

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/2

9388 HOUSE RESOURCES

24

1 ask the question whether the dive fishery management assessment on a species of
2 fishery resources taken in the administrative area shall be amended and must state the
3 rate of the dive fishery management assessment on the species of fishery resources that
4 would take effect if the assessment is amended; the ballot must be worded so that a
5 "yes" vote is for amendment of the dive fishery management assessment and a "no"
6 vote is for continuation of the current dive fishery management assessment;

7 (3) a majority of the eligible interim-use permit and entry permit
8 holders who vote in the election cast a ballot for the amendment of the dive fishery
9 management assessment; in this paragraph, "eligible interim-use permit and entry
10 permit holders" has the meaning given in AS 43.76.160; and

11 (4) the qualified regional dive fishery development association provides
12 notice of the election in accordance with AS 43.76.160 within two months after
13 receiving notice from the commissioner of fish and game that a valid petition under
14 (1) of this subsection has been received.

15 **Sec. 43.76.180. Termination of dive fishery management assessment.** (a)
16 The dive fishery management assessment levied on a species of fishery resources under
17 AS 43.76.150 may be terminated by the commissioner of revenue upon majority vote
18 at an election held under AS 43.76.160 in the administrative area in which the dive
19 fishery management assessment is levied.

20 (b) The commissioner of revenue shall terminate a dive fishery management
21 assessment under (a) of this section following an election in an administrative area if

22 (1) a petition, that is signed by at least 25 percent of the number of
23 persons who voted under AS 43.76.160 in the election approving the dive fishery
24 management assessment on the fishery resource in the administrative area, is presented
25 to the commissioner of fish and game requesting termination of the dive fishery
26 management assessment on a species of fishery resources; only a person who would
27 be eligible to vote in an election to repeal the assessment may validly sign the petition;

28 (2) an election is held in accordance with AS 43.76.160; the ballot must
29 ask the question whether the dive fishery management assessment on a species of
30 fishery resources taken in the administrative area shall be terminated; the ballot must
31 be worded so that a "yes" vote is for continuation of the dive fishery management

1 assessment and a "no" vote is for termination of the dive fishery management
2 assessment;

3 (3) a majority of the eligible interim-use permit and entry permit
4 holders who vote in the election cast a ballot for the termination of the dive fishery
5 management assessment; in this paragraph, "eligible interim-use permit and entry
6 permit holders" has the meaning given in AS 43.76.160; and

7 (4) the qualified regional dive fishery development association provides
8 notice of the election in accordance with AS 43.76.160 within two months after
9 receiving notice from the commissioner of fish and game that a valid petition under
10 (1) of this subsection has been received.

11 **Sec. 43.76.190. Collection of assessment.** (a) A buyer who acquires a fishery
12 resource that is subject to a dive fishery management assessment levied under
13 AS 43.76.150 shall collect the dive fishery management assessment at the time of
14 purchase and shall remit the total dive fishery management assessment collected during
15 each calendar quarter to the Department of Revenue by the last day of the month
16 following the end of the calendar quarter. In this subsection, "calendar quarter" means
17 each of the three-month periods ending March 31, June 30, September 30, and
18 December 31.

19 (b) A buyer who collects the dive fishery management assessment shall
20 maintain records of the value of each species of fishery resources that is subject to an
21 assessment that is purchased in each administrative area of the state.

22 (c) The owner of fishery resources removed from the state is liable for
23 payment of the dive fishery management assessment levied under AS 43.76.150 if, at
24 the time the fishery resource is removed from the state, the assessment payable on the
25 fishery resource has not been collected by a buyer. If the owner of the fishery
26 resource is liable for payment of the dive fishery management assessment under this
27 subsection, the owner shall comply with the requirements under (a) and (b) of this
28 section to remit the assessment to the Department of Revenue and to maintain records.

29 (d) The dive fishery management assessment collected under this section shall
30 be deposited in the general fund.

31 **Sec. 43.76.200. Funding for qualified regional dive fishery development**

1 associations. (a) The legislature may make appropriations of revenue collected under
2 AS 43.76.190 to the Department of Fish and Game for funding of the qualified
3 regional dive fishery development association in the administrative area in which the
4 assessment was collected. Funds received under this section by a qualified regional
5 dive fishery development association may be expended in accordance with the annual
6 operating plan developed under (b) of this section.

7 (b) The Department of Fish and Game shall develop an annual operating plan
8 with the cooperation of the regional dive fishery development association on or before
9 a date specified by the Department of Fish and Game. The qualified regional dive
10 fishery development association shall cooperate with the Department of Fish and Game
11 in the development of the annual operating plan. The annual operating plan must
12 describe the activities for which the funding will be expended, including identification
13 of species and areas for which bioassessment surveys will be conducted, a description
14 of management and research activities to be performed, planning for dive fisheries, and
15 administrative activities of the association. Funds appropriated to the Department of
16 Fish and Game for funding of qualified regional dive fishery development associations
17 may not be disbursed by the department or expended by the association, except for
18 administration of the association, unless the annual operating plan has been approved
19 by the association and the Department of Fish and Game. If an annual operating plan
20 has not been approved by the association and the Department of Fish and Game, the
21 Department of Fish and Game may not disburse and the association may not expend
22 funds received from the department for administration of the association in an amount
23 that exceeds the amount of administrative expenses authorized under the annual
24 operating plan for the prior fiscal year.

25 (c) A qualified regional dive fishery development association receiving funding
26 under this section shall submit an annual financial report to the Department of Fish and
27 Game on a form provided by the Department of Fish and Game. The Department of
28 Fish and Game may, by regulation, require that a qualified regional dive fishery
29 development association use a uniform system of accounting and may audit the use of
30 funding received under this section by the association.

31 (d) This section does not establish a dedication of a state tax or license.

1 (e) This section does not restrict or qualify the authority of the Department of
2 Fish and Game or the Board of Fisheries under AS 16.

3 Sec. 43.76.210. Definitions. In AS 43.76.150 - 43.76.210,

4 (1) "administrative area" means an area established by the Alaska
5 Commercial Fisheries Entry Commission under AS 16.43.200 for regulating and
6 controlling entry into fisheries using dive gear;

7 (2) "buyer" means a person who acquires possession of a fishery
8 resource from the person who caught the fishery resource, regardless of whether there
9 is an actual sale of the fishery resource, but does not include a person engaged solely
10 in interstate transportation of goods for hire;

11 (3) "fishery resource" means fish, shellfish, or marine invertebrates
12 taken or landed under the authority of a limited entry permit or interim-use permit
13 issued under AS 16.43 for dive gear;

14 (4) "qualified regional dive fishery development association" means an
15 association that is qualified under AS 16.40.240;

16 (5) "value" has the meaning given in AS 43.75.290.

17 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

CS FOR HOUSE BILL NO. 198(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES WILLIAMS, Hudson, Kookesh, Grussendorf, Elton

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regional dive fishery development associations and to dive
2 fishery management assessments; and providing for an effective date."

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

4 * Section 1. AS 16.40 is amended by adding a new section to read:

5 Article 4. Development of Dive Fisheries.

6 Sec. 16.40.240. Regional dive fishery development associations. (a) The
7 commissioner shall assist in and encourage the formation of qualified regional dive
8 fishery development associations for the purpose of developing dive fisheries in
9 administrative areas of the state in which dive fisheries exist. A regional dive fishery
10 development association is qualified if the commissioner determines that the regional
11 association

12 (1) is incorporated as a nonprofit corporation under AS 10.20;

13 (2) represents commercial fishermen who participate in each dive
14 fishery in the region; and

1 (3) possesses a board of directors that

2 (A) is representative of commercial dive fishermen who fish in
3 each of the significant commercial dive fishing areas in the administrative area;

4 (B) has a member who is representative of fish processors who
5 process dive fishery resources in the administrative area; and

6 (C) has a member who is representative of municipalities in the
7 administrative area.

8 (b) In this section, "administrative area" has the meaning given in
9 AS 43.76.210.

10 * Sec. 2. AS 43.76 is amended by adding new sections to read:

11 **Article 3. Dive Fishery Management Assessment.**

12 **Sec. 43.76.150. Dive fishery management assessment.** (a) A person holding
13 a limited entry permit for dive gear or an interim-use permit for dive gear issued under
14 AS 16.43 shall pay a dive fishery management assessment on fishery resources taken
15 by dive gear that the person removes from the state or transfers to a buyer in the state.
16 The species of fishery resources subject to the assessment and the rate of the
17 assessment, as a percentage of the value of the fishery resource, must be determined
18 by an election under AS 43.76.160.

19 (b) A dive fishery management assessment under (a) of this section may only
20 be levied or collected on a fishery resource in an administrative area if

21 (1) there exists in that administrative area an association determined by
22 the commissioner of fish and game to be a qualified regional dive fishery development
23 association under AS 16.40.240; and

24 (2) the species of fishery resource subject to the dive fishery
25 management assessment and the rate of the dive fishery management assessment is
26 approved by an election under AS 43.76.160.

27 **Sec. 43.76.160. Election to approve, amend, or terminate dive fishery
28 management assessment.** (a) A qualified regional dive fishery development
29 association may conduct an election under this section after the commissioner of fish
30 and game approves

31 (1) the notice to be published by the qualified regional dive fishery

1 development association; the notice must describe the species of fishery resources
2 subject to the dive fishery management assessment and must include the rate of the
3 dive fishery management assessment, as a percentage of the value of the fishery
4 resource, to be approved, amended, or terminated at the election;

5 (2) the ballot to be used in the election; and

6 (3) the registration and voting procedure for the approval, amendment,
7 or termination of the dive fishery management assessment.

8 (b) The dive fishery management assessment is levied under AS 43.76.150 in
9 an administrative area on the effective date stated on the ballot if

10 (1) the assessment is approved by a majority vote of the eligible
11 interim-use permit and entry permit holders voting in an election held in the
12 administrative area under this section; and

13 (2) the election results are certified by the commissioner of fish and
14 game.

15 (c) In conducting an election under this section, a qualified regional dive
16 fishery development association shall adopt the following procedures:

17 (1) the qualified regional dive fishery development association in the
18 administrative area shall hold at least one public meeting not less than 30 days before
19 the date on which ballots must be postmarked to be counted in the election to explain,
20 as appropriate, the reason for approval or amendment of the proposed dive fishery
21 management assessment, the reason for the proposed rate of the dive fishery
22 management assessment, or the reason for termination of the dive fishery management
23 assessment and to explain the registration and voting procedure to be used in the
24 election; the qualified regional dive fishery development association shall provide
25 notice of the meeting by

26 (A) mailing the notice to each eligible interim-use permit and
27 entry permit holder;

28 (B) posting the notice in at least three public places in the
29 administrative area; and

30 (C) publishing the notice in at least one newspaper of general
31 circulation in the administrative area at least once a week for two consecutive

1 weeks before the meeting;

2 (2) the qualified regional dive fishery development association shall
3 mail two ballots to each eligible interim-use permit and entry permit holder; the first
4 ballot shall be mailed not more than 45 days before the date ballots must be
5 postmarked to be counted in the election; the second ballot shall be mailed not less
6 than 15 days before the date ballots must be postmarked to be counted in the election;
7 the qualified regional dive fishery development association shall adopt procedures to
8 ensure that only one ballot from each eligible interim-use permit and entry permit
9 holder is counted in the election;

10 (3) the ballot must

11 (A) indicate the species of fishery resources subject to the dive
12 fishery management assessment and the rate of the dive fishery management
13 assessment, as a percentage of the value of the fishery resource, to be levied
14 on the fishery resources under AS 43.76.150 if the ballot measure is approved;

15 (B) ask the question whether the dive fishery management
16 assessment on the fishery resources addressed on the ballot shall be approved,
17 amended, or terminated, as appropriate;

18 (C) indicate the boundaries of the administrative area in which
19 the dive fishery management assessment will be levied or terminated;

20 (D) provide an effective date for the approval, amendment, or
21 termination of the dive fishery management assessment; and

22 (E) indicate the date on which returned ballots must be
23 postmarked in order to be counted;

24 (4) the ballots shall be returned by mail and shall be counted by an
25 auditor selected by the qualified regional dive fishery development association and
26 approved by the commissioner of fish and game; the qualified regional dive fishery
27 development association shall pay the costs of counting the ballots.

28 (d) The commissioner of fish and game shall certify the results of an election
29 under this section if the commissioner determines that the requirements of (a) and (c)
30 of this section have been satisfied.

31 (e) A qualified regional dive fishery development association may employ or

1 contract with another person to administer an election under this section subject to the
2 supervision of the association.

3 (f) Except as otherwise provided under AS 43.76.170 and 43.76.180, an
4 election to amend the rate of a dive fishery management assessment or to terminate
5 a dive fishery management assessment shall be conducted under the same procedures
6 established under (a), (c), and (d) of this section for an election to approve a dive
7 fishery management assessment.

8 (g) In this section, "eligible interim-use permit and entry permit holder" means
9 an individual who, 90 days before the date ballots must be postmarked to be counted
10 in an election under this section, is listed in the records of the Alaska Commercial
11 Fisheries Entry Commission as the legal holder of an interim-use permit for dive gear
12 or an entry permit for dive gear that authorizes the individual to fish commercially in
13 the administrative area for the species of fishery resource for which the dive fishery
14 management assessment is to be approved, amended, or terminated.

15 **Sec. 43.76.170. Amendment of dive fishery management assessment.** (a)
16 The rate of the dive fishery management assessment levied on a species of fishery
17 resources under AS 43.76.150 may be amended by the commissioner of revenue upon
18 majority vote at an election held under AS 43.76.160 in the administrative area in
19 which the dive fishery management assessment is levied.

20 (b) The commissioner of revenue shall amend the rate of a dive fishery
21 management assessment under (a) of this section following an election in an
22 administrative area if

23 (1) a petition, that is signed by at least 25 percent of the number of
24 persons who voted under AS 43.76.160 in the election approving the dive fishery
25 management assessment on the fishery resource in the administrative area, is presented
26 to the commissioner of fish and game requesting amendment of the rate of the dive
27 fishery management assessment on a species of fishery resources; the petition must
28 state the proposed rate, as a percentage of the value of the fishery resource, of the dive
29 fishery management assessment; only a person who would be eligible to vote in an
30 election to amend the rate of the assessment may validly sign the petition;

31 (2) an election is held in accordance with AS 43.76.160; the ballot must

1 ask the question whether the dive fishery management assessment on a species of
2 fishery resources taken in the administrative area shall be amended and must state the
3 rate of the dive fishery management assessment on the species of fishery resources that
4 would take effect if the assessment is amended; the ballot must be worded so that a
5 "yes" vote is for amendment of the dive fishery management assessment and a "no"
6 vote is for continuation of the current dive fishery management assessment;

7 (3) a majority of the eligible interim-use permit and entry permit
8 holders who vote in the election cast a ballot for the amendment of the dive fishery
9 management assessment; in this paragraph, "eligible interim-use permit and entry
10 permit holders" has the meaning given in AS 43.76.160; and

11 (4) the qualified regional dive fishery development association provides
12 notice of the election in accordance with AS 43.76.160 within two months after
13 receiving notice from the commissioner of fish and game that a valid petition under
14 (1) of this subsection has been received.

15 **Sec. 43.76.180. Termination of dive fishery management assessment.** (a)
16 The dive fishery management assessment levied on a species of fishery resources under
17 AS 43.76.150 may be terminated by the commissioner of revenue upon majority vote
18 at an election held under AS 43.76.160 in the administrative area in which the dive
19 fishery management assessment is levied.

20 (b) The commissioner of revenue shall terminate a dive fishery management
21 assessment under (a) of this section following an election in an administrative area if

22 (1) a petition, that is signed by at least 25 percent of the number of
23 persons who voted under AS 43.76.160 in the election approving the dive fishery
24 management assessment on the fishery resource in the administrative area, is presented
25 to the commissioner of fish and game requesting termination of the dive fishery
26 management assessment on a species of fishery resources; only a person who would
27 be eligible to vote in an election to repeal the assessment may validly sign the petition;

28 (2) an election is held in accordance with AS 43.76.160; the ballot must
29 ask the question whether the dive fishery management assessment on a species of
30 fishery resources taken in the administrative area shall be terminated; the ballot must
31 be worded so that a "yes" vote is for continuation of the dive fishery management

1 assessment and a "no" vote is for termination of the dive fishery management
2 assessment;

3 (3) a majority of the eligible interim-use permit and entry permit
4 holders who vote in the election cast a ballot for the termination of the dive fishery
5 management assessment; in this paragraph, "eligible interim-use permit and entry
6 permit holders" has the meaning given in AS 43.76.160; and

7 (4) the qualified regional dive fishery development association provides
8 notice of the election in accordance with AS 43.76.160 within two months after
9 receiving notice from the commissioner of fish and game that a valid petition under
10 (1) of this subsection has been received.

11 **Sec. 43.76.190. Collection of assessment.** (a) A buyer who acquires a fishery
12 resource that is subject to a dive fishery management assessment levied under
13 AS 43.76.150 shall collect the dive fishery management assessment at the time of
14 purchase and shall remit the total dive fishery management assessment collected during
15 each calendar quarter to the Department of Revenue by the last day of the month
16 following the end of the calendar quarter. In this subsection, "calendar quarter" means
17 each of the three-month periods ending March 31, June 30, September 30, and
18 December 31.

19 (b) A buyer who collects the dive fishery management assessment shall
20 maintain records of the value of each species of fishery resources that is subject to an
21 assessment that is purchased in each administrative area of the state.

22 (c) The owner of fishery resources removed from the state is liable for
23 payment of the dive fishery management assessment levied under AS 43.76.150 if, at
24 the time the fishery resource is removed from the state, the assessment payable on the
25 fishery resource has not been collected by a buyer. If the owner of the fishery
26 resource is liable for payment of the dive fishery management assessment under this
27 subsection, the owner shall comply with the requirements under (a) and (b) of this
28 section to remit the assessment to the Department of Revenue and to maintain records.

29 (d) The dive fishery management assessment collected under this section shall
30 be deposited in the general fund.

31 **Sec. 43.76.200. Funding for qualified regional dive fishery development**

1 associations. (a) The legislature may make appropriations of revenue collected under
2 AS 43.76.190 to the Department of Fish and Game for funding of the qualified
3 regional dive fishery development association in the administrative area in which the
4 assessment was collected. Funds received under this section by a qualified regional
5 dive fishery development association may be expended in accordance with the annual
6 operating plan developed under (b) of this section.

7 (b) The Department of Fish and Game shall develop an annual operating plan
8 with the cooperation of the regional dive fishery development association on or before
9 a date specified by the Department of Fish and Game. The qualified regional dive
10 fishery development association shall cooperate with the Department of Fish and Game
11 in the development of the annual operating plan. The annual operating plan must
12 describe the activities for which the funding will be expended, including identification
13 of species and areas for which bioassessment surveys will be conducted, a description
14 of management and research activities to be performed, planning for dive fisheries, and
15 administrative activities of the association. Funds appropriated to the Department of
16 Fish and Game for funding of qualified regional dive fishery development associations
17 may not be disbursed by the department or expended by the association, except for
18 administration of the association, unless the annual operating plan has been approved
19 by the association and the Department of Fish and Game. If an annual operating plan
20 has not been approved by the association and the Department of Fish and Game, the
21 Department of Fish and Game may not disburse and the association may not expend
22 funds received from the department for administration of the association in an amount
23 that exceeds the amount of administrative expenses authorized under the annual
24 operating plan for the prior fiscal year.

25 (c) A qualified regional dive fishery development association receiving funding
26 under this section shall submit an annual financial report to the Department of Fish and
27 Game on a form provided by the Department of Fish and Game. The Department of
28 Fish and Game may, by regulation, require that a qualified regional dive fishery
29 development association use a uniform system of accounting and may audit the use of
30 funding received under this section by the association.

31 (d) This section does not establish a dedication of a state tax or license.

1 (e) This section does not restrict or qualify the authority of the Department of
2 Fish and Game or the Board of Fisheries under AS 16.

3 **Sec. 43.76.210. Definitions.** In AS 43.76.150 - 43.76.210,

4 (1) "administrative area" means an area established by the Alaska
5 Commercial Fisheries Entry Commission under AS 16.43.200 for regulating and
6 controlling entry into fisheries using dive gear;

7 (2) "buyer" means a person who acquires possession of a fishery
8 resource from the person who caught the fishery resource, regardless of whether there
9 is an actual sale of the fishery resource, but does not include a person engaged solely
10 in interstate transportation of goods for hire;

11 (3) "fishery resource" means fish, shellfish, or marine invertebrates
12 taken or landed under the authority of a limited entry permit or interim-use permit
13 issued under AS 16.43 for dive gear;

14 (4) "qualified regional dive fishery development association" means an
15 association that is qualified under AS 16.40.240;

16 (5) "value" has the meaning given in AS 43.75.290.

17 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 31, 1997

SUBJECT: Ban on export of dive fishery resources (HB 198)

TO: Representative Bill Williams
Attn: Kyle Johansen

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether the state may ban the export of dive fishery resources. This memorandum is in response to your question.

Presumably your question relates to a ban on export of dive fishery resources after they have been harvested in a commercial fishery.¹ Dive fishery resources, such as sea urchin, geoducks, etc, taken in a commercial fishery are items of commerce because they are intended for sale. A regulation that directly or indirectly affects the movement of an item of commerce may violate the commerce clause of the United State Constitution.

The commerce clause of the federal constitution grants Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Article I, sec. 8, cl. 3, Constitution of the United States. "Although the Clause speaks in terms of powers bestowed upon Congress, the [U.S. Supreme Court] long has recognized that it also limits the power of the States to erect barriers against interstate trade." Lewis v. BT Investment Managers, Inc., 447 U.S. 27, 35, 64 L.Ed.2d 702, 711 (1980). The limitation imposed by the commerce clause on state regulatory power is by no means absolute, and the states retain authority under their general police powers to regulate matters of legitimate local concern, even though interstate commerce may be affected. Maine v. Taylor, 477 U.S. 131, 138, 91 L.Ed.2d 110, 120 (1986).

"In determining whether a State has overstepped its role in regulating interstate commerce, [the U.S. Supreme Court] has distinguished between state statutes that burden interstate transactions only incidentally, and those that affirmatively discriminate against such transactions. While statutes in

¹ The state could wholly foreclose the possibility of the export of dive fishery resources by closing the commercial dive fishery for legitimate conservation reasons.

Representative Bill Williams

March 31, 1997

Page 2

the first group violate the Commerce Clause only if the burden they impose on interstate trade are 'clearly excessive in relation to the putative local benefits,' Pike v. Bruce Church, Inc., [397 U.S. 137, 142, 25 L.Ed.2d 174, 178 (1970)]. statutes in the second group are subject to more demanding scrutiny. The [U.S. Supreme Court] explained in Hughes v. Oklahoma, [441 U.S. 322, 336, 60 L.Ed.2d 250, 262 (1979)], that once a state law is shown to discriminate against interstate commerce 'either on its face or in practical effect,' the burden falls on the State to demonstrate both that the statute 'serves a legitimate local purpose,' and that this purpose could not be served as well by nondiscriminatory means." Maine, 477 U.S. at 138, 91 L.Ed.2d at 120-21.

Protection of in-state industries from out of state competition is almost never a legitimate local purpose. State laws that amount to economic protectionism are virtually always invalid. Philadelphia v. New Jersey, 437 U.S. 617, 624, 57 L.Ed.2d 475, 481 (1978).

A ban on the export of commercially taken dive fishery resources would discriminate against interstate commerce "on its face". The ban would be judged under the strict requirements of Hughes v. Oklahoma. To survive scrutiny under Hughes v. Oklahoma, the State of Alaska has the burden of proving both that the bill serves a legitimate local purpose and that the purpose is one that cannot be served as well by nondiscriminatory means. The state would have to provide a significant amount of factual data to show that the ban on the export of dive fishery resources is necessary and reasonable. Though a state may pursue a legitimate purpose in restricting the flow of interstate commerce, the state may not pursue such a goal by unnecessarily restrictive means. The state must adopt the means to its end that imposes the least restriction on interstate commerce. If there is a reasonable means by which the state can achieve the same end with less interference with the free flow of interstate commerce, the state must use that means.

In Hughes v. Oklahoma, the United States Supreme Court struck down an Oklahoma law that banned the export of minnows for sale outside of the state. The state argued that the ban was a necessary conservation measure to protect natural populations of minnows. However, the court observed that the state did not place any restrictions on the take of minnows for sale in the state and that the state had chosen the most discriminatory means available to conserve minnows when less discriminatory mechanisms were available. Without more information on which to justify such discriminatory action by the State of Alaska, I suspect that a ban on the export of dive fishery resources would also be struck down as violative of the commerce clause.

A ban on the export of unprocessed dive fishery resources, i.e. an in-state processing requirement, is likely to be equally unsuccessful. An in-state primary processing requirement also discriminates against interstate commerce. The State of Alaska had attempted to impose a primary processing requirement on timber taken from state land. The

Representative Bill Williams

March 31, 1997

Page 3

State's effort was an impermissible burden on interstate and international commerce. Southcentral Timber Development Inc. v. Wunnicke, 467 U.S. 82, 81 L.Ed.2d 71 (1984). The state's case for a primary processing requirement for the timber was much stronger than it would be for fishery resources. The state owned the timber that was being sold and as a market participant (not a regulator) the state has greater leeway under the commerce clause in determining the conditions under which its resources may be sold and to whom they are sold. Nonetheless, the state's primary processing requirement for state timber was inconsistent with the commerce clause. In the context of dive fishery resources, the state's legal position is even less secure because the state does not own the fishery resources² and the state is acting as a regulator and not a market participant when it imposes an in-state processing requirement. Also, primary processing requirements are generally found to be economic protectionism that foster local interests to the detriment of interstate commerce. Without substantial information to support a valid reason for favoring local processing over out of state processing, the state would not be able to require in-state processing of dive fishery resources.

If I may be of further assistance, please advise.

GU:pl

97-078.plm

² The legal theory of state ownership of fish and wildlife (at least for commerce clause purposes) was laid to rest by the United States Supreme Court in Hughes v. Oklahoma.

DEPARTMENT OF REVENUE
Income and Excise Audit Division

Dive Fishery Management Assn & Assessment
CSHB 198(FSH)
April 9, 1997
Page 2 of 2

BILL ANALYSIS

Section 1 authorizes the formation of qualified regional dive fishery development associations for the purpose of developing dive fisheries in the state.

Section 2 adds new section to AS 43.76 (Salmon Enhancement and Marketing Taxes) which establishes provisions for an elective dive fishery management assessment. Qualified dive fishery development associations would be authorized to conduct an election to approve, amend or terminate a dive fishery management assessment based on a percentage of the value of the fishery resource. Terms for conducting the election are provided in this section.

Processors would collect applicable dive fishery management assessments from dive fishermen when they acquire or buy dive fishery resources. Processors would be required to file returns and remit assessment collections to Department of Revenue on a quarterly basis. Persons who export dive fisheries from the state would be required to file returns and pay assessments directly to the department on a quarterly basis. Assessment collections would be deposited in the general fund. The legislature may appropriate assessment revenue to the Department of Fish and Game for funding the qualified regional dive fishery association in the area in which the assessments were collected.

Section 3 provides for an immediate effective date.

OPERATING EXPENDITURES

Department of Revenue estimates that less than 40 dive fishery assessment returns would be filed each year. The department could handle collection of the fishery management assessments and processing returns with current resources.

REVENUE

It is not feasible to estimate revenue under this bill because the dive fishery assessment is contingent on (1) formation of a qualified dive fishery development association and (2) approval of an assessment and rate by a majority vote of association members. According to Department of Fish and Game, the total estimated value of dive fishery resources for calendar year 1997 will be between \$3.5 and \$4.0 million. Collections would likely begin in FY 1999 because of the time it would take to form associations and conduct an election for approval of an assessment.

Greg Cushing
407 Hemlock Street
Sitka AK 99835

April 8, 1997

Representative Alan Austerman
Chairman Special Committee on Fisheries
State Capitol
Juneau AK 99801-1182

Dear Representative Austerman:

I am writing to urge your committee to approve HB 198. This bill is vital to our efforts to conduct an orderly development of our region's dive fisheries.

As a lifelong resident of Sitka and a commercial fisherman and diver for 25 years, I have become very familiar with our area's resources. The potential for region-wide, long-term, stable dive fisheries is great. We have been working hard to establish a survey / assessment program in order to initialize the development of these fisheries.

We have a strong commitment to this development. We are willing to assess ourselves to ensure that future management is funded.

These fisheries will be very important to S E Alaska communities as they will be carried out during the Fall and Winter months, the traditional off-season. This will result in local divers having multi-specie work opportunities for months, rather than for a few days as is currently.

I would have preferred to be at this committee meeting in person, but could not because of family matters.

Thank you for your consideration of H B 198.

Sincerely,

Greg Cushing

CALIFORNIA URCHIN FISHERY: LESSONS FOR ALASKA



Christopher M. Dewees
Marine Fisheries Specialist
Sea Grant Extension Program
Department of Wildlife and
Fisheries Biology
University of California, Davis

Few Californians realize that the red sea urchin (*Strongylocentrotus franciscanus*) is that state's most valuable commercially harvested species. Prior to 1972, urchins were considered a pest. Quicklime (calcium oxide) was used to control urchins in commercial kelp beds and groups of recreational divers used hammers to smash urchins. Times have changed! In recent years landings have exceeded 50 million pounds per year, worth at least \$25 million to commercial fishermen.

During the 1980s, a small fishery for both red and green sea urchins has developed in Alaska. The rapid expansion and profitability of urchin fisheries in other Pacific Coast states and Maine has spurred increased interest in Alaska. Examining the California fishery could help in the orderly development of Alaska's sea urchin fishery.

Description of the Fishery

Divers use "hookah" gear in which an onboard compressor supplies air through a hose to a face plate. Most of the vessels are 25 to 35 feet long which often cruise at 20 knots to reach distant grounds in a few hours. Trips are usually one or two days. The urchins are harvested by hand using a rake-like tool to move the urchins into a mesh bag. Most diving takes place in 20 to 40 feet of water. In recent

years, the catch per hour has ranged from 150 to 500 pounds in southern California harvest areas and 350 to 700 pounds per hour in northern California harvest areas.

The vast majority of red sea urchins landed in California are processed locally and air shipped fresh to Japan. U.S. exports of urchins were worth \$67 million in 1989 (75 percent comes from California). There are about 15 processors in California who employ over 500 people.

In processing, the urchins are cracked open and the five large pieces of gonad ("uni") are removed with a small spoon, washed, dipped in an anhydrous potassium alum solution for firming, and packed in trays for shipment.

The "uni" is sold by auction in Japan. The prices fluctuate widely based on color, texture, quality, and supplies available from other sources worldwide. In 1988, auction prices per 8-9 ounce tray ranged from under \$4 to over \$40 per tray. Prices paid to fishermen also fluctuate widely. During much of the year the price ranges from \$.30 to \$.60 per pound, but around the winter holidays prices occasionally soar to over \$1.50 per pound.

Until recently, only the red sea urchin was harvested. The abundant purple urchin, *Strongylocentrotus purpuratus*, was not harvested because processors considered it too small to process profitably. In the fall of 1990, test



Packing "uni" into trays for air shipping to Japan

shipments of live purple urchins were favorably received in Japan and a limited fishery for this species appears likely.

Some History

Harvest of red sea urchins started in 1972 in southern California. Sus Kato from the National Marine Fisheries Service brought technicians from Japan to train processors on the handling, processing, packing, and shipping of urchins. The fishery took off. Within three years, the harvest reached 11 million pounds and by 1981 over 300 divers harvested nearly 25 million pounds in southern California. During 1982-84, landings slumped because of the negative effects of the *El Nino* on kelp availability, thus decreasing urchin food supplies. Since 1985, southern California landings have rebounded to over 20 million pounds annually.



Improved market conditions attracted processors to northern California in 1985-86. By 1987, over 23 million pounds of urchins were extracted from the virgin stock. Almost immediately there were 915 divers and statewide landings of 46 million pounds.

Concerns about the sustainability of the fishery, expressed by the fishing industry, concerned citizens and fishery managers, culminated in California Assembly Bill 972. This bill established a special one-half cent per pound landing tax on urchins to fund research needed for wise management of the resource. Half of the landing tax is allocated to data collection and research aiding management and the other half is allocated to urchin enhancement research. A ten-person advisory committee, made up primarily of industry participants, was established to advise the Department of Fish and Game on research mandated by AB 972, potential enhancement activities, and design of a limited entry system.

Management

Since 1987 the California Department of Fish and Game and the Sea Urchin Advisory Committee negotiated an increasingly restrictive management system in an attempt to maintain a sustainable fishery. By 1991, the fishery was operating under the regulations summarized below.

1. After a moratorium on the issuance of new permits was declared in 1987, a limited entry scheme was implemented in 1988. The initial goal was to reduce the number of divers from 915 to 400

through attrition. To qualify for a permit each year, each diver must demonstrate that they made at least 20 landings of at least 300 pounds during one of the two immediately preceding permit years. To allow some new entry, apprentice permits are issued. The number issued is equal to one-fifth of the difference between the total number of permits issued during the current permit year and the total number of permits issued in 1987-88 (915). Currently there are about 600 divers.

2. Several closures now exist. The northern California fishery is closed during July. Statewide, the season is only open four days per week, from May through September. If a certain level of landings is exceeded, the second week of each month (May through September) is closed. Several areas are completely closed to urchin harvest to maintain study areas.

3. Minimum size limits of 3.5 inches in the north and 3.0 inches in the south were initiated. There is a tolerance of 30 undersized urchins, not including urchins under 1.5 inches, in each load.

4. Divers are required to maintain and turn in logbooks. Compliance has been about 60 percent.

It is too early to measure the effectiveness of this management regime in reducing urchin harvests. In 1990, landings declined about 30 percent in northern California. It is difficult to separate the effects of the size limits, closures, reduced urchin abundance, and shift of effort to southern California.

Research

Industry funded research related to management has two main thrusts. The first is to track the landings with market sampling and logbook analysis. Other longer term research, which is contracted out to universities, focuses on age, growth, recruitment, effects of size limits, and changes in abundance. All of this information is critical to developing an effective long-term management strategy. Related sea urchin research is also funded by the California Sea Grant College Program.

The urchin industry is also funding research on the feasibility of resource enhancement. Projects include survey of potentially feasible enhancement techniques used in Japan, feeding of poor quality urchins to enhance marketability, test out plants of juvenile urchins, and start up of a small pilot hatchery.

Lessons for Alaska

California's experiences provide some useful information to Alaska. The first is that it is not easy to get a viable fishery started. The key is to find processors willing to develop trained workers, pursue highly competitive Japanese markets, overcome transportation difficulties, and secure a steady supply of product. Allowable catches need to be large enough to sustain a processing operation for a significant part of the year. California processors have resisted long closures because they feel that they will lose their place in the Japanese market and lose their trained work force.

LESSONS FOR ALASKA *continued*



Another lesson from California is that once a viable fishery is established, it can expand explosively. Management measures should be considered from the beginning that will provide some control over the growth of the fishery.

Several research topics would be critical to rational management. Surprisingly, little is known about recruitment of juvenile urchins. Preliminary findings in California indicate that recruitment in northern California may be much more erratic than in southern California. This could mean that the sustainable harvest in northern California is lower than further south. Recruitment should also be monitored in Alaska.

Another research priority should be some level of knowledge about the density of the currently unharvested urchin stocks. This information will be useful in

measuring the effect of harvest on the resource. Maintenance of some un-harvested reserves for research would also be helpful. Industry should be involved in developing the management plans. Although the agency-industry partnership in California's urchin fishery management has not been easy, I believe higher rates of compliance and self-policing have resulted from the process.

Alaska should consider several alternative management schemes. Properly selected size limits and limited entry might be sufficient. Individual transferable quotas should be considered if a non-derby fishery which maximizes product quality is the desired goal. A rotating harvest zone system, similar to that done in Washington, or area licenses are other possibilities. Another consideration may be the relationship between the sea urchin fishery

and management of sea otters. In California, areas with reestablished sea otter populations do not have large enough urchin populations to support a viable fishery.

Funding sea urchin management and research is a problem. The California industry pays its way with their landing tax. If state funds are not available, the industry may need to devise a way to raise funds.

Further Reading

Kato, S., and S.C. Schroeter. 1985. Biology of the red sea urchin, *Strongylocentrotus franciscanus*, and its fishery in California. *Marine Fisheries Review* 47:1-20.

Phu, C.H. 1990. The U.S. sea urchin industry and its market in Tokyo. NOAA Technical Memorandum NOAA-TM-NMFS-SWR-025.

Sea Urchin Conference

Description: A workshop to discuss the biology, processing, marketing, and management of sea urchins was held February 26, 1991, in Sitka, Alaska. The conference was sponsored by Sea Grant. Speakers from Maine, California, Washington, British Columbia, and Alaska gave presentations on the fishery in their region. A processor from Alaska discussed his experiences with processing and marketing. A lecture on the biology of sea urchins was also included. A panel discussion enabled members of the audience to explore topics of their interest. A detailed noteset on the conference is available from the Petersburg Marine Advisory Program office and a summary from the Sitka office.

Key Points: From the speakers' presentations, it was evident that Alaska management has been the most cautious of any state in regulating the fishery. Since management problems have developed in every region, and the West Coast regions have had to institute limited entry regulations, it appears that caution is justified. In Alaskan waters the lack of biological information, concern for subsistence resources, and the lack of funding for research has influenced management to set very cautious quotas. This has limited development of the fishery. Financially, marketing and processing sea urchins is initially a high risk operation and processors are disinclined to take the chance without an adequate quota and fairly long season.

Processing is dependent on a skilled, stable labor force and fast, careful air transport. The success of processing firms also depends on their willingness to adjust to cross-cultural values and their association with marketers experienced in the Japanese marketing system. The Japanese market is very appearance conscious with fresh roe products.

The fisheries for red and green urchins involved different habitat, processing and shipping techniques, and markets. Management tools that are available include rotational areas, quotas, size limits, seasons, boat limits, refuge areas, and area-specific permits, logbooks, and individual quotas. Almost all of these have been used in various regions. Divers must be experienced in judging roe quality in order to prevent wasteful harvest and a poor reputation in the market. Safety considerations should be part of the design of the management plan.

Tenass Pass Shellfish Company

Gourmet Oysters and Clams from Alaska Pure Waters



April 9, 1997

Rep. Bill Williams
Capitol Building, Room 524
Juneau, AK 99802-0704

Dear Rep. Williams:

As a small-scale processor just entering the geoduck business. I wish to strongly endorse House Bill 198 as the only apparent option for developing Alaska's great under-utilized clam resources. My company is one of the state's oldest shellfish farms and currently is the leading oyster and clam producer in the state, but we are still struggling to make a profit as we enter our second decade of business on Prince of Wales Island.

We began processing and shipping live geoducks last year, but we were stopped dead in our tracks after only three weeks as shipments began to fail PSP (paralytic shellfish poisoning) tests. We will test a system of purging geoducks of high levels of PSP during the 1997 fishery and fully expect to be able to consistently sell our geoducks on the lucrative live market in Hong Kong by the following year.

Your legislation should allow new geoduck and horse clam beds to open. These large clams can sell for more than \$10 per pound in Asian markets, and Alaska appears to have large quantities of untapped commercial scale resources. Here's the problem: state policies essentially prohibit the opening of new fisheries until there is sufficient research to verify resource strength and the Alaska Department of Fish and Game has the resources to manage a new fishery, but reduced state and federal spending has led to a virtual halt in research into new fisheries and ADF&G's budget is shrinking several sizes each year.

The result is a virtual assurance that no new fisheries will open, at least none under state control, or that only large companies with deep pockets need apply. HB 198 essentially gives the divers the ability to use the resource to help fund stock assessment and provides a method of funding ADF&G management. HB 198 has the potential to break down the existing barriers to development of some of Alaska's highest value seafood resources. It has my full support.

Sincerely,

Rodger Painter

Southeast Alaska Harvest Divers Association
Ketchikan Chapter
P.O. Box 6263
Ketchikan, AK 99901
March 29, 1997

Representative Bill Williams
Alaska State Legislature
State Capitol
Juneau, AK 99801-1102

Dear Representative Williams:

We would like to thank you for securing funding for the red urchin fishery for the continuation of the fishery after June 30. We understand that it is one year's funding only and that you were able to secure the money because of our initiative in stepping forward in our support of House Bill 198. While the red urchin fishery is important, and many of us participate in it, it is only one small part of what is addressed in House Bill 198 and the Dive Fishery Economic Development Project. We view this legislation as an opportunity to provide economic development for not only Ketchikan, but, for all of southeast. It will allow us to work in a positive manner with the Department of Fish & Game to develop these resources.

The most important fact relating to House Bill 198 is that it provides a level entrance for all the participants in the fishery. The funding mechanism currently in place is voluntary and has caused considerable confusion. House Bill 198 will provide opportunity for stability and accountability which we believe is very important.

The following individuals support House Bill 198 and the development project. We will continue to work in a forward looking manner to ensure the goals of the project are met. Thank you for your vision and support.

Sincerely,

Southeast Alaska Harvest Divers Association

James H. Bray 2134 2nd Ave Ketchikan, Alaska 99901
Debra M. Patel 12411 Semple St Ketchikan, AK 99901
H. Kernerle P.O. Box 7022 Ketchikan, AK 99901
George Robinson P.O. Box 5322 Ketchikan, AK
Walter Brown 23.7 Madison Rd AK 99901
Sandra Swain 1050 Water Street, Ketchikan, AK 99901



April 7, 1997

Representative Austerman
Alaska State Legislature
State Capitol Juneau, Alaska
99801-1182

Subject: House Bill 198, Regional Dive Fishery Development Associations

Dear Rep. Austerman:

The City of Craig supports House Bill 198 sponsored by Reps. Williams, Grussendorf, Kookesh, Hudson and Elton. This bill is entitled "An Act relating to regional dive fishery development associations and to dive fishery management assessments;..."

The city has supported this legislation as part of a broader project called the Dive Fisheries Economic Development Project to which the City of Craig has appropriated \$20,000 of our scarce city resources in support of phase I of this project.

The reason that our city has committed time and money to this project is that the dive fishery is an extremely important part of our community economic activity. The dive fishery produced over 270 jobs in our community just this past year in the following developing fisheries: sea cucumbers, sea urchins and geoducks. These fisheries have a very bright future along with other developing dive fisheries and, with proper resource management, we look to this fishery for many more jobs on a sustainable basis.

As you will note from the bill, management of the fishery pays for itself with an assessment from participating permit holders. Eligible divers vote on the amount that is assessed and placed into the general fund monthly. The legislature may then appropriate an amount to be determined by the legislature based on the amount of assessment received into the general fund. We wish that more programs were self-funding as is this one.

The City of Craig appreciates your consideration of this bill and points out that a vote for this bill is a vote for regional economic development and diversification. Please incorporate this letter into the bill-file for hearings on April 10th & 11th.

Sincerely,

Dennis Watson, Mayor
City of Craig



ADOPTED AUGUST 1913
March 17, 1997

CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1893

BOX 531, 99980 (907) 874-3591
FAX (907) 874-3952

Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Legislators:

The City of Wrangell supports House Bill 169, sponsored by Representative Bill Williams, "An Act relating to regional dive fishery development associations and to a dive fishery management assessment."

This legislation is part of a broader Dive Fisheries Economic Development Project for Southeast Alaska in which the City of Wrangell is actively participating. We have allocated \$20,000 for Phase I of this project as part of a regional effort to develop dive fisheries.

Southeast Alaska dive fishermen have been trying for the past decade to establish an orderly, consistent and stable fishery capable of providing dependable economic opportunity. The urgency to create an economically viable fishery in Southeast is highlighted by the recent reduction in timber harvest and the closure of several forest products manufacturing plants in the region. In fact, in Wrangell we have at least eight displaced timber workers who are now participating in the dive fishery.

The City of Wrangell appreciates your support for economic development and diversification for our region. Thank you for your consideration.

Sincerely,

Douglas W. Roberts
Douglas W. Roberts
Mayor

DWR:fv

Alaska Harvest Divers Association
Sitka Branch
P.O. Box 6423
Sitka, Alaska 99835
March 31, 1997

Representative Bill Williams
Alaska State Legislature
State Capitol, Room 424
Juneau, AK 99801-1182

Dear Representative Williams:

The Sitka divers support House Bill 198. We have been working for many years to develop our dive fishery in the Sitka area. Funding for this fishery has been requested as City and Borough priorities for a decade; however, the fishery has not developed because money has not been appropriated for the developing fishery.

In the Sitka area we have some geoduck and sea cucumber dive fisheries which are currently open. These fisheries represent a small portion of the dive resources located adjacent to our city and borough. House Bill 198 is part of a Dive Fisheries Economic Development Project which will begin to move us forward in the development of these resources.

At the same time we are working on several other elements connected with the project. It is our desire to develop these resources for the long-term benefit of our fishermen and community.

The following individuals support House Bill 198. Thank you for your support in this effort and we look forward to our continuing work with you and your staff.

Sincerely

Greg Cushing

- Paul Edwards P.O. Box 2024 Sitka AK Craig Sweeney
- Paul Edwards 1311-5 5th St Sitka AK
- Donna Galar 557 KATHAN ST SITKA AK
- Virginia Daiglen 317 Peterson Sitka AK
- John Hill P.O. Box 3204 SITKA AK
- Glenn Hill P.O. Box 6393 Sitka, AK

Alaska Harvest Divers Association
Sitka Branch
P.O. Box 6423
Sitka, Alaska 99835
March 31, 1997

Representative Bill Williams
Alaska State Legislature
State Capitol, Room 424
Juneau, AK 99801-1182

Dear Representative Williams:

The Sitka divers support House Bill 198. We have been working for many years to develop our dive fishery in the Sitka area. Funding for this fishery has been requested as City and Borough priorities for a decade; however, the fishery has not developed because money has not been appropriated for the developing fishery.

In the Sitka area we have some geuluck and sea cucumber dive fisheries which are currently open. These fisheries represent a small portion of the dive resources located adjacent to our city and borough. House Bill 198 is part of a Dive Fisheries Economic Development Project which will begin to move us forward in the development of these resources.

At the same time we are working on several other elements connected with the project. It is our desire to develop these resources for the long-term benefit of our fishermen and community.

The following individuals support House Bill 198. Thank you for your support in this effort and we look forward to our continuing work with you and your staff.

Sincerely

Greg Cushing

Barton Sollars Sr. 3315 HPR Sitka, AK 99835 (owner trailer
solus park)
Carol A. Sollars 3315-HPR Sitka AK 99835
John Lindvall 313 Lake Sitka AK 99835 (owner
ALASKA
AUTOMOTIVE)
Elizabeth Dedman 1302 Sinc #13 Sitka, AK 99835
Sharon E. L. Olsen 313 Lake St Sitka, AK 99835 ST/UKIND
SOLUS
David Hays PO Box 1285 Sitka, AK 99835



February 25, 1997

City and Borough of Sitka Assembly
100 Lincoln Street
Sitka, AK 99835

Dear Assembly Members:

Sitka Sound Seafoods supports the development of the dive species in southeast Alaska. We have shore plants in both Sitka and Yakutat and we presently process sea cucumbers at our plant in Sitka.

The development of the dive species will provide opportunity for our organization to consider additional investment for the processing of these species. Being able to keep a plant operational on a year round basis is dependent on the availability of product.

Many of the dive species require labor intensive processing which affords the opportunity of employment to a broad base.

As the new general manager of Sitka Sound Seafoods, I look forward to getting to know each of you and working with you over the years to come. Thank you for your consideration of the dive fishery development proposal and I hope you will view it favorably.

Sincerely,

John Sevier
John Sevier, General Manager
Sitka Sound Seafoods

(907) 747-6662

FAX (907) 747-6268

FRESH AND FROZEN SALMON, COD, SABLEFISH, HALIBUT, ROCK FISH, CRAB, HERRING

James B. Dennis
 Box 591
 Craig, Alaska 99921
 March 19, 1997

Senator Jerry Mackie
 Alaska State Legislature
 Juneau, Alaska 99801-1182

Dear Senator Mackie:

The undersigned divers support House Bill 196 "An Act relating to regional dive fishery development associations and to dive fishery management assessments." We would urge your support of a Senate version of the bill.

A public meeting was held today in Craig and the legislation was reviewed. As you know, we have been attempting to develop the dive fishery resources in southeast for over a decade. This bill will provide a mechanism for moving forward with the development of these resources.

The legislation is part of Dive Fisheries Economic Development Project for southeast and we look forward to its passage which will move this project forward.

Thank you for your consideration.

James B. Dennis Box 591 Craig 99921 826-7010

Bruce Baxter Box 384 Craig 99921 826-3047

Harriet K. Kelly Box 318 Craig 99921

Karen R. Johnson Box 177 Craig 99921 755-2700

No Knutsen Box 527 Craig 826-3476

Matt Green Box 442 Craig 826-3651

William Miller Box 1131 Craig 99921 254-1179

Michael F. Bell Box 8419 Craig 99921 826-3456

Rick Summers Box 227 CRAIG 826-3271

Tracy & Therese Box 260 CRAIG 99921



Sitka Tribal Enterprises

Mr. Bert Bergman
Alaska Harvest Divers Association
PO Box 6423
Sitka, Alaska 99835

RE: Letter in Support of the Dive Fisheries Development Project

Dear Mr Bergman:

With this letter, I would like to offer my support for the Dive Fisheries Economic Development Project. Sitka Tribal Enterprises is in the process of developing a fish-waste composting facility. The waste materials generated from this fishery, such as geoduck shells, would be a great additive for our compost. Seafood shells are an excellent source of calcium and would improve the quality of our finished product.

If this fishery project has the opportunity to come to fruition, we would like to offer The Alaska Harvest Divers Association a place for them to take their waste.

The Sitka Tribal Enterprise fish-timber waste composting facility, along with the Dive Fisheries Development Project, will help provide an economic stimulus for the community of Sitka, as well as provide an outlet for environmentally conscious business development within the Native community and the community at large. We look forward to working with the Alaska Harvest Divers Association as they move forward with this project.

Sincerely,

Bobi Rinehart
Environmental Resources Manager
Sitka Tribal Enterprises



Wrangell FISHERIES INC.

641 SHAKES STREET, P.O. BOX 908, WRANGELL, ALASKA 99929

TEL. (907)874-3340. FAX (907)874-3035

MARCH 6, 1997

To whom it may concern:

Wrangell Fisheries, Inc. supports the dive fishery in S.E. Alaska. The development of this fishery is important to this community as well as to ourselves, to be able to provide an opportunity for employment in this industry during the "off season". Being able to keep a plant operational on a year round basis is dependant on these other fisheries.

Thank you for your consideration on the development of this dive fishery and hope you view it favorably.

Sincerely

Levi Dow
Plant Manager
Wrangell Fisheries, Inc.



SEAFOOD PRODUCERS COOPERATIVE

PRODUCERS, PROCESSORS & MARKETERS OF PREMIUM QUALITY SEAFOODS

January 7, 1997

To Alaska Harvest Divers Association:

First of all I would like to thank you for the effort you have put forward concerning the dive fisheries in Southeast Alaska. Individual divers from other major communities in southeast have formed their own associations which have been modeled after yours and there is every indication that this movement will continue and develop into a regional association.

At a time when competition for other species are resulting in limited entry, moratorium, and quota based management systems, resources available to the diving industry remain in abundance and at near historic levels.

Markets for many of these products available in our area have been utilizing production from other coastal areas around the world. How our stocks will compete against these other sources in the marketplace depends on many factors, primarily on our ability to provide a consistent supply, which up until just recently has only been possible with Sea Cucumbers.

The problem is funding. Simply put, without funding to do stock assessments and to manage these fisheries, there will be no new fisheries. Knowing this, ADF&G has (within the last 2 years) been receptive to non legislative funding from the private sector. One example of this has been the Red Urchin fishery which just recently opened. Another is an area opened to Cucumber harvesting in Sea Otter Sound with money put forward by a Seafood Processor. That survey which cost \$15,000 opened an area which provided a 200,000 lb. quota in the first period. Considering an ex-vessel price of \$1.30 p/lb. that is a good first season return on anyones calculator. When you take into account contributions to processing, transportation, equipment and other service related jobs as well as generating raw fish taxes, the benefits are significant. I believe that this is just the beginning.

I encourage you to continue in your efforts to secure ADF&G funding for the purpose of stock assessment surveys, and to explore self funding strategy, so that these new fisheries may be opened.

Sincerely,

Craig Shoemaker

SEAFOOD PRODUCERS COOPERATIVE



City and Borough of Sitka

Providing for Today . . . Preparing for Tomorrow

100 LINCOLN STREET • SITKA, ALASKA 99835

747-1811

March 17, 1997

Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Legislators:

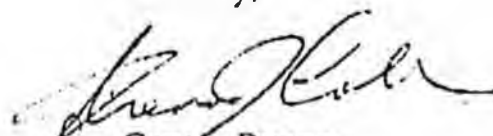
The City and Borough of Sitka supports HB 198 sponsored by Representative Bill Williams. "An Act relating to regional dive fishery development associations and to a dive fishery management assessment."

This legislation is part of a broader Dive Fisheries Economic Development Project for Southeast Alaska in which the City & Borough of Sitka is actively participating. We have allocated \$20,000 for Phase I of this project as part of a regional effort to develop dive fisheries.

Southeast Alaska dive fishermen have been trying for the past decade to establish an orderly, consistent, and stable fishery capable of providing dependable economic opportunity. The urgency to create an economically viable fishery in Southeast is highlighted by the recent reduction in timber harvest and the closure of several forest products manufacturing plants in the region.

The City & Borough of Sitka appreciates your support for economic development and diversification for our region. Thank you for your consideration.

Sincerely,



Gary L. Paxton
Municipal Administrator

END



NORQUEST

Lafayette, Silver Lining, Crusader

Phone: 907-826-3334

Fax: 907-826-3353

PO Box 412

Craig Ak. 99921

3-25-97

Alaska State Legislature
Representitive Bill Williams
Juneau, Alaska

Representitive Williams.

Thankyou for introducing H.B. 198. Positive action by the Legislature on this bill will solve the permanant funding of ADF&G management for Red Sea Urchins and clear the path for the development of several other dive fishery resources that we see promising futures in.

Dive fisheries are an important part of our winter program in S.E. Alaska. We currently employ 30-35 people on a full-time basis in each of our facilities in Craig and Ketchikan. We are looking forward to expanding the program to Petersburg when resource becomes available in that area.

I am confident that fisherman are in support of the mechanism put forth in H.B. 198. We have been deducting a .05 cents assessment from fisherman on urchins. To date we have collected \$17,000.00 with only \$380.00 not paid. This current method is temporary. Your bill addresses all of the concerns that I have and I support it. I favor this permanant solution so our company can make investments in these resources with confidence of a future.

Sincerely yours,

Stephen LaCroy



NORQUEST

Lafayette, Silver Lining, Crusader
Phone: 907-826-3334
Fax: 907-826-3353
PO Box 412
Craig, Ak. 99921

March 26, 1997

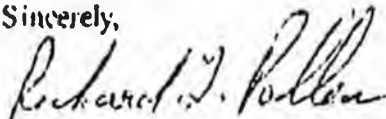
Dear Senator Mackie,

I wish to thank you for your support of House Bill 198. This Bill would set the stage for dive fishery production, which in turn will offer seafood processors the opportunity to operate year round. This would offer employment to many local folks who other wise would not have it at this time of year.

Norquest currently has a payroll of forty-five people which contributes around \$2400.00 daily into the local economy. This fishery has the potential of allowing other, now empty plants to open and operate in these labor intensive fisheries.

Again, your support of House Bill 198 is greatly appreciated.

Sincerely,



Richard L. Pollen
Plant Manager
Norquest/Craig

March 28, 1997

Representative Bill Williams
Fax (907) 465-3793

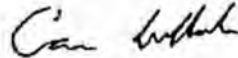
Dear Representative Williams

I support House Bill 198 and the whole concept of developing the dive fishery in southeast.

There are alot of untapped dive resources out there in southeast that Divers can earn their living from.

I believe this dive fisheries will help improve the economy for southeast people who need it, because of reduction in the timber harvest and the closure of several forest products manufacturing plants in southeast.

Sincerely,



Cam Tulloch
Petersburg Commercial Diver
Fax (907) 772 2141

Alaska Harvest Divers Association
Sitka Branch
P.O. Box 6423
Sitka, Alaska 99835
March 31, 1997

Representative Bill Williams
Alaska State Legislature
State Capitol, Room 424
Juneau, AK 99801-1182

Dear Representative Williams:

The Sitka divers support House Bill 198. We have been working for many years to develop our dive fishery in the Sitka area. Funding for this fishery has been requested as City and Borough priorities for a decade; however, the fishery has not developed because money has not been appropriated for the developing fishery.

In the Sitka area we have some geoduck and sea cucumber dive fisheries which are currently open. These fisheries represent a small portion of the dive resources located adjacent to our city and borough. House Bill 198 is part of a Dive Fisheries Economic Development Project which will begin to move us forward in the development of these resources.

At the same time we are working on several other elements connected with the project. It is our desire to develop these resources for the long-term benefit of our fishermen and community.

The following individuals support House Bill 198. Thank you for your support in this effort and we look forward to our continuing work with you and your staff.

Sincerely

Greg Cushing

William R. Arnold 1308 SMC Sitka (MANAGER
Hidden Falls
Hatchery)
Dorothy D. White P.O. Box 253 Sitka (S.E. Dive Shop)
John H. [unclear] 8631 Aurora Circle, Anchorage, AK
[unclear] owner/op (F/V MARIE)
Clara [unclear] 147 [unclear] #C Sitka, AK
Harry D. Bradley P.O. Box 1093 Sitka, AK 99835
Charles M. Hamrick Box 117 SITKA AK 99835 (OWNER
LAKE SIDE GROC)
Zeny Bradley P.O. Box 2416 Sitka AK 99835
[unclear] 705 [unclear] SITKA AK 99835 (OWNER Whites + Race PHARM)
Robert Collins 603 HPR SITKA AK 99835 (owner ROCK RACK)
Fran [unclear] 617 Katharine E-33 Sitka, AK 99835

Dawn Deuth 3201 HPR Sitka
Ramon San Pedro HPR
Rebecca Jaurio 138 Wexford Dr S, + KIT (Owner F/V Jenny Leah)
Angela n. Bradley P.O. Box 1043 Sitka, AK
Richard A. Danyl 1013 Kuhnke Dr Sitka AK
Philipp 224 Lakewood dr. Sitka AK
Billy 2309 HPR #42 Sitka AK
Phillip 2103 SMC Sitka, AK
Phillip 2200 SMC Sitka, AK (Owner F/V Roshell)
Phillip P.O. Box 6517 Sitka AK, (F/V Siamson owner)
Toni P.O. Box 6512 Sitka AK (F/V MAGIC owner)
Mary McMaster 1722 Eduecumbe S. HKA AK (Owner F/V Dist)
Edward V. Bunt 101 Rudolph Nelson Cir Sitka, AK (owner f/v)
Hertha E. Swan 617 Keilian St A13 Sitka AK
Mary Jo Kuhn 4109 HPR #35 Sitka AK (F/V Puffin)
Mary K. Ali P.O. Box 6342 Sitka AK
Denise P. Klugher 909 HPR #35 Sitka AK
Gregory J. Adkins P.O. Box 2301 Sitka, AK (owner Pristeen Seabrook)
Gregory J. Adkins 637 DORADO Sitka, AK
Darlene May 1302-27 SMC Sitka AK
Mark 3307 HPR #4 Sitka, AK
Charles Nelson 805 Sestad Sitka, AK
Idema Phillips PO Box 854 Sitka AK
Karen Cornacchio P.O. Box 1925 Sitka, AK
Mitch Cowan 605 DeGross Sitka, AK (F/V W. L. Horses)
Ken Weis P.O. Box 6343 SITKA AK
Jerry Fleming 1924 Dodge Circle Sitka, AK (Fleming, Pat)
James Lecrone P.O. Box 591 Sitka AK (F/V)

Richard Stephens PO Box 6358 SITKA AK 99835
William J. Carroll PO Box 6484 SITKA AK 99835
MKham Box 6467 SITKA AK 99835 annual open
FN Fairview
Ward Eldridge Box 6245 SITKA AK 99835 SHIPWRIGHT
Steve Calder PO Box 252 Sitka, AK 99835 SN
Alan Newman 2309-22 HPR, Sitka AK 99835
Brenda Reynolds 207 Jeff Davis, Sitka AK 99835
Camelia Hyde Box 6444 Sitka, AK 99835
Chelle Box 6444 Sitka, AK 99835 FIN LOON
Kolce, Warren Box 6467 SITKA AK 99835
Marie J. Gordon Box 1043 Sitka, AK 99835
Richard G. URIAS 612 BIORRA Sitka, AK 99835
Dorothy Gordon 908 HPR# 3 Sitka AK 99835
George Q. Condos 908 H.P.# 3 Sitka, AK 99835
Barbara Box 277 SITKA, AK 99835 F/NORMA J
Burke Box 277 SITKA, AK 99835 (SITKA VETCLIN)



KAKE TRIBAL CORPORATION

April 1997

P.O. Box 263

Kake, AK 99830

COURT RULES AGAINST KTC

Past error haunts Kake Tribal

The Alaska Supreme Court dealt a blow to a majority of Kake Tribal shareholders on February 21, 1997 when it upheld a lower court decision in the Arlene Bell Hanson et. al v. Kake Tribal Corporation. The highest court in Alaska ruled that Kake Tribal must pay 173 shareholders approximately \$98 per share as res-

Continued on page 3

Going After MONY

The only bright lining to the otherwise dark cloud created by the Alaska courts is that Kake Tribal has preserved its right to sue Mutual of New York (MONY), the company responsible for the insurance program that discriminated against certain shareholders.

"There is a wide paper trail that leads directly to Mutual of New York, the insurance company that sold the program to Kake Tribal in 1980," says Gordon Jackson. "It was naive of the board back then to accept a program that was discriminatory, but it was irresponsible for a huge enterprise like Mutual of New York to sell such a life insurance program. Certainly a corporation such as this insurance company should have known about corporate laws, fiduciary responsibilities, and shareholder rights."



The Kake Crew: over 40 residents of Kake are employed processing sea urchin this winter.

KAKE SEA URCHIN PROJECT

The processing crew at Kake is given credit for producing high quality sea urchin roe that commands top prices at the famed Tsukiji Market in Tokyo, the largest sea food market in the world. Mike Ellis, the sea urchin specialist hired by Larry Cambronero to oversee processing at Kake Fisheries, says the Kake Fisheries' crew is producing a product that sells for a higher average price than that of other Alaskan urchin producers.

"For those who understand the system, the key is the average price you receive," Ellis explains. "The market is an auction, and while

someone else might sell a portion of their product for a higher price, the bragging rights go to whoever gets the best price over-all."

Start-up of the project in January coincided with the low end of the market price for sea urchin. The sales strategy Cambronero and Ellis devised was to enter the market at the low end and to build a demand for the product as prices rise. The strategy appears to be paying off. In the 7th week of producing sea urchin roe the project is making profits.

"This project is labor intensive, and fortunately, we have a good

Continued on page 2

THE 1997 WORK SEASON BEGINS

In 1996 KTC employed over 400 people. Over 500 may work in 1997.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska



KAKE TRIBAL CORPORATION

April 1997

P.O. Box 263

Kake, AK 99830

COURT RULES AGAINST KTC

Past error haunts Kake Tribal

The Alaska Supreme Court dealt a blow to a majority of Kake Tribal shareholders on February 21, 1997 when it upheld a lower court decision in the Arlene Bell Hanson et. al v. Kake Tribal Corporation. The highest court in Alaska ruled that Kake Tribal must pay 173 shareholders approximately \$98 per share as res-

Continued on page 3

Going After MONY

The only bright lining to the otherwise dark cloud created by the Alaska courts is that Kake Tribal has preserved its right to sue Mutual of New York (MONY), the company responsible for the insurance program that discriminated against certain shareholders.

"There is a wide paper trail that leads directly to Mutual of New York, the insurance company that sold the program to Kake Tribal in 1980," says Gordon Jackson. "It was naive of the board back then to accept a program that was discriminatory, but it was irresponsible for a huge enterprise like Mutual of New York to sell such a life insurance program. Certainly a corporation such as this insurance company should have known about corporate laws, fiduciary responsibilities, and shareholder rights."



The Kake Crew: over 40 residents of Kake are employed processing sea urchin this winter.

KAKE SEA URCHIN PROJECT

Kake Fisheries produces high quality sea urchin product

The processing crew at Kake is given credit for producing high quality sea urchin roe that commands top prices at the famed Tsukiji Market in Tokyo, the largest sea food market in the world. Mike Ellis, the sea urchin specialist hired by Larry Cambronero to oversee processing at Kake Fisheries, says the Kake Fisheries' crew is producing a product that sells for a higher average price than that of other Alaskan urchin producers.

"For those who understand the system, the key is the average price you receive," Ellis explains. "The market is an auction, and while

someone else might sell a portion of their product for a higher price, the bragging rights go to whoever gets the best price over-all."

Start-up of the project in January coincided with the low end of the market price for sea urchin. The sales strategy Cambronero and Ellis devised was to enter the market at the low end and to build a demand for the product as prices rise. The strategy appears to be paying off. In the 7th week of producing sea urchin roe the project is making profits.

"This project is labor intensive, and fortunately, we have a good

Continued on page 2

THE 1997 WORK SEASON BEGINS

In 1996 KTC employed over 400 people. Over 500 may work in 1997.

SEA URCHIN PROCESSING

is the place to be in Kake

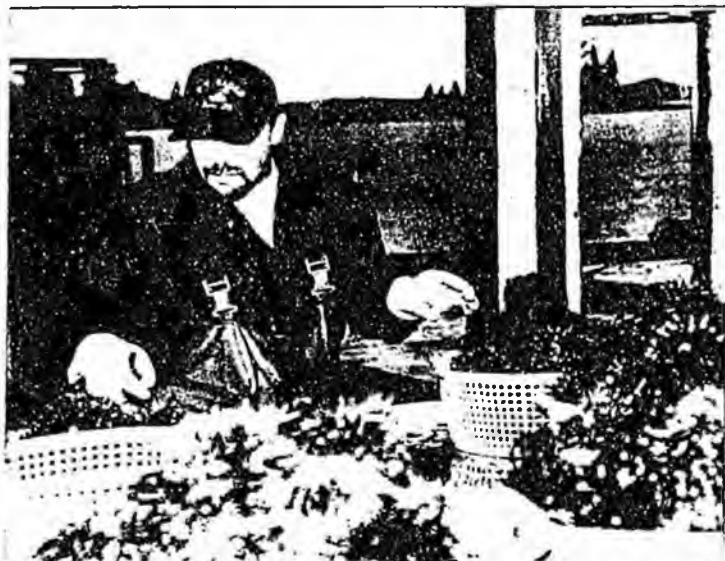
The early morning scene at the Kake Cold Storage is unusual only for the time of year. People, mostly young, stream into work, engaging in good natured banter as time cards are punched and rubber gloves and aprons are put on. Within a few minutes after eight in the morning the processing line

and workers talk, gossip and joke with one another.

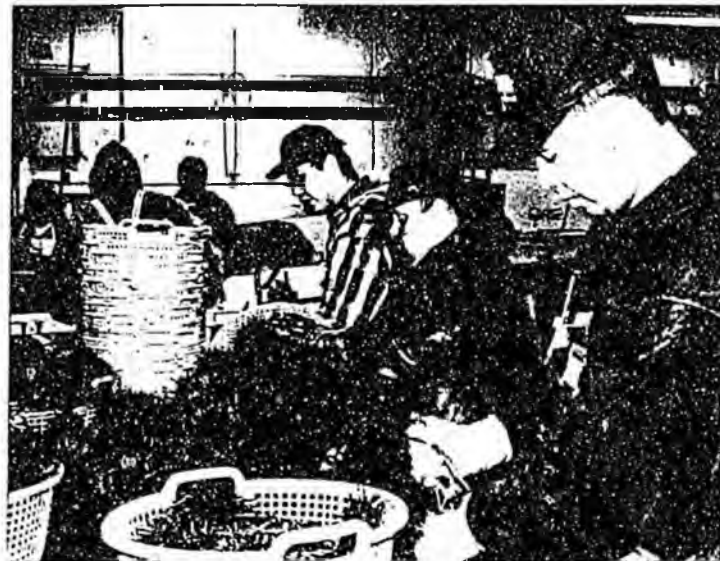
During coffee break at 10:00 a.m. Carole Jackson, a widow with three children, is seated in the lunch room. She says that were it not for this job, she would be trying to raise money at bake sales to keep her family going.

work here, where all the people are," he says with a grin. "Sea urchin processing is a nice job. It doesn't require heavy lifting like processing halibut and salmon."

When the break ends, Sandra Thomas and Melody Martin, both 19 years old and 1995 graduates of Kake High School, are back at work. Sandra is on the production line using a table spoon to separate the sea urchin roe from the spiny shells. Nearby, Melody sits at the table where the product is packaged. Using a tweezers, she



Dan Vernetti is one of the first to arrive at the plant. He and several other workers set things up so the full crew can go right to work at 8 a.m.



George Skeek, Danny Jackson and David Thomas crack the sea urchin shells with reverse-jaw pliers.

is up and running. For the first time in living memory there is mid-winter seafood production work in Kake.

"People came out of the woodwork for these jobs," says Larry Jackson, employee coordinator for Kake Fisheries. "We are paying good wages: this is the place to be."

Anyone who has ever seen a seafood processing plant in operation would be struck by the high morale of these workers. Rock and roll blasts from a boom box and the only time harsh criticism is voiced occurs when a heavy metal tape is replaced by the easy listening rock favored by management. Even with the music, the noise level is much lower than during the height of the salmon season,

George Skeek, a heavy equipment operator during the logging season, seated across from Carol, says he would be drawing unemployment.

At the end of the table is George's father, Wilfred Skeek,

"People came out of the woodwork for these jobs."

who has regular employment as the driver of the senior services van, and works part-time as a long-shoreman whenever a log ship pulls in. The elder Skeek says he doesn't need the check, but he likes the companionship. "Might as well

removes spine and gut fragments before sliding two pounds of product into a styrofoam cup filled with chilled water. Both Sandra and Melody are saving to afford attendance at the colleges of their choice, decisions available to them only with the earnings from winter season processing jobs.

Leonard Johnson, whose present job is to tend the trays of product during the drip-drying phase between extraction and packaging, is one of several people from the nearby village of Angoon who came to Kake last summer for work at the cold storage. The others left after the salmon season ended in September, but Johnson stayed on and has worked steadily ever since. "Sea urchin processing



About 18 people work the roe extraction line including Sandra Thomas, Wilfred Skeek, Ray Kadake, Ella Vernetti and others.



Melody Martin and Kari Hale pack the product in styrofoam containers.

is good work. I wouldn't have a job otherwise," says Johnson who was unable to find employment in Angoon after his fourteen year stint with the local National Guard unit ended due to force reductions.

Mike Ellis, hired by Kake Fisheries manager Larry Cambronero to supervise the processing end of the project has been a commercial diver since 1976. He is also a seasoned processor with experience in markets up and down the west coast.

"We are processing red sea

"Sea urchin processing is good work. I wouldn't have a job otherwise."

urchin, which are much larger than green sea urchin. You have to extract the roe of red urchin, unlike green sea urchin which are often shipped whole," says Ellis. Because of the processing requirements for red sea urchin the project is labor intensive. "The beauty of this fishery is that it doesn't require a lot of capital or equipment. Just labor and typical plant facilities."

According to Ellis, the Kake product is receiving high marks

for quality. "We were amazed that the Japanese compare our product favorably to Santa Barbara sea urchin, which has the best reputation for flavor and consistency."

Processing, while mechanically simple, is labor intensive and requires great care, especially once the roe is extracted. If not handled properly, vibrations during shipment will render the roe into a soupy, unmarketable mess.

"There is a learning curve for processing like this," Ellis notes. "Although it's simple work, it is a manual dexterity thing. Like typing: you start out and 20 words a minute seems fast, 70 words per minute impossible." With a start up project like this, Ellis is pleased that everything has gone so smoothly that no product has been lost, and that it is receiving such high marks from the buyers.

UNI FOR SUSHI

Two to three times a week, a tender pulls into Kake with loads of sea urchins that vary from 12,000 pounds to 20,000 pounds per delivery. The variables are largely weather induced. A bad storm on the coast, and the divers will be unable to work. Really bad storms can keep the tender weather bound; and mild but foggy weather can delay delivery of the valuable, fragile, and quick to spoil processed sea urchin roe from getting to market. Despite a season of quirky weather, no shipment has spoiled, and the reports from Japan have praised the Kake Fisheries' product.

"We were amazed that the Japanese compare our product favorably to Santa Barbara sea urchin, which has the best reputation for flavor and consistency," says Mike Ellis.

The roe, known as uni in Japan where it is usually eaten as sushi, is actually gonads, either male or female, but to the untrained eye uni looks like a thumb-sized golden skein of tiny eggs. Unlike caviar of fin fish, this product does not demand an acquired taste. It has a pleasant tangy sour cream flavor and texture, palatable even to the uninitiated. The Japanese are extremely discriminatory. If the sea urchin roe is off-colored, too small or too large, not firm enough, not fresh enough, it may be rejected out of hand or will barely command any price at all.

**Management Plan for the Harvest of Red Sea Urchins
in Districts 101-104 of Southeast Alaska**



Regional Information Report ¹ NO. 1196-19

Alaska Department of Fish and Game
Commercial Fisheries Management and Development Division
P.O. Box 240020
Douglas, Alaska 99824

August 1996

¹ The Regional Information Report Series was established in 1987 to provide an information access system for all unpublished divisional reports. These reports frequently serve diverse ad hoc informational purposes or archive basic uninterpreted data. To accommodate timely reporting of recently collected information, reports in this series undergo only limited internal review and may contain preliminary data, this information may be subsequently finalized and published in the formal literature. Consequently, these reports should not be cited without prior approval of the author or the Commercial Fisheries Management and Development Division.

INTRODUCTION

Fishers and seafood processors have expressed interest in developing a red sea urchin fishery in southern southeast Alaska since at least the late 1980s. While the department has sought an appropriation from the legislature to develop this fishery for many years, no such appropriation has been provided. In 1994, the department began to explore alternative funding sources to develop this resource.

In late 1994 the department chose test fishing to generate revenue for a stock assessment survey. District 101 was selected because of its large urchin resource and close proximity to Ketchikan (Figure 1). Ocean Fresh Alaska was the sole bidder, paying the department \$139,567 to cover costs of a stock assessment survey and for the costs associated with the monitoring the subsequent year long test fishery. In exchange, Ocean Fresh Alaska was allowed to harvest 3 million pounds of urchins from March 1995 to April 1996. The results of the survey and subsequent test fishery clearly demonstrated the economic potential of a red sea urchin fishery in the Ketchikan area.

In 1996, industry representatives sought legislation that would resolve funding and management issues necessary to begin a fishery. Legislation to resolve these issues did not emerge. The department proposed test fishing be used once again as the source of revenue but this approach met with significant opposition. As an alternative, industry representatives sought funding from the Ketchikan Gateway Borough to conduct stock assessment surveys in Districts 103 and 104 (the west coast of Prince of Wales Island and coasts of Dall and nearby islands to the north) and began discussion of alternative sources of revenue to pay for long term research and fishery management. In May of 1996, when it appeared that the borough would fund the stock assessment in District 103 and 104, a task force formed with the aid of staff of State Representative Williams (Saxman) to address the issues of long term funding and to advise the department on management of the fishery.

Members of the task force included dive fishermen, fish processors, and community representatives. Department staff served as advisors to the task force. The task force held a series of meetings through June 1996 and provided the department with a report that included a list of recommendations for management measures.

The Ketchikan Gateway Borough contracted with the department in July 1996 to conduct a survey of urchin biomass in Districts 103 and 104. These assessments, in addition to those in Districts 101 and 102, are a necessary step to allow the department to establish quotas for a commercial fishery over a wide geographic area.

With information available on stock size, two tasks remain prior to opening a commercial fishery. First, the department must adopt regulations to manage the fishery under the High Impact Emerging Fisheries Regulation (5 AAC 39.210) and the Administrative Procedures Act (AS 44.62.180-290). Second, funding must be provided to the department to cover all management costs and to begin the research program.

While adoption of interim regulations and short term funding will allow the department to open a fishery, successful completion of these steps do not assure a fishery in the longer term, nor

necessarily define how the fishery will be managed after the first year. Developing a long-term program to fund the costs of stock assessment, research and management remains an outstanding issue. If sufficient funds are not provided to the department each year, the fishery will not open. Last, the regulations adopted under the High Impact Emerging Fisheries Regulation are subject to review and change by the Alaska Board of Fisheries at its next regularly scheduled meeting.

In developing this management plan, the department incorporated many of the recommendations of the sea urchin task force. Some recommendations were deemed inappropriate by the department and either modified or eliminated. Significant changes in management from those recommended by the task force are noted and discussed.

STATE OF ALASKA
 COMMERCIAL FISHERIES ENTRY COMMISSION

13:40 Friday, January 24, 1997

PROJECT NUMBER : 96157
 PROJECT NAME : Southeast Dive Fisheries

Moratorium Eligibility List For Out Of State Permit Holders

,ADDR,CITY

A_CITY	Frequency	Cumulative Frequency
ANCHORAGE	6	6
ANGOON	1	7
AUKE BAY	5	12
BETHEL	1	13
COFFMAN COVE	2	15
CORDOVA	4	19
CRAIG	51	70
DOUGLAS	1	71
EDNA BAY	6	77
GUSTAVUS	1	78
HAINES	4	82
HOMER	2	84
HYDABURG	4	88
JUNEAU	8	96
KENAI	1	97
KETCHIKAN	98	195
KLAWOCK	5	200
METLAKATLA	14	214
MEYERS CHUCK	1	215
PALMER	1	216
PETERSBURG	37	253
PORT ALEXANDER	2	255
Seward	2	257
SITKA	116	373
SLANA	1	374
THORNE BAY	16	390
WARD COVE	12	402
WASILLA	2	404
WRANGELL	34	438

Addresses listed are the most current ones on file.

PROJECT 96157 - Southeast Dive Fisheries Eligibility Lists & Labels.

13:40 Friday, January 2

,ADDR,STATE

<u>A STATE</u>	<u>Frequency</u>	<u>Cumulative Frequency</u>
CA	26	26
CO	1	27
ID	1	28
NM	1	29
NV	1	30
NY	1	31
OR	13	44
WA	74	118
WY	1	119

S.E. DIVE FISHERIES ELIGIBILITY
 (Based on final version of HB 547)

DIVE FISHERY OPTIONS	Number Eligible Participants
Abalone: All persons who harvested abalone in 1994 or 1995 (and) any persons who harvested any of the four species in the five consecutive years 1991-1995.	190
Geoducks: All persons who harvested geoducks in 1994 or 1995 (or) January 1996 (and) any persons who harvested any of the four species in the five consecutive years 1991-1995.	170
Sea Cucumbers: All persons who harvested sea cucumbers in 1994 or 1995 (and) any persons who harvested any of the four species in the five consecutive years 1991-1995.	472
Sea Urchins: All persons who harvested sea urchins in 1992 or 1993, (and) any persons who harvested sea cucumbers in 1994 or 1995, harvested abalone in 1994 or 1995 or harvested geoduck in 1994 or 1995 or January 1996.	559

program guide

Winter weather lends itself to this month's cozy indoor projects. Eberhard Mueller, executive chef of New York City's renowned Lutèce restaurant, shares some of his signature seafood dishes. Learn to make a tempered chocolate and a coeur à la crème on our special Valentine's Day show. Later in the month, florist Michael George shows us how to construct a Victorian rose bouquet, and because it's time to look forward to spring, we'll build a beehive, and master seedsman Shepherd Ogden will show us how to raise tomatoes from seed.—*Martha Stewart*

EPISODE 421 FEBRUARY 1-2

Cooking: Seafood with Eberhard

BLACK SEA BASS WITH CHANTERELLE MUSHROOMS

SERVES 4 AS A FIRST COURSE,
2 AS A MAIN COURSE

- 1 whole black sea bass, about 2 to 2½ pounds, cleaned and scaled
- 2 tablespoons unsalted butter
- ½ teaspoon coarse or kosher salt
- Freshly ground white pepper to taste
- 1 to 1¼ pounds fresh chanterelle mushrooms, cleaned
- ½ tablespoons canola oil, for cooking
- 1 shallot, finely chopped
- ½ pound mixed baby field greens, washed
- Sherry Vinaigrette, recipe follows
- 2 tablespoons chives, finely chopped
- Fresh chervil for garnish

1. Fillet the sea bass by making the first cut behind the gills to the backbone; starting at the tail end, cut toward the head along the backbone; remove fillet. Turn fish over; repeat. Trim the thin edges of the fillets for even cooking. Remove pin bones with pliers. Cut each fillet in half for first-course serving; leave whole for main-course serving.
2. Heat oven to 450°. Heat butter, salt, and pepper in a large sauté pan over medium heat. Add mushrooms; toss to coat. Cook until mushrooms release their liquid.
3. Heat an ovenproof sauté pan over medium-high heat. Season both sides of the fillets with salt and pepper. Add canola oil to pan. When oil is hot but not smoking, add fillets skin-side down; remove from heat if too hot. Sear until crisp, golden brown, 1½ to 2 minutes. Place the pan (with the fillets still flesh-side up) in the oven for 2 to 3 minutes.

4. Add shallots to mushrooms, and sauté. Toss greens with three-fourths quantity of Sherry Vinaigrette. Remove mushrooms from heat; add remaining vinaigrette and chives.
5. Drain fillets on paper towel. Distribute dressed greens on plates; top with mushrooms and fillets. Garnish each with chervil.

Sherry Vinaigrette

- 1 teaspoon Dijon mustard
- ½ teaspoon coarse or kosher salt
- Freshly ground white pepper to taste
- 1 tablespoon sherry vinegar
- 1 tablespoon red-wine vinegar
- 1½ tablespoons walnut oil
- 1½ tablespoons extra-virgin olive oil

Whisk together mustard, salt, pepper, vinegars, and oils in a small bowl. Adjust seasonings, and set aside.

BAKED AND RAW SEA URCHINS

Baked Sea Urchin with Sea-Urchin Butter

SERVES 2

- 12 sea urchins, in shells
- 1 cup (two sticks) unsalted butter
- Freshly ground white pepper to taste
- 2 tablespoons fish stock
- 1 tablespoon heavy cream
- Pinch of cayenne pepper
- Coarse or kosher salt to taste
- 1 teaspoon fresh lemon juice
- Seaweed for presentation (optional)
- Whole lemon, halved, for garnish

1. Heat oven to 450°. Cut away the flat bottom of the sea-urchin shell with scissors; pour away liquid. Scrape out membrane with the end of a spoon's handle. Set aside the six most attractive urchins in a baking dish.
2. Scoop the flesh out of the remaining six, to yield about ½ cup. Pulse in food processor for 5 to 8 seconds. Add butter, and

blend until thoroughly emulsified; add more butter if necessary. Press the urchin-butter mixture through a sieve with a spatula.

3. Bake the whole sea urchins 4 to 5 minutes.
4. Meanwhile, combine stock, cream, cayenne, salt, and pepper in a small saucepan over medium heat. Add urchin-butter mixture, stirring constantly, until resulting emulsion thickens. Adjust seasoning; add lemon juice.
5. Remove sea urchins from oven. Arrange them on a bed of seaweed, drizzle with Sea-Urchin Butter, and garnish with lemon halves

Raw Sea Urchin with Lemon

SERVES 2

- 6 to 8 sea urchins, in shells
- Seaweed for presentation (optional)
- Crushed ice
- 1 whole lemon, halved

1. Insert scissors in hole located on domed top of sea urchin. Rotate around top of shell, cutting toward outer edge, exposing flesh.
2. Place a bed of seaweed in a shallow bowl; top with crushed ice. Arrange sea urchins on top of ice; garnish with lemon, and serve.

PAN-SEARED SEA SCALLOPS WITH FRESH HERB SAUCE

SERVES 4 AS A FIRST COURSE,
2 AS A MAIN COURSE

- 8 large sea scallops, about ½ pound
- 2 tablespoons unsalted butter
- 2 shallots, finely chopped
- ¼ cup Riesling, or other dry white wine
- 1 tablespoon white vinegar
- ½ cup fish stock
- 2 tablespoons extra-virgin olive oil
- Coarse or kosher salt to taste
- Freshly ground white pepper to taste
- 1 tablespoon vegetable oil for cooking
- 2 tablespoons fresh herbs, such as parsley, chives, and tarragon, finely chopped

1. Remove the tough musclelike membrane from the side of each scallop.
2. Heat 1 tablespoon butter in a small saucepan over medium heat. Sauté shallots until soft. Add wine and vinegar; reduce until nearly evaporated. Add fish stock, and bring to a gentle boil. Add 1 tablespoon olive oil, and whisk until well blended.
3. Strain the resulting sauce through a fine sieve into a blender; return shallots to saucepan. Add 1 tablespoon butter, and 1 tablespoon olive oil, and blend until emulsified, about 10 seconds. Return liquid to pan.
4. Heat a 10" sauté pan on medium-high heat. Season both sides of scallops with salt and pepper. Add vegetable oil. When hot but not smoking, add scallops and more oil if needed. Cook until golden brown, 2 minutes a side.
5. Add herbs to sauce; blend well. Place scallops on a plate; surround with sauce; serve.

Sources: *Special thanks to Eberhard Mueller, executive chef, Lutèce, 249 East 10th Street, New York, NY 10022; 212-712-2221. Whole black sea bass, \$7.95 a pound; sea urchins, \$4.95 a pound (about 4 to 5 urchins); seaweed, available by special order; sea scallops, \$12.95 a pound, all available from Cigarilla, 2135 Broadway, New York, NY 10024; 212-874-4881 or 800-660-0750. Market prices vary; shipping and handling charges extra for priority overnight mail-order delivery. Catalog available. Global 8" chef's knife, \$52.95, from Lamalle Kitchenware, 36 West 25th Street, New York, NY 10013; 212-242-0750 or 800-660-0750.*

EPISODE 422 FEBRUARY 9-10

Cooking: Tempering Chocolate with Water

Cooking: Chocolate Leaves and Cabbage

TEMPERING CHOCOLATE

- Work in a room with low humidity, no warmer than 73°.
- Use couverture chocolate, which contains at least 32% cocoa butter.
- As it melts, dark chocolate should not exceed 120° (110° for milk and white chocolates) or it may lose depth of flavor and burn.
- Leftovers can be remelted several times, but add a few ounces of unmelted chocolate to prevent bloom, a whitish surface cast.
- Water and condensation cause tempering chocolate to "seize," or become unworkable.



- Bittersweet chocolate tempers between 85° and 90°; milk and white chocolates temper between 82° and 85°.

INGREDIENTS

- 1 1/2 pounds bittersweet chocolate, such as Callebaut or Valrhona

1. Bring a large saucepan of water to a boil. Coarsely chop chocolate with a cleaver or chocolate fork. Place 1 pound in a metal bowl (make sure bowl fits snugly in saucepan); reserve 1/2 pound.
2. Remove water from heat, and place bowl over saucepan. Stir chocolate with a rubber spatula, periodically measuring temperature with a candy thermometer, until the melted chocolate is between 112° and 120°. If too cool, return pot to heat for a few minutes.
3. Continue stirring, and add reserved chocolate in three stages. Remove bowl, and bring down temperature by stirring constantly until mixture is smooth and drops to 85° to 90°; add more chocolate as necessary. (The bowl will feel slightly warm to the touch, and chocolate will appear smooth and shiny.)
4. To test tempering, dip an offset spatula in the melted chocolate, scrape excess off the back, and refrigerate 5 minutes; properly tempered chocolate will snap off of the spatula. Or dab a spot of melted chocolate on your lip; if it feels just slightly cool, then it's tempered. Use immediately. Keep chocolate over warm water to maintain temperature.

Sources: *Special thanks to Marilyn Mueller, proprietor, Cigarilla Chocolatier, P.O. Box 2252, Annapolis, MD 21404; 410-757-4338 or fax 410-757-0730. Chocolate fork, \$19.50, from Lamalle Kitchenware, 36 West 25th Street, New York, NY 10013; 212-242-0750 or 800-660-0750. Callebaut bittersweet chocolate (#69-467399), \$10.50 for 17 1/2 ounces, and canning thermometer (#69-1081520), \$27, from Williams-Sonoma, 800-141-2233.*

COEUR A LA CREME

SERVES 6

- 4 tablespoons raspberry purée (from about 1/2 pint fresh berries or 1 cup frozen berries, thawed)
 - 8 ounces cream cheese
 - 2/3 cup confectioners' sugar
 - 1 teaspoon pure vanilla extract
 - 8 ounces crème fraîche or heavy cream
- Raspberry Coulis, recipe follows
- Fresh raspberries and mint for garnish

1. Cut six rinsed 8"-by-8" squares of cheesecloth, three to four layers thick, for each small mold, or one 16"-by-16" square for a large mold. Line mold with dampened cloth.
2. Make raspberry purée by pressing berries through a fine sieve; discard seeds. Combine cream cheese and sugar in bowl of an electric mixer; blend until smooth. Scrape down sides of bowl. Add vanilla, and combine; add raspberry purée, and mix well.
3. In a large mixing bowl, whip crème fraîche or cream with a balloon whisk until stiff. Fold stiffened cream into raspberry mixture.
4. Fill mold with mixture, and smooth the top surface. Neatly fold edges of cheesecloth over mixture, and place on a plate to catch the draining whey. Chill 24 hours before serving.
5. To serve, unwrap cheesecloth, center a plate on top of mold, and flip plate and mold right-side up. Remove mold; carefully pull away cheesecloth. Pour on Raspberry Coulis, and garnish with berries and mint.

Raspberry Coulis

MAKES 1 1/2 CUPS

- 12 ounces raspberries, fresh or frozen
- 1/2 cup sugar

In small saucepan over medium heat, boil raspberries and sugar 10 minutes, or until mixture thickens. Strain through a sieve; add water, a tablespoon at a time, until mixture resembles a sauce. Refrigerate until ready to use.

Sources: *Ceramic coeur à la crème mold, \$6.95 for 1/2-cup mold, \$19.95 for 4-cup mold, available from Lamalle Kitchenware, 36 West 25th Street, New York, NY 10013; 212-242-0750 or 800-660-0750.*

CHOCOLATE LEAVES AND CABBAGES

Chocolate Leaves

- 1 1/2 pounds tempered bittersweet chocolate (see recipe, above)
- Assorted pesticide-free leaves with pronounced veins, such as magnolia, nasturtium, lemon, rose, and holly

**THE FOLLOWING PAGES MAY
NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL**

NoiQuest Seafoods, Inc.

Planting Plant

1000 E. 1st St.

PO Box 200

Greenwood, Alaska 99530

PH: (907) 273-1000

FAX: (907) 273-1000

April 8, 1997

Dear Representative Williams:

Just a brief letter to thank you for your efforts to support the Dive fisheries and progress on House Bill 198. As a full range seafood processor, we depend on resource harvest to survive and prosper in a challenging industry. Consistent work opportunities for our crews as well as earning opportunities for our fishermen are dependent on taking advantage of available viable resources.

House Bill 198 addresses an excellent fisheries development opportunity and provides a funding source that fits our declining State revenues. I hope that with its successful passage, we will be able to provide increased opportunity for our community. Thanks again for all your work.

Sincerely,

Dave G.

Dave Grier
Plant Manager
NoiQuest/Petersburg

Post-It Fax Pad	7/11	TO: <i>41814</i>
TO: <i>SEN. LA CROIX</i>	FROM: <i>Dave G</i>	
CO: <i>Sen</i>		
PHONE #		
FAX #		

March 7, 1997

Devin & Bridget Myers
PO Box 8155
Ketchikan, AK 99901

Dear Mr. Williams:

We appreciate your efforts in trying to create jobs in the community through the dive fisheries. The intent of this letter is to give you a little ammunition in the form of real numbers related to the urchin fishery. We would also like to offer our warm bodies and opinions whenever you think they would be helpful.

We moved to Ketchikan specifically because we believe in the long term viability of the fisheries affected by the moratorium. We attempted to move here in the fall of 1995, but we were forced to reconsider when the cucumber fishery in Southeast ended about three months earlier than projected. We love the area and hope to become a valuable part of the community here.

The following is a bare-bones list of money I (Devin) have spent since the opening of the fishery in the second week of January:

\$1,600	Boyer Barge	\$2,000	Fuel
\$400	Murray Pacific	\$1,100	Gray Marine
\$100	Alaska Dive Svc.	\$345	Service Auto
\$250	Southeast Comm.	\$175	Moorage
\$700	in wages to tenders whom are Ketchikan residents		
\$600	in groceries from local merchants to feed the crew		

This list is by no means comprehensive! Using only these expenses, just one boat is responsible for returning \$6,225 to Ketchikan. This is in 6 weeks - and the Alaska Department of Fish and Game projected a October 1 - September 30 fishery prior to its opening and in the future.

My wife is also employed full-time, and paying her own share of taxes locally, and we rent an apartment in town. We have several friends who also have made what they hope is a permanent move to Ketchikan. Please do all you can to help us stay, purchase homes, and raise families in this wonderful community.

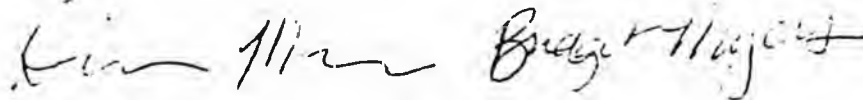
We ask you to help secure funding to keep the fishery alive. The peak prices for urchin roe are November and December, when we weren't yet

fishing, but we should be in coming years. Also, studies have shown that the quality of urchin roe improves when some "thinning" occurs, and even if there is no increase in catch limits, the dollar return will improve in coming years - IF we have a fishery.

We support local processors and jobs, and are confident that in the years to come, the majority of the product will be processed locally. However, the fact remains that we make more money if there are more potential buyers, and we do not like to see buyers excluded. When fisheries shut down the out-of-state processors last week, it cost us a minimum of \$1500. Please keep the divers at the top of your list when negotiating in the future. They have the least power, particularly because they are out fishing during much of the negotiations, and are taking on the most risk to get this fishery rolling. Fund the fishery, and the processing will follow.

Again, don't hesitate to call us if you need further information, or if you feel our voices can make a difference. We wish you the best of luck in getting the maximum amount of dollars into the community!

Sincerely,

Handwritten signatures of Devin and Bridget Myers in cursive script.

Devin and Bridget Myers
(907) 247-7774

MEMORANDUM

State of Alaska
Department of Law

TO: Doug Woodby, Marine Fisheries Research Supervisor
Division of Commercial Fisheries
Management and Development
Department of Fish & Game

DATE: March 27, 1997

TELEPHONE NO: 465-3600

FROM: *Stephen M. White*
Stephen M. White
Assistant Attorney General
Natural Resources Section
Department of Law

SUBJECT: Management of Red Sea Urchin Fishery

You have asked questions about the Department's management of the red sea urchin fishery in southeast Alaska.

The red sea urchin fishery is governed by a management plan adopted by the Board of Fisheries. 5 AAC 39.145. The plan provides for daily opening and closing times for harvesting sea urchins, and the hours are different for winter than for summer. 5 AAC 39.145(d).

The actual days that the fishery will be open each week are established by emergency orders issued by the Department under Alaska Statute 16.05 040. The Board has directed the Department "to the extent practicable, (to) attempt to manage the fishery so that approximately 25 percent of the guideline harvest level is taken within 30 days of each emergency opening unless the commissioner determines that this will adversely impact conservation, law enforcement, waste reduction, or development of the fishery." 5 AAC 39.145(e).

Currently, the Department opens sea urchin fishing for Sunday through Wednesday of each week. That schedule allows both weekend and weekday harvests. It gives the Department enough time to monitor the harvest rate through fish tickets so that the 25 percent goal will be achieved. Thus, the Department's present schedule serves both development (i.e., making the fishery resource available for maximum use) and conservation (ensuring that the guideline harvest level is not exceeded).

Other Board regulations govern the transport of red sea urchins. For example, before a person may receive a permit allowing him or her to transport unprocessed urchins from Statistical Area A, the Department must sample and inspect the urchins. A person may request urchin sampling and inspection only by contacting the Department's Ketchikan office during normal working hours on weekdays. 5 AAC 39.130(n).

Apparently, a significant amount of red sea urchins are being sold to foreign or out-of-state processors, and this harms local processors in southeast Alaska. It would be advantageous to

Deag Woodby, Marine Fisheries
Research Supervisor
Re: Management of the Red Sea Urchin Fishery

March 27, 1997

Page 2

the local processors of the Department were to schedule weekly openings so that it will be more difficult or impossible for urchins to be sold to their competitors. For example, the schedule could be modified to include both Saturday and Sunday, days when the Department cannot receive requests for sampling and inspection before transport. You have asked whether the Department may legally take such action.

Two legal problems would be raised if the Department were to schedule openings for the sole purpose of benefiting local processors and hindering foreign or out-of-state processors. First, we believe that the Department's ability to issue emergency orders is limited by any parameters and purposes that have been adopted by the Board. That is, the Department may "open and close seasons or areas" or "change weekly closed periods," AS 16.05.060, in ways that are consistent with adopted Board regulations and management plans that apply to that fishery. The following purposes governing Department action, can be derived from the red sea urchin management plans: "law enforcement," "management," "conservation," "waste reduction," and "development" of the fishery." 5 AAC 38.145(e), (f), (g), and (r).

Missing from the above list is any board expression that the Department may manage to benefit any type of processors or group of processors. Since any Department action to serve that purpose would be outside of the Board's directions for the red sea urchin fishery, we believe that it would be legally vulnerable.

Even if the Board expressed such a purpose, we would recommend that the Department not take action to accomplish it. The legislature gave the Board power to regulate fishing only for conservation, development, and utilization of fishery resources. AS 16.05.251(a)(12). Allocating fishery resources among processors is neither expressed nor implied in those powers.

Finally, there is a more fundamental reason that the Department should not act to discriminate against out-of-state processors. Under the "negative" Commerce Clause of the United States Constitution, U.S. Const. art. I, sec. 8, cl. 3, a state may not take an action that discriminates against interstate commerce unless the action serves a legitimate local purpose that cannot be achieved in any other way. *Hughes v. Oklahoma*, 441 U.S. 322, 336, (1979).

An example of a state's action that violated the Commerce Clause is Oklahoma's prohibition against the transport of live fish outside of the state. Oklahoma failed to identify a legitimate interest, like conservation, that could not be achieved without discriminating against interstate commerce. *Id.* at 338. Closer to

Doug Woodby, Marine Fisheries
Research Supervisor
Re Management of the Red Sea Urchin Fishery

March 27, 1997
Page 3

home, the U.S. Supreme Court, under the Commerce Clause, struck down a Department of Natural Resources requirement that logs be partially processed within Alaska before they could be exported. *Southcentral Timber Dev. v. Wainicke*, 467 U.S. 82 (1984).

We believe any action by the Department that hinders the movement of red sea urchins into interstate commerce and does not serve a legitimate state purpose, like conservation, development, or utilization of the resource,¹ would likely be held unconstitutional. For this reason and those mentioned above, we recommend that the Department not take such an action.

SMW:lnt

1: [unclear]

1

¹ In certain circumstances, the Department may schedule its fishery openings and closings according to the availability of processors. "Utilization of fisheries," AS 16.05.251(12), can be interpreted to mean that if processing is not available at a certain time, commercially harvested fish cannot be utilized if openings are scheduled then. However, the availability of processing is not the issue here. There appears to be sufficient processors to handle the red sea urchin harvest. The issue is whether some of those processors may be legitimately preferred over others.

HB

204

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

NO. _____
Bill version: HB 204
(H) Publish Date: 3/25/97

Revision Date: _____ Dept. Affected: Fish and Game
Title: An Act revising the procedures and authority of the Alaska
Commercial Fisheries Entry Commission BRU: Commercial Fisheries (Limited) Entry Commission
Commercial Fisheries Entry Commission Component: Limited Entry Program Administration
Sponsor: House Special Committee on Fisheries
Requester: House Special Committee on Fisheries COMPONENT SERIAL NO. 0471

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared By: Roger Kolden Phone: 789-6160
Agency: Commercial Fisheries (Limited) Entry Commission Date: 3/21/97
Approved by Commissioner: Bruce Twomley (Signature)
Agency: Commercial Fisheries (Limited) Entry Commission Date: 3/21/97

COMMITTEE COPY PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office



REPRESENTATIVE ALAN AUSTERMAN Alaska State Legislature

P.O. Box 2368, Kodiak, Alaska 99615 (907) 486-5930 • Session: State Capitol, Juneau, Alaska 99801 465-2457

M E M O R A N D U M

TO: Representative Scott Ogan, Co-Chair
Representative Bill Hudson, Co-Chair
House Resources Committee

FROM: Representative Alan Austerman, Chair
House Special Committee on Fisheries

DATE: April 2, 1997

RE: House Bill ~~19~~ 204

House bill 204, "relating to moratoria on commercial fisheries entry" has been referred to your committee. I respectfully request that a hearing for HB 204 be scheduled for the Resources committee at your earliest possible convenience.

If you have any questions regarding scheduling this legislation, please contact my staff, Amy Daugherty, at x4230.

Thank you in advance for your consideration of this request.

Alaska State Legislature

House Resources Committee

Co-Chair Scott Ogan
(907) 465-3715
FAX (907) 465-3265
Capitol Building, Room 124
Juneau, Alaska 99801



Co-Chair Bill Hudson
(907) 465-6820
FAX (907) 465-2273
Committee Meetings
T/Th 1 - 4 p.m.

Vice Chair: Beverly Masek,
Representatives Ramona Barnes, Fred Dyson, Joe Green, Reggie Joule, Irene Nicholia, William Williams

TO: Chief Clerk

FROM: Representative Bill Hudson, *Bill* Co-Chairman
House Resources Committee

SUBJECT: HB204 Committee Report

DATE: April 16, 1997

The House Resources Committee incorrectly reported the committee action taken on Tuesday, April 15 regarding HB204: Moratoria on Commercial Fisheries Entry.

Please amend the committee report to correctly reflect the passage of CSHB204, with the same title, as the version actually passed by the committee.

ALASKA STATE LEGISLATURE



House of Representatives
Special Committee on Fisheries

Sponsor Statement

HB 204

HB 204 amends the existing moratorium law to provide a workable and effective moratorium tool as part of Alaska's existing fisheries management process. The current moratorium statute has proved unworkable and confusing. The current process involves a multi-step where a fisher seeking a moratorium must first go to the Commissioner of Fish and Game, who, in turn must seek authorization from the Board of Fisheries. Once authorization is granted from the Board of Fisheries, the Commissioner may then petition the Commercial Fisheries Entry Commission to provide a moratorium.

The Commission is then authorized to go forward if it can make findings required by the current statute, which are difficult to understand and mutually inconsistent.

This cumbersome and confusing process prevents a quick response in fisheries that are growing too rapidly to ensure effective management. As a result, the resource and the economic livelihood of fishers could be jeopardized. In some situations, ADF&G's only recourse is to close the fishery or refuse to open a new fishery if effort cannot be controlled.

HB 204 would allow fishers seeking a moratorium to petition the commission directly. This legislation would also give the commission the authority to place a moratorium on vessels and gear as well as individuals. This is important in a fishery like the Bering Sea Korean hair crab fishery where large vessels may use a number of different skippers in a season.

Under the current statute, eligibility to participate during the moratorium is based on past participation. This requirement precludes the use of a

moratorium in new fisheries or in fisheries that have remained closed for years. In these two situations, participation levels in an open-access fishery may be initially too great to promote resource conservation and sustainable fisheries. HB 204 would allow the commission to implement a moratorium in such fisheries and base eligibility on other reasonable standards such as participation in similar fisheries.

Additionally, HB 204 would allow the state to extend its moratorium authority to offshore fisheries adjacent to state waters when consistent with federal law.

Improving the moratorium law is consistent with our concern for developing and protecting jobs, as well as streamlining government and resource protection.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 204

- 1 Page 3, lines 25 - 26:
- 2 Delete all material.
- 3 Insert "vessel permit to another vessel if the original permitted vessel is sunk,
- 4 destroyed, or damaged to the extent that the vessel is inoperable for the fishery for which the
- 5 permit is issued."

Petersburg Vessel Owners Association

P.O. Box 232
Petersburg, Alaska 99833
Phone (907) 772-9323 Voice and Fax

April 10, 1997

Representative Bill Hudson
Co-Chair, House Committee
on Resources
Alaska State Legislature
Juneau, AK 99802

Dear Representative Hudson:

Limiting a fishery is the management strategy of last resort; any efforts to streamline this process must be carefully crafted to avoid needlessly restricting Alaskan's access to the resource. The current CFEC law contains certain checks and balances and strict guidelines to insure that there are no other management options available before a moratorium is issued and a fishery limited. Considering these parameters, we have the following concerns about provisions in HB 204.

Section 1 (a) of HB 204 would alter the criteria for placing a fishery under moratorium. According to the legislation, the CFEC would need to show that a moratorium would "promote the conservation and sustained yield management and the economic health and stability of commercial fishing." Technically, the CFEC could establish a moratorium on a fishery regardless of the level of harvest or participation and still be accomplishing that goal. Current statute requires a fishery have increased effort or be approaching or exceeding the maximum sustainable level of harvest to be considered for a moratorium. We believe the language in section 1 (a) of HB 204 needs to be strengthened to include the criteria currently used by the CFEC under AS 16.43.225(a) (1-3).

Section 2 (b) (2) of HB 204 would allow CFEC to establish a moratorium on fisheries that do not yet exist and have no participants. In determining who qualifies for a permit for these new fisheries, the commission would consider participation in similar or related fisheries. This provision could create a situation where the only Alaskans receiving limited entry permits for new fisheries are those already participating in commercial fisheries. This would needlessly restrict Alaskan's access to the resource and the opportunity to earn a living by participating in the state's commercial fisheries. The authority to develop and manage an emerging fishery should remain with the Board of Fisheries. We recommend this provision be deleted from the legislation.

Section 2 (b) (3) We would prefer that if CFEC establishes a moratorium, it do so to develop management alternatives in conjunction with the Board of Fisheries and the Department of Fish and Game, not the legislature. The public already has the option to approach the legislature to develop proposals if it so desires, though it is our hope the

legislature would only consider introducing legislation when both the CFEC and the Board of Fisheries are unable to address the needs of a particular fishery. We believe the CFEC will be granted sufficient authority under Section 2 (b) (1) to establish a moratorium to allow time for consultation with ADF&G and the Board, and we recommended deleting this provision from HB 204.

Section 2 repeals the current statute requiring the commission to determine a fishery has reached a level of participation that may threaten the conservation and sustained yield management of the resource before a moratorium is established. We believe this criteria must be met before access to the resource is limited; we recommend amending the bill to include language at AS 16.43.225 (b) (2) (a).

Lastly, HB 204 eliminates any checks and balances that exist in the limited entry law. Under HB 204, the CFEC is virtually an autonomous agency no longer dependent on the Board of Fisheries or the Department of Fish and Game for the authority to establish a moratorium. While we empathize with the commission's concerns that the current process is cumbersome, we are not willing to give CFEC sole authority to determine whether a fishery should be limited. At some level, the CFEC should be required to gain the approval of the Board of Fisheries before proceeding.

Without a specific problem statement from the CFEC it is impossible to suggest language which may address their concerns, but we hope this letter outlines some of the contentious points as well as possible solutions. If you or your staff have any questions, please feel free to contact us at 772-9323.

Thank you for your consideration.

Sincerely,



Liz Cabrera
Director

cc:

Sen. Robin Taylor
Rep. Ben Grussendorf
United Fishermen of Alaska
Kodiak Seiners Association

MEMORANDUM

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION


TO: The Honorable Tony Knowles
Governor of Alaska

DATE: February 4, 1997

HAND - CARRY

FAX NO.: 789-6170

TELEPHONE NO.: 789-6160

FROM: COMMERCIAL FISHERIES
ENTRY COMMISSION
 Dale Anderson, Commissioner
Marlene Johnson, Commissioner
Bruce Twornley, Chairman
Mail Stop: 0302

SUBJECT: Improved Moratorium
Legislation for
Commercial Fisheries

1. Introduction: The Task for the Alaska Commercial Fisheries Entry Commission and the Alaska Department of Fish and Game

Last July, you signed into law HB 547 and HB 538, that, respectively, established a four-year moratorium in the Southeast Alaska dive fisheries and the Bering Sea Korean hair crab fishery. At the time your July 3, 1996 letter (copy attached) to The Honorable Drue Pearce, President of the Senate and The Honorable Gail Phillips, Speaker of the House, expressed concern about fisheries management decisions made by legislation, and you asked the Commercial Fisheries Entry Commission and the Department of Fish and Game to review existing statutes and recommend changes to existing law to provide more workable and effective general moratorium provisions.

2. Problems of the Existing Moratorium Law

We are happy to undertake this task because we recognize (1) the dysfunctionality of the current moratorium provisions and (2) the heavy burden on individual fishers to seek legislation to achieve a moratorium in their fisheries. This memo suggests ideas for new legislation to provide a functional moratorium tool as part of Alaska's existing fisheries management process.

Existing statutes do provide a means to establish a moratorium in a commercial fishery. However, as your valued staff member Mary McDowell well recognizes, the current statutes are unworkable. We worked with Ms. McDowell at the time this legislation was developed, and the final product to emerge from the Legislature bore little resemblance to the legislation originally supported by Senator Eliason.

One seeking a moratorium must first go to the Commissioner of Fish and Game, who, in turn, must seek authorization from the Board of Fisheries. AS 16.43.225; AS 16.05.251(g). If the Board of Fisheries authorizes the Commissioner to go forward, the Commissioner may then petition the Commercial Fisheries Entry Commission to provide a moratorium. *Id.*

The Commission is then authorized to go forward if it can make the findings required by AS 16.43.225(b)(2). However, the Commission must also meet the requirements of AS 16.43.225(a), which are inconsistent with those of AS 16.43.225(b)(2). Additionally, the standards set forth in AS 16.43.225(a) are difficult to understand and mutually inconsistent.

This cumbersome and confusing, multi-step process prevents quick response in fisheries that are growing too rapidly to ensure effective management. As a result, the resource and the economic livelihood of the fishers could be jeopardized. In some situations, ADF&G's only recourse is to close the fishery or refuse to open a new fishery if effort cannot be controlled.

Petitioners should be able to approach CFEC directly to request a moratorium in their fisheries. The Alaska Department of Fish and Game would not be bypassed in such a procedure. Unless the Alaska Department of Fish and Game could defend a moratorium proposal from the standpoint of resource conservation, our proposal could not realistically go forward. All moratoria to date were adopted because additional advice, regulations or new laws were needed to formulate an effective management plan. Consultations with industry, ADF&G, the Board of Fisheries and the Legislature are extremely important during a temporary moratorium.

In short, the ambiguity and inconsistency of the standards in the existing legislation create an obstacle to a moratorium. Additionally, by the time one pursued the matter before the Board of Fish, through ADF&G's Commissioner, and then before CFEC, the situation sought to be addressed by a moratorium would likely be aggravated by additional participants wanting to beat a moratorium deadline.

3. CFEC Suggestions for Better Moratorium Legislation

Our ideas below suggest more effective procedure and standards that we believe we and the public could understand and apply.

(a) The purpose of a moratorium is to quickly put a lid on participation levels in order to buy time to develop better management tools and avoid risks from greater participation. The Entry Commission has existing authority to make permanent decisions to limit entry into a commercial fishery. In contrast, a moratorium would likely be limited to four years. Therefore, it is difficult to justify the more burdensome existing procedure for establishing a moratorium. We recommend the Commission be authorized to establish a moratorium under appropriate standards, so fishers are required to go to only one agency.

(b) Appropriate standards can be found in the existing limited entry legislation. Limited entry under the existing system is authorized when limiting a fishery would "promote the conservation and sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska" As 16.43.010(a). We propose

*MUS - 2/10
 CFEC/ADFG
 to submit*

legislation that would authorize a moratorium when necessary to serve these same statutory purposes, but where it can not be shown (for example, due to lack of sufficient information) that limited entry under the existing system would be most beneficial.

* (c) Another problem with the existing moratorium legislation is the qualification date can only be the effective date of the regulation adopted following the full administrative procedure. In practice, this can not be accomplished in less than four months, and if a fishery is open during the process, large numbers of new participants can enter the fishery in the hope of beating the moratorium qualification date. We have recent examples of this well-known phenomenon. We believe a moratorium could be more effective if the qualification date could clearly be authorized as the date of public notice of the proposal for a moratorium (or another reasonable date). Such a qualification date would allow the Commission to provide actual notice of the proposal to anyone holding a license in the fishery as well as anyone purchasing a license in the fishery from that date forward.

(d) CFEC should be able to use a moratorium instead of limited entry if new or additional information surfaces during the regulatory process that suggests reconsideration of a proposed limitation.

Our recent proposal to limit entry into the Southeast shrimp pot fishery is a case in point. There was substantial support for our proposal, but the record that developed from the public hearings pointed toward a greatly increased number of permit holders above the level ADF&G said was manageable. Participation levels in the fishery had already swelled, and continued to rise in anticipation of limited entry. CFEC either had to adopt a higher maximum number or allow the open-access shrimp fishery to continue escalating unchecked. Either choice resulted in a fishery with a large number of participants.

The shrimp fishery might have benefitted from a moratorium rather than limited entry, but CFEC did not have that option. A moratorium would have allowed a period with no further increase in participants, during which time CFEC could have consulted with ADF&G and the Board of Fisheries about the most effective way to manage this rapidly expanding fishery. A moratorium could have allowed time for ADF&G and the Board to adopt regulations establishing a management plan for the fishery or additional regulations defining shrimp pot gear. These regulations would have provided the means for a limited entry program, if adopted, to effectively control effort, protect the resource and maintain the economic viability of the fishery.

(e) Eligibility to participate during the moratorium could be based on past participation prior to the qualification date or other reasonable standards that serve the purposes of the legislation. This alternative is important, because there are fisheries that remain closed for fear participation levels would be too great to sustain them if reopened. Similarly, there are potential new fisheries that would not be opened for the same reason. In such fisheries, there would be no recent past participation to measure for purposes of eligibility. Alternatives such as a lottery to select a manageable number of participants would be useful. Eligibility to participate in a lottery could be conditioned on relevant fishing experience and other reasonable criteria. This authority could allow fishers and the state (through additional jobs and revenue) to benefit from a fishery that would otherwise remain closed.

The Honorable Tony Nowles

-4-

February 4, 1997

The Southeast sea urchin dive fishery is a good example of a new fishery that could have benefitted from improvements in the current moratorium statutes. ADF&G had been reluctant to open new urchin fisheries because there may be too many divers for the available resource. CFEC could not implement a moratorium under existing statutes because of the difficulty in applying the standards and the lack of history of participation on which to base eligibility. The Legislature was left to create a moratorium for the Southeast dive fisheries (including sea urchins), but over 500 persons will be eligible to fish in a new sea urchin fishery.

(f) To be effective, moratorium authority would need to be available to limit vessels and gear as well as individuals. Additionally, the four-year limit to the duration of a moratorium is the standard the Legislature has so far embraced. It would be useful if the moratorium could be extended beyond four years provided certain standards could be met: for example, in the event that additional legislation was required to provide the means to rationalize a fishery.

4. Conclusion and Recommendation

If the ideas presented here appear to be workable and desirable, we would be happy to consult with the Department of Law to develop specific statutory language. Our experience with proposed legislation affecting limited entry leads us to make a recommendation: limited entry legislation has been most successful when real fishers promoted the legislation and enlisted sponsorship by their local legislators. There are various groups of fishers who might have a direct stake in such legislation. For example, demersal shelf rockfish fishers from Sitka might have an interest in this matter. Paul Larson, Deputy Director, Commercial Fisheries Management and Development, has also suggested participants in the new groundfish fisheries emerging in State waters might see such legislation as a valuable tool to check growth in their fisheries.

We suggest improving the moratorium law would be consistent with your concern for developing and protecting jobs, as well as streamlining government and resource protection. A workable moratorium law would allow CFEC to do the job the Legislature intended it to do, and allow the Legislature to focus on other issues.

Attachment

cc: Jim Ayers, Chief of Staff
Mary McDowell, Special Assistant for Fisheries
Patrick Pourchot, Legislative Director
Shari Kochman, Deputy Legislative Director
Frank Rue, Commissioner, ADF&G
David Benton, Deputy Commissioner, ADF&G
Robert C. Clasby, Director, CFMD
Paul R. Larson, Deputy Director, CFMD
Steven Daugherty, Assistant Attorney General

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

PO Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

July 3, 1996

The Honorable Drue Pearce
President of the Senate
716 W. 4th Avenue, Suite 500
Anchorage, AK 99501-2133

The Honorable Gail Phillips
Speaker of the House
716 W. 4th Avenue, Suite 620
Anchorage, AK 99501-2133

RECEIVED

JUL - 5 1996

ALASKA DEPARTMENT OF FISH AND GAME
ENTRY CONTROL SECTION

Dear President Pearce and Speaker Phillips:

Today I am signing House Bill 547, establishing a four-year moratorium on entry into the Southeast Alaska dive fisheries, and House Bill 538, establishing a four-year moratorium for the Bering Sea Korean hair crab fishery and providing for a vessel permit limited entry system. While there are important pragmatic reasons to implement provisions of these bills, I am concerned about the legislation from a public policy and resource management standpoint.

Addressing management of specific fisheries through legislation is not the ideal approach. Alaska's fisheries management system has proven highly effective in maintaining healthy and sustainable resources because it is run by scientists, professional fisheries administrators, and boards and commissions, rather than through the legislative process.

However, over the last few years, situations in several developing fisheries have pointed out that the provisions in existing law regarding the imposition of a moratorium are cumbersome and ineffective. The lack of sufficient funding for the Department of Fish and Game to conduct needed biological research on new or developing fisheries aggravates this situation. Thus, in fisheries such as those addressed in HB 547 and HB 538, we find ourselves having to quickly impose a moratorium through legislation to prevent damage to a fragile resource or the economic health and stability of a dynamic fishery.

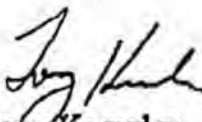
Given the current lack of workable alternative approaches, I recognize several compelling reasons for signing these bills. These include:

- Significant increases in numbers of participants, both recent and anticipated, and the lack of adequate information threaten the conservation of stocks and the stability of these fisheries.
- Severe budget constraints on the Department of Fish and Game prevent gathering of sufficient information and necessitate conservative management of these fisheries.
- A veto of these bills and return to open access could create a stampede into these fragile fisheries. A moratorium will allow a "time out" for proper evaluation to ensure a well managed fishery providing conservation of the resources and sustained economic opportunity for Alaskans in the future.
- The bills establish moratoriums of set duration, not permanent limitations. Nor do they require limited entry. The moratoriums will provide opportunity for public participation in the design of future management options for each of the fisheries, as well as cooperation between the Commercial Fisheries Entry Commission, the Department of Fish and Game, and the Board of Fisheries.

As these bills demonstrate, we need to develop new statutes that provide our professional fisheries managers with the means to easily establish a moratorium in a particular fishery when the need arises. Therefore, I am directing the Commercial Fisheries Entry Commission to work with the Department of Fish and Game to review existing statutes and to recommend changes to make the fishery moratorium provisions more workable and effective.

I will provide the legislature with the results of this review and look forward to working with its members on amending our statutes. The goal is to avoid the need for future emergency legislation for our developing fisheries as exhibited by these two bills.

Sincerely,


Tony Knowles
Governor

cc: Commissioner Frank Rue
Dept. of Fish and Game

Bruce Twomley, Chair,
Commercial Fisheries Entry Commission