

ALASKA LEGISLATURE COMMITTEE FILES 2001 2002 00/2

10382 HOUSE RESOURCES

1 regulations under AS 44.62 (Administrative Procedure Act) that the commission finds  
2 necessary to implement this Act. The regulations may not take effect before July 1, 2002.

3 \* **Sec. 20.** Section 19 of this Act takes effect immediately under AS 01.10.070(c).

4 \* **Sec. 21.** Except as provided in sec. 20 of this Act, this Act takes effect July 1, 2002.



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**National Marine Fisheries Service  
Alaska Region  
NEWS RELEASE**

Alaska Region, P.O. Box 21668, Juneau, Alaska 99802-1668

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NMFS 01-01-AKR  
FOR IMMEDIATE RELEASE  
January 2, 2001

**NOAA FISHERIES LAUNCHES NEW SCALLOP LICENSE LIMITATION PROGRAM**

Officials with NOAA's National Marine Fisheries Service announced the start of a new Scallop License Limitation Program (Scallop LLP) for the commercial scallop fishery in federally-managed Alaskan waters, effective January 16, 2001.

The Scallop LLP limits access to the commercial scallop fisheries in Alaska. A qualified person who applies as prescribed will receive a license(s) that authorizes that person to catch and retain scallops. Initial allocation of licenses will be based on the eligibility qualifications outlined in Federal regulations at 50 CFR part 679.4(g).

"This program will allow us to carry out valuable conservation measures," said Jim Balsiger, Alaska Regional Administrator for NOAA Fisheries. "With this final rule published, we can now take the necessary administrative steps to fully rationalize this small but important scallop fishery."

The application period for a scallop license is January 16, 2001, to February 12, 2001. Applications are available on the NOAA Fisheries web page at <http://www.fakr.noaa.gov/ram/default.htm> or from the Program Administrator, Restricted Access Management, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Philip Smith. Applications may also be obtained in person from NOAA Fisheries in the Federal Building, Room 713, Juneau, AK, or requested by facsimile at (907) 586-7354.

"We strongly urge all eligible applicants to meet the February 12 application deadline," said Balsiger. Under this regulation, the agency has no discretion to accept late applications. Eligible applicants who fail to meet this published deadline will not be granted a permit.

Balsiger added, "We are attempting to avoid that possibility by notifying every person who, according to the agency's Restricted Access Management Program records, may be eligible."

NOAA Fisheries conducts scientific research and provides services and products to support domestic and international fisheries management, fisheries development, trade and industry assistance, enforcement, and protected species and habitat conservation programs.

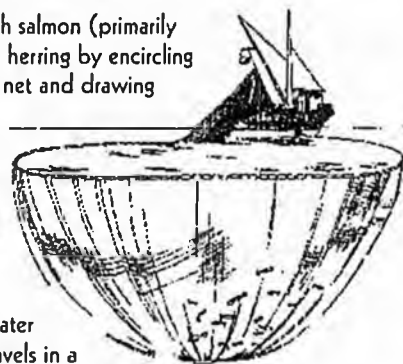
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# What kind of fishing boat is that?

## — Purse Seiner —

Purse seiners catch salmon (primarily pink salmon) and herring by encircling them with a long net and drawing (pursing) the bottom closed to capture the fish. The net is first stacked on the stern of the boat and then payed into the water



while the boat travels in a large circle around the fish. The far end of the net is attached to a "power skiff," which helps the operation by holding the net while the seiner completes the circle. The top of the net stays on the surface of the water because of its "float line" that runs through thousands of colorful floats, and the bottom of the net falls vertically because of its weighted "lead line." As a result, the net hangs like a curtain around the school of fish. The vessel crew then purses its bottom with a "purse line." The lines, and thus the net, are retrieved through a hydraulic power block (winch). Once most of the net has been retrieved, with the remainder of it lying in a "bag" alongside the vessel, the fish are dipped from the bag and into the vessel's hold. For large catches of herring, a buying vessel or "tender" comes alongside the fishing vessel and lowers the end of a fish pump into the bagged purse seine. The herring are then pumped aboard the tender and into its hold without ever going aboard the seiner.

Sometimes referred to as "limit seiners," purse seiners are sleek, cabin-forward vessels that are limited by Alaska law to 58' in order to more precisely manage their fishing effort. They are recognized by their long, clean decks, the boom with its power block, the net stacked on the back, and the power skiff that is often seen riding "piggyback" aboard the vessel's stern while it is traveling. When fishing, of course, the circle of floats on the surface of the water, and the power skiff assisting with the operation, are sure giveaways.

Seine-caught salmon are delivered "in-the-round" (whole) to buying stations and canneries where they end up as canned and frozen products. Herring are delivered to processing plants

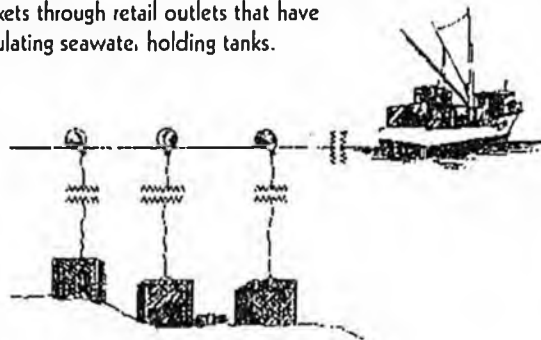
where they are either stripped of their roe (eggs), or packaged as bait for other commercial fisheries, e.g., the longline fisheries and the crab fisheries. Salted herring roe, called "kazunoko," is shipped to Japan where it is a high-priced delicacy.

## — Crabber —

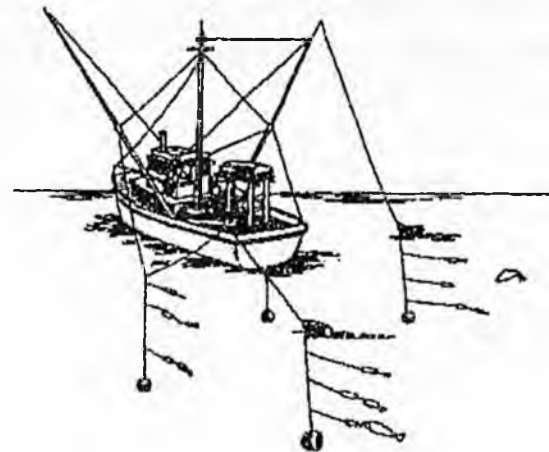
Crabbers target Dungeness, king, and Tanner crabs using twine or wire-meshed steel pots (traps). Baited with herring or other fresh bait, the pots are left to "soak" for several days. A line extends from each pot to a surface buoy that marks its location. There are several configurations for the pots, though in general, the smaller round pots are fished for Dungeness in shallow bays and estuaries, and the large, heavy, rectangular pots are fished in waters deeper than 100' for king and Tanner crab. A power winch is used to retrieve the pots. Once aboard, a pot is opened and the catch sorted. Females and undersized males are discarded (alive) over the side and legal-sized males are retained in aerated seawater tanks.

Crab boats come in a variety of shapes and sizes, from aluminum skiffs with outboard motors that fish the inside waters for Dungeness, to seagoing vessels of 100' or more that ply the Bering Sea and the Gulf of Alaska for king crab. Unless one happens to see a crabber headed for the fishing grounds with its decks stacked with pots, identification of a vessel as a crabber might be difficult for the casual observer.

Crabs are delivered live to shore stations where they are cooked and then either canned or sold as a fresh or frozen product. A small number are sold live in local markets through retail outlets that have circulating seawater holding tanks.



## — Troller —



Troll vessels catch salmon, principally chinook, coho, and pink salmon, by "trolling" bait or lures through feeding concentrations of fish. The word "troll" comes from a medieval German word, "trollen," and refers to the revolving motion of the bait or lures used in this type of fishing.

Typically, four main wire lines are fished, each of which has a large (40 lb), lead sinker ("cannon ball") on its terminal end, and 8-12 nylon leaders spaced out along its length, each of which ends in either a lure or baited hook. To retrieve hooked fish, the main lines are wound about small, onboard spools via hand crank (hand trollers) or with hydraulic power (power trollers), and the fish are gaffed when alongside the vessel. The leaders are then rebaited and let back down to the desired depth(s).

Troll vessels come in a variety of sizes and configurations, ranging from small, hand troll skiffs to large, ocean-going power troll vessels of 50' or more in length. Troll salmon fishermen operate throughout Southeast Alaska in both state and federal waters.

The troll salmon fishery produces a low-volume, high-quality product. Troll-caught salmon are dressed at sea and sold either as a fresh or frozen product. Public markets and fine restaurants are the final destination.



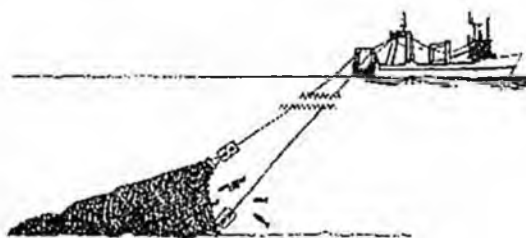
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## Trawler

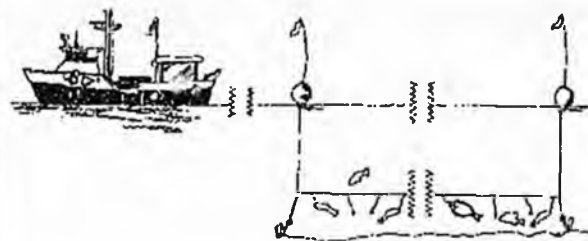
Trawlers are sometimes confused with trollers due to their similar sounding names, though there are few similarities. Trawlers typically catch large quantities of midwater species, such as pollock or pink shrimp, and bottomfish, such as flounder, by towing a large, cone-shaped net. Most trawl nets have "doors" on either side of the net's opening to help hold it open, and some, that are fished near the bottom, have a heavy chain strung along the bottom of the opening to hold it close to the sea floor. The net is retrieved via the use of huge winches and a power drum upon which the net is rolled as it is brought aboard. The end of the net, the "bag" or "cod end," holds the fish and is usually pulled right up into the back of the vessel on a slanting stern ramp.

Trawlers are generally large vessels; the largest in the ocean pollock fishery are factory trawlers that possess onboard processing facilities. These can be up to 600' in length. Catches are often enormous, with a 2-hour tow of the net yielding up to 100 tons or more, depending on the fishery, the size of the vessel, and the concentration of fish in the area.

The trawl fishery may process its catches into fillets, as in the case of flounder destined for the fresh and frozen market, or minced fish called "surimi," which is manufactured into fish sticks and similar products such as artificial king crab. Shrimp fishermen sort their catches by size and species and sell the product as either a whole, frozen product, or as a headed, frozen product.



## Longliner



Longliners catch bottomfish (primarily halibut, blackcod, lingcod, and rockfish) via a long line that is laid on the bottom. Attached are leaders (called gangions) with baited hooks. Each longline can be up to a mile in length and have thousands of baited hooks. The lines are anchored at each end of each "set." Lines at the ends run to the surface and are marked with a buoy and flag. A longline vessel typically sets several lines for a 24-hour "soak." The lines are retrieved over a side roller with a power winch, and the fish caught are bled or dressed and then packed in ice in the vessel's hold.

Longliners are typically large vessels, 50' to 100' in length, with a weather cover on the stern to protect the crew. The longlines are coiled and stacked on deck in tubs when not in use. Most vessels in this fishery can pack 20 to 40 tons, or more, of iced product before returning to port. Longliners are readily identified by their weather cover and, when not fishing, by the numerous orange buoys and flags that are tied along their rails.

This fishery delivers its catch whole and bled (rockfish), or whole and gutted (halibut), or headed and gutted (blackcod and lingcod) for subsequent sale to fresh and frozen markets.



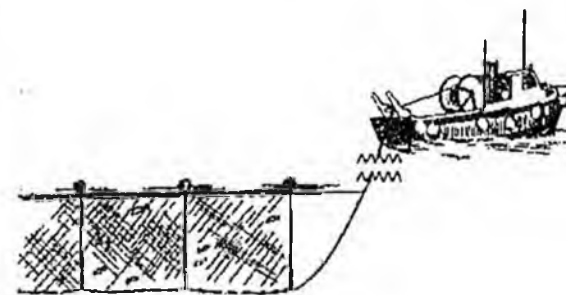
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## Gillnetter

Gillnetters catch salmon, primarily sockeye, chum, and coho, by setting curtain-like nets perpendicular to the direction in which the fish are travelling as they migrate along the coast toward their natal streams. The net has a float line on the top and a weighted lead line on the bottom. The mesh openings are designed to be just large enough to allow the male fish, which are usually larger, to get their heads stuck ("gilled") in the mesh. Much larger fish and the smaller females are not so readily gilled. Gillnets work best in silty or turbid water which makes them difficult for the fish to see.

Gillnet vessels are usually 30' to 40' long. They are easily recognized by the drum on either the front ("bow picker") or the stern ("stern picker"), on which the net is rolled. Net retrieval is by hydraulic power which turns the drum. Fish are removed from the net by hand "picking" them from the mesh as the net is reeled onboard.

Gillnet-caught salmon are usually iced and delivered to buyers and cold storages. Historically, their ultimate destination was the canned market, though a growing market for frozen product has developed overseas.



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## ADF&amp;G Chart Series

**2001 Groundfish/Shellfish Statistical Area Charts**

The new series of ten ADF&G groundfish/shellfish statistical area charts became effective on January 1, 2001 for groundfish fisheries statewide and for shellfish fisheries excluding Southeast Alaska. These new charts should be used for determining statistical areas for filling out fish tickets from this date forward. Older versions of the charts should be retained for doing historic harvest analysis.

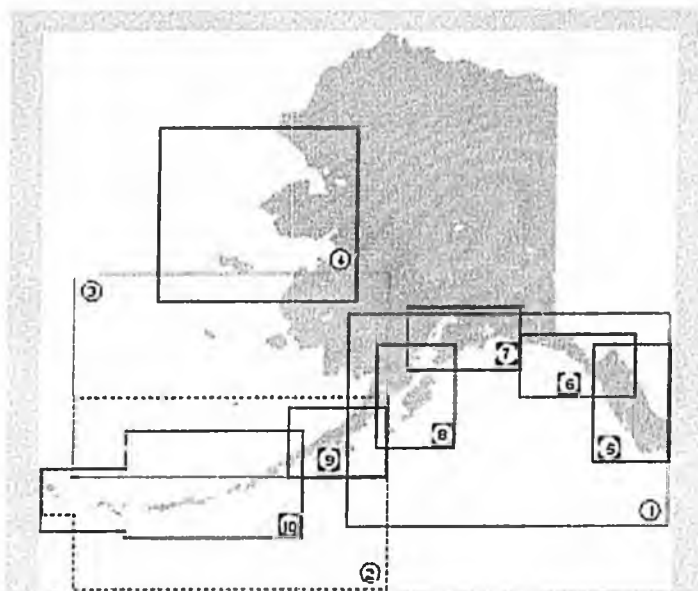
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Each of the ten charts may be downloaded as a PDF file\* by clicking on any of the designated chart area NUMBERS shown in the Index Map at right (or by using the PDF links below the map).

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**Tips:**

- To print select areas of the large PDF maps it is recommended that PDF files be downloaded to your PC — all viewing and printing can then be done in your



The charts are divided up into small-scale and large-scale charts and are available as follows:

Larger Index Map – 604K

## ○ Small-scale charts

- 1 - Gulf of Alaska\* – 1,228K
- 2 - AK Peninsula and Aleutian Islands \* – 1,005K
- 3 - Bering Sea\*\* – 885K
- 4 - Northern Bering Sea – 605K

\* outside waters statistical areas only

\*\* outside waters statistical areas and inside waters statistical areas north of 57° North latitude

## ⌚ Large-scale charts

- 5 - Southeast AK (aroundfish only) – 1,044K

standalone Adobe Reader program rather than inside a browser window (utilizing a PDF plugin). For additional instructions go [HERE](#).

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- 7 - [Prince William Sound/Cook Inlet](#) – 973K
- 8 - [Kodiak](#) – 858K
- 9 - [Alaska Peninsula and Chionik](#) – 1,346K
- 10 - [Aleutian Islands](#) – 846K

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### Questions?

Contact: [Tim Haverland](#), ADF&G Commercial Fisheries, (907) 465-6147

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## History and Development of the Scallop Fishery in Alaska

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### ABSTRACT

The weathervane scallop *Patinopecten caurinus* is a large, long-lived pectinid distributed from California to Alaska. A commercial dredge fishery from northern Southeast Alaska to the Bering Sea targets the species. The fishery developed rapidly in the late 1960s, declined sharply in the mid 1970s due to local depletion and availability of other fishing alternatives, and increased quickly in the late 1980s with improved stock conditions and prices. Fishery management evolved accordingly. Passive management regulations were replaced by active fishery management plans in the early 1990s in response to overcapitalization and resource conservation concerns. In recent years, fishery management plans have stabilized harvests at about 0.8 million pounds of shucked meats annually through guideline harvest levels and crab bycatch limits. An onboard observer program is a critical component of the fishery management process, providing important information on the biology, distribution, and relative abundance of Alaska's scallop stocks.

### INTRODUCTION

The purpose of this report is to provide a brief overview of biology, history, and management of the weathervane scallop *Patinopecten caurinus* fishery in Alaska. The fishery is managed with a precautionary approach given a lack of complete information on the species and its

productivity. Studies of scallop biology, abundance, productivity, and fishing effects are critically needed to fill information voids so that fishery management can better strive toward sustained optimal yields while minimizing adverse effects on other species and habitats. A high level of observer coverage on a small fleet renders this a very tractable fishery for research.

## THE WEATHERVANE SCALLOP

Weathervane scallops are distributed from Point Reyes, California, to the Pribilof Islands, Alaska (Foster 1991). They are found from intertidal waters to depths of 300 m (Foster 1991), but they tend to be most abundant between depths of 45–130 m on mud, clay, sand, and gravel (Hennick 1973). Scallop beds tend to be elongated in the direction of mean current flow. In Alaska, highest abundances of scallops exist off Yakutat, Kodiak Island, and in the Bering Sea, with smaller aggregations occurring in Prince William Sound and off the Alaska Peninsula and Aleutian Islands (Figure 1).

Most weathervane scallops mature at 76-mm shell height (SH) at about age 3 (Haynes and Powell 1968, Hennick 1973). Funk (unpublished data) fitted Gompertz growth equations to scallop data collected in the late 1960s and early 1970s by Hennick (1973). Scallops off Yakutat grow much more slowly than scallops off Kodiak Island, and scallops off the west side of Kodiak grow more slowly than those from the northeast side of Kodiak. The largest recorded Alaskan specimen measured 250-mm SH and weighed 340 g (Hennick 1973).

Weathervane scallops are long-lived; the oldest Alaskan specimen was estimated to be 28 years old (Hennick 1973). Kruse (1994) estimated mortality rates for four areas in Alaska using three different methods. Instantaneous natural mortality rates varied from 0.04 to 0.21 with a median of 0.13, corresponding to 12% annually.

## FISHERY HISTORY

The Alaskan scallop fishery provides a classic example of fishery evolution through several developmental stages: discovery and initiation of development, bandwagon growth, fallback, and subsequent evolutionary development (Walters 1986). A fishery for weathervane scallops in Alaska began in 1967 using paired New Bedford-style scallop dredges (Haynes and Powell 1968). Within one year the fishery became fully developed when 19 vessels made 125 landings totaling 1.7 million pounds of shucked meats (Figure 2).<sup>1</sup> Catches peaked in 1969 when 157 landings totaled 1.9 million pounds. Harvests off Kodiak and Yakutat accounted for nearly all of the landings in the early years of the fishery. Whereas catches from the early fishery were dominated by old scallops ( $\geq 7$  years of age), landings shifted toward younger ages (2–6 year olds) by the early 1970s (Hennick 1973). Landings declined to 0.4 million pounds in 1975 as average landing per trip declined (Kaiser 1986). Less than

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<sup>1</sup> Meat recovery rate averages about 10% but varies between 9% and 11% depending on scallop size, season, and area.

three vessels participated in the fishery each year from 1976-1979. No vessels participated in 1978.

In the 1980s the weathervane scallop fishery received renewed interest due to increased exvessel prices and recovering stock conditions. On an annual basis during the 1980s, an average of nine vessels delivered 0.6 million pounds worth \$2.15 million. Unlike the 1970s when Kodiak and Yakutat accounted for 93% of the landings, during the 1980s 33% of the landings were taken from Dutch Harbor and other areas such as Southeast Alaska, Cook Inlet, Alaska Peninsula, and the Bering Sea.

In 1990 nine vessels made 144 deliveries that totaled 1.5 million pounds (Figure 2). By late 1992 landings exceeded 1.8 million pounds, the highest harvest since fishing on virgin stocks. The fishing power of the fleet increased substantially in the 1990s. The number of vessels increased from 4 in 1988 to 16 in 1993. Mean vessel length increased from 83 feet in 1981 to 110 feet in 1991, and mean crew size increased from 5.5 in 1984 to 12 in 1993. Some vessels used automatic shucking machines. Concerns about resource conservation and fleet overcapitalization led to new state (1994) and federal (1995) fishery management plans (FMPs). As a result, statewide landings have averaged about 0.8 million pounds since 1996. For more complete descriptions of the history of the Alaskan scallop fishery, see Kaiser (1986), Kruse and Shirley (1994), and Shirley and Kruse (1995).

## **FISHERY MANAGEMENT**

Prior to 1993 no FMP existed for scallops in Alaska. Rather, the fishery was managed by a set of passive regulations, such as gear restrictions, closed areas to protect crabs, and fishing seasons (ADF&G 1993, Kruse et al. 1992). Owing to increased landings, fishing power, and resource conservation concerns in the early 1990s, the scallop fishery met the conditions of a high-impact emerging fishery (5 AAC 39.210 in ADF&G 1993). Therefore, the Alaska Department of Fish and Game (ADF&G) developed fishery management options (Kruse et al. 1992), solicited public comment, and implemented an interim FMP and associated regulations in 1993 (5 AAC 38.076 in ADF&G 1993). Later, a draft FMP (Kruse 1994) was prepared to fully describe the rationale and strategy for scallop management and fishing regulations. The Alaska Board of Fisheries (BOF) adopted a scallop FMP in March 1994, and a current version appears in state regulations (5AAC 38.076 in ADF&G 1999).

In 1995 the National Marine Fisheries Service (NMFS) became involved in scallop fishery management when the catcher-processor vessel *Mister Big* fished in the Exclusive Economic Zone (EEZ) without a State of Alaska permit. NMFS issued an emergency interim rule in February 1995 to close federal waters to scallop fishing to prevent overfishing. In July 1995 the North Pacific Fishery Management Council (NPFMC) adopted a federal FMP to formally close EEZ waters to scallop fishing. Since then, the federal FMP, including six amendments, delegates most management to the State of Alaska.

Primary management objectives of the scallop FMP are to: (1) ensure long-term viability of scallop populations, (2) minimize adverse effects of gear on habitat and other species, (3) prosecute steady-paced fisheries that provide long-term socioeconomic benefits,

(4) maintain resource availability to subsistence users, and (5) conduct research to increase knowledge for future management decisions. Key management measures to achieve these objectives include establishment of nine registration areas, area closures to protect crab habitat, a limited entry program to prevent overcapitalization, fishing season (July 1 through February 15, except for August 15 to October 31 in Kamishak Bay), gear specifications (e.g., no more than two dredges of maximum size, 15 feet with 4-inch minimum ring size), guideline harvest ranges for each area constrained by an overall cap of 1.24 million pounds of shucked meats, crab bycatch limits set at 0.5% to 1% of the crab population, 100% onboard observer coverage requirements, and efficiency controls (e.g., crew size limited to 12 and a ban on automatic shucking machines). Scallop regulatory proposals are reviewed once every three years by the BOF and as needed by the NPFMC.

## **DATA COLLECTION AND FISHERY RESEARCH**

ADF&G conducts a small research program on weathervane scallops to implement and improve management of the fishery. The most important element is an onboard observer program that was instituted in 1993. All scallop vessels, except those fishing in Kamishak Bay, must carry an onboard observer at their own expense unless ADF&G waives this requirement. The observer collects valuable information on fishing locations, bycatch and scallop catch, size distributions, sex composition, reproductive condition, meat recovery, and injury rates. Annual reports (e.g., Barnhart and Rosenkranz 1999) provide complete descriptions and summaries of the observer data. A vessel operators' logbook program provides additional information on the fishery.

Collection of observer data has facilitated ongoing spatial analyses of scallop stock status and productivity. The geographic distribution of scallop beds has been mapped, and depletion estimators of abundance have been calculated for some beds. Ongoing aging studies are examining reliability of growth rings as a measure of age. Size and age data are providing valuable information for studies of recruitment. Preliminary analysis of biological reference points from data collected in the late 1960s and early 1970s indicated target harvest rates of 12% to 14% and overfishing rates of 16% to 20% (F. Funk, unpublished data). Updated analyses with contemporary observer data are planned. Other research needs include studies of basic biology and life history, genetic stock structure, fishery-independent stock assessments, population dynamics, gear catchability and selectivity, handling mortality, and effects of scallop dredges on the sea floor.

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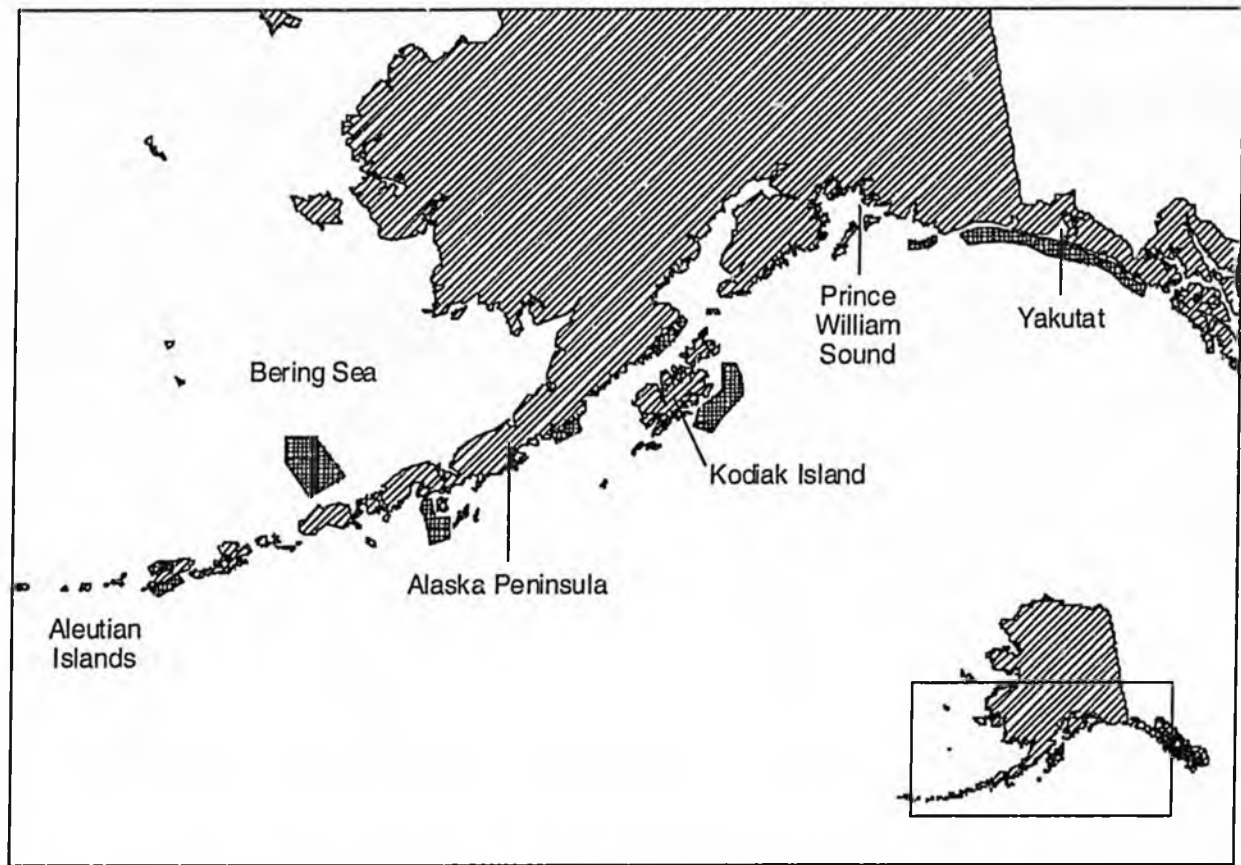


Figure 1. Locations of commercial scallop beds in Alaska.

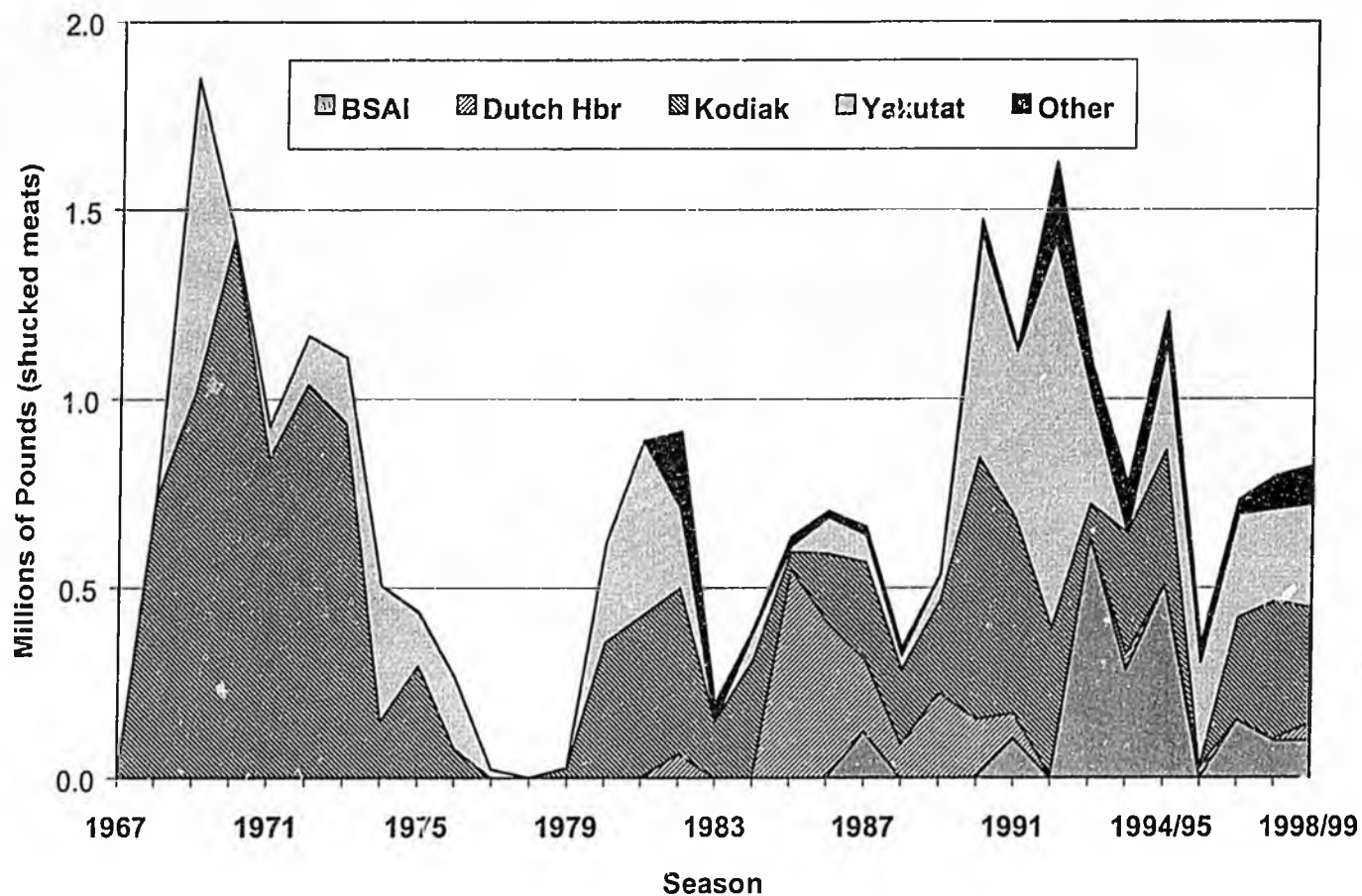


Figure 2. Historic Alaska scallop harvests during 1967–1998 for the Bering Sea–Aleutian Islands (BSAI), Dutch Harbor, Kodiak, and Yakutat Management Areas. Additional harvests occurred in Prince William Sound and Cook Inlet.

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## PRESS RELEASE



### Committee on Resources Don Young, Chairman

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May 10, 1995

## Magnuson Act Approved By U.S. House Committee

Washington, D.C. - A major fishing conservation bill authored by U.S. Rep. Don Young (R-Alaska) that is designed to strengthen fishery resource laws and curtail wasteful fishing practices was overwhelmingly approved today by the U.S. House Committee on Resources.

H.R. 39, officially entitled "The Fishery Conservation and Management Amendments of 1995", reauthorizes the Magnuson Fishery Conservation and Management Act through Fiscal Year 2000. The legislation is expected to be considered by the full House this summer.

"This legislation addresses several important fishery issues including the reduction of bycatch and waste in our fisheries, the protection of essential habitat, the identification of overfished stocks, and the need to establish rebuilding plans for the overfished stocks," said Young, the Chairman of the committee.

"This requires a delicate balancing act but I believe we have crafted a bill which allows our fishermen and processors to make a living from the sea, while also making them better stewards of the resources they rely on for their livelihood.

"One of my primary concerns, which is addressed in this legislation, is the reduction of the wasteful bycatch problem. I know fishermen can fish cleanly. Unfortunately, there often isn't an incentive for them to do so, which leads to unbelievable amounts of bycatch in some of our fisheries.

"In 1993, in the North Pacific groundfish fishery alone, more than 740 million pounds of fish were discarded. This resulted in the waste of 16 percent of the total catch in that fishery. Much of this waste was of prohibited species. This included the outright waste of 16.7 million pounds of halibut, nearly 17 million pounds of king and Tanner crab, 372,000 pounds of salmon, and 770,000 pounds of herring.

"This is an absolute waste and must be stopped. If we are to maintain a healthy fishery, we need to aggressively attack this problem."

Young said his legislation "takes a major step" toward addressing the bycatch problem by requiring new and existing management plans to include measures to minimize bycatch to the maximum extent possible. The bill also allows the regional councils to offer incentives to those

who fish "cleanly".

"I believe incentives are the answer for getting our fishermen to clean up their act," Young said.

Young successfully led the opposition to an amendment which could have jeopardized the Community Development Quota program (CDQ) for Western Alaska, which provides fishery quotas for the Alaska Native residents in the region.

"Western Alaska is one of the poorest, most underdeveloped areas in the United States. The residents of this Bering Sea region, predominately Alaska Natives - Yup'ik and Inupiat Eskimos and Aleuts - have watched their marine resources being exploited, first by foreign fleets and later by American distant water fleets," Young said. "Due to the lack of capital and opportunity, the residents of these communities were unable to share any of the benefits of their fishery resources.

"By developing and implementing the CDQ program, the people of Western Alaska have benefited through new opportunities for employment, training and education through their participation in the fisheries of the Bering Sea."

Among the key provisions of Young's bill are:

- Expanded authority for the Secretary of Commerce to protect the overfished stocks and the rebuilding of fisheries if the regional councils fail to do so;
- Closed the loophole in the Magnuson Act which allowed a vessel to exploit the closed scallop fishery earlier this year;
- New safeguards against conflicts of interest on the regional councils;
- New requirements for the reporting of bycatch;
- New descriptions of essential habitat;
- New fishery stock rebuilding programs when necessary;
- New measures to minimize adverse impacts on essential habitat.

Young offered and was successful in passing an "en bloc" amendment package of amendments which, among other things, clarified there will be no retroactive application of Individual Transferable Quota (ITQ) sunset provisions to the existing Halibut and Sable Fish Plan. However, existing law continues to allow the regional councils to make changes in this plan.

**For more information, please check the House Committee on Resources Home Page at <http://resourcescommittee.house.gov/>**

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## Summaries of Major Laws Implemented by the National Marine Fisheries Service <sup>(1)</sup>

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Environment and Natural Resources Policy Division

March 24, 1995

95-460 ENR

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## SUMMARY

The National Marine Fisheries Service (NMFS) is located within the National Oceanic and Atmospheric Administration (NOAA) in the Department of Commerce. NOAA and NMFS were created by President Nixon's Reorganization Plan No. 4 of July 9, 1970 (84 Stat. 2090). Programs now comprising NMFS had previously been located in the Bureau of Commercial Fisheries within U.S. Fish and Wildlife Service (FWS) in the Department of the Interior.

This report summarizes the major laws implemented by NMFS, with divisions into five categories: a) ten laws for which Congress authorizes specific annual appropriations; b) three laws for which Congress has permanently or indefinitely authorized appropriations; c) ten laws implementing international treaties or agreements; d) nine laws wherein NMFS provides consultation or acts as a trustee; and e) five other laws. In many of these enactments where the Secretary of Commerce is specifically authorized or directed to take action, NMFS has been delegated the authority to implement the provision or take specific action.

## INTRODUCTION

The National Marine Fisheries Service (NMFS) is located within the National Oceanic and Atmospheric Administration (NOM) in the Department of Commerce. NOM and NMFS were created by President Nixon's Reorganization Plan No. 4 of July 9, 1970 (84 Stat. 2090). Programs now comprising NMFS had previously been located in the Bureau of Commercial Fisheries within U.S. Fish and Wildlife Service (FWS) in the Department of the Interior. This report summarizes the major laws implemented by NMFS, with divisions into five categories: a) laws for which Congress authorizes specific annual appropriations; b) laws for which Congress has permanently or indefinitely authorized appropriations; c) laws implementing international treaties or agreements; d) laws wherein NMFS provides consultation or acts as a trustee; and e) other laws. In many of these enactments where the Secretary of Commerce is specifically authorized or directed to take action, NMFS has been delegated the authority to implement the provision or take specific action.

## ANNUAL AUTHORIZATIONS

**Table 1** summarizes the status of authorizations for the various laws implemented by NMFS which include annual authorizations for appropriations.

**TABLE 1: Status of Laws Authorizing Annual Appropriations to NMFS**

Statute	U.S. Code Citation	Authorization Expires
Anadromous Fish Conservation Act	16 USC 757d	9/30/95
	16 USC 757g	9/30/94
Atlantic Coastal Fisheries Cooperative Management Act	16 USC 5109	9/30/96
Atlantic Striped Bass Conservation Act	16 USC 1851 note	9/30/94
Central, Western, and South Pacific Fisheries Development Act	16 USC 758e-5	9/30/95
Endangered Species Act	16 USC 1542	9/30/92
Interjurisdictional Fisheries Act of 1986	16 USC 4107(a)	9/30/95
	16 USC 4107(b)	9/30/95
	16 USC 4107(c)	9/30/95
	16 USC 4107(d)	9/30/92
Magnuson Fishery Conservation and Management Act	16 USC 1882	9/30/93
Marine Mammal Protection Act	16 USC 1384	9/30/99
Marine Protection, Research, and Sanctuaries Act, Title II	33 USC 1445	9/30/90
National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act	97 Stat 1409	9/30/93

### Anadromous Fish Conservation Act

The Anadromous Fish Conservation Act (16 U.S.C. 757a-757g; Pub. L. 89-304, as amended) authorizes the Secretary of Commerce, along with the Secretary of Interior, or both, to enter into cooperative agreements to protect anadromous and Great Lakes fishery resources. To conserve, develop, and enhance anadromous fisheries, the fisheries which the United States has agreed to conserve through international agreements, and the fisheries of the Great Lakes and Lake Champlain, the Secretary may enter into agreements with States and other non-Federal interests. An agreement must specify: (1) the actions to be taken; (2) the benefits expected; (3) the estimated costs; (4) the cost distribution between the involved parties; (5) the term of the agreement; (6) the terms and conditions for disposal of property acquired by the Secretary; and (7) any other pertinent terms and conditions.

Pursuant to the agreements authorized under the Act, the Secretary may: (1) conduct investigations, engineering and biological surveys, and research; (2) carry out stream clearance

activities; (3) undertake actions to facilitate the fishery resources and their free migration; (4) use fish hatcheries to accomplish the purposes of this Act; (5) study and make recommendations regarding the development and management of streams and other bodies of water consistent with the intent of the Act; (6) acquire lands or interest therein; (7) accept donations to be used for acquiring or managing lands or interests therein; and (8) administer such lands or interest therein in a manner consistent with the intent of this Act. Following the collection of these data, the Secretary makes recommendations pertaining to the elimination or reduction of polluting substances detrimental to fish and wildlife in interstate or navigable waterways. Joint NMFS-FWS regulations applicable to this program are published in 50 *C.F.R.* Part 401.

The Secretary of Commerce also cooperates with States and other non-Federal interests in studying anadromous stocks of Atlantic striped bass. NMFS and the U.S. FWS hold periodic joint meetings to discuss progress of the Emergency Striped Bass Research Study. The most recent such meeting was held on December 2, 1993.

Under §757d, \$8 million is authorized for FY95 for activities conducted under cooperative agreements, while §757g authorized \$1 million for Atlantic striped bass studies for FY94. For cooperative agreements under the Act, \$2.18 million was appropriated in FY94. For striped bass activities, \$250,000 was appropriated during both FY94 and FY95. States have used these funds to conduct research on and monitoring of anadromous species, and NMFS has conducted tagging and stock assessment studies.

### **Atlantic Coastal Fisheries Cooperative Management Act**

The Atlantic Coastal Fisheries Cooperative Management Act (16 *U.S.C.* 5101-5109; Title VIII of Pub. L. 103-206, as amended) authorizes the Secretary of Commerce to provide financial assistance to the Atlantic States Marine Fisheries Commission and to Atlantic coastal States to adopt and implement fishery management plans for coastal fisheries. If the Commission reports to the Secretary that it finds a State is not complying with an adopted plan, the Secretary may impose a moratorium on all fishing for the species in question within the offending State's waters until that State comes into compliance.

For FY95, \$5 million is authorized for these activities. During FY94, \$3.2 million, plus an additional \$500,000 for the interstate commissions, was transferred from appropriations under the authority of the Interjurisdictional Fisheries Act for work conducted under the Atlantic Coastal Fisheries Cooperative Management Act. NMFS and the FWS have developed a cooperative Memorandum of Understanding to coordinate Federal actions required by the Act, developed and implemented a funding strategy for distribution of funds to State and Federal agencies, and established procedures for implementing a federally imposed moratorium for States not in compliance with the Atlantic States Marine Fisheries Commission's fishery management plans. The NMFS Office of Enforcement participates in meetings of the Atlantic States Marine Fisheries Commission's Law Enforcement Committee. In 1994, this Committee addressed possible enforcement activities to be taken after a moratoria is declared under the authority of this Act.

On December 5, 1994 (59 *Federal Register* 63326, December 8, 1994), NMFS first used the Atlantic Coastal Fisheries Cooperative Management Act of 1993 by finding New Jersey not in compliance with the Atlantic States Marine Fisheries Commission's Interstate Coastal Fishery Plans for Atlantic sturgeon, bluefish, and weakfish. A moratorium on fishing in New Jersey State waters will be implemented on April 15, 1995, if the State does not come into compliance with the Commission's plans by April 1, 1995.

### **Atlantic Striped Bass Conservation Act**

The Atlantic Striped Bass Conservation Act (16 U.S.C. 1851 note; Pub. L. 98-613, as amended) authorizes the Secretaries of Commerce and the Interior to assist in the conservation and management of the Atlantic striped bass. To accomplish this goal, the Secretaries may use the resources of any other Federal agency or department, or any coastal State. Regulations for management of the Atlantic striped bass fishery in Federal exclusive economic zone (EEZ) waters are published in 50 C.F.R. Part 656.

Upon certification by the Atlantic States Marine Fisheries Commission that a coastal State is not in compliance with the Interstate Fisheries Management Plan for Striped Bass, the Secretaries of Commerce and the Interior are required to implement a moratorium on fishing for Atlantic striped bass in the coastal waters of that State, pending a review. During the period of the moratorium, it is illegal to fish within the moratorium area for Atlantic striped bass. This includes failing to return to the water any Atlantic striped bass taken incidentally from the moratorium area, regardless of physical condition. The Act allows for civil penalties and/or forfeitures for violation of the moratorium or any regulations promulgated pursuant to this Act. This provision was used in 1987 for New Jersey and the District of Columbia and again in 1988 for New Jersey when they were notified that a moratorium on fishing might be instituted because they were not in compliance with the Interstate Fisheries Management Plan for Striped Bass. In each case, the moratorium was not implemented because their regulations were brought into compliance with the Plan. During 1990, however, New Jersey was again cited for being out of compliance and a moratorium was implemented for a few days in March until the State's fishing regulations were adequately revised. All States have been reported in compliance with the Striped Bass Plan since 1991.

To facilitate implementing the provisions of this Act, the Secretaries of Commerce and the Interior conduct comprehensive annual surveys of Atlantic striped bass fisheries. Included in these surveys are, among other things, a compilation and assessment of the recreational and commercial landings of this species in coastal States. The results of this survey are published in the *Federal Register* annually. The most recent (1993 survey) was published February 17, 1995 (60 *Federal Register* 9324).

During 1994, NMFS participated in the Commission's management planning program to develop Amendment 5 to the Interstate Fisheries Management Plan for Striped Bass that is designed to relax fishing restrictions on striped bass fishing because stocks are recovering. Amendment 5 is expected to be implemented during 1995.

The Act was authorized for "such sums as may be necessary or appropriate to carry out this Act" through FY94. No funds, however, have been appropriated under this authority.

### **Central, Western, and South Pacific Fisheries Development Act**

The Central, Western, and South Pacific Fisheries Development Act (16 U.S.C. 758e-758e-5; Pub. L. 92-444, as amended) authorizes the Secretary of Commerce to conduct a program for the development of tuna and other fisheries resources of the Central, Western, and South Pacific Ocean.

The Secretary of Commerce is authorized to conduct, either by contract or directly, a program for the development of tuna and other fisheries resources of the Central, Western, and South

Pacific Ocean in cooperation with the Pacific Fisheries Development Foundation. The goals of this program include exploring for and assessing tuna and other fish stocks; improving harvesting techniques; developing gear; monitoring the biological resource; and evaluating the economic potential for tuna and other fisheries resources within the area. In implementing this Act, the Secretary of Commerce may consult and cooperate with the Secretaries of the Interior and State, Hawaii and other affected States, the Governments of American Samoa and Guam, the Commonwealth of the Northern Mariana Islands, educational institutions, the commercial fishing industry, and all appropriate member nations of the South Pacific regional fishery agency. The Secretary of Commerce makes the results and findings of research or development projects conducted under the authority of this Act available to all interested member nations of the agency.

For FY95, \$5 million is authorized for this program.

### Endangered Species Act

The Endangered Species Act (ESA; 16 *U.S.C.* 1531-1543; Pub. L. 93-205, as amended) was enacted in 1973 to provide for the conservation of species which are in danger of extinction throughout all or a significant portion of their range (for more information, see "Endangered Species: Continuing Controversy," CRS Issue Brief IB97046). "Species" is defined by the Act to mean either a species, a subspecies, or, for vertebrates (*i.e.*, fish, reptiles, mammals, etc.) only, a distinct population.

Anyone may petition to have a species considered for listing as endangered or threatened, the action which qualifies it for increased protective measures. NMFS regulations concerning ESA listing procedures are published at 50 *C.F.R.* Parts 217-227, with joint NMFS-FWS regulations appearing at 50 *C.F.R.* Parts 402 and 424-453. Generally, the U.S. FWS coordinates ESA activities for terrestrial and freshwater species, while NMFS is responsible for marine species and Pacific salmon. Within 90 days of a listing petition's filing, an agency decision is made on whether to reject the petition, or accept it for a further intensive status review of the species. (2) If a status review is conducted, it is initiated with a public solicitation of information and data relevant to the species of concern. A species must be listed if it is threatened or endangered because of any of the following five factors:

- - present or threatened destruction, modification, or curtailment of its habitat or range;
- - overutilization for commercial, recreational, scientific, or educational purposes;
- - disease or predation;
- - inadequacy of existing regulatory mechanisms; and
- - other natural or manmade factors affecting its continued existence.

Additional important considerations for an ESA listing decision, especially concerning anadromous fish, include defining distinct population segments that qualify as species, determining the abundance threshold for threatened and endangered status, and determining the causes of decline. NMFS will consider listing individual Pacific salmon populations only if they are evolutionarily significant units, defined as "substantially reproductively isolated" and "an important component in the evolutionary legacy of the species" (56 *Federal Register* 58612, Nov. 20, 1991; for more information, see CRS Report 92-944 ENR, The Listing of a Species: Legal Definitions and Biological Realities).

Economic considerations are legally not relevant to the listing decision; this decision is to be

made solely on the basis of the best biological data available. Except for extensions due to consideration of other proposals, a one-year time limit is placed on making the decision to propose listing. If the agency proposes listing, public comments are again solicited on the proposed listing, and a final decision is made within one year after the issuance of the proposal.

(3)

Concurrent with the listing decision, critical habitat believed necessary for the continued survival of species is designated. For this decision, economic impacts must be considered. If information is insufficient to designate critical habitat at the time of listing, or if designation of critical habitat would not be "prudent," the Government may take an additional year to identify it.

Once a species is listed, recovery plans are prepared which identify mitigation measures to be initiated to improve the species' status. In addition, the ESA §7 consultation process requires all Federal agencies to use their authorities to conduct conservation programs (mitigation measures) and to consult with NMFS (or the FWS) concerning the potential effects of their actions on any species under the Act's jurisdiction.

For FY92, \$6.75 million was authorized for Department of Commerce ESA activities. Most recently, \$8.6 million was appropriated for NMFS's ESA activities in FY94, increasing to \$17 million for FY95. NMFS publishes the *Endangered Species Act Biennial Report: Status of Recovery Program*, with the most recent issue summarizing January 1992 through June 1994 program activities.

Much of NMFS's recent ESA activities involve its duty to develop strategies for the conservation and survival of endangered and threatened species. In the area of marine mammals, the ESA and the Marine Mammal Protection Act (MMPA) offer similar management authority for endangered and threatened marine mammal species or stocks. Section 4(f) of the ESA requires the development and implementation of recovery conservation plans, while §115 of the MMPA mandates conservation plans modeled after the ESA for listed species. Several species of whales and sea turtles, the North Pacific fur seal, Hawaiian monk seals, and Stellar sea lions have final recovery plans or conservation plans. Major efforts are also underway for the recovery of listed stocks of Pacific salmon, shortnose sturgeon, and grey sturgeon. Consultations occur on an on-going basis under §7 with Federal action agencies to avoid or mitigate the impacts of their activities on listed species. NMFS also reviews non-Federal activities which may affect listed species and issues §10 permits for incidental take.

In 1994, the NMFS Office of Enforcement initiated 353 cases under the ESA. In the last quarter of the year, a task force of enforcement personnel from all NMFS regions conducted more than 500 boardings of shrimp vessels in the Gulf of Mexico to ensure compliance with regulations regarding turtle excluder devices. This operation resulted in approximately 70 enforcement actions. The majority of the remaining ESA cases involved illegal importations of endangered species parts and products and illegal taking, including harassment, of endangered species.

### **Interjurisdictional Fisheries Act of 1986**

The Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4101-4107; Pub. L. 99-659, as amended) authorizes the Secretary of Commerce to apportion money to the States for use in developing research programs to enhance the management of interjurisdictional fisheries. NMFS regulations applicable to this program are published in 50 C.F.R. Part 253.

The Secretary of Commerce is authorized to apportion funds to the States for the development

of interjurisdictional fisheries. For funds to be disbursed, the Secretary of Commerce has to evaluate the proposed project to ensure funds will be used in the most efficient manner. The Federal Government's share of the cost does not exceed 75 percent of the total projected cost. If the Secretary rejects a proposal, a written explanation must be given to the petitioning State. Any property acquired during the fulfillment of a project is considered the property of the State. However, if the State sells the property for a profit, an amount equal to the proportion of Federal funding which went into acquiring the property must be repaid to the U.S. Treasury. Once States have received funding, the Secretary of Commerce writes a follow-up report on the project for Congress. Included in the report are a description of the project, how much money has been spent on each project by both State and Federal Governments, an assessment of how the project is progressing, and a statement describing all funds which have been allocated pursuant to this Act and the amount of remaining funds.

Under §4107(a), \$5 million is authorized for FY95 for general activities, while §4107(b) authorizes an additional \$2.5 million for FY95 for cost-sharing programs with States experiencing a commercial fishery failure or a serious disruption from a natural disaster. Grants to commercial fishermen for uninsured losses from specified natural disasters were authorized at \$65 million during FY92 under §4107(d). During 1994, \$12 million of those funds were designated for Northwest salmon disaster relief. This disaster relief will fund three programs: (1) a vessel permit buyout program (Washington Department of Fish and Wildlife); (2) a habitat restoration jobs program (Natural Resources Conservation Service of the U.S. Department of Agriculture); and (3) a data collection jobs program (Pacific States Marine Fisheries Commission). In addition to these disaster funds, the Disaster Emergency Supplemental Act of 1992 (Pub. L. 102-368) appropriated \$8.5 million for disaster related work, of which \$5.1 million was used in 1993 for shellfish restoration activities to mitigate hurricane damage in California. During 1994, a disaster was also declared in the New England groundfish fishery and \$30 million was appropriated for relief efforts in that area. For general activities under the Act, \$3.156 million was authorized in 1994, with an additional \$3.7 million transferred to fund activities conducted under the authority of the Atlantic Coastal Fisheries Cooperative Management Act. With the funds for general activities under the Act, States have studied and monitored interjurisdictional species.

### **Magnuson Fishery Conservation and Management Act**

The 1976 enactment of the Fishery Conservation and Management Act (FCMA; 16 U.S.C. 1801-1882; Pub. L. 94-265, as amended; later renamed the Magnuson Fishery Conservation and Management Act for the late Senator Warren G. Magnuson) ushered in a new era for U.S. marine fisheries management. The FCMA was signed into law on April 13, 1976, after several years of debate on the merits of, and various approaches to, extended fisheries jurisdiction. On March 1, 1977, fisheries resources within 200 miles of all U.S. coasts came under Federal jurisdiction, and a multifaceted regional management system began allocating harvesting rights, with priority given to domestic enterprises. Exclusive Federal management authority was vested in NMFS, within NOAA of the Department of Commerce. The 200-mile fisheries conservation zone was superseded by an EEZ, proclaimed by President Reagan on March 10, 1983. (4)

Under provisions of this Act, eight Regional Fishery Management Councils were established for the New England, Mid-Atlantic, South Atlantic, Caribbean, Gulf of Mexico, Pacific, Western Pacific, and North Pacific regions. Regulations relating to Regional Council activities and operations are published in 50 C.F.R. Parts 601 and 605. The eight Councils prepare fishery management plans (FMPs) for those fisheries, (5) both commercial and recreational, which they determine to require active Federal management. Guidelines for preparation of FMPs in conformance with national standards (§1851 of the MFCMA) are published in 50 C.F.R. Part

602. An environmental assessment or environmental impact statement is prepared for every FMP submitted. After public hearings on these plans, revised FMPs and draft regulations are submitted to the Secretary of Commerce for approval. Regulations are published in the *Federal Register* to implement approved plans. Completed plans may be amended and revised through similar procedures. As of January 1, 1995, these Councils had implemented 34 FMPs for various fish and shellfish resources, with 11 additional plans in various stages of development. Some plans are created for individual or a few closely related species (e.g., FMPs for red drum by the South Atlantic Council, northern anchovy by the Pacific Council, and for shrimp by the Gulf of Mexico Council). Others are developed for larger species assemblages inhabiting similar habitat (e.g., FMPs for Gulf of Alaska groundfish by the North Pacific Council and for reef fish by the Gulf of Mexico Council). Many of the implemented plans have undergone subsequent amendment (one has been amended more than 30 times), and three plans have been developed and implemented jointly by two or more Councils. In addition, Pub. L. 101-627 amended the MFCMA to give the Secretary of Commerce the responsibility for preparing FMPs for Atlantic highly migratory species, such as sharks, billfish, and tuna. Regulations implementing individual FMPs are published in 50 *C.F.R.* Parts 625 through 685.

Initially under MFCMA authority, a substantial portion of fishery resources in offshore waters under Federal jurisdiction was allocated for foreign harvest. However, foreign allocations were reduced as domestic fish harvesting and processing industries expanded under the domestic preference authorized by the MFCMA. Under the MFCMA, foreign harvests from the U.S. EEZ declined from about 3.8 billion pounds in 1977, to zero in 1992. Commensurate with the decline of foreign harvest, domestic offshore catch increased from about 1.56 billion pounds (1977) to more than 6.32 billion pounds (1993). Thus, the percent of fish harvested by foreign nations from the U.S. EEZ declined from 71 percent in 1977 to nothing by 1992.

Since 1977, total fish harvest from the U.S. EEZ increased more than 325 percent to a peak of 6.65 billion pounds annually in 1986-1988, but has subsequently declined -- 6.52 billion pounds were landed in 1993. Currently, the largest offshore fishery, in terms of volume landed, is Alaska pollock, with more than 3 billion pounds harvested in 1993. By value, Alaska pollock (almost \$337 million) and Gulf of Mexico shrimp (more than \$190 million) were the leading fisheries in 1993.

For FY93, \$102 million was authorized for MFCMA activities. In calendar year 1994, 27 FMP amendments prepared by Regional Councils were implemented. These included major amendments to the FMPs for the Atlantic sea scallop fishery, the American lobster fishery, the Northeast multispecies (groundfish) fishery, corals and coral reefs of the Gulf of Mexico and the South Atlantic, the Western Pacific pelagics fishery, and the Bering Sea and Aleutian Islands groundfish fishery. In addition, major regulatory amendments to implement the North Pacific Fishery Research Plan (59 *Federal Register* 61556, December 1, 1994) and an inshore/offshore allocation program for whiting in the Pacific Coast groundfish fishery (59 *Federal Register* 17491, April 13, 1994) were promulgated. The Administration also proposed amendments to reauthorize and amend the Magnuson Act (S. 2138 and H.R. 4430). Major proposals included provisions concerning rebuilding depleted stocks, identifying essential fishery habitat, creating a national data collection program, reducing bycatch, and addressing perceptions of conflict of interest on the Regional Councils.

Enforcement of this law and FMP regulations account for the largest portion of NMFS's enforcement activity. In 1994, the NMFS Office of Enforcement, U.S. Coast Guard, and State enforcement officers, working under cooperative agreements, initiated 979 cases under the MFCMA. Included in these violations were 10 foreign vessels (4 Canadian, 2 Japanese, 2

Korean, 1 Taiwanese, and 1 Mexican) cited for fishing illegally in the U.S. EEZ.

### Marine Mammal Protection Act

The Marine Mammal Protection Act of 1972 (MMPA; 16 *U.S.C.* 1361-1421; Pub. L. 92-522, as amended) was most recently reauthorized in 1994 (Pub. L. 103-238), and the current authorization for appropriations expires at the end of FY99. In passing the MMPA in 1972, Congress found that:

- - certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;
- - such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population level;
- - measures should be taken immediately to replenish any species or population stock which has already been diminished below its optimum sustainable level. In particular, efforts should be made to protect the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions;
- - there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully; and
- - marine mammals have proven themselves to be resources of great international significance, aesthetic and recreational as well as economic. (6)

The MMPA established a moratorium, with certain exceptions, on the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas, and on the importing of marine mammals and marine mammal products into the United States. It defines the term "take" to mean "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal." (7)

Under the MMPA, the Secretary of Commerce is responsible for the conservation and management of pinnipeds (other than walruses) and cetaceans. The Secretary of the Interior is responsible for walruses, sea and marine otters, polar bears, manatees, and dugongs. (8) The Secretary of Commerce delegated MMPA authority to NMFS. Title II of the Act established an independent Marine Mammal Commission and its Committee of Scientific Advisors to oversee and recommend actions necessary to meet the intents and provisions of the Act. NMFS regulations concerning MMPA permits and procedures are published at 50 *C.F.R.* Parts 216 and 228-229, with additional joint NMFS-FWS regulations appearing at 50 *C.F.R.* Part 403.

Prior to passage of the MMPA, States were responsible for the marine mammals on lands and in waters under their jurisdiction. The MMPA vested marine mammal management authority in the Federal Government. It provides that management authority, on a species-by-species basis, could be returned to States that adopt conservation and management programs consistent with the purposes and policies of the Act. (9) It also provides that the moratorium on taking can be waived for specific purposes (excluding public display and scientific research, for which permits may be issued) if the taking will not disadvantage the affected species or stock. It provides that permits may be issued to take or import any marine mammal species, including depleted species, to conduct scientific research or to enhance the survival or recovery of a species or stocky Permits may also be issued to take or import non-depleted species for public display.

These permits are very specific in designating numbers and species of animal that can be taken, as well as times, dates, places, and methods of taking.

In 1994, Pub. L. 103-238 amended the MMPA, establishing a new regime to govern the taking of marine mammals incidental to commercial fishing, and replacing an Interim Exemption in place since 1988. This new regime included the preparation of stock assessments for all marine mammal stocks in waters under U.S. jurisdiction, development and implementation of take reduction plans for stocks that may be reduced or are being maintained below their optimum sustainable population levels due to interactions with commercial fisheries, and studies of pinniped-fishery interactions. The mortality of dolphins during tuna seining operations in the eastern tropical Pacific Ocean was a major impetus for passage of the MMPA in 1972, and it continues to be a major international issue which is dealt with under §104 of the MMPA.

The Act also provides that the Secretary shall allow the incidental, but not intentional, taking, by U.S. citizens engaged in activities other than commercial fishing (e.g., offshore oil and gas development), of small numbers of depleted as well as non-depleted marine mammals if, after notice and opportunity for public comment, the Secretary:

(i) finds that the total of such taking will have a negligible impact on the affected species or stock, and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses by Alaska Natives; and

(ii) prescribes regulations setting forth permissible methods of taking, and requirements for monitoring and reporting such taking." However, the 1994 Amendments provide that this regulation requirement may be waived provided that the proposed activity results in only harassment, and no serious injury or mortality is anticipated.

The Act's moratorium on taking does not apply to taking by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking is for subsistence purposes or for creating and selling authentic Native articles of handicrafts and clothing, and is not done in a wasteful manner. (12)

For FY95, \$12.623 million is authorized for MMPA activities other than stock assessments and implementation of the new regime on taking of marine mammals incidental to commercial fishing. For these additional activities, \$20 million is authorized for FY95. For FY95, \$2.314 million was appropriated for marine mammal research along with \$8 million for implementation of the 1994 Amendments to the Act.

Since the 1994 Amendments became law, NMFS has published several regulations to implement requirements under the Act. These include the general authorization for scientific research (59 *Federal Register* 50372, October 3, 1994), the prohibition on intentional lethal take in commercial fishing (60 *Federal Register* 6036, February 1, 1995), and a final rule prohibiting approaching closer than 100 yards to humpback whales in Hawaii (60 *Federal Register* 3775, January 19, 1995). Also, in response to a request from the State of Washington under the new §120, on January 4, 1995, NMFS authorized the intentional lethal taking of individually identifiable California sea lions that are adversely affecting the continued existence of a run of steelhead trout at Ballard Locks, Washington. In addition, NMFS has published a proposed list of fisheries using the criteria established by §118 of the MMPA (59 *Federal Register* 45263, September 1, 1994) and established Scientific Review Groups to review various aspects towards implementing this section of the law. In this regard, NMFS has made available for public

review the methodology for determining each marine mammal stock's Potential Biological Removal and the draft stock assessment reports. Final stock assessment reports are expected to be available in March 1995. In the late spring of 1995, NMFS anticipates publishing proposed regulations governing incidental takes by commercial fisheries under 6118 of the MMPA. In late 1994, NMFS held two public working sessions to discuss the draft regulations. Finally, as part of its public outreach program, NMFS's Office of Protected Resources publishes a *Marine Mammal Protection Act Bulletin* describing recent events concerning the implementation of the 1994 Amendments to the Act.

A total of 143 cases were made under the MMPA by NMFS enforcement personnel in 1994. These cases consisted mainly of illegal importations of marine mammal parts and products and illegal taking, including harassment, of marine mammals.

### **Marine Protection, Research, and Sanctuaries Act**

Title II of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1441-1445; Title II of Pub. L. 92-532, as amended) authorizes research and monitoring related to ocean dumping as well as research on possible effects of pollution, overfishing, and human-induced changes of the ocean system. The Act provides for long-range research on the effects of human-induced changes to the marine environment and authorizes research and demonstration activities related to phasing out sewage and industrial waste dumping in the marine environment. The Department of Commerce, through NOM and NMFS, conducts comprehensive and continued monitoring and research programs on the possible long-range effects of pollution, overfishing, and human-induced changes of ocean ecosystems, including the scientific assessment of natural resource damages from petroleum spills. NOAA also monitors the environmental conditions at certain dumping sites. The Act requires the Department of Commerce to present an annual report to Congress on these monitoring and research activities.

For FY90, an amount not to exceed \$14.5 million was authorized for these research programs.

### **National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act**

The National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (97 Stat. 1409; Pub. L. 98-210, as amended) authorizes NMFS fisheries programs not otherwise authorized by law, including research to reduce entanglement of marine mammals in fishing gear, development of habitat restoration techniques, restoration of Chesapeake Bay, and conservation of Antarctic living marine resources.

For FY93, \$59.162 million was authorized for §2(a) -- information collection and analyses, \$35.594 million was authorized for §3(a) -- conservation and management operations, and \$18.838 million was authorized for §4(a) -- State and industry assistance programs.

### **Endnotes**

1. Lennis L. Herburger, student intern from Lewis and Clark College, researched and wrote the draft of this report under the supervision of Eugene H. Buck, Senior Analyst in Natural Resources Policy.
2. However, either NMFS or the FWS may initiate a status review for a species without a petition for listing.
3. If there is substantial disagreement regarding the sufficiency or accuracy of available data,

this one-year period may be extended an additional six months.

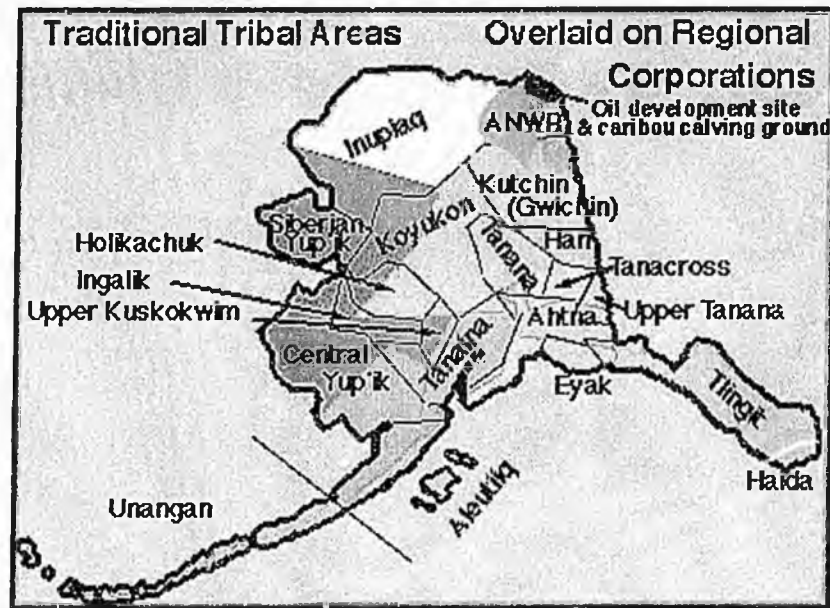
4. Presidential Proclamation 5030 -- Note that the EEZ excludes nearshore waters under State jurisdiction.
5. A "fishery" is a collection of harvesting operations using similar harvesting methods (*i.e.*, gear) to catch one or a group of closely related species of fish or shellfish.
6. §§2(1) and 2(2) of the Marine Mammal Protection Act.
7. A similar definition was also incorporated in the Endangered Species Act of 1973, Pub. L. 93-205.
8. This division of authority derives from agency responsibilities as they existed when the MMPA was enacted.
9. However, NMFS would retain authority over incidental taking in commercial fishing and taking for public display or scientific research purposes, except that Federal permits for removal of live animals from a State could not be issued if the proposed action was inconsistent with the State's program.
10. Permits for taking threatened or endangered species must also be obtained under the authority of the Endangered Species Act.
11. §101(a)(5)(A).
12. However, takes of depleted species or stocks may be regulated.



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**NCSE**



As the overlay shows, there is a rationale to the organization of Alaska's hundreds of Native communities into regional Native development companies. Roughly, the company regions correspond to traditional territories of the tribes. See (if willing to wait for slow load) slightly different territories on an [Alaska Native Education program languages map](#).

**Five Landless Tlingit Tribes** These tribes were left out of the Alaska native Claims settlement. They have no land, no right to subsistence fishing and hunting. Well-known Tlingit artist Jesse Cooday helped to design these pages, which contain a real (not as told to bzabytalk) traditional story by an elder. Don't forget the "What you can do" section.

**Alaska's Towns and Villages** ingenious database where you can look up much (all text) info. Not limited to Native villages, but there are so many of those they dominate the database. Get the names of the towns at this mapsite, look up info about them here.

**Alaska's Native Cultures** Once-over shallowly, by a tourist agency. No pix.



The Arctic National Wildlife Refuge -- a calving place for the last remaining large herd of caribou -- barely escaped being opened for oil and gas development by U.S. Congress in the fall of 1996. The issue will continue to arise, one presumes until permission is conferred and the wildlife refuge is invaded. Most of the environmental deiscussion of this ignored the viewpoints of those who will be most affected by disturbances to the herd's calving ground. For these people are

the Vuntut Gwich'in, who live above the Arctic Circle *in Canada*. International boundaries are meaningless to the animals, who make a great circle migration between the U.S. and Canada seasonally, every year.

- Old Crow -- Land of the Vuntut Gwichin This traditional tribe uses Internet to make a plea -- especially to U.S. citizens, the only ones who can do anything about it -- to protect the Porcupine herd's calving ground (the Arctic national Wildlife Refuge) from oil and gas development. Their plea takes the form of a personal, obviously unprofessional website showing how their lives still depend on these caribou.
- Arctic National Wildlife Refuge -- An Introduction Arctic Perspectives has a good collection of documents, historical survey, and maps. Unlike most of the environmentalists who covered this issue, Perspectives takes a look at Native viewpoints. This is a much slicker presentation (with better maps).
- Tanana Chiefs -- whose people are on one path that the returning caribou take -- oppose ANWR development, in a 1990 resolution
- Jacob Adams. Inuipiaq Arctic Slope regional development corporation native head, is in favor of development. We want our share, he says.
- ANWR -- CASE STUDY #1 by Arctic Circle, a support group for Native and environmental issues of the far north
- Time to Permit Drilling in ANWR sez a right-wing think-tank. Just a tiny handful of Indians stand in the way of progress here, and anyway, that oil-gas development that already went down in the Beaufort Sea was *good* for the smaller Central Caribou herd. His statistics about this are flat-out lies; elsewhere the herd was scientifically monitored, found to be decimated.

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**P**oint Hope is a historic Native community in Alaska. In the late 1950's, the Bureau of Land Management issued the Atomic Energy Commission (AEC) a license for a cockeyed and enormously dangerous scheme to use 1600 square miles around Point Hope to blast out a deep water seaport with nuclear explosives. No one ever consulted the village residents who would have to have been moved away for the blast (no environmental considerations either). In 1961, the president of the Point Hope Village Council wrote to the Association of American Indian Affairs (AAIA) a private foundation formed to help Indians. AAIA provided funds and coordination for inter-village meetings

at which rights were explained, and common solutions agreed upon. 12 regional associations of Alaska Natives were formed and began the legal process to pursue their land claims (resulting in the Alaska Native Claims Settlement of 1971). The small group of Native people of Point Hope, a remote and isolated Arctic village, played a very important role beyond the start of a land claims process for all the treatyless peoples of Alaska. Nuclear blasting in the seas of the fragile north, where currents circulate between the continents would have had incalculably dangerous environmental effects, probably much broader than on the ecology just of the far north, affecting the oceans, and perhaps worldwide weather and climate patterns. Point Hope began the action that stopped this -- but the area was then used as a dumping ground by the AEC for hazardous nuclear wastes. There are many indications this was an intentional experiment to try to discover the effects (i.e. how bad the effects would be) on the biota, including the Native people OF the area.

Case Study of Project Chariot -- here's the nitty-gritty, long article on the plans, the waste dumping 30 miles from the Point Hope Inupiat community, the supposed cleanup efforts. Arctic Circle has considerably streamlined their site, so this interesting material should now load in a reasonable time.

The Chukchi Sea Trading Company - Frames Inupiaq Women of Point Hope started this web project to sell their crafts -- such as baskets made of whale baleen, fossil mammoth ivory carvings. It's much more than a sales gallery; there's a town photo album of a whale feast, stories from elders, and many other things. Unfortunately these are quite hard to get at, in the inexperienced contractor's wildly busy non-functional frames presentation.



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Profiles of Alaska Inuit-Aleut Communities -- Bristol Bay , AK villages Region Page by one of the regional development corporations.

Cook Inlet Tribal Council, Alaska. Not much info, tribal contacts, programs. Native Regional Development Corporation page.

- Chickaloon News from CIRI dissident shareholders , who are trying to muster enough other dissidents -- they mention many shareholders live in the Lower 48 -- to

change present management, apparently they want larger cash payments, or to break up the entity and distribute its assets (land) in cash. The website is so in-groupy (I might be one of the few who can recognize what the initials CIRI stand for; there is a great deal of other unexplained minutiae) it's doubtful they'll succeed. There is no news or background here, misleadingly named site is of interest only to Cook Inlet and Kenai Peninsula CIRI shareholders.

Chugach Regional Company's server: they appear to be trying to be access providers. the server contains alaska JobNet, a shopping mall, and that's about it.

Alaska North Slope Borough School district Website They do a lot of distance education necessarily. Many of the communities are entirely or largely Inupiaq students

- Ipalook School -- Ryan Miller's 5th grade Check out the kids' caribou project and their ANWR text of a Native visitor to their class (who unlike Adams, opposes the development of ANWR).

Nuniamit Pass School History web project -- photos, current writing and journalism by the students.

Alaska Online: project of 200 students at D'zantiki Heeni (Tlingit) middle school. Juneau, interesting pags with student work, reportage, art.

Alaska Native Education at Lathrop High (Fairbanks). 120 students -- including some from tribes far south -- participate in the program. They researched Alaska Native tribes and posted pages of info and links about several of them

## STORIES, ART, CULTURE

The Origin of Light (Alaska Inuit) -- Australian server world stories/myths collection. Submitted in 1995 by students from the Alaska Native Network (Inuit), managed by Laura Thorpe.

Marie Oldfield. Tsimshian-Haida demonstrates craft with some of her paintings and drawings on show here

A Story of a Shaman Anthros can make just about anything dull.

Shamanism -- bunch of anthros academic writings fed through the grinding mill of a PR person for tourism. The word 'shaman' doesn't exist in any Indian or Native language; anmthros made it up.

[Two Old women: A Legend of Courage and Survival](#) -- Book review.

[The Inupiat Eskimo of Arctic Alaska](#) -- Ethnographic Portraits from Arctic Circle cultural materials

[Tlingit Dancers](#) Brief interview with two of them about the meanings of dances, the outfits, etc. No pix.

[Tlingit carving](#) related to Northwest Coast history. No pix.

[Native Alaskan Plants and their uses](#), high-school botany student work

[The inside Passage Boat trip](#) along the skinny southern panhandle of Alaska, with some shallow Indian info about Tlingit, Haida and other NWC tribes. No pix.



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**CREDITS:** I made maps, icons and other graphics used on these pages, using source material from "America Indian Reservations and Trust Areas," V.E. Tiller, Economic Development Administration, U.S. Department of Commerce, 1996. Also very useful were the articles on Alaska Natives -- history, claims, organization of the regional development corporations -- in the encyclopedia **Native America in the 20th Century**, ed Mary B. Davis, Garland, NY: 1994, 1996.

Last Updated: 4/25/97

House Resources Committee  
Drew Scalzi, Beverly Masek , co-chairs

Re; HB206  
Testimony of Paul Seaton, 58395 Bruce Street, Homer AK 99603,  
Ph907 2356342  
April 3, 2001

Thank you Mr. Scalzi for the invitation to submit written comments prior to the consideration of HB 206 by the committee. I also include in this written testimony points that were discussed at the Fisheries Committee consideration of this bill.

When limited entry was introduced in 1973 the complexion of the industry was much the same as is stated by proponents of this bill for the necessity for vessel owner, corporate, permits. That is, the corporate canneries owned most of the salmon drift vessels in Cook Inlet and Bristol Bay. The argument is that the investment was by the vessel owner corporation [salmon canneries]. Now the same argument is that the investment is by vessel owner corporations [and processors] for scallops. The only difference is that the salmon canneries owned a fleet of small boats while the scallop corporations own one, or several, larger boats. The State specifically decided to empower the fishermen and not the investor by only granting limited entry permits to natural persons who must be actively involved in the harvest. This decision determined the course of development of the Alaskan fisheries, led to a now owner operated fleet, and a move away from corporate control by absentee owners of the lives of fishermen.

I therefore take strong exception to the assertion in the Sponsor Statement "...it would award ongoing fishing privileges to many who have worked essentially as hired crew, and not to those who have invested in the fishery." That statement implies that the State was wrong in empowering fishermen. I have no doubt that if this provision had been included in the original plan it would have been voted down in 1973, as it should be now.

Although the point of this testimony is not to present alternatives to accomplish the findings for the bill, I wish to point out that the situation has greatly changed since the original moratorium was enacted. At that time there was no way to limit entry into the federal fisheries which are the predominate subject of this bill. Now, the Federal License Limitation Program (LLP) is in place for groundfish and crab fisheries. This program allows designation by gear type, area, and species endorsements. So a simple solution is to have the members of these industries petition the North Pacific Fisheries Management Council to add a species and possibly area endorsement based on past participation to the current LLPs. The need for State action no longer exists to accomplish their desired goals.

Pg 1 of 3

issue 4 permits but each would be for the one area that operator fished and thus the 4 permits would still just let one vessel fish the whole state – or over time this might turn into 4 smaller local vessels fishing scallops in only one area each. ]

Sec. 16.43.480 page 6 line 10 – 13.

This requires the purchaser of a permit to buy that particular vessel as well as the permit. This does not make any sense. If a person had multiple uses of his vessel, he could never sell his permit and remain fishing.

The ownership provisions in the federal system have proven to be totally ineffective. At first people "sold" 1% of their vessel to IFQ holders so they could harvest the IFQ shares without the 'owner' being on-board. Then the NPFMC raised the limit to 20%, but it is just a name and number on paper and can be added and removed for the \$150 documentation fee. This owner provision is the subject of great abuse in the federal system. If they can't make it work I don't know why the State will have any better success with the same provision.

(b) line 14

As stated by the CFEC, most of the vessels currently in question are corporate owners. Though the permit cannot be sold to another entity, the entire corporation can be acquired by a holding corporation and thus enable relatively easy transfer without the State ever knowing. If for some reason they are 'caught' the penalty on line 22 is that the permit is transferred back to the original entity.

If you want this system to go towards fisherman (owner-operator) as the bill purports for the future, any transfer to another vessel or other owner should trigger the 'only to a natural person' who must be on board provision.

SEC 16.43.430 p 7, line 11 – 24

As stated above, this provision should be entirely eliminated. If the intent is to ease this fleet into owner-operator status as stated in the Sponsor Statement and declarations by CFEC, granting such provision for the life of the vessel or until a person or vessel removes from the fishery in question is ample allowance. This provision would allow the existing corporate complexion of the fleet to continue indefinitely. Granting the vessel an absentee owner permit for the qualifying vessel's life only (without exception for loss, fire, sale etc) is a generous compromise to this corporate fleet and no substitutions should be allowed at all.

I am opposed to HB206 as unnecessary and as anathema to the State's explicit provisions to empower fishermen, and believe the consequences of adoption of HB206 would negatively influence many fisheries throughout Alaska.

*Paul K. Seaton*

19303

# CORRECTION

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Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

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Pg 1 of 3

This in no way affects the ability of the State to manage those fisheries for the NPFMC as its management designee. In fact, the State currently manages all Bering Sea crab fisheries but any participant in those federal waters is required to have a federal crab LLP. That system works well and no one is suggesting that the State needs to superimpose another State Limited Entry Permit in order to have the ability to manage that huge fishery.

#### HB 206

I dispute the validity of the FINDINGS 1 and 2.

I dispute FINDING 5. I give as example the State water sablefish fisheries on the North Gulf Coast and the Aleutian Islands. The federal vessel owner based system exists side by side with a State waters fishery that has proven to be very manageable and beneficial to small coastal Alaskan vessels from our local communities.

I give as further example the State waters Pacific cod fishery which exists in five management areas and regulates up to 25% of the Gulf of Alaska total allowable catch – determined jointly for federal and State waters. This exists alongside the federal waters vessel LLP but uses gear restriction, vessel size, and sometimes-different seasons and has been the greatest fishery boon to coastal communities and small boat fishermen for extended opportunity along the entire Gulf coast. The Board of Fishery developed this fishery predominately in response to the detrimental effects of the vessel-owner based systems developed for federal waters. We should not inflict those same type problems on our coastal fishermen by being co-opted into mirroring the federal system from which our fishermen seek relief.

#### ARTICLE 6A,

Sec.16.43.460 page 5 lines 3 – 6.

I cannot believe that this substitution clause remain intact –only allowing substitution if the original vessel was lost. If a corporation removed one vessel and used another, do they loose all claims, or do they have to sink the vessel. I do not see the point in this since after permit issuance the vessel owner can transfer his permit to a larger, more powerful, vessel without restriction by Sec.16.43.490.

Sec.16.43.470 line 15 - 17. (2) "promote" (B) "broad access to the fishery;"

This is the exact opposite of the true goal of this bill, to restrict access to the narrowest number of vessels. It underlies a rejection of the using of area fished by the operator to restrict expansion of effort while allowing past operators to get their own vessel for fishing one area. [To better explain this consider the scallop vessel that used several operators per year. Generally an operator has expertise in an area, Southeast, Kodiak, etc. If the permit was by area to the fisherman (operator), the state might

issue 4 permits but each would be for the one area that operator fished and thus the 4 permits would still just let one vessel fish the whole state – or over time this might turn into 4 smaller local vessels fishing scallops in only one area each. ]

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*Paul K. Seaton*

19313

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House Resources Committee  
Drew Scalzi, Beverly Masek , co-chairs

Re; HB206  
Testimony of Paul Seaton, 58395 Bruce Street, Homer AK 99603,  
Ph907 2356342  
April 3, 2001

Thank you Mr. Scalzi for the invitation to submit written comments prior to the consideration of HB 206 by the committee. I also include in this written testimony points that were discussed at the Fisheries Committee consideration of this bill.

When limited entry was introduced in 1973 the complexion of the industry was much the same as is stated by proponents of this bill for the necessity for vessel owner, corporate, permits. That is, the corporate canneries owned most of the salmon drift vessels in Cook Inlet and Bristol Bay. The argument is that the investment was by the vessel owner corporation [salmon canneries]. Now the same argument is that the investment is by vessel owner corporations [and processors] for scallops. The only difference is that the salmon canneries owned a fleet of small boats while the scallop corporations own one, or several, larger boats. The State specifically decided to empower the fishermen and not the investor by only granting limited entry permits to natural persons who must be actively involved in the harvest. This decision determined the course of development of the Alaskan fisheries, led to a now owner operated fleet, and a move away from corporate control by absentee owners of the lives of fishermen.

I therefore take strong exception to the assertion in the Sponsor Statement "...it would award ongoing fishing privileges to many who have worked essentially as hired crew, and not to those who have invested in the fishery." That statement implies that the State was wrong in empowering fishermen. I have no doubt that if this provision had been included in the original plan it would have been voted down in 1973, as it should be now.

Although the point of this testimony is not to present alternatives to accomplish the findings for the bill, I wish to point out that the situation has greatly changed since the original moratorium was enacted. At that time there was no way to limit entry into the federal fisheries which are the predominate subject of this bill. Now, the Federal License Limitation Program (LLP) is in place for groundfish and crab fisheries. This program allows designation by gear type, area, and species endorsements. So a simple solution is to have the members of these industries petition the North Pacific Fisheries Management Council to add a species and possibly area endorsement based on past participation to the current LLPs. The need for State action no longer exists to accomplish their desired goals.

Pg 1 of 3

This in no way affects the ability of the State to manage those fisheries for the NPFMC as its management designee. In fact, the State currently manages all Bering Sea crab fisheries but any participant in those federal waters is required to have a federal crab LLP. That system works well and no one is suggesting that the State needs to superimpose another State Limited Entry Permit in order to have the ability to manage that huge fishery.

#### HB 206

I dispute the validity of the FINDINGS 1 and 2.

I dispute FINDING 5. I give as example the State water sablefish fisheries on the North Gulf Coast and the Aleutian Islands. The federal vessel owner based system exists side by side with a State waters fishery that has proven to be very manageable and beneficial to small coastal Alaskan vessels from our local communities.

I give as further example the State waters Pacific cod fishery which exists in five management areas and regulates up to 25% of the Gulf of Alaska total allowable catch – determined jointly for federal and State waters. This exists alongside the federal waters vessel LLP but uses gear restriction, vessel size, and sometimes-different seasons and has been the greatest fishery boon to coastal communities and small boat fishermen for extended opportunity along the entire Gulf coast. The Board of Fishery developed this fishery predominately in response to the detrimental effects of the vessel-owner based systems developed for federal waters. We should not inflict those same type problems on our coastal fishermen by being co-opted into mirroring the federal system from which our fishermen seek relief.

#### ARTICLE 6A,

Sec.16.43.460 page 5 lines 3 – 6.

I cannot believe that this substitution clause remain intact –only allowing substitution if the original vessel was lost. If a corporation removed one vessel and used another, do they loose all claims, or do they have to sink the vessel. I do not see the point in this since after permit issuance the vessel owner can transfer his permit to a larger, more powerful, vessel without restriction by Sec.16.43.490.

Sec.16.43.470 line 15 - 17. (2) "promote" (B) "broad access to the fishery;"

This is the exact opposite of the true goal of this bill, to restrict access to the narrowest number of vessels. It underlies a rejection of the using of area fished by the operator to restrict expansion of effort while allowing past operators to get their own vessel for fishing one area. [To better explain this consider the scallop vessel that used several operators per year. Generally an operator has expertise in an area, Southeast, Kodiak, etc. If the permit was by area to the fisherman (operator), the state might

issue 4 permits but each would be for the one area that operator fished and thus the 4 permits would still just let one vessel fish the whole state - or over time this might turn into 4 smaller local vessels fishing scallops in only one area each. ]

Sec. 16.43.480 page 6 line10 - 13.

This requires the purchaser of a permit to buy that particular vessel as well as the permit. This does not make any sense. If a person had multiple uses of his vessel, he could never sell his permit and remain fishing.

The ownership provisions in the federal system have proven to be totally ineffective. At first people "sold" 1% of their vessel to IFQ holders so they could harvest the IFQ shares without the 'owner' being on-board. Then the NPFMC raised the limit to 20%, but it is just a name and number on paper and can be added and removed for the \$150 documentation fee. This owner provision is the subject of great abuse in the federal system. If they can't make it work I don't know why the State will have any better success with the same provision.

(b) line 14

As stated by the CFEC, most of the vessels currently in question are corporate owners. Though the permit cannot be sold to another entity, the entire corporation can be acquired by a holding corporation and thus enable relatively easy transfer without the State ever knowing. If for some reason they are 'caught' the penalty on line 22 is that the permit is transferred back to the original entity.

If you want this system to go towards fisherman (owner-operator) as the bill purports for the future, any transfer to another vessel or other owner should trigger the 'only to a natural person' who must be on board provision.

SEC 16.43.490 p 7, line11 - 24

As stated above, this provision should be entirely eliminated. If the intent is to ease this fleet into owner-operator status as stated in the Sponsor Statement and declarations by CFEC, granting such provision for the life of the vessel or until a person or vessel removes from the fishery in question is ample allowance. This provision would allow the existing corporate complexion of the fleet to continue indefinitely. Granting the vessel an absentee owner permit for the qualifying vessel's life only (without exception for loss, fire, sale etc) is a generous compromise to this corporate fleet and no substitutions should be allowed at all.

I am opposed to HB206 as unnecessary and as anathema to the State's explicit provisions to empower fishermen, and believe the consequences of adoption of HB206 would negatively influence many fisheries throughout Alaska.

*Paul K. Seaton*

79313

**HB**

**208**

**HOUSE COMMITTEE REPORT**

(9)

Date Referred to Committee: March 6, 2002

FURTHER REFERRALS: Finance

Date of Committee Action: 3/6/02

The RESOURCES Committee considered:

HB 208

HOUSE BILL NO. 208

AQUATIC FARMS FOR SHELLFISH

"An Act relating to aquatic farming of shellfish; and providing for an effective date."

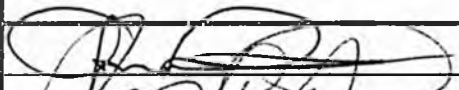
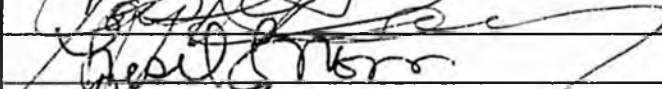
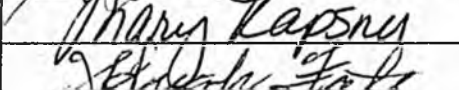
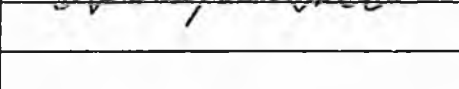
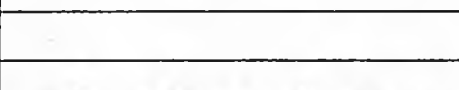

Recommends it be replaced with CS ( ) [ ] Same Title [ ] New Title  
 For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_

- [ ] attach amendments
- [ ] add new referral to \_\_\_\_\_ Committee
- [ ] Letter of Intent \_\_\_\_\_ Committee

- List of Abbrev. for Depts.:
- ADM
  - CEC
  - COR
  - CRT
  - EED
  - DEC
  - DFG
  - GOV
  - HSS
  - LAA
  - LAW
  - LWF
  - MVA
  - DNR
  - DPS
  - REV
  - DOT
  - UA

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DFG	1	✓		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DFG	1			✓
DNR	2	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	J TRUESD	✓			
	Succi	✓			
	McSweeney	✓			
	Kapsner	✓			
	Fata	✓			
Chair: 	SCARZI	✓			
Chair:					



# Alaska State Legislature

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Official Business

REPRESENTATIVE DREW SCALZI

State Capitol  
Juneau, Alaska 99801-1182

(907) 465-2689; (800) 665-2689

FAX: (907) 465-3472

*Representative\_Drew\_Scalzi@legis.state.ak.us*

## HB 208

### Aquatic Farms for Shellfish

*"An Act relating to aquatic farming of shellfish; and providing for an effective date."*

The mariculture industry has the potential to increase the availability of fresh seafood to Alaskans, strengthen the competitiveness of Alaskan seafood products in the world marketplace and provide a premium product year-round.

Mariculture is new to Alaska. The permitting process is complex due to the number of agencies that oversee aquatic farming, i.e., Fish and Game, Environmental Conservation, Natural Resources and Governmental Coordination. With cooperation from these entities, this industry, which has proven extremely successful in other states, can certainly enhance economic development in our coastal communities with year-round employment for farmers and processors.

In a good faith effort to encourage good relationships between government agencies and the industry, HB 208 is being introduced as companion legislation to Senator John Torgerson's SB141.

HB 208 requires the Department of Natural Resources to offer public leases on 60 suspended shellfish sites, 20 clam sites and 10 geoduck sites. These lease sites are in addition to those already permitted. Security bonds must be posted according to the value of the product on-site and will be returned upon termination of the lease. Farmers must abide by the sustained yield principle of management when harvesting the wild stock. The Commissioner of DNR must solicit nominations from industry for sites that do not interfere with established commercial, subsistence or personal use.

HB208 is the means for encouraging the state to develop another resource that will add economic diversity to our coffers -- while protecting the right of Alaskans to harvest a common property resource.

## QUTEKCAK SHELLFISH HATCHERY

PO Box 369  
101 Railway Avenue  
Seward, AK 99664  
907-224-5181 fax 224-5282  
[qshatch@arctic.net](mailto:qshatch@arctic.net)

February 28, 2002

Dear Representative Scalzi,

On behalf of the Qutekcak Native Tribe and the hatchery, I would like to express our support for HB-208, and our appreciation for your sponsoring this important legislation.

The economics of coastal communities have been negatively impacted in the recent past for a variety of reasons too numerous to recount here. What's important is to look for possible solutions, and we feel the shellfish farming industry has demonstrated the potential to bring needed economic diversity to these communities. That potential is enhanced due to the fact that many of the individuals who have been hardest hit are commercial fishermen who already possess many of the necessary skills and equipment.

Over the past few years we have witnessed an increased awareness of this industry's potential in Alaska, and have managed to dispel some perceptions that draw inaccurate parallels between finfish farming and shellfish farming. We have not been as successful in streamlining the permitting process in a way that will allow the industry to reach the "critical mass" necessary to support the hatchery as our research nears completion and the funding for that research needs to be replaced by marketing the developed product.

We recognize that there is no magic wand, and that the proper course for our industry is incremental and steady improvements in regulation and understanding, and in further demonstrating the economic benefits of the industry. This legislation represents an important step along that course of improvement by making available sites that will increase our customer base. We are cognizant that some investment in the form of agency budgets will be necessary on the State's part to make this legislation work, but are confident that we can provide returns over time on that investment many times over.

Thank you for your support and best regards,

Ron Long,  
Director

**Letters of Support**



Rodger Painter, vice president  
P.O. Box 20704 Juneau, AK 99802  
Phone/Fax: (907) 463-3600  
rodgerpainter@hotmail.com

February 11, 2002

Senator John Torgerson  
State Capitol, Room 427  
Juneau, AK 99801-1182

Dear Senator Torgerson:

After carefully considering your comments on our proposed "aquaculture development zone" concept, we have decided that your approach on Senate Bill 141 is superior. We'd like to work closely with you and Rep. Scalzi in getting the legislation approved this session.

There is one amendment to SB 141 that we believe is vital to accomplishing the intent of the legislation: removal of the section on lease valuation. Here's the language we'd like to have deleted:

**In determining the fair market value of a lease for an aquatic farming site where shellfish indigenous to the site are cultured, the department shall consider the value of the harvestable shellfish resource on the site and the potential productivity of the site for cultured shellfish.**

Here's our rationale for removal of the language:

- Adoption of regulations by ADF&G subsequent to development of SB 141 has effectively rendered this section moot. Under current ADF&G procedures, the harvestable "standing stock" of native shellfish on an aquatic farm site must be harvested under commercial fishing permits prior to transfer of the site to the applicant. In addition, ADF&G policies prohibit applicants from obtaining sites with significant numbers of wild geoducks. Insertion of this language could confuse the validity of these practices.
- SB 141 also contains language codifying current ADF&G regulations and permit conditions requiring growers to replace standing stocks prior to relinquishing the site. The practical effect of putting both sections into law would be to require growers to pay for standing stocks twice, in addition to paying the state the same fisheries business tax rates of commercial fishermen AND lease fees for use of state land and waters.
- The existing language could create concerns for growers attempting to farm mussels and other species not subject to commercial fisheries. If the shellfish is not subject to commercial fisheries and we have a great abundance of the species, the state shouldn't create disincentives for utilizing surplus natural resources.
- The final clause of the section includes "potential productivity of the site" as a reason for increasing lease valuations. ASGA has objected strongly to this

language in ADF&G regulations and we will seek to have it removed when a more friendly administration takes office. The "potential productivity" of a site is an extremely elusive concept that is extremely troublesome for the industry.

- Alaska already has some of the highest tidelands lease fees for aquatic farm sites of any jurisdiction in North America, and we have been attempting to convince DNR to bring them more in line with our competitors. The existing language in SB 141 has the potential for increasing existing lease fees and moving us away from our goal.

After discussing your intent behind SB 141, we have become convinced it is a very good approach to moving the industry forward. DNR confirms the sites will remain "in the bank" following the initial offering and that it is possible to obtain annual offerings or even an over-the-counter approach. DNR also says it will be possible to divide a large site between two or more applicants.

We were unaware of these attributes of the state's land disposal process. We appreciate your vision in putting together this package and apologize for taking so long to get solidly behind the legislation. We look forward to working with you and Rep. Scalzi in getting SB 141 approved during this legislative session.

Sincerely,

**Rodger Painter**

c.c. Rep. Drew Scalzi  
Sen. Robin Taylor  
Rep. Lesil McGuire



Rodger Painter, vice president  
P.O. Box 20704 Juneau, AK 99802  
Phone/Fax: (907) 463-3600  
rodgerpainter@hotmail.com

February 20, 2002

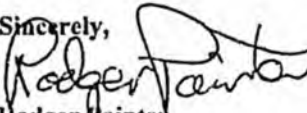
Honorable John Torgerson  
State Capitol, Suite 427  
Juneau, AK 99801-1182

Dear Senator Torgerson:

Your efforts to create a "bank" of aquatic farm sites are greatly appreciated by aquatic farmers throughout the state. The committee substitute for SB 141 you have developed has made good bill even better, and we are enthusiastic about working with you to move it through the process this year.

We are particularly grateful for the changes in the committee substitute. We believe SB 141 represents a wise investment in creating new economic development opportunities in coastal Alaska with the use of one of the state's most abundant natural resources. What a better way to bolster the sagging economies of coastal regions than promote an environmentally friendly industry supporting year-round jobs.

We believe this approach to aquaculture development may become a model for the rest of the country. We again thank you.

Sincerely,  
  
Rodger Painter  
Vice President

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# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL HEALTH  
DIRECTOR'S OFFICE  
555 CORDOVA STREET  
ANCHORAGE, ALASKA 99501  
<http://www.state.ak.us/dec/deh>

Telephone: (907) 269-7644  
Fax: (907) 269-7654  
e-mail: [Janice\\_Adair@envircon.state.ak.us](mailto:Janice_Adair@envircon.state.ak.us)

March 1, 2002

The Honorable Drew Scalzi  
Alaska House of Representatives  
Room 13, Capitol Building  
Juneau, AK 99801

Re: HB 208, an Act relating to aquatic farming of shellfish

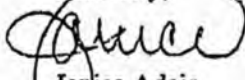
Dear Representative Scalzi:

Enclosed please find a copy of a letter I recently sent to Senator Torgerson regarding SB 141 which, as you know, is the companion bill to yours referenced above.

Although the Department of Environmental Conservation (DEC) has now submitted zero fiscal notes on both pieces of legislation, it is important that everyone understand that any shellfish sites must be certified by DEC under the National Shellfish Sanitation Program (NSSP) before the product can be sold in commerce. We are required by both state law (AS 17.20.005(6)) and federal law to comply with the NSSP. There are significant costs associated with certification, some of which are currently borne by the farmers themselves. The rest is covered in DEC's operating budget. Should either of these bills pass, down the road there will be increased costs to DEC for this certification. In the interest of full disclosure, I wanted you and the rest of the committee members to know that.

I do not plan to be on line for the hearing on HB 208 unless you'd like me to be available to answer questions, which I would be happy to do. You or your staff can reach me at 269-7644 or via email at [Janice\\_Adair@envircon.state.ak.us](mailto:Janice_Adair@envircon.state.ak.us) to let me know.

Sincerely,



Janice Adair  
Director

Enclosure:

- Letter to Senator Torgerson dated February 28, 2002

*Safe Food, Safe Water, Healthy Communities*

**DEC Comments**

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL HEALTH  
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February 28, 2002

The Honorable John Torgerson  
Chairperson, Senate Resources Committee  
Room 427, Capitol Building  
Juneau, AK 99801

Re: SB 141, Shellfish Growing Areas

Dear Senator Torgerson:

I have had a chance to discuss the above-referenced legislation with Rodger Painter with the Alaska Shellfish Grower's Association. As you know, we did include a fiscal note on this bill because we interpreted "suitable" to mean certified under the National Shellfish Sanitation Program (NSSP).

While the definition of "suitable" was not discussed in any of the testimony on the bill that I heard, Rodger did point out some very legitimate problems with certifying an area so early in the process. Therefore, I will be submitting a zero fiscal note on the committee substitute when it arrives in the Senate Finance Committee. Certification under the NSSP normally takes place shortly before commercial harvesting begins. Although the industry currently pays for a part of the cost to certify growing areas and we would expect that to remain the case, there will be an increased cost to the department when certification of growing areas is required. However, from talking with Rodger, I believe those costs will be incurred after the time frame covered by the fiscal note form.

I hope our misunderstanding of the bill and the resultant fiscal note did not cause you any undue problems in moving this legislation, and please accept my sincere apologies if it did.

Sincerely,



Janice Adair  
Director

cc: Michele Brown, Commissioner

*Safe Food, Safe Water, Healthy Communities*

## Why Clam Farming?

Alaska has enormous potential as a supplier of littleneck clams, often called steamer clams, to the seafood market. Past and current efforts to develop a commercial fishery on the abundant clam resources of Alaska have resulted in limited harvest caused by logistics and economic problems associated with managing the fishery. At present, only Kachemak Bay has a commercial harvest of littleneck clams, and because of depleted stocks, the fishery is limited to only 25,000 pounds annually.

The topic of clam farming in Alaska first appeared as an agenda item at the 1987 4<sup>th</sup> Alaska Sea Grant Aquaculture Conference. With high worldwide consumer demand for steamer clams and short supply of littleneck clams for the Alaska seafood market, new and existing farms are eager to pursue clam farming.

In 1991, Alaska's original clam farmers were allowed to harvest clams only under commercial fisheries regulations of the Alaska Department of Fish and Game (ADF&G). The first official clam farms were permitted in 1993. Expecting broader interest in clam farming a conference, titled Broadening Shellfish Farming Opportunities in Alaska, was sponsored in 1996 by the ADF&G, the Alaskan Shellfish Growers Association, and the University of Alaska Marine Advisory Program. The purpose of the conference was to begin development of a regulatory program for on-bottom aquaculture in Alaska. At the conference, ADF&G representatives issued a clear statement that the department did not have the resources to manage a commercial clam fishery beyond that existing in Kachemak Bay and favored development of clam farming.

By the end of 1997, three aquatic farmers have obtained tidelands leases to farm littleneck clams in southeastern Alaska. Their combined 1998 harvest was 35,014 pounds of clams worth nearly \$87,535.

## What is Clam Farming?

Farming clams requires application of well established farming practices to an existing clam population that will increase the beach productivity and allow for a sustained harvest of the enhanced clam population. In Alaska, farming activities include:

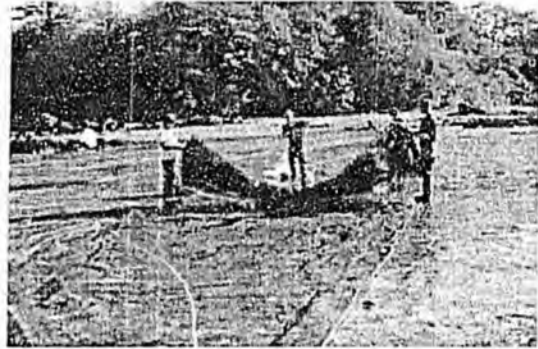
1. Regular inventories of standing stock and determination of the size composition of the clams.
2. Optimizing growth and production of clams by controlling their density by harvest planning, redistribution of seed from overstocked parts of the bed, and/or planting hatchery produced clam seed.
3. Reducing clam mortality by appropriate use of predator exclusion netting.
4. Maintaining the beach free of major deposits of large debris and improving the substrate quality.
5. Harvesting clams to maximize their value and marketability.
6. Complying with the required Alaska Department of Environmental Conservation water quality testing program, and marine toxin certification of farmed product.

Performance of these farming activities, is far beyond what is required of a commercial clam harvester.

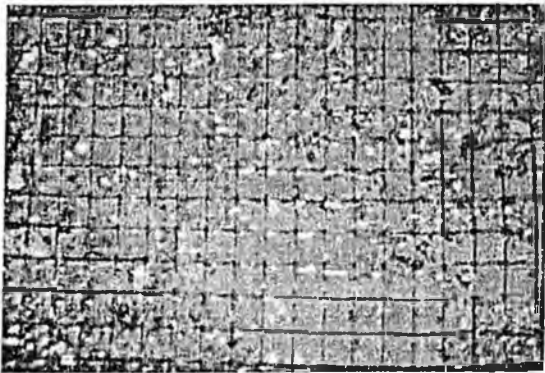
## What is a clam farm? A pictorial tour



Clam farming may require application of predator exclusion netting. In this picture, a trench has been dug to anchor the margins of the net.



Predator exclusion netting is rolled out over the prepared plot.



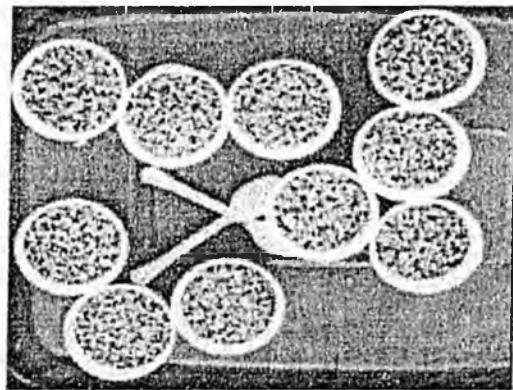
Predator netting is about 1" square mesh. It is not intended to exclude all predators. Crabs and starfish are the farmers primary concern. Birds can feed through the netting



Predator nets anchored and ready for seeding clams.



The farm plot after a few months. Predator netting is partially covered by sediment and algae growth.



Measured quantities of clam seed ready for planting the farm.



Planting clam seed over the netting. Clams are smaller than the net mesh and will dig themselves in as the tide covers them.



In Alaska, clam harvesting is done by hand.

## Impacts of clam farming

**Environmental** (Statements in parenthesis are editorial comments needed for clarification).

Mojica, R. and W.G. Nelson. 1993. Environmental effects of a hard clam (*Mercenaria mercenaria*) aquaculture site in the Indian River Lagoon, Florida. *Aquaculture*. Volume 113, page 326.

- "Measurements of water column nutrients and chlorophyll concentrations gave no indication of changes..."
- "sediment differences were not associated with significant changes in benthic dwelling organisms."
- "Differences in mobile macrofauna were minimal ..." (between aquaculture and natural sites)

Spencer, B.E., M.J. Kaiser, and D.B. Edwards. 1997. Ecological effects of intertidal Manila clam cultivation: observations at the end of the cultivation phase. *Journal of Applied Ecology*. Number 34. Page 451.

"Our results suggest that the biotic and abiotic changes caused as a result of clam cultivation are relatively benign compared to other forms of marine cultivation..."

Kaiser, M.J., I. Laing, S.D. Utting, G.M. Burnell. 1998. Environmental impacts of bivalve mariculture. *Journal of Shellfish Research*. Volume 17. Number 1. Page 63.

"...the benthic community within dredged plots was indistinguishable only 3 months after harvesting regardless of the scale of disturbance,..."

Brooks, K. 1996. Intensive clam culture and the environment. Proceedings of the conference: Broadening Alaska's shellfish farming opportunities: A conference and workshops focusing on public issues involved with the development of on-bottom culture of indigenous shellfish. University of Alaska Marine Advisory Program. Anchorage, Alaska. Page 41.

"Of all the forms of aquaculture, intertidal shellfish culture is undoubtedly the most benign. If you minimize encroachment on eel grass beds and find effective methods of predator control, the several hundred pages of literature reviewed in preparing this talk suggest only positive environmental affects associated with either intensive clam or oyster culture."

### **Economic impacts**

The current commercial harvest limit for littleneck clams in Kachemak Bay is 40,000 lbs. Local management has set the commercial harvest at 25,000 lbs having a market value at \$2.50/lb or \$62,500. Actual 1998 harvest was less than 20,000 lbs.

An aquatic farm can produce, with predator protection and seeding, about 10 times the biomass of clams as a natural population. By any definition, this level of production increase would be considered enhancing the clam population of the beach.

Aquatic farming in can produce an estimated conservative production of 12 harvestable clams per square foot per year. From a 10 acre plot, the annual harvest would be 435,000 lbs. worth approximately \$1.1 million.

#### **What is the market?**

##### Homer

- Lands End during the summer buys 6,000 lbs and had indicated that they could sell more than 20,000 lbs if more clams were available.
- His Catch Seafood, Homer, Alaska indicated a sales potential of over 40,000 lbs. annually.

##### Anchorage

- Favco, Anchorage's largest seafood wholesaler, estimates the Anchorage market demand for littleneck clams at over 1,000,000 lbs. annually.

##### Western Region of U.S. (Aquaculture situation outlook, Western Regional Aquaculture Center)

- "In 1997, it is estimated that over 5.4 million pounds of clams were produced at an estimate of over \$13.7 million." Farmers are converting oyster production into clam farms, and by 2002 production will increase to 7.7 million pounds

##### United States

- The long term trend (1988-1998) for clam landings showed an overall decrease, however, imports have increased.

##### Export market

- The long term trend of clam exports (1988-1998) have shown an increase of 196.16% from 661 metric tons to 1,958 metric tons.
- Recently, exports of clams have been somewhat variable depending on the economic circumstances in Asia. In 1998 exports rose 8% while in first half of 1999, exports declined by 15%. We do know, however, that water quality in Asia is a great concern, and shellfish grown in clean water will have an economic advantage.

#### **Effect clam farming on other clam fisheries in Alaska**

- There is no littleneck clam fishery outside of Kachemak Bay
- The Kachemak Bay clam commercial fishery is very limited
- In a hearing before the Alaska Legislature: House Resources Standing Committee Mr. Kevin Duffy, acting deputy director of the ADF&G Division of Commercial Fisheries Management and Development was asked by Representative Harris.

Rep Harris: "Is there anything about this industry that has a negative effect on any other seafood industries that it works around or that it's processed around?"

Kevin Duffy: "The clear answer to that is no."

POSTAGE PAID

To: Respective Legislators:  
Regarding SB 104 & HB 208  
"An act relating to the aquatic farming of shellfish"

3/13/02

From: Gary R. Zaugg  
519 Pittenger St.  
Ktn, Ak. 99901.  
(907) 225-2089

MAR 13 2002

Dear Senators & Representatives,

During recent weeks I have watched the respective bills move through committees'. I have listened to the public comments of support from legislators, administrators, sections of industry and the likes. With all due respect to the individuals supporting this bill, you are attempting to fix a part of the aquatic farm program that is not broken. There is no problem with the current review process under the Alaska Coastal Management Plan, Best Interest Finding and subsequent lease program. There is no need to identify areas that are 'suitable' for aquaculture because that is already being done, by industry, within the current review process under the concepts of "conflicting use". The current process may not be perfect but I can guarantee you, all the pieces are in place and this part of the process is working.

I feel I am in a unique position to comment on this issue. First, I am a principle litigant in the administrative appeal surrounding the 1999 aquatic shellfish application period. The 1999 application period, which resulted in the appeal, was a fiasco for everyone. But it was only because of a "conflicting use" concern by ADF&G regarding utilization of "natural set" stock by aquatic farmers within the boundaries of a farm. This issue will be resolved by the Supreme Court within one year and the results will be superimposed on top of the current mariculture program. I would like to ask you this. What is going to happen if the Supreme Court rules that aquatic farmers are a legitimate "commercial user group"? No less or no more a "commercial user group" than the limited entry fishers? In other words there will be no "preferential use" given to limited entry fishers resulting in a "conflicting use", over aquatic farmer on "natural set" stocks that have never been utilized in the history of modern man. Will this current legislation hold any water in this situation. The answer is no and there is no deference given to this highly probable situation in this bill.

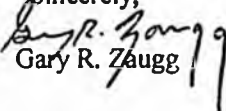
Second, I am one of six individuals in the state who will be issued permits for on bottom geoduck mariculture within the next few weeks. These permits are being issued after going through the 2001 aquatic shellfish application period. The 2001 application period went well, and at this time I believe no appeals are pending. My current site is inside the boundaries of a "limited entry fisheries". How is that? You might ask. The answer is simple and is also why the current system works. The answer is; there is no current "conflicting use" because the limited entry fisheries, under sustainable yield, has harvested the natural set stocks to 30% of the original volume and has been shut down by regulations of the Board of Fish. Does the system work? You bet it does. I would further suggest the system will always work, because under the Alaska Coastal Management Plan Review process if there is a legitimate "conflicting use" it is dealt with under the rule of law. This bill would change the way these established processes work. How can ADF&G guarantee an applicant prior to undergoing the ACMP review process that the application will be approved? Is the ADF&G going to take into consideration public, municipal and federal concerns prior to telling DNR what sites it can offer for competitive bidding for lease? Is the ADF&G going to become the overseer of the Alaska Coastal Management Plan? Is the DNR willing to be put in the position of being sued because it offered sites that have no guarantee of being approved under the ACMP? Would the applicant have to go through the ACMP process? I would caution you here as "conflicting use" is not up to just the ADF&G.

Instead of fixing something that's not broken the legislature needs to address the "conflicting use" issue of "natural set" within the boundaries of an approved farm. How is the ADF&G to deal with "natural set" within the boundaries of a farm? The legislature needs to instruct the ADF&G, within the current statutes, to review applications that contain "natural set" stock under a utilize and replace concept. It's just that simple. Aquaculture leases have this unique ability. So far the legislature has not exerted its **constitutional right** and in this case **constitutional obligation** to define what is acceptable to the administrative reviewers at the ADF&G. In my opinion unless the legislature recognizes aquatic farmers as a legitimate "user group" that has a right to utilize and replace "natural set" stock within the boundaries of an approved site for, among other things, the development of this industry, you are not doing your job. It is a mistake to leave this to the courts when this is well within your realm of authority.

As an aquatic farmer I am trying to **develop an industry**. I'm not asking for \$867,000 dollars of general fund money over two years to create another layer of questionable policy like the current bill. But I am purposing a business that in essence is asking you for a short-term loan of the resource. As legislators you have to be looking at ways to further the coastal community economies. Utilizing and replacing the resource to aid in the start up of these farms is an excellent concept that the industry can guarantee. It costs you nothing. Everyone knows that utilizing the resource is exactly what happens in the development of industry. But in this case we are proposing to replace the resource to 100% of its original volume at the termination of a lease. What other industry offers to replace what it uses? This language is already stipulated in the coastal consistency and the best interest finding that I have had sitting idle on my desk since 2000. Seven additional sites from 1999 are in the same position. The problem is we have no working operational permit from the ADF&G because ADF&G has no guidance from the legislator that the concept of utilize and replace the resource is a legitimate "use" approved by the legislature. The legislature needs to be clear to the agency that has raised a "conflicting use" concern by defining and incorporating a utilize and replace system within the boundaries of an aquatic farm lease. That is the only issue that should concern you at this time.

Thank you for your time.

Sincerely,

  
Gary R. Zaugg

**HB**

**216**

**HOUSE BILL NO. 216**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SECOND LEGISLATURE - FIRST SESSION**

**BY THE HOUSE RESOURCES COMMITTEE**

**Introduced: 3/26/01**

**Referred: House Special Committee on Fisheries, Resources**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the emergency order authority of the commissioner of fish and game  
2 and to meetings of the Board of Fisheries."

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

4 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 **INTENT.** It is the intent of the legislature to

7 (1) clarify the roles of the Board of Fisheries and the commissioner of fish and  
8 game and to recognize that the commissioner is better able to respond quickly to changing  
9 conditions on the fishing grounds by authorizing the commissioner to supersede a regulation  
10 or fishery management plan adopted by the board as necessary to assure that fishery resources  
11 are managed for sustained yield;

12 (2) formalize the procedures for setting the agenda for meetings of the Board  
13 of Fisheries in order to provide adequate notice and to avoid surprises and inconvenience to  
14 the public that is affected by the decisions of the board;

1           (3) maintain the customary practice by which the Board of Fisheries may  
2 change its meeting agenda to correct errors in regulations, to address unforeseen  
3 consequences of regulations, and to address fishery conservation issues, but to further require  
4 that an agenda change to address a fishery conservation issue be subject to the determination  
5 by the commissioner of fish and game that a conservation issue does exist and that the issue  
6 cannot be resolved under current regulations.

7       \* Sec. 2. AS 16.05.060 is amended by adding a new subsection to read:

8           (d) The commissioner, as necessary to manage fishery resources for sustained  
9 yield, may exercise authority under this section to supersede a regulation or fishery  
10 management plan adopted by the Board of Fisheries.

11       \* Sec. 3. AS 16.05.300 is amended by adding a new subsection to read:

12           (c) The Board of Fisheries shall adopt regulations establishing procedures for  
13 proposing, adopting, and amending the agenda for meetings of the board. The board  
14 may amend an adopted agenda in response to a request to consider a matter that is not  
15 on the adopted agenda in order to (1) address a fishery conservation issue if the  
16 commissioner concurs in the determination of the board that a fishery conservation  
17 issue exists and that the issue cannot be resolved under current regulations, (2) correct  
18 an error in a regulation adopted by the board, or (3) address an unforeseen  
19 consequence on a fishery of a regulation adopted by the board. The board may not  
20 consider a request for an amendment of an adopted agenda unless the request for the  
21 amendment is accompanied by substantial evidence that the request complies with this  
22 subsection and the regulations adopted by the board.

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CLARION

Web posted Tuesday, August 22, 2000

## Pink fishery could be considered today

By DOUG LOSHBAUGH  
Peninsula Clarion

The Board of Fisheries could consider today whether to give upper Cook Inlet commercial fishers the chance to harvest a bumper run of pink salmon.

The United Cook Inlet Drift Association has been asking the Department of Fish and Game since Aug. 9 to reopen commercial fishing to take advantage of the bumper run of pink salmon, said Bob Merchant, the group's president.

That idea surfaced again Friday, when the head of Gov. Tony Knowles' Disaster Policy Cabinet visited Soldotna to hear how this year's dismal sockeye salmon run has affected the Kenai Peninsula and how the state can help.

"Let us go fishing. I could be fishing silvers, humpies and dogs right now and not have to come in here and beg for money," Homer drift skipper Wes Humbyrd told Maj. Gen. Phil Oates, head of the disaster team.

"We can't fish anything but sockeyes anymore. We used to make ends meet if at least we could fish something besides sockeyes later on."

Oates asked Jeff Fox, area biologist for the Division of Commercial Fisheries, to call Department of Fish and Game Commissioner Frank Rue. Returning, Fox said Rue could open commercial fishing, but would not.

"The reason is, we're dealing with pinks and chums vs. silvers that are allocated to someone else," Fox said.

**'We went to Fish and Game and asked for emergency order authority because there was a huge run of fish coming in. The time to do it is way past.'**

**—Bob Merchant,  
president of  
United Cook Inlet  
Drift Association**

08/22/01

STORY BY JENNIFER FOX, FOR GMA.

He said Rue advised commercial fishers to petition the board. Friday afternoon, setnet fisher Paul Shadura and driftnet skipper Steve Tvenstrup did just that.

Their petition asks the board to eliminate the Aug. 7 season closure for eastern inlet setnetters and the Aug. 9 closure for driftnetters, allow fishing for pink and chum salmon during the regularly scheduled weekly fishing periods and authorize the Department of Fish and Game to authorize one additional period each week by emergency order.

Diana Cote, executive director of the Board of Fisheries, said she faxed the petition to board members Monday morning. She planned to send them information about stock status, run timing and what is happening now on Cook Inlet as soon as she received that from Fish and Game.

Then, board members will vote whether the petition meets the criteria for an emergency meeting.

The criteria define an emergency as an unforeseen event that threatens a fish or game resource, or an unforeseen situation where a biologically allowable harvest would be precluded by a delay in regulatory action, and the resource would unavailable in the future.

Cote said that if the board agrees to meet, she expects to have teleconference sites in Soldotna, Anchorage and Juneau where the public can listen. The board would not take testimony, she said.

If it agrees to change the regulations, it could do so for this season only, until its regular fall 2001 meeting on Cook Inlet issues or permanently.

"Are there fish surplus to escapement needs? Yes," Fox said. "Do they have to do something quickly if they're going to do it? Yes."

The pink salmon run usually peaks about Aug. 15, he said. The peaks of the chum and coho runs likely also have passed.

Board chairman Dan Coffey said he wants to see Fish and Game's analysis before he casts his vote.

"I don't know anything about the abundance of pinks, or if you don't have a lot of chums, how you avoid harvesting them if you harvest pinks," he said.

Coffey said regulations the board adopted in February 1999 ban a commercial fishery for Cook Inlet pink salmon until there is a pink salmon management plan.

Fish and Game has no means to count Cook Inlet pinks and chums, he

3  
said.

"We want management plans so that we don't fish strong stocks to the detriment of weak stocks," he said. "My question is, where is the management plan we talked about 18 months ago? We still don't have enumerators. The only information we have is anecdotal. We see lots of jumpers. My question is, where is the information? I want that data from the department."

It long has been known that even-year upper inlet pink salmon runs are strong, he said, so it is legitimate to ask whether the present situation is an emergency.

He also questioned why the emergency petition did not come until Friday.

Fox said that before the board set the Aug. 9 closure, 30 to 50 driftnet boats used to fish until early September. When the sockeye run was very weak, more boats would fish late.

Now, though, many drift fishers already have pulled their boats from the water.

"Meanwhile, you're only looking at making a few hundred dollars a day past expenses," Fox said. "You put four or five of those together, and you've made \$1,000."

Merchant guessed that just 10 or 20 boats would fish pinks, now. Many processors already have laid off their crews.

"That's why we tried to get this done on the 9th," he said. "We went to Fish and Game and asked for emergency order authority because there was a huge run of fish coming in. The time to do it is way past."

Merchant said UCIDA asked Fish and Game first because its members did not believe there was time to petition the board. Hundreds of thousands of pink salmon can enter the rivers in a single day, and there is no time call seven Board of Fisheries members, he said.

"That's why the commissioner has the statutory authority to open it," he said.

UCIDA members did not believe reopening the commercial fishery would conflict with the board's allocation of cohos to sport fishers, since the strong run of cohos should sustain the incidental take by drift fishers targeting pinks, Merchant said.

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2

pitchfork tossing the carcasses back into the water.

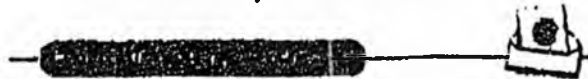
Bower, a former member of the state Board of Fisheries, advocates fertilizing the river with dead fish. On Friday he was sounding a lot like Martha Stewart: "When I hit 'em with a pitchfork, the flesh breaks out and clouds the water, and that's a good thing, because of the nutrients it's putting in the water."

Research by the U.S. Forest Service's Pacific Northwest Research Station in Juneau suggests that decomposing salmon play a key role in maintaining a healthy fishery. They promote the growth of algae and bacteria, which feed aquatic insects, which in turn feed juvenile salmon. The carcasses also feed bears, eagles and other animals, and fertilize shore plants that shelter young fish.

But there's no denying the smell. Meehan said her family's just waiting for freeze-up to provide some relief.

"We laugh about paying for this fine riverfront property," she said.

Discuss this story in our Discussion Forum



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**CS FOR HOUSE BILL NO. 216(RES)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SECOND LEGISLATURE - FIRST SESSION**

**BY THE HOUSE RESOURCES COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): HOUSE RESOURCES COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the emergency order authority of the commissioner of fish and game**  
2 **and to meetings of the Board of Fisheries."**

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

4 **\* Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 **FINDINGS AND INTENT.** (a) The legislature finds that

7 (1) in rare instances, circumstances may require changes to fishery  
8 management regulations outside of the process prescribed in the Joint Board Petition Policy  
9 adopted by the Board of Fisheries and the Board of Game;

10 (2) emergencies should be held to a minimum and rarely be found to exist;

11 (3) a fish resource emergency is

12 (A) an unforeseen event that threatens fish resources; or

13 (B) an unforeseen resource situation in which a biologically allowable  
14 resource harvest of a fish resource would be precluded by delayed regulatory action

1 and the delay would significantly burden the public because the fish resource would be  
2 unavailable in the future;

3 (4) the ability to respond quickly to changing conditions on the fishing  
4 grounds is often necessary for efficient use of fish resources and to avoid undue burden on the  
5 public;

6 (5) the commissioner of fish and game is, in certain circumstances, better able  
7 to respond quickly to changing conditions on the fishing grounds.

8 (b) The legislature also finds that

9 (1) public participation in the Board of Fisheries process for developing  
10 fishery management regulations is an important element of the process;

11 (2) members of the public rely on the predictability of the Board of Fisheries  
12 process in order to insure an opportunity to participate in the development of regulations that  
13 are important to the public;

14 (3) public participation in the Board of Fisheries process would be enhanced  
15 and surprises and inconvenience to the public would be avoided if the procedures for setting  
16 the agenda of the Board of Fisheries were formalized.

17 (c) It is the intent of the legislature to

18 (1) clarify the roles of the Board of Fisheries and the commissioner of fish and  
19 game and to recognize that the commissioner is better able to respond quickly to changing  
20 conditions on the fishing grounds by authorizing the commissioner to supersede a regulatory  
21 action of the board as necessary to assure efficient management of fishery resources;

22 (2) formalize the procedures for setting the agenda for meetings of the Board  
23 of Fisheries in order to provide adequate notice and to avoid surprises and inconvenience to  
24 the public that is affected by the decisions of the board;

25 (3) maintain the customary practice by which the Board of Fisheries may  
26 change its meeting agenda to correct errors in regulations, to address unforeseen  
27 consequences of regulations, and to address fishery conservation issues, but to further require  
28 that an agenda change to address a fishery conservation issue be subject to the determination  
29 by the commissioner of fish and game that a conservation issue does exist and that the issue  
30 cannot be resolved under current regulations.

31 \* Sec. 2. AS 16.05.060 is amended by adding a new subsection to read:

1 (d) Notwithstanding (a) of this section, the commissioner may, on the basis of  
2 new information, supersede a regulatory decision of the Board of Fisheries by  
3 exercising authority under this section to allow or extend a fishing season to prevent  
4 the loss of a biologically allowable resource harvest that would otherwise be precluded  
5 by delayed action and be unavailable in the future. The commissioner may exercise  
6 authority under this subsection only upon a determination that the basis for the board's  
7 regulatory provisions can be adequately addressed. This authority may not be used for  
8 the purpose of summarily changing the allocation of fishery resources among users  
9 established by regulation. An emergency order issued under this subsection does not  
10 supersede or amend regulatory decisions by the board beyond the scope or time set out  
11 in the emergency order. This subsection does not amend or repeal the process of  
12 petitions for regulatory proposals to the Board of Fisheries under AS 44.62  
13 (Administrative Procedure Act) or regulations adopted jointly by the Board of  
14 Fisheries and the Board of Game.

15 \* Sec. 3. AS 16.05.300 is amended by adding a new subsection to read:

16 (c) The Board of Fisheries shall adopt regulations establishing procedures for  
17 proposing, adopting, and amending the agenda for meetings of the board. The board  
18 may amend an adopted agenda in response to a request to consider a matter that is not  
19 on the adopted agenda in order to (1) address a fishery conservation issue if the  
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24 consider a request for an amendment of an adopted agenda unless the request for the  
25 amendment is accompanied by substantial evidence that the request complies with this  
26 subsection and the regulations adopted by the board.

*Alaska State Legislature*

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35477 Suite 101-B Spur Hwy  
Soldotna, Alaska 99669  
Phone 907-260-5236  
Fax 907-260-3044

*Representative Ken Lancaster*  
*District 8*

April 2, 2001

House Resources Committee  
Capitol Building  
Juneau, AK 99801

Dear Honorable Committee Members:

I would like to document my support for House Bill 216, relating to the emergency order authority of the Commissioner of the Department of Fish & Game, and to meetings of the Board of Fisheries.

The piece of legislation documents the necessity to clarify the commissioner's authority to expeditiously issue emergency orders to preserve the state's fisheries resources. It would also better define the role of the Board of Fisheries and its limitations.

I believe House Bill 216 would enhance the roles of Alaska's fisheries authorities to better serve the public.

Cordially,

A handwritten signature in black ink, appearing to read "Ken Lancaster".

Ken Lancaster, Representative

E-Mail: [Representative\\_Ken\\_Lancaster@legis.state.ak.us](mailto:Representative_Ken_Lancaster@legis.state.ak.us)

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# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 216  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title: Relating to emergency order authority of the BRU: Commissioners Office  
commissioner of fish and game Component: Commissioners Office  
 Sponsor: House Resources Committee  
 Requester: House Resources Committee Component Number: 2175

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The impact of adoption of HB 216 on the department is difficult to quantify. It is unknown how many requests to supersede regulations or management plans may come to the commissioner, how complicated the issues involved might be, and how many of the requests might be approved or denied. The Commissioner's Office, the Division of Commercial Fisheries, the Division of Sport Fish, and the Boards Support Section may all have additional demands placed upon them to properly evaluate requests and build a record for defending actions taken.

Prepared by: Gordy Williams Phone 465-6143  
 Division: Commissioners Office Date/Time 4/2/01 9:00 AM  
 Approved by: Commissioner Frank Rue Date 04/02/2001  
 Agency: Department of Fish and Game

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HB216

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**CLARION**

Web posted Tuesday, August 22, 2000

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By DOUG LOSHBAUGH  
 Peninsula Clarion

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**--Bob Merchant, president of United Cook Inlet Drift Association**

118519

PROVIDED TO PUBLIC BY: A. VAN DER...

He said Rue advised commercial fishers to petition the board. Friday afternoon, setnet fisher Paul Shadura and driftnet skipper Steve Tvenstrup did just that.

Their petition asks the board to eliminate the Aug. 7 season closure for eastern inlet setnetters and the Aug. 9 closure for driftnetters, allow fishing for pink and chum salmon during the regularly scheduled weekly fishing periods and authorize the Department of Fish and Game to authorize one additional period each week by emergency order.

Diana Cote, executive director of the Board of Fisheries, said she faxed the petition to board members Monday morning. She planned to send them information about stock status, run timing and what is happening now on Cook Inlet as soon as she received that from Fish and Game.

Then, board members will vote whether the petition meets the criteria for an emergency meeting.

The criteria define an emergency as an unforeseen event that threatens a fish or game resource, or an unforeseen situation where a biologically allowable harvest would be precluded by a delay in regulatory action, and the resource would be unavailable in the future.

Cote said that if the board agrees to meet, she expects to have teleconference sites in Soldotna, Anchorage and Juneau where the public can listen. The board would not take testimony, she said.

If it agrees to change the regulations, it could do so for this season only, until its regular fall 2001 meeting on Cook Inlet issues or permanently.

"Are there fish surplus to escapement needs? Yes," Fox said. "Do they have to do something quickly if they're going to do it? Yes."

The pink salmon run usually peaks about Aug. 15, he said. The peaks of the chum and coho runs likely also have passed.

Board chairman Dan Coffey said he wants to see Fish and Game's analysis before he casts his vote.

"I don't know anything about the abundance of pinks, or if you don't have a lot of chums, how you avoid harvesting them if you harvest pinks," he said.

Coffey said regulations the board adopted in February 1999 ban a commercial fishery for Cook Inlet pink salmon until there is a pink salmon management plan.

Fish and Game has no means to count Cook Inlet pinks and chums, he

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said.

"We want management plans so that we don't fish strong stocks to the detriment of weak stocks," he said. "My question is, where is the management plan we talked about 18 months ago? We still don't have enumerators. The only information we have is anecdotal. We see lots of jumpers. My question is, where is the information? I want that data from the department."

It long has been known that even-year upper inlet pink salmon runs are strong, he said, so it is legitimate to ask whether the present situation is an emergency.

He also questioned why the emergency petition did not come until Friday.

Fox said that before the board set the Aug. 9 closure, 30 to 50 driftnet boats used to fish until early September. When the sockeye run was very weak, more boats would fish late.

Now, though, many drift fishers already have pulled their boats from the water.

"Meanwhile, you're only looking at making a few hundred dollars a day past expenses," Fox said. "You put four or five of those together, and you've made \$1,000."

Merchant guessed that just 10 or 20 boats would fish pinks, now. Many processors already have laid off their crews.

"That's why we tried to get this done on the 9th," he said. "We went to Fish and Game and asked for emergency order authority because there was a huge run of fish coming in. The time to do it is way past."

Merchant said UCIDA asked Fish and Game first because its members did not believe there was time to petition the board. Hundreds of thousands of pink salmon can enter the rivers in a single day, and there is no time call seven Board of Fisheries members, he said.

"That's why the commissioner has the statutory authority to open it," he said.

UCIDA members did not believe reopening the commercial fishery would conflict with the board's allocation of cohos to sport fishers, since the strong run of cohos should sustain the incidental take by drift fishers targeting pinks, Merchant said.

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pitchfork tossing the carcasses back into the water.

Bower, a former member of the state Board of Fisheries, advocates fertilizing the river with dead fish. On Friday he was sounding a lot like Martha Stewart: "When I hit 'em with a pitchfork, the flesh breaks out and clouds the water, and that's a good thing, because of the nutrients it's putting in the water."

Research by the U.S. Forest Service's Pacific Northwest Research Station in Juneau suggests that decomposing salmon play a key role in maintaining a healthy fishery. They promote the growth of algae and bacteria, which feed aquatic insects, which in turn feed juvenile salmon. The carcasses also feed bears, eagles and other animals, and fertilize shore plants that shelter young fish.

But there's no denying the smell. Meehan said her family's just waiting for freeze-up to provide some relief.

"We laugh about paying for this fine riverfront property," she said.

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