 1987.

Graham, Katherine. Executive Director, UFA. August 17, 1987.

Haggren, Mike. Member, Board of Fisheries. September 1, 1987.

Hall, Bill. Commercial Fisheries and Agriculture Bank. September 3, 1987.

Hartman, Jeff. Fisheries Rehabilitation and Enhancement Division, ADFG. September 25, 1987.

Hastie, William. Public Information Officer, Washington Department of Fisheries. September 1, 1987.

Hoffman, David. Former Committee Aide, Special Committee on Subsistence. October 10, 1987.

Isleib, Pete. Past Board of Fisheries Member; past advisory committee member, NPFMC Advisory Panel member, International North Pacific Fisheries Management Council, Pacific Fisheries Management Council. September 15, 1987.

Jensen, Gordon. Past Board of Fisheries Member. August 13, 1987.

Johnson, Whittier. Watershed Planning Coordinator, Oregon Department of Fisheries. August 11, 1987.

Kink, Mitch. President, AIFMA. August 15, 1987.

Krygier, Earl. Executive Director, Alaska Trollers Association. August 20, 1987.

Larson, Robert. Assistant Director, Division of Boards, ADFG. July 10, 1987.

Lauber, Richard. Director, Pacific Seafood Processors Association. August 18, 1987.

Listowski, Richard. Commissioner, Commercial Fisheries Entry Commission. August 17, 1987.

Lonner, Thomas. Former director, Division of Subsistence, ADFG. June, 1987.

Matthews, Theo. President, United Cook Inlet Driftnetters Association. September 10, 1987.

McVey, Robert. Director, NMFS Alaska Region. August 17, 1987.

Wacum, Doug. Biologist, Division of Sportfish, ADFG. October 10, 1987.

Miller, Marc. Professor, Marine Sciences Institute, University of Washington. August 1987.

Mitchell, Don. Attorney. September 23, 1987.

Osterback, Alvin. Former legislator; advisory committee member. August 17, 1987.

Paddock, Dean. Bristol Bay Driftnetters Association; former advisory committee coordinator, ADFG. September 15, 1987.

Painter, Roger. Executive Director, Alaska Mariculture Association. August 17, 1987.

Parker, Ken. Director, Division of Commercial Fisheries, ADFG. October 5, 1987.

Peckham, John. Executive Director. Southeast Alaska Seine Boat Owners and Operators Association. August 24, 1987.

Pearson, John. Development Specialist, Division of Tourism, Alaska Department of Commerce and Economic Development. September 22, 1987.

Peyton, Paul. Director, Office of Commercial Fisheries Development, ADCED. October 2, 1987.

Redick, Russell. Executive Director, ADFG; former supervisor, Sportfish Division, ADFG. August 14, 1987.

Robinson, Arthur. Attorney, Cook Inlet setnetter. September 14, 1987.

Rosier, Carl. Development Specialist, NMFS; former director, Commercial Fisheries Division, ADFG. October 2, 1987.

Schneider, George. Director, NMFS Auks Bay Laboratory. August 17, 1987.

Shanks, Roland. Legislative Liaison, ADFG. September 1, 1987.

Slaven, Gary. Chair, Board of Fisheries, past president, ATA. September 21, 1987.

Smith, Larry. Chair, Southcentral Regional Council. July 7, 1987.

Somerville, Ronald. Alaska Outdoor Council; Territorial Sportsmen. August 11, 1987.

Spengler, Larri. Assistant Attorney General, Alaska Department of Law. June and October 15, 1987.

Stanley, Mike. Attorney; former General Counsel, NOAA. August 31, 1987.

Stewart, Elizabeth. Executive Director Division of Boards. July 10 and 11; August 21; and September 24, 1987.

Twomey, Bruce. Commissioner, Commercial Fisheries Entry Commission. September 23, 1987.

Yahn, Larry. President, Wildlife Management Institute. July 11, 1987.

Zahn, Milstead. Past Executive Director, Division of Boards ADFG. August 31, 1987

STATE OF ALASKA - OFFICE OF THE GOVERNOR
Boards and Commissions Office

Membership Roster

(040) GAME

Member	Appointed	Reappointed	Term Exp.
Richard A. Burley Public 1165 Coppat Street Fairbanks, AK 99709 Home Phone - (907) 474-0188 FAX - (907) 474-0188	02/19/91	01/31/94	01/31/97
Susan Entsminger Public HC72 Box 800 Tok Cutoff, AK 99780 Home Phone - (907) 883-2833 FAX - (907) 882-2833	01/31/93		01/31/98
Larry Holmes Jr. Public P.O. Box 454 Girdwood, AK 99587	02/09/95		01/31/98
Thomas Johnson Public P.O. Box 608 Nome, AK 99762 Home Phone - (907) 443-2842	04/08/94		01/31/96
Ernest E. Polley Public 17305 Lena Loop Juneau, AK 99801 Home Phone - (907) 789-9333 FAX - (907) 789-9333	05/11/93	01/31/94	01/31/97
Frank Rue Commissioner/Fish and Game Acting Commissioner Department of Fish & Game P.O. Box 25526 Juneau, AK 99802-5526 Work Phone - (907) 485-4100	01/13/95		
Anne K. Ruggles Public P.O. Box 82950 Fairbanks, AK 99708 Home Phone - (907) 474-3755 FAX - (907) 452-6410	01/31/93		01/31/96
Walter Sampson Public P.O. Box 1088 Kotzebue, AK 99752 Home Phone - (907) 442-3605 Work Phone - (907) 442-3301	02/09/95		01/31/98

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STATE OF ALASKA
DEPARTMENT OF COMMUNITY
& REGIONAL AFFAIRS

POSITION PAPER

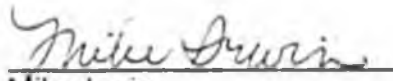
Bill no.: SB 56
Sponsor: Senator Leman

DCRA FN: Zero (submitted)
Position: Support

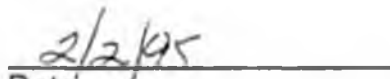
Title: An Act relating to rights in certain tide and submerged land

This legislation amends AS 38.05 by adding a new section that would give the Department of Natural Resources (DNR) the authority to convey tidelands and submerged lands to municipalities. Presently, in accordance with AS 38.05.820, DNR may convey such lands only to municipalities incorporated on or before April 1, 1964. DNR may only lease these lands to municipalities incorporated after that date.

The department supports the principle of treating municipalities equally in the process of conveyance or lease of state lands. The current artificial distinction among municipalities based on date of municipal incorporation should be eliminated. Also, as an advocate for stronger local government and stronger local economies, the department supports the long-range development stability provided by municipal land ownership rather than leasing of state lands. Therefore, the department supports this legislation.



Mike Irwin
Commissioner



Date

File: SB 56 1/30/95

DEPARTMENT OF FISH AND GAME POSITION PAPER

BILL NO: SB56

SPONSOR: Senator Leman

DIVISION: Habitat and Restoration

DEPARTMENT POSITION:

The department recommends that this bill be amended to:

1. Require that lands to be conveyed to municipalities be classified for conveyance based on an adopted state land use plan and not be classified as Wildlife Habitat; and
2. Remove legislatively designated areas from lands that are eligible for conveyance.

SB 56 would allow municipalities, including those created after 1964, to acquire ownership of tidelands and submerged lands. While this would place newer cities and boroughs on an equal footing with older municipalities, many tidelands and submerged lands available for municipal conveyance under this bill are currently covered by adopted state land management plans which address, among other things, a variety of public uses including commercial, subsistence and recreational fishing; recreational and subsistence hunting; and the production of fish, wildlife and aquatic plant resources. Important fish and wildlife areas needed to support fish and wildlife production are classified as Wildlife Habitat and should not be available for conveyance to municipalities.

Additionally, some tidelands and submerged lands have been legislatively designated as critical habitat areas, refuges, sanctuaries, and parks because of their extraordinary values for fish and wildlife resources and public uses. For example, approximately 1.3 million acres of tidelands and submerged lands are legislatively designated as critical habitat areas and refuges to be managed jointly by the departments of Natural Resources and Fish and Game to protect and maintain fish and wildlife production and public uses. Examples include: Kachemak Bay Critical Habitat Area, Anchorage Coastal Wildlife Refuge, Mendenhall Wetlands State Game Refuge, and Izembek State Game Refuge. The Attorney General has held that these areas cannot be administratively removed from state authority. Legislatively designated areas should be retained under state management and should not be conveyed to municipalities.

COMMISSIONER'S SIGNATURE

Geron Bruce for

DATE

2/27/95

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB56

Revision Date: _____ Dept. Affected: Fish and Game
 Title: An Act relating to certain tide and BRU: Habitat and Restoration
submerged land Component: Habitat
 Sponsor: Senator Leman
 Requester: CRA, RES COMPONENT SERIAL NO. 486

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	31.2	31.2	31.2	31.2	31.2	31.2
TRAVEL	1.6	1.6	1.6	1.6	1.6	1.6
CONTRACTUAL	1.0	1.0	1.0	1.0	1.0	1.0
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	34.3	34.3	34.3	34.3	34.3	34.3

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	34.3	35.7	37.3	38.9	40.6	42.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	34.3	35.7	37.3	38.9	40.6	42.4

Estimate of any current year (FY95) cost: \$ _____

POSITIONS

FULL-TIME	0.5	0.5	0.5	0.5	0.5	0.5
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Department of Fish and Game will require approximately one-half full time equivalent for a Habitat Biologist to review municipal tideland and submerged land selections and advise the Department of Natural Resources on the effects of conveyance to fish and wildlife resources, public uses of fish and wildlife, and potentially for legislatively designated state game refuges, critical habitat areas, and game sanctuaries. Additionally, as municipal conveyances are made, existing state land use plans and Special Area Management plans will need to be revised to reflect the changes in land management. This will require approximately one-half full time equivalent of Habitat Biologist participation.

Prepared by: Ellen Fritts, Acting Director
 Division: Habitat and Restoration
 Approved by Commissioner: *Fritz*
 Agency: Department of Fish and Game

Phone: 465-4105
 Date: 2/21/95
 Date: 2/25/95

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FISCAL NOTE

STATE OF ALASKA

BILL NO. CSSB56 (CRA)

1995 LEGISLATIVE SESSION

Revision Date: 8-Mar-95 Dept Affected: Natural Resources
 Title: An Act relating to rights in certain BRU: Resource Development
tides and submerged land Component: Land Development
 Sponsor: Senator Leman
 Requestor: _____ Compen. Serial No. 431

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1005)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

POSITIONS	FY96	FY97	FY98	FY99	FY00	FY01
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

In addition to the general grant land entitlement under AS 29 65, qualified municipalities which were incorporated prior to 1964 have been conveyed tide and submerged land (22,848 acres). This legislation would authorize the department to convey improved tidelands or land required for the accomplishment of a public or private development to all home rule, first and second class municipalities. Currently, the department can only issue leases that create a financial burden to the municipality and a liability to the state. This legislation will reduce the amount of lease monitoring and compliance activities currently required of the department on the existing leases, however the department anticipates no reduction in expenses due to the continuing effort to process and monitor other current and additional leases.

A zero fiscal note on expenditures is submitted assuming that staff that would normally be processing leases to municipalities will be issuing conveyances instead.

The reduction of \$100 0 in general fund program receipts is a rough estimate of the amount of annual lease revenue that will be lost with the implementation of this legislation.

See attached proposed amendments.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 8-Mar-95
 Approved by Commissioner: _____ Date: 3-7-95
 Agency: Natural Resources

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FISCAL NOTE ATTACHMENT - PAGE 2 - SB56
Amendments Proposed

While we support the bill in concept, the changes suggested below would better protect the public interest.

The first change is the addition of the following to Section 1(a):

Unless the commissioner finds that the public interest in retaining state ownership of the land clearly outweighs the municipality's interest in obtaining the land, the commissioner shall convey to a municipality tide or submerged land requested by the municipality that is occupied or suitable for occupation and development if the...

This addition (which is already contained in HB20) will give the commissioner discretion to reject municipal selections in areas outside of legislatively designated areas which section (b) of this bill allows. This will rarely be needed and only when the greater public interest is at stake.

As example, the City of Valdez selected the entire Anderson Bay proposed Trans-Alaska Gas Pipeline terminal facility. Three years ago, for a variety of reasons, the department rejected the selections as not being in the greater public interest. Under SB56, we would not have this discretion.

The second change would be the deletions of the phrase "or sale" from page 2, line 18. Tidelands, shorelands, and submerged lands are all managed under the Public Trust Doctrine. This is a living doctrine that has evolved and continues to evolve over time. Other states and the courts have long found that the sale of these lands, while not necessarily violating the public trust doctrine at the time of sale, may by its use violate the doctrine at a later date.

In a recent survey conducted by the State of Washington, all 22 western states currently prohibit the sale or exchange of tide, shore, or submerged land. They have all found that short or long term leases (up to 55 years) provide the protection needed and allow the stipulations to be changed at periodic intervals.

As a side note, I find it somewhat ironic, except for rare circumstances, that the department cannot convey tide, shore, or submerged lands to private individuals. This proposed legislation, however, would allow local municipalities that ability without any side boards or restrictions.

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB56

1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to rights in certain BRU: Resource Development
tides and submerged land Component: Land Development
 Sponsor: Senator Loman
 Requestor: _____ Component Serial No. 431

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (1005)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
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FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

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

ANALYSIS: (Attach a separate page if necessary)

In addition to the general grant land entitlement under AS 29.65, qualified municipalities which were incorporated prior to 1964 have been conveyed tide and submerged land. This legislation would authorize the department to convey improved bdelands or land required for the accomplishment of a public or private development to all home rule, first and second class municipalities. Currently, the department can only issue leases that create a financial burden to the municipality and a liability to the state. This legislation will reduce the amount of lease monitoring and compliance activities currently required of the department on these existing leases, however the department anticipates no reduction in expenses due to the continuing effort to process and monitor other current and additional leases.

The reduction of \$50 0 in general fund program receipts is a rough estimate of the amount of annual lease revenue that will be lost with the implementation of this legislation.

See attached proposed amendments.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 2-Feb-95
 Approved by Commissioner: [Signature] Date: 2-5-95
 Agency: Natural Resources

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STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB56

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to rights in certain BRU: Resource Development
tides and submerged land Component: Information Resource Management
 Sponsor: Senator Leman
 Requestor: _____ Component Serial No. 427

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	6.0					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1005)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	6.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	6.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This bill will require the development of a new Land Administration System (LAS) casetype for these conveyances to municipalities. The actual notation of these conveyances to the status plats is considered regular work and will be absorbed by the component. The incremental work to develop a new casetype is estimated to be a one-time cost of \$6.0 in personal services.

Prepared by: Nico Bus, Acting Director Phone: 465-2406
 Division: Support Services Date: 6-Feb-95
 Approved by Commissioner: Nico Bus for Mr. Lutherford, Act. Comm. Date: 2/6/95
 Agency: Natural Resources

FISCAL NOTE ATTACHMENT - PAGE 2 - SB56
Amendments Proposed

While we support the bill in concept, the changes suggested below would better protect the public interest.

The first change is the addition of the following to Section 1(a):

Unless the commissioner finds that the public interest in retaining state ownership of the land clearly outweighs the municipality's interest in obtaining the land, the commissioner shall convey to a municipality tide or submerged land requested by the municipality that is occupied or suitable for occupation and development if the...

This addition (which is already contained in HB20) will give the commissioner discretion to reject municipal selections in areas outside of legislatively designated areas which section (b) of this bill allows. This will rarely be needed and only when the greater public interest is at stake.

As example, the City of Valdez selected the entire Anderson Bay proposed Trans-Alaska Gas Pipeline terminal facility. Three years ago, for a variety of reasons, the department rejected the selections as not being in the greater public interest. Under SB56, we would not have this discretion.

The second change would be the deletions of the phrase "or sale" from page 2, line 18. Tidelands, shorelands, and submerged lands are all managed under the Public Trust Doctrine. This is a living doctrine that has evolved and continues to evolve over time. Other states and the courts have long found that the sale of these lands, while not necessarily violating the public trust doctrine at the time of sale, may by its use violate the doctrine at a later date.

In a recent survey conducted by the State of Washington, all 22 western states currently prohibit the sale or exchange of tide, shore, or submerged land. They have all found that short or long term leases (up to 55 years) provide the protection needed and allow the stipulations to be changed at periodic intervals.

As a side note, I find it somewhat ironic, except for rare circumstances, that the department cannot convey tide, shore, or submerged lands to private individuals. This proposed legislation, however, would allow local municipalities that ability without any side boards or restrictions.

FISCAL NOTE

Revision Date: 2/1 January 31, 1995 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to rights in certain tide and submerged land. BRU: none
 Sponsor: Senator Leman Component: none
 Requestor: Senator Leman COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE FUND SOURCE: _____

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would give the Department of Natural Resources (DNR) the authority to convey tidelands and submerged land to municipalities. Presently, DNR can only issue leases (unless the municipality was incorporated before 1964). There is no fiscal impact on DCRA from this bill.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 2/23/95
 Approved by Commissioner: *Diana M. ...* Date: 2/23/95
 Agency: Community & Regional Affairs

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SENATE COMMITTEE REPORT

DATE: 2/21/95

FURTHER:

DATE TURNED INTO OFFICE: 3-9-95

Resources Committee considered SENATE BILL NO. 56

"An Act relating to rights in certain tide and submerged land."

and recommends:

- be replaced with CS SB56 (RES)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

technical change

new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Rich Halford</i>		✓	
		<i>[Signature]</i>		✓	
		<i>[Signature]</i>		✓	
		<i>[Signature]</i>	✓		
		<i>[Signature]</i>	✓		
<i>Robin W Taylor</i>	✓				
CHAIR: <i>Loren D. Luman</i>	✓				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

DF+G	2/21/95			34.3

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

DNR - IIRM	2/16/95			6.0
DNR - Land Dev.	2/15/95			1500
C+RA	2/1/95	0		0

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill