

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2008 / 2

11569 HOUSE RESOURCES

Department of Environmental Conservation
NPDES Primacy
Workgroup Process

Background

Senate Bill 326 enacted by the 22nd Alaska Legislature directed the Alaska Department of Environmental Conservation (DEC) to evaluate the potential benefits and consequences of the state assuming primacy of the NPDES program. The Department released "*State of Alaska's Assumption of the National Pollutant Discharge Elimination System - A Report to the Alaska Legislature*" in January 2004.

Subsequent to release of the report, an advisory workgroup was formed to examine further the concerns, costs and benefits of state primacy from the permittee perspective and to recommend whether to proceed toward primacy.

Six meetings were held during the period November 2004 through January 2005 with representatives from NPDES permittee groups as well as the EPA. The meetings were held in Anchorage and were open to the public. Public notice of the schedule of meetings was provided. Meetings were informal and attendees who were not official members of the workgroup freely participated. Information, handouts, attendance lists and agendas were posted on an NPDES Primacy web site at http://www.state.ak.us/dec/water/npdes/work_group.htm.

Representation

The workgroup included one representative from each of the following major categories of NPDES-regulated dischargers:

- Oil and gas industry sector
- Mining industry sector
- Seafood industry sector
- Timber industry sector
- Construction industry sector
- Large community wastewater permitting
- Small community/tribal wastewater permitting

The EPA, as the current NPDES authority, had a special role and attended meetings to provide perspective and guidance on federal requirements and constraints.

**Department of Environmental Conservation
NPDES Primacy
Workgroup Process**

Workgroup Report

Workgroup proceedings, findings and recommendations were captured in a report: *National Pollutant Discharge Elimination System Primacy Workgroup Report* (2005). That report is available on the Department's web site.

Workgroup Recommendations

The majority of the workgroup recommended or did not object to Alaska's assuming primacy for the NPDES permit program. The workgroup's findings included the following recommendations for a state-run NPDES program.

1. Opportunity for permittee review of the draft and proposed final permits prior to issuance.
2. Only legally required monitoring and reporting requirements included in a permit.
3. Continued use of the fee structure established in HB 361; fees based on direct permitting and compliance costs only.
4. Continued use of contractors for technical expertise and during workload surges.
5. Sufficient and consistent funding to ensure a financially stable NPDES program.
6. Use of the existing state appeals process where permit terms and conditions are not automatically stayed upon appeal.
7. Submit a primacy application to EPA by June 2006.
8. Continued permittee participation to help develop the program and the primacy application.
9. Ensure permit consistency where facilities fall under both state and federal jurisdiction.
10. Senior DEC management review of permits conditions that could set precedents.
11. Develop formal training plans for DEC permit and compliance staff.

Department of Environmental Conservation
NPDES Primacy
Workgroup Findings

Background

A workgroup including representatives from each of the major categories of NPDES-regulated dischargers in Alaska met in a series of six day-long meetings between November 2004 and January 2005. Workgroup proceedings, findings and recommendations were captured in a report: *National Pollutant Discharge Elimination System Primacy Workgroup Report (2005)*. That report is available on the DEC web site.

A key part of the group's work was to identify the benefits, costs and concerns associated with the State of Alaska assuming primacy for the NPDES permitting program.

Identified Benefits

The workgroup identified potential benefits of a state NPDES Program:

1. Time and cost savings to permit major new facilities due to working with one, instead of two regulatory agencies and predictable compliance and enforcement programs.
2. Permit requirements tailored to Alaskan conditions by permit writers familiar with Alaska's environment.
3. An appeals process where filing of an appeal on a new permit does not automatically stay the entire permit.
4. Replacing time-consuming, formal consultation processes with faster, less formal processes.
5. Alaska-specific guidance documents.
6. The use of on-line permit applications, electronic data submittal and other efficiency measures.

Identified Concerns

The workgroup identified potential concerns of a state NPDES Program:

1. Permit fees are expected to increase on average by a factor of 1.8.
2. The state might not direct appropriate resources and funding to adequately implement the Program.

**Department of Environmental Conservation
NPDES Primacy
Workgroup Findings**

3. NPDES primacy could be temporary if future administrations or legislatures do not support a state program.
4. The state may not be able to hire and retain staff with the expertise to permit complex projects.
5. Responsibility to implement the NPDES program may come at the cost of other programs and priorities.
6. A state program may not provide the degree of certainty currently in place at EPA.

Department of Environmental Conservation
NPDES Primacy
Overview

Background

Section 402 of the Clean Water Act (CWA) requires that all discharges to surface waters be permitted under the National Pollutant Discharge Elimination System (NPDES) permit program.

The CWA intends for states to implement (to have "primacy" for) the NPDES program with the Environmental Protection Agency (EPA) acting in an oversight role.

Forty-five states have primacy for the NPDES program. The four other states, aside from Alaska, that do not have NPDES primacy are Idaho, New Mexico, New Hampshire and Massachusetts.

EPA is the NPDES authority in Alaska. DEC plays a secondary role "certifying" that EPA permits meet state water quality standards and issuing state permits for very small discharges that EPA cannot get to.

If Alaska had NPDES primacy, DEC would take over discharge permitting authority including responsibility for issuing and monitoring compliance with CWA permits.

NPDES Program Components

There are six components to the NPDES permit program. It is proposed that the State assume responsibility for the first five.

1. *NPDES Permitting* which amounts to developing, issuing, modifying and renewing the permits.
2. *Storm water program* which consists of permitting stormwater discharges from construction and industrial activities as well as permitting the stormwater collected and discharged by large municipal storm sewer systems.
3. *Compliance and Enforcement* which includes monitoring compliance with permit terms and conditions and taking enforcement action when necessary.
4. *Federal Facilities* which involves permitting of discharges from federally-owned facilities, such as Department of Defense installations.
5. *Pre-treatment Program* which consists of regulating highly toxic discharges into sewerage systems.
6. *Biosolids Management Program* which regulates the disposal of sewage treatment byproducts, or "sludge."

Department of Environmental Conservation
NPDES Primacy
Overview

The Biosolids component is a small component of the NPDES program in Alaska. States have the option whether to assume primacy for this part of the program.

NPDES Primacy Application

Alaska must submit an application to EPA to assume NPDES primacy. That application includes:

1. A *letter from the Governor* requesting approval of the state's application;
2. A *program narrative* that describes how the state will issue permits, ensure permit compliance, perform enforcement, fund the program, track issued permits and enforcement actions, and submit periodic reports to EPA;
3. An *Attorney General statement* of legal authority that confirms the state's laws and regulations are sufficient to implement the NPDES program;
4. A signed *Memorandum of Agreement (MOA)* between the state and EPA that establishes timeframes for the state to assume authority for the program components over a five-year period; and
5. A *compliance assurance agreement* developed between the State and EPA that describes the methods the State will employ to assure that permittees comply with the terms and conditions of their permits.

**ALASKA FOREST ASSOCIATION
111 STEDMAN #200
KETCHIKAN, AK 99901
907-225-6114**

March 1, 2005

Representative Jay Ramras, Co-Chair
House Resources Committee
Alaska State House of Representatives
State Capitol
Juneau, AK 99801

RE: Alaska Forest Association NPDES Primacy Testimony for 3-2-05 Hearing

Dear Representative Ramras:

The Alaska Forest Association supports the DEC proposal to manage the NPDES permitting program for Alaska. State Primacy for this permitting program will be beneficial in many ways, for instance:

1. Simplify the permitting process for our timber industry. We will be able to go to a single agency for both State and Federal permits. Further, we have much easier access to State DEC permitting staff than the EPA staff in Seattle or Alaska. For instance, it often takes several days to get a response to a phone call to the EPA, whereas the DEC normally responds immediately.
2. Replacing proscriptive time-consuming formal consultations with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service with a faster less formal process will decrease the time it takes to issue permits.
3. The DEC staff is more familiar with Alaska sites and conditions. This greatly reduces the amount of time needed to describe a project and the need for that project.
4. Applicants will be able to review draft permits and proposed final permits before they are issued. This will reduce the incidence of errors in permits.
5. The EPA makes some decisions based upon national policy, rather than local needs and conditions. For example, the use of Ward Cove for temporary storage of log rafts and the use of the Ward Cove ship mooring buoys was permitted by the State DEC two years ago, but the EPA, by policy, will not permit that activity until after a TMDL limit has been established for the cove. The EPA proposed limits are too severe to allow any reasonable activity; hence the TMDL is stalled as is the use of the cove.

Alaska Forest Assoc Support

6. The appeals process for permits is expected to be more efficient under State Primacy. For instance, under State Primacy there would be no automatic stay of a permit that is appealed; whereas, the EPA does allow an automatic stay. The automatic stay provision encourages antidevelopment groups to file appeals simply as a delaying tactic.

There is a cost to both the State and the industry for permits under State Primacy, but the added cost is not unreasonable because in return we get a more reliable and efficient permitting process.

Thank you for the opportunity to comment.

Sincerely,

/s/

Owen J. Graham
Executive Director



SB 110/HB 153 - NPDES Primacy

Background: SB 110/HB 153 authorizes the state to apply to U.S. Environmental Protection Agency (EPA) for the right to issue federal wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES). Currently, EPA issues these discharge permits in Alaska for free. The legislation is the outcome of a Department of Environmental Conservation (DEC) permittee-only workgroup process to determine the circumstances under which the industry would accept state primacy over NPDES permitting. As a result of its limited membership the workgroup did not adequately address several problems with state NPDES Primacy.

Problems with SB 110/HB 153

Inadequate Staffing Levels: The fiscal note estimates NPDES primacy will cost Alaska over \$1.5 million annually. Unfortunately, the proposed DEC staffing levels are inadequate- reducing the current permitting staff by 28% and compliance and enforcement staff by 16%. Given the size and scale of many Alaskan industrial operations – oil and gas-related, mining, timber, and seafood processing – the proposed staffing levels are far too low. As the January 2004 DEC report on NPDES Primacy shows, Alaska expects to spend only 52% of the resources that Washington state spends per permit. **Needed: Increase staff estimates.**

Harm from Inadequate Funding: If the legislature fails to appropriate the funds needed *each year*, the state's salmon streams and overall water quality will suffer, permits will be delayed, there may be technical deficiencies in permits, etc. Additionally, necessary annual appropriations for the NPDES program will increase as personnel costs and Alaska's economy expand. **Needed: Legislative intent to fund the NPDES program adequately over the long-term.**

Inappropriate Influence: Permitted industries will have excessive influence on the permitting process, reducing governmental accountability. Industry workgroup members wish to review draft and final permits before public issuance, again giving industry permittees excessive and unfair influence over permits. EPA may not approve such an unbalanced permit process. **Eliminate Sec. 4(h)(2) and 4(h)(3).**

Lack of Outside Consultations: Under state primacy there no longer will be Tribal government-to-government consultations with regulators who issue wastewater discharge permits. NPDES primacy also will eliminate various expert reviews and public input opportunities required in federal statutes which protect, among other things, essential fish habitat.

Conflicts of Interest: The presumed lack of sufficient technical and other experts at DEC means that the legislation anticipates the use of consultants to develop permits. Problems with using consultants include potential conflicts of interest and the lack of long-term DEC staff experience with particular industries, which can result in technical deficiencies and costly staff inefficiencies. **Needed: Amend Sec. 4(h)(4) so it addresses potential conflicts of interest and increase DEC staff estimates.**

The legislation extends the mandate of the undemocratic and unrepresentative NPDES primacy workgroup. **Needed: Amend Sec. 1(b)(2) so the workgroup is representative of all stakeholders.**

Conclusion: SB 110/HB 153 need to be amended to ensure that the state has the resources, the expertise, and the necessary Tribal and public involvement process in place to implement NPDES Primacy without harming Alaska's natural resources, communities, and businesses.

Large Alaska treatment plant operators currently oppose state NPDES Primacy
<http://www.state.ak.us/dec/water/npdes/pdfs/AWWU.pdf>.



ALASKA MINERS ASSOCIATION, INC.

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March 2, 2005

Honorable Ralph Samuels
Honorable Jay Ramras
Co-Chairmen, House Resources Committee
Capitol Building
Juneau, AK 99801

RE: House Bill 153, State Assumption of NPDES Program

Dear Representatives Samuels and Ramras,

Thank you for the opportunity to comment on House Bill 153. This bill would give the Department of Environmental Conservation the authority to assume primacy for the National Pollution Discharge Elimination System (NPDES) program currently managed by the Environmental Protection Agency (EPA). Alaska is one of only five states that has not taken primacy for NPDES.

The mining industry has considered this option of the State taking primacy for the NPDES program for many years but until recently had not concluded that State primacy was best for Alaska. We also had concerns that DEC may not have personnel with the expertise and ability to take over the program and to manage it effectively. Over the past year, and more specifically over the past few months, we have become convinced that State Primacy for NPDES is in the State's best interest and that the DEC staff is definitely up to the task.

From late last fall through January 2005 we participated in a work group composed of regulated industries and municipalities. This work group evaluated what an NPDES program run by the State would include and the pros and cons for State assumption. We concluded that there are many reasons that justify State primacy. Alaska Attorney Larry Hartig wrote an article for the December 2004 edition of *the Alaska Miner*, our monthly publication, in which he discussed many reasons why it would be better if the State took primacy. Mr. Hartig has worked on water quality permitting issues in Alaska for more than two decades. That article is enclosed.

Thank you for the opportunity to comment on this important issue. We encourage you to move the bill as soon as possible so DEC can begin the process of applying to EPA to obtain primacy

Sincerely,

Steven C. Borell, P.E.
Executive Director

enclosure

cc: Resource Committee Members

HB

174



Representative Ralph Samuels

House District 29

HB 174 Sponsor Statement

"An Act relating to commercial fishing permit and vessel license fees; and providing for an effective date."

House Bill 174 would bring the state into compliance with recent rulings in the *Carlson v. State of Alaska* case by charging the nonresident fee differential on a "per person" rather than a "per permit" basis.

Nonresidents who qualify for a reduced permit fee by meeting low income standards will be charged the full allowable nonresident differential.

The bill would remove the arbitrary \$300 cap on the annual permit renewal fee. By statute, the base fee must "reasonably reflect the different rates of economic return for different fisheries." Currently fisheries with high economic returns pay disproportionately low permit fees because of the \$300 cap. Under HB 174, CFEC in concert with full public hearings would be able to assign fees tied to the true value of a fishery.

The existing 6 vessel length categories would be increased by \$15, \$30, \$45, \$60, \$75, and \$90 respectively.

This legislation would authorize CFEC to charge reasonable fees for initial issuance and replacement of the number plates issued to vessels for displaying the vessel's ADF&G number and annual vessel license renewal stickers.

Key Provisions of HB 174

RE: Commercial Fishing Permit and Vessel License Fees

- To comply with recent rulings in *Carlson v. State of Alaska*, clarify that the nonresident fee differential will be charged on a "per person" basis, rather than a "per permit" basis.

Nonresidents who renew more than one permit in a year have been paying an additional amount, above what a resident would pay, for each permit they renew. Under a recent ruling in *Carlson*, the state may only charge the nonresident differential (surcharge) to each nonresident one time per year, regardless of the number of permits they renew.

- Charge nonresidents who qualify for the reduced permit fee (by meeting low income standards) the full allowable nonresident differential

Current law provides that residents and nonresidents who qualify for the reduced fee may pay one-half of the base fee for the fishery, and that nonresidents will also pay an additional amount equal to only one-half of the allowable nonresident differential.

- Remove the \$300 cap on the base fee CFEC may charge for annual renewal of permits.

While current law calls for annual base fees for permits to "reasonably reflect the different rates of economic return for different fisheries," the current \$300 cap places an artificial ceiling on the fee structure. This results in fisheries with a very high economic return being charged fees that are disproportionately low, relative to the fees charged to lower value fisheries. Removing the cap allows for a fairer fee structure that more fully complies with the mandate that fees reflect the value of respective fisheries.

- Slightly increase annual commercial fishing vessel license fees, beginning with 2006.

Fees are currently broken into 6 vessel size categories from smallest (vessels up to 24 feet) to largest (over 250 feet). The bill would maintain the 6 categories and simply increase the fee in the respective categories by \$15, 30, 45, 60, 75, and 90.

- Authorize CFEC to charge reasonable fees for initial issuance and replacement of the number plates issued to vessels for displaying the vessel's ADF&G number and annual vessel license renewal stickers.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB174
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title Annual commercial fishing permit RDU Comm. Fish Entry Commission
and vessel license fees Component Commercial Fisheries Entry
 Sponsor Representative Samuels Commission
 Requester House Fisheries Committee Compliant No. 471

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	2,300.0	2,188.2	2,081.9	1,980.7	1,884.4	1,792.8

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Passage of HB174 will not require additional expenditures or positions. It will provide for increased revenues generated by permit and license fees, though an exact amount cannot be determined at this time.

HB174 maintains the commercial fishing vessel licensing size classes in current law and statutorily establishes slightly higher annual fees for each class. This results in an estimated increase of approximately \$291,000 in annually generated revenue.

For commercial fishing permits, the bill maintains the directive that fees "must reasonably reflect the different

Continued on page 2

Prepared by: Shirley Penrose, Administrative Officer Phone 907-790-6960
 Division Commercial Fisheries Entry Commission Date/Time 3/21/05 12:55 PM
 Approved by: Frank M. Homan, Commissioner Date 3/21/2005
 Agency Commercial Fisheries Entry Commission

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB174

ANALYSIS CONTINUATION

rates of economic return for different fisheries," and removes the \$300 base fee cap in current law. The current fee cap artificially holds fees down in the highest-earning fisheries and results in those fisheries paying fees that are disproportionately lower.

While passage of HB174 would not, in itself, change annual permit fees, the removal of the \$300 maximum base fee effectively authorizes CFEC to implement a fairer fee schedule that more truly meets the statutory mandate that fees are to reflect the earnings in respective fisheries. By allowing fees for high-end fisheries to fall where they naturally would under a fully proportional formula, the regulatory fee structure CFEC intends to propose under provisions of HB174 would result in an estimated annual increase of approximately \$2.1 million in revenues to the state.

The change from a "per permit" nonresident fee differential to a single annual nonresident surcharge (necessitated by recent rulings in the Carlson v. State of Alaska class action), results in an annual estimated decline of about \$67,000 in revenue.

In combination, the various revisions made by HB174, and the regulatory framework CFEC intends to propose to implement the provisions of the bill, would likely result in an overall annual increase in revenues generated by commercial fishing permits and vessel licenses of about \$2.3 million.

Due to steadily declining revenues, CFEC (a receipt supported agency) expects to be in a deficit situation in FY06 or FY07 without passage of HB174. While passage of the bill will likely increase revenues enough to provide revenues to the General Fund above the current cost of CFEC's budget in the next few years, total revenues generated by CFEC fees are expected to continue declining. This is due to economic difficulties in some fisheries (particularly salmon fisheries) resulting in their falling into lower annual permit fee classes, and to ongoing decreases in the number of permits and vessel licenses issued annually. This decrease in participants is due to many factors, including fewer permits being issued after each fishery limitation; consolidation in federally-managed fisheries licensed by the state; and cancellation of nontransferable permits as holders of those permits die or retire. Thus, the amount of revenue generated by CFEC fees, and the cost of funding CFEC's operating budget, will likely converge again in coming years.

Because of the uncertainty of future events and the downward trend in our revenues, we have shown the anticipated revenue this bill may produce to decrease at 4.86% per year, which is our current calculated rate of decline.



UNITED FISHERMEN OF ALASKA

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March 29, 2005

Representative Ralph Samuels, Co-Chair
House Resources Committee
Alaska State Legislature
State Capitol (Mail Stop 3100)
Juneau AK 99801-1182

Dear Representative Samuels,

United Fishermen of Alaska (UFA) represents thirty-one Alaska commercial fishing groups and hundreds of individual fishermen, crew members and related businesses. The UFA Board of Directors recently met and discussed HB 174 regarding Commercial Fisheries Entry Commission (CFEC) fees.

The current cap of \$300 on CFEC permits is projected to leave the CFEC with a net operating budget shortfall by 2007. UFA believes that CFEC should be self-funded entirely through permit fees, not reliant on general funds from the state budget. The potential for raising fees for some fisheries is of concern to fishermen in the fisheries most affected, but the process of establishing the fees for specific fisheries is a subsequent process with public input opportunities for individual fishermen to make their case for equitable fees for their fisheries.

UFA supports the concept of eliminating or raising the CFEC cap to accomplish the same goal - that commercial fishing permit fees fully fund the Commercial Fisheries Entry Commission.

Respectfully,

Mark D. Vinsel
Executive Director

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Dragners Association • Alaska Longline Fishermen's Association • Armstrong Keta • At-sea Processors Association
Bristol Bay Reserve • Concerned Area "M" Fishermen • Cordova District Fishermen United • Douglas Island Pink and Chum
Fishing Vessel Owners Association • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
North Pacific Fisheries Association • North Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation
Purse Seine Vessel Owner Association • Seafood Producers Cooperative • Southeast Alaska Herring Seiners Marketing Association
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Catcher Boats • United Salmon Association United Southeast Alaska Gillnetters • Valdez Fisheries Development Association
Western Gulf of Alaska Fishermen



UNITED FISHERMEN OF ALASKA

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March 29, 2005

Representative Jay Ramras, Co-Chair
House Resources Committee
Alaska State Legislature
State Capitol (Mail Stop 3100)
Juneau AK 99801-1182

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Respectfully,

Mark D. Vinsel
Executive Director

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Longline Fishermen's Association • Armstrong Keta • At-sea Processors Association
Bristol Bay Reserve • Concerned Area 'M' Fishermen • Cordova District Fishermen United • Douglas Island Pink and Chum
Fishing Vessel Owners Association • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
North Pacific Fisheries Association • North Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation
Purse Seine Vessel Owner Association • Seafood Producers Cooperative • Southeast Alaska Herring Seiners Marketing Association
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Catcher Boats • United Salmon Association • United Southeast Alaska Gillnetters • Vaidez Fisheries Development Association
Western Gulf of Alaska Fishermen

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

FRANK H. MURKOWSKI, GOVERNOR

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(907) 789-6150 Licensing Calls
(907) 789-6160 Other Business
(907) 789-6170 FAX
(907) 789-6180 BLS

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March 21, 2005

The Honorable Ralph Samuels
Alaska State Representative

Dear Representative Samuels:

Passage of HB174 or its companion SB93 will provide the Commercial Fisheries Entry Commission (CFEC) with the means to continue to support commercial fisheries. CFEC is funded by revenue generated permit and license fees paid by the commercial fishing industry. CFEC fees have traditionally generated more revenue than its budget required and those revenues have been used to fund commercial fishing support projects in the Department of Fish and Game. Because of a number of factors, revenues in recent years have declined and there is a real threat in the near future revenues will not be sufficient to cover even CFEC's budgetary obligations.

Lifting the statutory cap on permit fees in HB174/SB93 will require that CFEC revise its annual permit fee schedule through the public hearing process. The public hearing process will provide the opportunity for CFEC and the fishing community to work together to develop a fee structure that reflects the statutory requirement that fees represent the economic return from the different fisheries and the reality that fees must be reasonable and not unduly burden the industry.

CFEC has already heard from fishermen and fishing associations on issues considered important in a new fee proposal which would be developed for public comment. The public hearing process could address, among others, such issues as: (1) a phase-in of fees over time that would provide the benefit of a planned approach; (2) adjustments in permit fees to recognize vessel size in order that reasonable fees are achieved; (3) adjustments in permit fees to reflect fishing capacity restrictions; (4) adjustments in fees where permit values may not be representative if no permit sales have occurred for some time; and other issues identified during the public hearing process.

CFEC will begin to develop a fee proposal and public hearing schedule based on comments received during the legislative hearings. In this way, a timely proposal would be submitted for public comment as soon as possible after passage of HB174/SB93. This will allow sufficient public hearing time for industry comments before calendar year 2006 fees are required to be adopted in the fall of 2005.

CFEC gives its assurance that upon passage of HB174/SB93 we will work with the commercial fishing community to develop a fair and reasonable permit renewal fee structure.

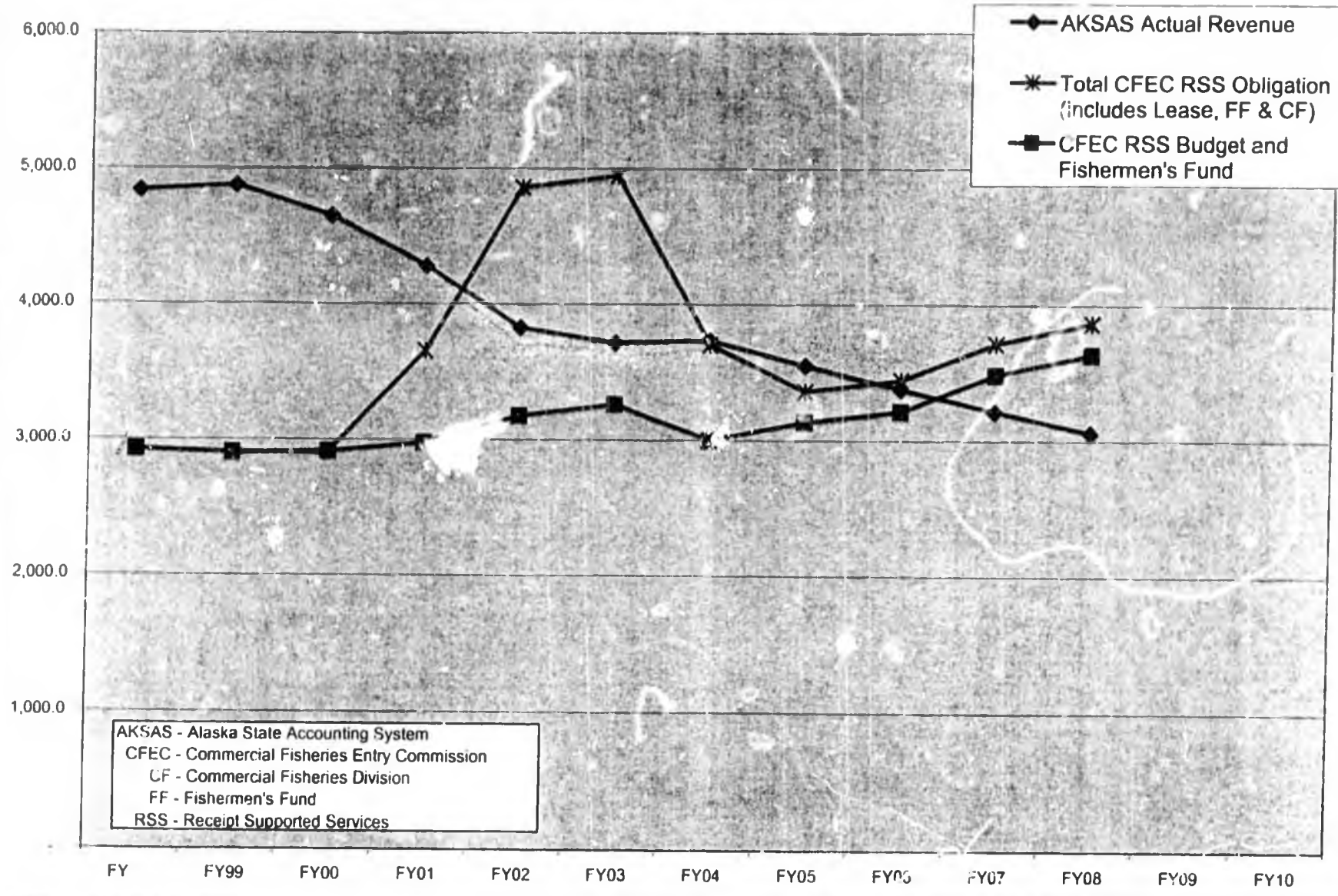
Sincerely,



Frank Homan, Commissioner

Commission Letter & Support

CFEC Revenue Received Compared To Authorized Receipt Supported Services Budget



AKSAS - Alaska State Accounting System
 CFEC - Commercial Fisheries Entry Commission
 CF - Commercial Fisheries Division
 FF - Fishermen's Fund
 RSS - Receipt Supported Services

Source: CFEC

Chart last updated:
 2/10/2005 at 4:32 PM

**CFEC VESSEL LICENSE FEES¹
CURRENT AND PROPOSED**

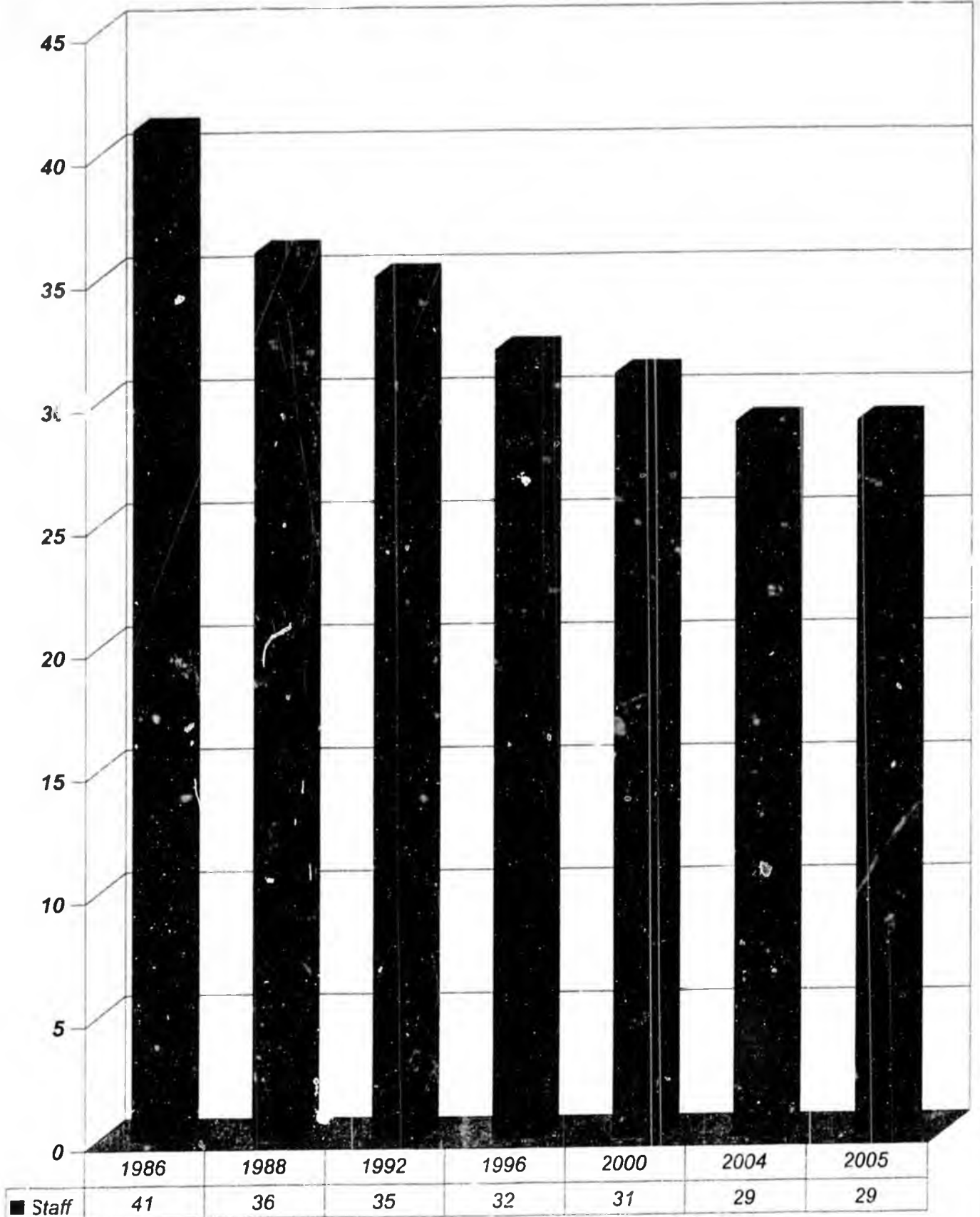
Vessel Length	Number	Current Fee	Proposed Fee
0-25'	3,484	\$20	\$35
25-50'	5,600	\$50	\$80
50-75'	764	\$100	\$145
75-150'	447	\$250	\$310
150-250'	92	\$500	\$575
250'	26	\$750	\$840
TOTAL	10,413		

33.5% would increase only by \$15
53.8% would increase only by \$30
 87.3% would increase only by \$30 or less

¹ AS 16.05.530 last amended in 1995

Source: CFEC 2/03/2005

Commercial Fisheries Entry Commission Permanent Full-Time Budgeted Staff



Percentage of Full Time
positions lost since 1986

12.20%

14.63%

21.95%

24.39%

29.27%

29.27%

State of Alaska
Commercial Fisheries Entry Commission

Comparison of Permit Renewal Fees For 2005 Licensing Year Under Current Fee Schedule
and Under CFEC's Proposed Methodology for Implementing SB 93

Permit Counts By Base Fee Category

February 10, 2005

Current 2005 Permit Counts By Base Fee Category				2005 Permit Counts Using Proposed Method			
Base Fee	Number of Permits		Total Permits	Base Fee	Number of Permits		Total Permits
	Residents	Non-Residents			Residents	Non-Residents	
				\$3,975	45	220	265
				↓			
				\$2,025	9	42	51
				↓			
				\$1,500	12	54	66
				↓			
				\$1,200	34	17	51
				↓			
				\$900	200	209	409
				\$825	136	240	376
				\$750	101	23	124
				\$675	33	14	47
				\$600	23	2	25
				\$525	71	77	148
				↓			
\$300	747	918	1,665	\$375	10	2	12
\$240	858	272	1,130	\$300	652	254	906
\$180	827	241	1,068	\$225	257	32	289
\$120	3,749	1,634	5,383	\$150	4,496	1,860	6,356
\$60	10,702	1,815	12,517	\$75	10,804	1,834	12,638
Totals	16,883	4,880	21,763		16,883	4,880	21,763



Under the proposed methodology, no permits would fall into the omitted base fee categories.

24-LS0676\F
Utermohle
3/29/05

CS FOR HOUSE BILL NO. 174(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE SAMUELS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to commercial fishing permit and vessel license fees; and providing for**
2 **an effective date."**

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

4 *** Section 1.** AS 16.05.520(a) is amended to read:

5 (a) The vessel license includes a permanent number plate. The number plate
6 shall be accompanied by a tab affixed to the number plate [IT] designating the year
7 to be fished. A number plate is not transferable, and the number plate [IT] shall be
8 considered a permanent fixture upon the vessel upon which the number plate [IT] is
9 originally placed. The number plate [IT] shall be securely fastened well forward on
10 the port side in plain sight. On a vessel with a superstructure the number plate shall
11 be fastened on the port side of the superstructure. A number plate remains the
12 property of the state. The Alaska Commercial Fisheries Entry Commission may
13 establish by regulation a reasonable fee for the initial issuance of a permanent
14 number plate. If a permanent number plate is accidentally defaced, mutilated,

1 destroyed, or lost, the person owning or operating the vessel shall immediately apply
 2 for and may obtain a duplicate upon furnishing the Alaska Commercial Fisheries
 3 Entry Commission with the pertinent facts and a payment of a reasonable fee
 4 established by the commission by regulation that is not less than \$2.

5 * **Sec. 2.** AS 16.05.530 is repealed and reenacted to read:

6 **Sec. 16.05.530. Renewal of vessel license.** (a) Upon payment of the vessel
 7 license fee and filing of the name and address of the owner of the vessel or the owner's
 8 authorized agent, the name and number of the vessel, a description of the vessel, the
 9 vessel license number, if any, the areas to be fished, and other reasonable information
 10 required by the Alaska Commercial Fisheries Entry Commission, the commission
 11 shall issue a permanent number plate and a vessel license. If the vessel has a
 12 permanent number plate, the commission shall issue a vessel license and tab
 13 designating the year the license is valid. The tab shall be placed in the space provided
 14 on the permanent number plate.

15 (b) For calendar year 2006 and following years, the annual fee for a vessel
 16 license issued or renewed under this section is set according to the overall length, as
 17 defined by the United States Coast Guard, of the vessel under the following schedule:

18	(1) 0 - 25 feet	\$24
19	(2) over 25 feet - 50 feet	60
20	(3) over 50 feet - 75 feet	120
21	(4) over 75 feet - 150 feet	300
22	(5) over 150 feet - 250 feet	600
23	(6) over 250 feet	900.

24 * **Sec. 3.** AS 16.43.160 is repealed and reenacted to read:

25 **Sec. 16.43.160. Fees.** (a) Except as specifically provided in this section, the
 26 commission shall establish annual fees for the issuance and annual renewal of entry
 27 permits or interim-use permits.

28 (b) The commission may charge interest at a rate not to exceed the legal rate
 29 of interest established in AS 45.45.010 on fees more than 60 days overdue.

30 (c) For an entry permit or an interim-use permit issued or renewed for
 31 calendar year 2006 and following years, the annual base fee for issuance or renewal of

1 an entry permit or an interim-use permit may not be less than \$30 or more than
 2 \$3,000. The annual base fee must reasonably reflect the different rates of economic
 3 return for different fisheries. In addition to the annual base fee established by the
 4 commission under this subsection, a nonresident shall pay an annual nonresident
 5 surcharge for the issuance or renewal of one or more entry permits or interim-use
 6 permits. The commission shall establish the annual nonresident surcharge by
 7 regulation at an amount that is as close as is practicable to the maximum allowed by
 8 law.

9 (d) For an entry permit or an interim-use permit issued or renewed for
 10 calendar year 2006 and following years, the holder of a permit whose household
 11 income, assets, and financial resources fall within the eligibility standards for the food
 12 stamp program under 7 U.S.C. 2011 - 2025, as amended, is subject to an annual base
 13 fee for the issuance or renewal of an entry permit or an interim-use permit that is equal
 14 to 50 percent of the annual base fee that the permit holder would otherwise pay under
 15 (c) of this section. In addition to the reduced annual base fee under this subsection, a
 16 nonresident who qualifies for a reduced fee under this subsection shall pay the annual
 17 nonresident surcharge established under (c) of this section.

18 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
 19 read:

20 VESSEL LICENSE FEES FOR CALENDAR YEAR 2005. (a) Notwithstanding the
 21 repeal and reenactment of AS 16.05.530, by sec. 2 of this Act, the annual license fee for a
 22 vessel license issued or renewed for calendar year 2005 is set according to the overall length,
 23 as defined by the United States Coast Guard, of the vessel under the following schedule:

24	(1) 0 - 25 feet	\$20
25	(2) over 25 feet - 50 feet	50
26	(3) over 50 feet - 75 feet	100
27	(4) over 75 feet - 150 feet	250
28	(5) over 150 feet - 250 feet	500
29	(6) over 250 feet	750.

30 (b) Notwithstanding the repeal and reenactment of AS 16.05.530, by sec. 2 of this
 31 Act, a vessel license issued or renewed for calendar year 2005 under the former provisions of

1 AS 16.05.530 before the effective date of sec. 2 of this Act is valid for the period for which
2 the license was issued or renewed.

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

5 FEES FOR ENTRY PERMITS AND INTERIM-USE PERMITS FOR CALENDAR
6 YEAR 2005. (a) Notwithstanding the repeal and reenactment of AS 16.43.160, by sec. 3 of
7 this Act, for an entry permit or an interim-use permit issued or renewed for calendar year
8 2005, on or after the effective date of sec. 3 of this Act, the annual base fee may not be less
9 than \$10 or more than \$300. The annual base fee must reasonably reflect the different rates of
10 economic return for different fisheries. In addition to the annual base fee established by the
11 Alaska Commercial Fisheries Entry Commission under this subsection, a nonresident shall
12 pay an annual nonresident surcharge for the issuance or renewal of one or more entry permits
13 or interim-use permits. The annual nonresident surcharge shall be established by the
14 commission by regulation at an amount that is as close as is practicable to the maximum
15 allowed by law.

16 (b) Notwithstanding the repeal and reenactment of AS 16.43.160, by sec. 3 of this
17 Act, for an entry permit or an interim-use permit issued or renewed for calendar year 2005,
18 the holder of a permit whose household income, assets, and financial resources fall within the
19 eligibility standards for the food stamp program under 7 U.S.C. 2011 - 2025, as amended, is
20 subject to a maximum annual base fee that is equal to 50 percent of the annual base fee that
21 the permit holder would otherwise pay under (a) of this section. In addition to the annual base
22 fee under this subsection, a nonresident who qualifies for a reduced fee under this subsection
23 shall pay an annual nonresident surcharge of \$57 for the issuance or renewal of one or more
24 entry permits or interim-use permits.

25 (c) Notwithstanding the repeal and reenactment of AS 16.43.160, by sec. 3 of this
26 Act, an entry permit or an interim-use permit issued or renewed for calendar year 2005 under
27 the former provisions of AS 16.43.160 before the effective date of sec. 3 of this Act is valid
28 for the period for which the entry permit or the interim-use permit was issued or renewed.

29 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

**CFEC VESSEL FEES
CURRENT AND PROPOSED**

Vessel Length	Number	Current Fee	Current Revenue	Proposed 20 % Fee	Proposed 20% Revenue
0-25'	3,484	\$20	\$69,680	\$24	\$83,616
25-50'	5,600	\$50	\$280,000	\$60	\$336,000
50-75'	764	\$100	\$76,400	\$120	\$91,680
75-150'	447	\$250	\$111,750	\$300	\$134,100
150-250'	92	\$500	\$46,000	\$600	\$55,200
250'	26	\$750	\$19,500	\$900	\$23,400
TOTAL	10,413		\$603,330		\$723,996

Source: CFEC 3/29/2005

State of Alaska
Commercial Fisheries Entry Commission

Comparison of Permit Renewal Fees For 2005 Licensing Year Under Current Fee Schedule
and Under CFEC's Proposed Methodology for Implementing HB 174

Permit Counts and Estimated Revenue By Base Fee With \$3000 Cap

March 29, 2005

Current 2005 Permit Renewal Fees				2005 Fees Using Proposed Method				
Base Fee	Number of Permits		Estimated Revenue	Base Fee	Number of Permits		Estimated Revenue	
	Residents	Non-Residents			Residents	Non-Residents		
				\$3,000	45	220	\$795,000	
				↓				
				\$2,025	9	42	\$103,275	
				↓				
				\$1,500	12	54	\$99,000	
				↓				
				\$1,200	34	17	\$61,200	
				↓				
				\$900	200	203	\$368,100	
				\$825	136	240	\$310,200	
				\$750	101	23	\$93,000	
				\$675	33	14	\$31,725	
				\$600	23	2	\$15,000	
				\$525	71	77	\$77,700	
				↓				
\$300	747	918	\$499,500	\$375	10	2	\$4,500	
\$240	858	272	\$271,200	\$300	652	254	\$271,000	
\$180	827	241	\$192,240	\$225	257	32	\$65,025	
\$120	3,749	1,634	\$645,960	\$150	4,496	1,860	\$953,400	
\$60	10,702	1,815	\$751,020	\$75	10,804	1,834	\$947,850	
Totals	16,883	4,880	\$2,359,920		16,883	4,880	\$4,196,775	



Under the proposed methodology, no permits would fall into the omitted base fee categories.

State of Alaska
Commercial Fisheries Entry Commission

Comparison of Permit Renewal Fees For 2005 Licensing Year Under Current Fee Schedule
and Under CFEC's Proposed Methodology for Implementing HB 174 With \$3000 Cap

3/39/2005

Fishery	Description	Under Limited Entry?	Resident Permits	Non-Resident Permits	Actual 2005 Base Fee	2005 Base Fee Under Proposed Methodology
B05B	HALIBUT, HAND TROLL, STATEWIDE	N	170	0	\$60	\$75
B25B	HALIBUT, DINGLEBAR TROLL, STATEWIDE	N	4	1	\$60	\$75
B26B	HALIBUT, MECHANICAL JIG, STATEWIDE	N	72	3	\$60	\$75
C26B	SABLEFISH, MECHANICAL JIG, STATEWIDE	N	8	0	\$60	\$75
C4CE	SABLEFISH, NET GEAR MAX VL LENGTH 50', PRINCE WILLIAM SOUND	Y	1	0	\$60	\$75
C5AE	SABLEFISH, FIXED GEAR MAX VL LENGTH 90', PRINCE WILLIAM SOUND	Y	1	0	\$60	\$75
C5BE	SABLEFISH, FIXED GEAR MAX VL LENGTH 60', PRINCE WILLIAM SOUND	Y	3	0	\$60	\$75
C5DE	SABLEFISH, FIXED GEAR MAX VL LENGTH 35', PRINCE WILLIAM SOUND	Y	10	0	\$60	\$75
D09D	DUNGENESS CRAB, POT GEAR VL UNDER 60', YAKUTAT	N	0	1	\$60	\$75
D09L	DUNGENESS CRAB, POT GEAR VL UNDER 60', CHIGNIK	N	1	0	\$60	\$75
D10A	DUNGENESS CRAB, RING NETS, SOUTHEAST	Y	5	0	\$60	\$75
D11A	DUNGENESS CRAB, DIVING GEAR, SOUTHEAST	Y	1	1	\$60	\$75
D91D	DUNGENESS CRAB, POT GEAR VL OVER 60', YAKUTAT	N	1	1	\$60	\$75
D9DA	DUNGENESS CRAB 75 POTS; OR 25% OF MAX, SOUTHEAST	Y	91	10	\$60	\$75
G01K	HERRING ROE, PURSE SEINE, KODIAK	Y	51	14	\$60	\$75
G01L	HERRING ROE, PURSE SEINE, CHIGNIK	N	4	0	\$60	\$75
G01M	HERRING ROE, PURSE SEINE, AK PENINSULA	N	9	0	\$60	\$75
G31K	HERRING ROE, GILLNET & PURSE SEINE, KODIAK	Y	2	0	\$60	\$75
G34A	HERRING ROE & FD/BT, GILLNET, SOUTHEAST	Y	78	37	\$60	\$75
G34H	HERRING ROE, GILLNET, COOK INLET	N	39	0	\$60	\$75
G34K	HERRING ROE, GILLNET, KODIAK	Y	80	9	\$60	\$75
G34M	HERRING ROE, GILLNET, AK PENINSULA	N	4	0	\$60	\$75
G34N	HERRING ROE, GILLNET, NELSON ISLAND	Y	123	4	\$60	\$75
G34S	HERRING ROE, GILLNET, SECURITY COVE	N	44	35	\$60	\$75
G34T	HERRING ROE, GILLNET, BRISTOL BAY	N	137	58	\$60	\$75
G34U	HERRING ROE, GILLNET, NUNIVAK ISLAND	Y	39	4	\$60	\$75
G34V	HERRING ROE, GILLNET, CAPE AVINOF	N	77	0	\$60	\$75
G34W	HERRING ROE, GILLNET, GOODNEWS BAY	Y	138	0	\$60	\$75
G34Y	HERRING ROE, GILLNET, CAPE ROMANZOF	Y	59	0	\$60	\$75
G34Z	HERRING ROE, GILLNET, NORTON SOUND	Y	183	59	\$60	\$75
H01L	HERRING FOOD/BAIT, PURSE SEINE, CHIGNIK	N	1	0	\$60	\$75
H21A	HERRING FOOD/BAIT, SPAWN ON KELP/POUND, SOUTHEAST	N	19	3	\$60	\$75
H34M	HERRING FOOD/BAIT, GILLNET, AK PENINSULA	N	22	0	\$60	\$75
H7BK	HERRING FOOD/BAIT, OTTER TRAWL, FIXED VL 75', KODIAK	Y	0	1	\$60	\$75
H7CK	HERRING FOOD/BAIT, OTTER TRAWL, FIXED VL 70', KODIAK	Y	1	0	\$60	\$75
H7DK	HERRING FOOD/BAIT, OTTER TRAWL, FIXED VL 60', KODIAK	Y	0	2	\$60	\$75
I05B	LING COD, HAND TROLL, STATEWIDE	N	20	0	\$60	\$75
I06B	LING COD, LONGLINE VL UNDER 60', STATEWIDE	N	18	2	\$60	\$75
I25B	LING COD, DINGLEBAR TROLL, STATEWIDE	N	72	3	\$60	\$75
I26B	LING COD, MECHANICAL JIG, STATEWIDE	N	42	2	\$60	\$75
I61B	LING COD, LONGLINE VL OVER 60', STATEWIDE	N	1	0	\$60	\$75
I91B	LING COD, POT GEAR VL OVER 60', STATEWIDE	N	2	1	\$60	\$75
K09D	KING CRAB, POT GEAR VL UNDER 60', YAKUTAT	N	1	0	\$60	\$75
K09O	KING CRAB, POT GEAR VL UNDER 60', DUTCH HARBOR	N	1	0	\$60	\$75
K09Q	KING CRAB, POT GEAR VL UNDER 60', BERING SEA	N	2	0	\$60	\$75
K09X	KING CRAB, POT GEAR VL UNDER 60', SAINT LAWRENCE ISLAND	N	4	0	\$60	\$75
K19A	RED/BLUE KING CRAB, POT GEAR, SOUTHEAST	Y	5	0	\$60	\$75
L12T	HERRING SPAWN ON KELP, DIVE/HAND PICK, BRISTOL BAY	Y	201	6	\$60	\$75
L21C	HERRING SPAWN ON KELP/POUND, SOUTHERN SOUTHEAST	Y	159	16	\$60	\$75
M01B	MISCELLANEOUS SALT WATER FINFISH, PURSE SEINE, STATEWIDE	N	1	0	\$60	\$75
M05B	MISCELLANEOUS SALT WATER FINFISH, HAND TROLL, STATEWIDE	N	72	4	\$60	\$75
M06B	MISCELLANEOUS SALT WATER FINFISH, LONGLINE VL UNDER 60', STW	N	687	60	\$60	\$75

State of Alaska
Commercial Fisheries Entry Commission

Comparison of Permit Renewal Fees For 2005 Licensing Year Under Current Fee Schedule
and Under CFEC's Proposed Methodology for Implementing HB 174 With \$3000 Cap

3/30/2005

Fishery	Description	Under Limited Entry?	Resident Permits	Non-Resident Permits	Actual 2005 Base Fee	2005 Base Fee Under Proposed Methodology
M17B	MISCELLANEOUS SALTWATER FINFISH, BEAM TRAWL, STATEWIDE	N	4	0	\$60	\$75
M25B	MISCELLANEOUS SALTWATER FINFISH, DINGLEBAR TROLL, STATEWIDE	N	10	0	\$60	\$75
M26B	MISCELLANEOUS SALTWATER FINFISH, MECHANICAL JIG, STATEWIDE	N	445	51	\$60	\$75
M37B	MISCELLANEOUS SALTWATER FINFISH, PAIR TRAWL, STATEWIDE	N	1	0	\$60	\$75
M61B	MISC. SALTWATER FINFISH, LONGLINE VL 60' to 89', STW	N	48	11	\$300	\$75
P09D	SHRIMP, POT GEAR VL UNDER 60', YAKUTAT	N	15	0	\$60	\$75
P09E	SHRIMP, POT GEAR VL UNDER 60', PRINCE WILLIAM SOUND	N	1	0	\$60	\$75
P09J	SHRIMP, POT GEAR VL UNDER 60', WESTWARD	N	14	0	\$60	\$75
P17E	SHRIMP, BEAM TRAWL, PRINCE WILLIAM SOUND	N	5	0	\$60	\$75
P17J	SHRIMP, BEAM TRAWL, WESTWARD	N	2	0	\$60	\$75
P91A	SHRIMP, POT GEAR, SOUTHEAST	Y	271	21	\$60	\$75
P91J	SHRIMP, POT GEAR VL OVER 60', WESTWARD	N	5	0	\$60	\$75
Q11A	SEA CUCUMBER, DIVING GEAR, SOUTHEAST	Y	258	72	\$60	\$75
Q11B	SEA CUCUMBER, DIVING GEAR, STATEWIDE/EXCLUDING SOUTHEAST	N	23	5	\$60	\$75
R18E	CLAMS, SHOVEL, STATEWIDE	N	30	25	\$60	\$75
R23B	CLAMS, MECHANICAL DIGGER, STATEWIDE/NOT SE GEODUCK	N	1	0	\$60	\$75
S01E	SALMON, PURSE SEINE, PRINCE WILLIAM SOUND	Y	188	67	\$60	\$75
S01H	SALMON, PURSE SEINE, COOK INLET	Y	69	8	\$60	\$75
S01K	SALMON, PURSE SEINE, KODIAK	Y	267	85	\$60	\$75
S01M	SALMON, PURSE SEINE, AK PENINSULA	Y	83	26	\$60	\$75
S02K	SALMON, BEACH SEINE, KODIAK	Y	25	5	\$60	\$75
S03A	SALMON, DRIFT GILLNET, SOUTHEAST	Y	351	120	\$60	\$75
S03H	SALMON, DRIFT GILLNET, COOK INLET	Y	386	172	\$60	\$75
S04D	SALMON, SET GILLNET, YAKUTAT	Y	127	32	\$60	\$75
S04H	SALMON, SET GILLNET, COOK INLET	Y	611	120	\$60	\$75
S04P	SALMON, SET GILLNET, UPPER YUKON	Y	53	0	\$60	\$75
S04T	SALMON, SET GILLNET, BRISTOL BAY	Y	693	277	\$60	\$75
S04W	SALMON, SET GILLNET, MUSKOKWIM	Y	732	4	\$60	\$75
S04X	SALMON, SET GILLNET, KOTZEBUE	Y	148	4	\$60	\$75
S04Y	SALMON, SET GILLNET, LOWER YUKON	Y	561	5	\$60	\$75
S04Z	SALMON, SET GILLNET, NORTON SOUND	Y	139	2	\$60	\$75
S05B	SALMON, HAND TROLL, STATEWIDE	Y	961	118	\$60	\$75
S08P	SALMON, FISH WHEEL, UPPER YUKON	Y	100	2	\$60	\$75
S15B	SALMON, POWER TROLL, STATEWIDE	Y	756	186	\$60	\$75
T09K	TANNER CRAB (NOT BAIRDI), POT GEAR VL UNDER 60', KODIAK	N	89	8	\$50	\$75
T09Q	TANNER CRAB, POT GEAR VL UNDER 60', BERING SEA	N	1	0	\$60	\$75
T10A	TANNER CRAB, RING NET, SOUTHEAST	N	105	2	\$60	\$75
T91K	TANNER CRAB, POT GEAR VL OVER 60', KODIAK	N	20	6	\$60	\$75
TB9BK	TANNER BAIRDI CRAB, POT GEAR VL UNDER 60', KODIAK	Y	106	6	\$60	\$75
U11A	SEA URCHIN, DIVING GEAR, SOUTHEAST	Y	34	38	\$60	\$75
U11B	SEA URCHIN, DIVING GEAR, STATEWIDE/EXCLUDING SOUTHEAST	N	3	1	\$60	\$75
Y05A	DEMERSAL SHELF ROCKFISH, HAND TROLL, SOUTHEAST	N	15	1	\$60	\$75
Y06A	DEMERSAL SHELF ROCKFISH, LONGLINE VL UNDER 60', SOUTHEAST	N	181	6	\$60	\$75
Y25A	DEMERSAL SHELF ROCKFISH, DINGLEBAR TROLL, SOUTHEAST	N	8	1	\$60	\$75
Y26A	DEMERSAL SHELF ROCKFISH, MECHANICAL JIG, SOUTHEAST	N	11	1	\$60	\$75
Y61A	DEMERSAL SHELF ROCKFISH, LONGLINE VL OVER 60', SOUTHEAST	N	28	1	\$60	\$75
D09J	DUNGENESS CRAB, POT GEAR VL UNDER 60', WESTWARD	N	24	3	\$120	\$75
D91L	DUNGENESS CRAB, POT GEAR VL OVER 60', CHIIGNIK	N	1	0	\$120	\$75
G01H	HERRING ROE, PURSE SEINE, COOK INLET	Y	6	0	\$120	\$75
K91K	KING CRAB, POT GEAR VL OVER 60', KODIAK	N	4	1	\$120	\$75
L21E	HERRING SPAWN ON KELP/POUND, PRINCE WILLIAM SOUND	Y	2	0	\$120	\$75
P07J	SHRIMP, OTTER TRAWL, WESTWARD	N	2	0	\$120	\$75

State of Alaska
Commercial Fisheries Entry Commission

Comparison of Permit Renewal Fees For 2005 Licensing Year Under Current Fee Schedule
and Under CFEC's Proposed Methodology for Implementing HB 174 With \$3000 Cap

3/3/2005

Fishery	Description	Under Limited Entry?	Resident Permits	Non-Resident Permits	Actual 2005 Base Fee	2005 Base Fee Under Proposed Methodology
TB9AK	TANNER BAIRD CRAB, POT GEAR VL OVER 60', KODIAK	Y	15	4	\$120	\$75
B06B	HALIBUT, LONGLINE VL UNDER 60', STATEWIDE	N	2,211	338	\$120	\$150
C07B	SABLEFISH, OTTER TRAWL, STATEWIDE	N	0	3	\$120	\$150
C5CE	SABLEFISH, FIXED GEAR MAX VL LENGTH 50', PRINCE WILLIAM SOUND	Y	37	3	\$120	\$150
D91J	DUNGENESS CRAB, POT GEAR VL OVER 60', WESTWARD	N	9	2	\$120	\$150
D91M	DUNGENESS CRAB, POT GEAR VL OVER 60', AK PENINSULA	N	1	0	\$120	\$150
D9CA	DUNGENESS CRAB, 150 POTS/OR 50% OF MAX, SOUTHEAST	Y	72	11	\$120	\$150
G01T	HERRING ROE, PURSE SEINE, BRISTOL BAY	N	67	16	\$120	\$150
H01A	HERRING FOOD/BAIT, PURSE SEINE, SOUTHEAST	N	13	1	\$120	\$150
J11A	GEODUCK CLAMS, DIVING GEAR, SOUTHEAST	Y	44	34	\$120	\$150
K09Z	KING CRAB, POT GEAR VL UNDER 60', NORTON SOUND	N	71	5	\$120	\$150
K59A	BROWN KING/TANNER CRAB, POT GEAR, SOUTHEAST	Y	3	1	\$120	\$150
S01A	SALMON, PURSE SEINE, SOUTHEAST	Y	182	222	\$120	\$150
S03M	SALMON, DRIFT GILLNET, AK PENINSULA	Y	71	77	\$120	\$150
S03T	SALMON, DRIFT GILLNET, BRISTOL BAY	Y	900	911	\$120	\$150
T09M	TANNER CRAB, POT GEAR VL UNDER 60', AK PENINSULA	N	11	2	\$120	\$150
T09O	TANNER CRAB, POT GEAR VL UNDER 60', DUTCH HARBOR	N	3	0	\$120	\$150
D9BA	DUNGENESS CRAB, 225 POTS/OR 75% OF MAX, SOUTHEAST	Y	35	8	\$180	\$150
G02Z	HERRING ROE, BEACH SEINE, NORTON SOUND	Y	4	1	\$180	\$150
H1DK	HERRING, FOOD/BAIT, PURSE SEINE, FIXED VL LENGTH 60', KODIAK	Y	5	0	\$180	\$150
K29A	RED/BLUE/BROWN KING CRAB, POT GEAR, SOUTHEAST	Y	5	0	\$180	\$150
K39A	BROWN KING CRAB, POT GEAR, SOUTHEAST	Y	4	1	\$180	\$150
L21A	HERRING SPAWN ON KELP/POUND, NORTHERN SOUTHEAST	Y	96	14	\$180	\$150
P17A	SHRIMP, BEAM TRAWL, SOUTHEAST	Y	29	2	\$180	\$150
S03E	SALMON, DRIFT GILLNET, PRINCE WILLIAM SOUND	Y	403	135	\$180	\$150
S04K	SALMON, SET GILLNET, KODIAK	Y	130	56	\$180	\$150
S04M	SALMON, SET GILLNET, AK PENINSULA	Y	30	17	\$180	\$150
C91C	SABLEFISH, POT GEAR VL OVER 60', SOUTHERN SOUTHEAST	Y	3	1	\$180	\$225
D09M	DUNGENESS CRAB, POT GEAR VL UNDER 60', AK PENINSULA	N	6	1	\$180	\$225
H01M	HERRING FOOD/BAIT, PURSE SEINE, AK PENINSULA	N	17	5	\$180	\$225
D9A	DUNGENESS CRAB, 300 POTS/OR 100% OF MAX, SOUTHEAST	Y	43	5	\$240	\$225
M09B	MISCELLANEOUS SALTWATER FINFISH, POT GEAR VL UNDER 60', STW	N	163	15	\$240	\$225
S04E	SALMON, SET GILLNET, PRINCE WILLIAM SOUND	Y	25	5	\$240	\$225
B61B	HALIBUT, LONGLINE VL OVER 60', STATEWIDE	N	231	122	\$240	\$300
C06B	SABLEFISH, LONGLINE VL UNDER 60', STATEWIDE	N	396	125	\$240	\$300
K91Q	KING CRAB, POT GEAR VL OVER 60', BERING SEA	N	9	5	\$300	\$300
T19A	TANNER CRAB, POT GEAR, SOUTHEAST	Y	16	2	\$300	\$300
C09B	SABLEFISH, POT GEAR VL UNDER 60', STATEWIDE	N	4	1	\$300	\$375
K09T	KING CRAB, POT GEAR VL UNDER 60', BRISTOL BAY	N	3	1	\$300	\$375
P07E	SHRIMP, OTTER TRAWL, PRINCE WILLIAM SOUND	N	3	0	\$300	\$375
M91B	MISCELLANEOUS SALTWATER FINFISH, POT GEAR VL OVER 60', STW	N	71	77	\$300	\$525
K49A	RED/BLUE KING/TANNER CRAB, POT GEAR, SOUTHEAST	Y	23	2	\$300	\$600
M07B*	MISC SALTWATER FINFISH, OTTER TRAWL, VL UNDER 60', STATEWIDE	N	33	14	\$300	\$675
C61C	SABLEFISH, LONGLINE VL OVER 60', SOUTHERN SOUTHEAST	Y	18	6	\$300	\$750
S01L	SALMON, PURSE SEINE, CHIGNIK	Y	83	17	\$300	\$750
C61B	SABLEFISH, LONGLINE VL OVER 60', STATEWIDE	N	68	88	\$300	\$825
C91B	SABLEFISH, POT GEAR VL OVER 60', STATEWIDE	N	5	7	\$300	\$825
T91Q	TANNER CRAB, POT GEAR VL OVER 60', BERING SEA	N	63	145	\$300	\$825
C61A	SABLEFISH, LONGLINE VL OVER 60', NORTHERN SOUTHEAST	Y	62	27	\$300	\$900
K69A	RED/BLUE/BROWN KING/TANNER CRAB, POT GEAR, SOUTHEAST	Y	42	2	\$300	\$900
K91T	KING CRAB, POT GEAR VL OVER 60', BRISTOL BAY	N	76	180	\$300	\$900
G01A	HERRING ROE, PURSE SEINE, SOUTHEAST	Y	34	17	\$300	\$1,200

**State of Alaska
Commercial Fisheries Entry Commission**

**Comparison of Permit Renewal Fees For 2005 Licensing Year Under Current Fee Schedule
and Under CFEC's Proposed Methodology for Implementing HB 174 With \$3000 Cap**

3/31/2005

Fishery	Description	Under Limited Entry?	Resident Permits	Non-Resident Permits	Actual 2005 Base Fee	2005 Base Fee Under Proposed Methodology
M61B*	MISC. SALTWATER FINFISH, LONGLINE VL OVER 89' STW	N	12	54	\$300	\$1,500
K910	KING CRAB, POT GEAR VL OVER 20', DUTCH HAPBOCR	N	9	42	\$300	\$2,025
M07B*	MISC. SALTWATER FINFISH, OTTER TRAWL, VL OVER 59', STATEWIDE	N	45	220	\$300	\$3,000
			18,883	4,880		

Using the methodology proposed in HB 174, CFEC would assess renewal fees based on gross earnings for the M61B and M07B fisheries by splitting each fishery into two separate fisheries based on vessel length:

- * M61B Misc. Saltwater Finfish, Longline VL 30' to 89' STW
- * M61B Misc. Saltwater Finfish, Longline VL OVER 89' STW

- * M07B Misc. Saltwater Finfish, Otter Trawl VL to 59' STW
- * M07B Misc. Saltwater Finfish, Otter Trawl VL OVER 59' STW

HB

197

Alaska State Legislature

Rep. Harry Crawford
Rep. Jim Elkins
Rep. Carl Gatto
Rep. Mary Kapsner
Rep. Gabrielle LeDoux
Rep. Kurt Olson
Rep. Paul Seaton



State Capitol, Room 124
Juneau, AK 99801-1182
Co-Chairs
Rep. Ralph Samuels
(907) 465-2095 fax: 465-3810
Rep. Jay Ramras
(907) 465-3004 fax: 465-2070

House Resources Committee FAX

Please deliver the following pages to: Legis. Legal

Fm: Staff, Resources Committee

Fax #: 2029

Total number of pages including cover:

Date: 3/23/05 2:29 PM

Re: HB 197 24-LS0664\G

Please amend the above referenced resolution and return in final as the RES CS.

Page 3, lines 13-14

Delete "or refined petroleum products"

Page 4, Line 7-8

Delete "or refined petroleum products"

Page 4, Line 1

Insert "to" to read ...oil to the ground surface.

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Thank you

ALASKA STATE LEGISLATURE

Interim:

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Wasilla, Alaska 99654
(907) 373-1842
Fax (907) 373-4729



Session:

State Capitol Building
Juneau, Alaska 99801-1182
(907) 465-2186
Fax (907) 465-3318

REPRESENTATIVE VIC KOHRING DISTRICT 14

House Bill 197 Sponsor statement

House Bill 197 clarifies the Department of Environmental Conservation's (DEC) authority to exempt gas exploration wells and production facilities from *oil discharge prevention and contingency plans* ("C-Plans"). The legislation also removes the industry's burden of financial responsibility required of wells that do not pose an oil spill threat.

HB 197 fixes the unintended consequences of last year's HB 531. That legislation, in part, limited previous exemptions for gas exploration and production facilities for all shallow natural gas facilities to a narrow exemption for "non conventional gas wells." The problem HB 197 seeks to correct relates to the new definition of "non conventional gas," which HB 531 defined as "coal bed methane, gas contained in shales or gas hydrates."

Benefits of HB 197 include permitting DEC to focus its resources on the review of C-Plans and proof of financial responsibility for those gas exploration facilities that could potentially incur an oil spill. It also gives DEC authority to conduct inspections the Legislature directed when it changed the *contingency plan review renewal requirement* from three to five years. In addition, the bill relieves industry from unnecessary financial costs associated with preparing and implementing oil spill contingency plans for gas exploration facilities where no threat of an oil release spill exists. Lastly, HB 197 relieves industry from the costs involving demonstrating proof of financial responsibility in response to oil spills at gas exploration facilities, where no threat of spills exist.

HB 197 - Sectional Analysis

HB 197 clarifies DEC's authority to exempt natural gas exploration wells that do not pose a threat of an oil spill from the contingency plan and proof of financial responsibility requirements. HB 197 corrects an unintended consequence of HB 531, adopted in May 2004, that narrowed one of the exemptions for natural gas exploration and production facilities from a broad exemption for all shallow natural gas facilities to a narrow exemption for nonconventional gas wells. The 2004 legislation defined "nonconventional gas" as only "coal bed methane, gas contained in shales or gas hydrates."

HB 197 repeals the "nonconventional gas" provisions in AS 46.04.030(b) and AS 46.04.040(b)(3)(A) and replaces them with a broader exemption in AS 46.04.050(c). The new exemption would be for all natural gas exploration wells that the Alaska Oil and Gas Conservation Commission (AOGCC) determines that "evidence demonstrates with reasonable certainty . . . will not penetrate a formation capable of flowing oil to the ground surface."

Section 1. Creates a new authorization in AS 31.05.030(l) for the AOGCC to evaluate the likelihood that a well at a natural gas exploration facility may penetrate a formation capable of flowing oil to the ground surface. If the commission determines that evidence demonstrates with reasonable certainty that a well at a natural gas exploration facility will not penetrate a formation capable of flowing oil to the ground surface, it shall report its determination to DEC. Section 6 repeals the 2004 language authorizing AOGCC to make exception determinations for nonconventional gas wells since that authority is replaced by the new authority in section 1 (AS 31.05.030(l)).

Section 2. Repeals the existing c-plan exemption for nonconventional gas wells and replaces it with a broader exemption in section 5 by creating a new subsection (c) in AS 46.04.050 (exemptions).

Section 3. Repeals the \$25,000 financial responsibility requirement for nonconventional gas onshore exploration facilities. Natural gas facilities would only be required to have financial responsibility under AS 46.04.040 if the wells could penetrate a formation capable of flowing oil to the surface. At which point, they would be required to have \$1 million in financial responsibility as an onshore oil exploration facility.

Section 4. Clarifies the existing exemption for "natural gas production facilities" and "natural gas terminal facilities." Makes clear that the exemption is not lost unless the facility produces, stores or transports natural gas in combination with crude oil or the facility would qualify as

an oil terminal facility with storage capacity above 5,000 barrels of crude oil or 10,000 barrels of noncrude oil.

Section 5. A new subsection to the c-plan and financial responsibility exemptions would exempt a natural gas exploration facility if the AOGCC determines under AS 31.05.030(l) that evidence obtained through evaluation demonstrates with reasonable certainty that all of the exploration wells at the facility will not penetrate a formation capable of flowing oil to the ground surface. If the AOGCC cannot make that determination for all of the wells at the exploration facility, the facility would not be exempted. Similarly, if the drilling of a well does penetrate such a formation a c-plan and financial responsibility would be required.

A new subsection (c) is added to define the term "natural gas exploration facility" with similar exceptions to the exemption if the facility explores, produces, stores or transports natural gas in combination with crude oil or if it qualifies as a regulated oil terminal facility.

Section 6. Repeals the AOGCC nonconventional gas finding provision that is replaced by new AS 31.05.030(l) and removes the definition of nonconventional gas from AS 46.04.900 since it is no longer used in Chapter 4 of Title 46.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 197
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
Title: Related to oil discharge prevention and contingency plans for certain natural gas exploration facilities RDU: Soil Prevention and Response
Sponsor: House Oil & Gas Committee Component: Industry Preparedness and Pipeline Operations
Requester: House Oil & Gas Committee Component No.: 1922

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type—Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

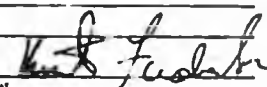
Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

POSITIONS	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
This bill will not have a financial impact on the department. It clarifies DEC's authority to exempt natural gas exploration wells (that do not pose a threat of an oil spill) from contingency plan and proof of financial responsibility requirements. It corrects an unintended consequence of HB531 passed in May, 2004, which, in part, narrowed the scope of that exemption from the pre-existing broad exemption for all shallow natural gas facilities, to a narrower exemption for "nonconventional gas" wells, defined as strictly "coal bed" methane, gas contained in shales or gas hydrates. This bill repeals the "nonconventional gas" definition in applicable DEC contingency plan statutes AS 46.04.030(b) and 040(b)(3)(A) and replaces it with broader exemption language restated in AS 46.04.050(c) "For those natural gas exploration wells the AOGCC determines will not penetrate a formation capable of flowing oil to the ground surface."

Prepared by: Larry Dietrick, Director Phone 465-5250
Division: Spill Prevention and Response Date/Time 3/14/05 3:41 PM
Approved by: Kurt Fredriksson, Acting Commissioner  Date _____
Agency: Department of Environmental Conservation

OVERVIEW DOCUMENT
Natural Gas Facility Exemption from
DEC Contingency Plan Requirements

This bill clarifies DEC's authority to exempt natural gas exploration wells – that do not pose a threat of an oil spill – from contingency plan and proof of financial responsibility requirements. It corrects an unintended consequence of HB 531, which passed the Legislature in May, 2004. That bill, in part, narrowed the scope of an exemption (for natural gas exploration and production facilities) from the preexisting broad exemption for all shallow natural gas facilities, to a narrow exemption for 'nonconventional gas' wells. The problem stems from the HB 531 definition of 'nonconventional gas' as strictly, "coal bed methane, gas contained in shales or gas hydrates."

Benefits of the Legislation.

- Allows DEC to focus its resources on the review of c-plans and proof of financial responsibility for those natural gas exploration facilities that could potentially threaten the environment with oil spills; and
- Ensures that DEC can conduct the additional inspections and drills that the Legislature envisioned would be performed when it changed the contingency plan review renewal requirement from three to five years;
- Relieves industry from the unnecessary financial costs and schedule impacts of preparing and implementing oil spill contingency plans for natural gas exploration facilities where there is not a threat of an oil release from the well; and
- Relieves industry from the unnecessary cost of demonstrating proof of financial responsibility (i.e. insurance, bonds or letters of credit) to respond to oil spills at natural gas exploration facilities where there is not a threat of an oil release from the well.

The "fix" proposed through this bill repeals the "nonconventional gas" provisions in applicable DEC contingency plan and financial responsibility statutes -- AS 46.04.030(b) and .040(b)(3)(A) -- and replaces them with broader exemption language restated in AS 46.04.050(c) for those natural gas exploration wells that the AOGCC determines the evidence "demonstrates with reasonable certainty . . . will not penetrate a formation capable of flowing oil to the ground surface."

DEC has used its existing authority in AS 46.04.050(b) for natural gas *production* wells to exempt natural gas *exploration* wells where there is sufficient geological information to determine that the wells will not penetrate a formation capable of flowing oil to the surface. In consultation with AOGCC, DEC has determined such wells to be natural gas production facilities under .050(b) even if sufficient information is unavailable to quantify their commercial potential as development wells. This bill would clarify DEC's existing exemption authority in AS 46.04.050(b) by exempting all natural gas exploration wells that are not capable of causing an oil spill from the c-plan and financial responsibility requirements. Sec 5.

BACKGROUND



U.S. Environmental Protection Agency

Underground Injection Control Program

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What is the
UIC program?

Critical Initiatives

Classes of
Injection Wells
Class I
Class II
Class III
Class IV
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State UIC Programs

Regulations &
Guidance

Deep Wells (Class I)

- EPA has completed and submitted to Congress a study of Class I wells that describes the current Class I UIC Program, documents past compliance incidents involving Class I wells, and summarizes studies of human health risks associated with Class I injection conducted for past regulatory efforts and policy documentation. Read [Class I Underground Injection Control Program: Study of the Risks Associated with Class I Underground Injection Wells \[PDF file\]](#) (EPA 816-R-01-007 / March 2001).
- Class I injection well facilities dispose of industrial hazardous, industrial nonhazardous and municipal (non-hazardous) waste.
- There are 272 active Class I injection facilities nationwide. Of these, 51 are hazardous and 221 are non-hazardous. These 272 facilities maintain approximately 529 Class I injection wells that are scattered throughout the US in 19 states. The greatest concentration are located in the Gulf Coast, Great Lakes, and the Floridian peninsular geographical regions.
- Class I wells are mainly used in the following industries:
 - Petroleum Refining,
 - Metal Production,
 - Chemical Production,
 - Pharmaceutical Production,
 - Commercial Disposal,
 - Municipal Disposal and
 - Food Production.
- Class I injection wells are sited such that they inject below the lowermost USDW and a confining zone above an injection zone. Injection zone reservoirs typically range in depth from 1,700 to over 10,000 feet below the surface.

Hazardous Waste Injection Wells

Injection of hazardous waste into deep wells began in the United States in the 1960s. At that time, the chemical industry was looking for a safe, relatively inexpensive method for disposing of high volumes of waste that could be considered toxic. Technology was borrowed from the oil and gas industry to develop this new form of disposal.

- There are 163 Class I hazardous waste injection wells located at 51 facilities. Most are found in Texas (78) and Louisiana (18). Eleven of the facilities are commercial hazardous waste injection facilities. These are the only facilities that can accept hazardous waste generated offsite for injection. Ten of them are located in the Gulf Coast region while one is located in the Great Lakes region.
- Hazardous and Solid Waste Amendments to RCRA made UIC regulations (1988) more stringent for Class I hazardous wells. This resulted in strict no-migration standards and a petition approval process for continued operation of the wells. Of the 51 Class I hazardous waste facilities, 47 have approved no-migration petitions that cover 123 wells. To receive a no-migration petition the facility must be able to

demonstrate that injected waste will not impact the biosphere (ground water or surface water) for 10,000 years.

UIC Class I Deep/High Technology Hazardous Waste Wells



Non-Hazardous Waste Injection Wells

Non-hazardous deep injection wells have to meet all the technical requirements of hazardous waste wells. These wells inject industrial, low radiation and municipal wastes. Some States include some mining wells in this group and require the operators of these wells to meet all the requirements of other deep wells.

- There are 366 Class I non-hazardous injection wells nationwide. While these wells are scattered through 19 states, most of them are found in the states of Florida (112) and Texas (110).
- Florida is the only state with Class I municipal waste disposal wells (104).

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URL: <http://www.epa.gov/safewater/uic/classi.html>



U.S. Environmental Protection Agency Underground Injection Control Program

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Critical Initiatives

Classes of
Injection Wells
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Guidance

Oil and Gas Injection Wells (Class II)

The oil and gas production industry accounts for a large proportion of the fluids injected in the subsurface. Typically, when oil and gas are extracted, large amounts of salt water (brine) are also brought to the surface. This salt water can be very damaging if it is discharged in surface water. Instead, all states require that this brine be injected into formations similar those from which it was extracted. Over 2 billion gallons of brine are injected daily into injection wells in the US.

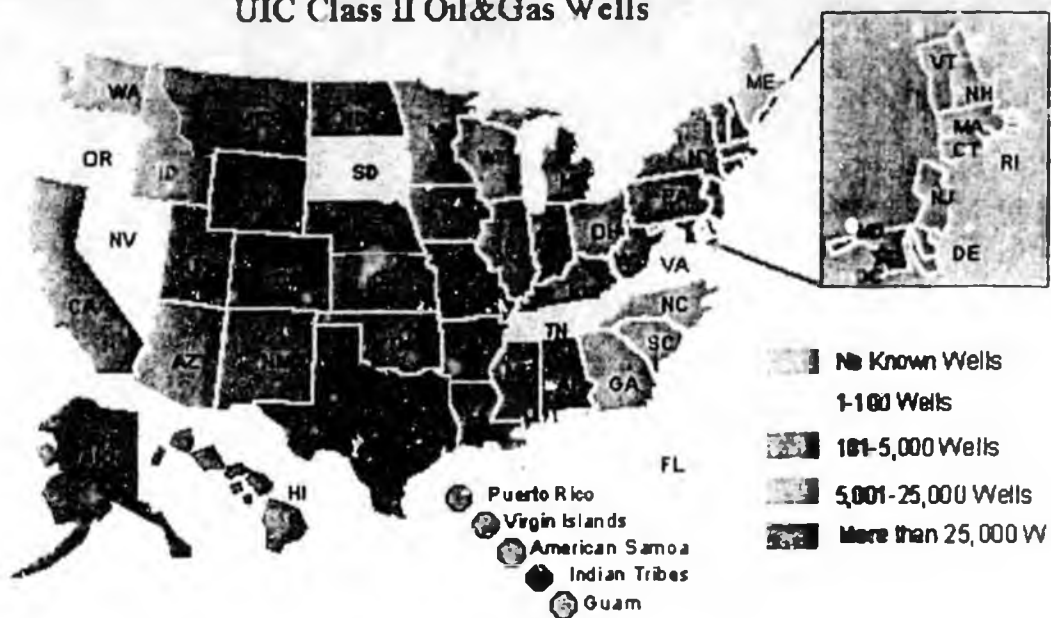
The largest proportion of these brines are injected into formations that contain trace portions of extractable oil and gas. Injection of the brine can have the effect of enhancing production of oil and gas from the formations, thus secondary recovery of oil and gas depends heavily on injection. Furthermore, when States started to implement rules that prevented the disposal of brine to surface water bodies and soils, injection of this waste fluid became the prevalent form of disposal.

Class II wells exist wherever there is production of oil and gas. There are approximately 167,000 oil and gas injection wells in the US, most of which are used for the secondary recovery of oil. In this process water is pumped into the formation that contains some residual hydrocarbons. A portion of the hydrocarbons are recovered, along with the injected water, by extraction or production wells. In a common configuration, one injection well is surrounded by 4 or more extraction wells. The recovered fluid is treated to remove most of the hydrocarbons in a device called a separator. The other type of oil and gas injection well is a disposal well. In this type of well, excess fluids from production and some other activities directly related to the production process are injected solely for the purpose of disposal.

Class II wells have to follow strict construction and conversion standards except when historical practices in the State and geology allow for different standards. A Class II well that follows EPA federal standards is built very much the same as a deep or Class I well. In 1997 Congress added Section 1425 to the Safe Drinking Water Act, that controls underground injection, relieving Class II well programs in the States from having to meet the technical requirements in the UIC regulations. Instead, they can make a demonstration that the State has an "... effective program (including adequate record-keeping and reporting) to prevent underground injection which endangers drinking water sources."

Most of the oil and gas injection wells are located in the Southwest, with Texas having the largest number (53,000) and California, Oklahoma and Kansas following some distance behind with 25,000, 22,000 and 15,000 wells respectively.

UIC Class II Oil&Gas Wells



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Last updated on Monday, February 14th, 2005
URL: <http://www.epa.gov/safewater/uic/classii.html>

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

ALASKA OIL AND GAS CONSERVATION COMMISSION

333 W. 7TH AVENUE, SUITE 100
ANCHORAGE, ALASKA 99501-3899
PHONE (907) 278-1488
FAX (907) 278-7642

March 14, 2005

The Honorable Victor Kohring
Chair, House Special Committee on Oil and Gas
State Capitol
Juneau, Alaska 99801

Re: Letter of Support Concerning House Bill No. 197

Dear Representative Kohring:

The Alaska Oil and Gas Conservation Commission ("Commission") supports House Bill No. 197 ("HB 197"), which amends the laws regarding oil discharge prevention and contingency plans and proof of financial responsibility ("C-plans") to allow better use of geologic information and understanding in determining the need for such plans.

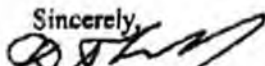
Under current law, a C-plan is required for wells drilled to explore for or produce oil. On the other hand, a C-plan is not required for wells drilled to produce only gas. The treatment of wells drilled to *explore* for gas has a complicated history. Previously, wells drilled for shallow gas were exempted from the C-plan requirement. In 2004, however, HB 531 changed the language from "shallow" gas to "nonconventional" gas. In practical terms, this means that wells drilled to explore for coalbed methane qualify for exemption, but wells drilled to explore for other shallow gas are generally not entitled to exemption. In the Commission's view, there is a mismatch between the current scope of the C-plan exemption and the facts of Alaska's geology.

What the Commission has learned over the years is that drilling in many areas of the state poses essentially no risk of an oil spill. These areas have thick geologic sections containing both conventional and nonconventional gas reservoirs, but have very little potential for the existence of zones capable of flowing liquid hydrocarbons. Requiring a C-plan for wells drilled in these circumstances adds cost and delay to gas exploration without providing increased protection to the environment.

HB 197 corrects the inadequacies in current law by providing for a case-by-case geological evaluation of wells drilled to explore for gas - whether shallow or deep, nonconventional or conventional. Under this bill, a well drilled to explore for gas would qualify for a C-plan exemption if, but only if, the Commission determines that evidence demonstrates with reasonable certainty that the well will not penetrate a formation capable of flowing oil to the ground surface. The approach of HB 197 is to base C-plan exemption decisions on application of the Commission's geologic expertise to the specific facts of a proposed exploration project. The Commission believes this is exactly the right approach.

Thank you for your attention.

Sincerely,



Daniel T. Seamont, Jr.
Commissioner

SUPPORT

Unocal Alaska
Union Oil Company of California
909 West 9th Avenue, P.O. Box 196247
Anchorage, Alaska 99519-8247
Telephone (907) 276-7600
Fax (907) 263-7698



Kevin A. Tabler, Manager
Land/Government Affairs

March 11, 2003

Representative Vic Kohring
State of Alaska Legislature
Room 24, State Capitol
Juneau, Alaska 99801-1182

Re: Support for HB197

Representative Kohring:

Union Oil Company of California was delighted to see the introduction of HB 197 to clean up the effect of HB531 (2003 legislation) which created the unintended consequence of elimination of the exemption for oil spill contingency plans for exploration and production facilities used solely to explore, develop or produce shallow natural gas. Our review of the proposed legislation concludes that HB 197 clears up the unintentional change caused by implementation of HB 531 and supports your efforts.

Thank you for taking the initiative to fix this problem.

Sincerely,

A handwritten signature in cursive script that reads "Kevin A. Tabler".

Kevin A. Tabler

Sec. 46.04.900. Definitions.

Statute text

In this chapter, unless the context requires otherwise,

- (1) "barrel" is a measure of capacity equal to the space occupied by 42 U.S. gallons at 60 degrees Fahrenheit;
- (2) "catastrophic oil discharge" means an oil discharge in excess of 100,000 barrels, or any other discharge which the governor determines presents a grave and substantial threat to the economy or environment of the state;
- (3) "Clean Water Act" means the Federal Water Pollution Control Act of 1972 (P.L. 92-500), as amended by the Clean Water Act of 1977 (P.L. 95-217), as amended (33 U.S.C. 1251 - 1376);
- (4) "commissioner" means the commissioner of environmental conservation;
- (5) "containment and cleanup" includes all direct and indirect efforts associated with the prevention, abatement, containment, or removal of a pollutant, and the restoration of the environment to its former state; when applied to expenses, the term includes the additional costs of providing a reasonable and appropriate function or service incurred in response to the discharge of a pollutant, including administrative expenses for the incremental costs of providing the function or service;
- (6) "department" means the Department of Environmental Conservation;
- (7) "discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping;
- (8) "exploration facility" means a platform, vessel, or other facility used to explore for hydrocarbons in or on the waters of the state or in or on land in the state; the term does not include platforms or vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation;
- (9) "natural gas"
 - (A) means a hydrocarbon that at 70 degrees Fahrenheit and atmospheric pressure is in a gaseous state;
 - (B) includes liquefied natural gas or other form of natural gas that has been converted to a liquid state by pressure or cooling that at 70 degrees Fahrenheit and atmospheric pressure reverts to a gaseous state; (emphasis added)
- (10) "nonconventional gas" has the meaning given in AS 38.05.965.
- (11) "nonpersistent product" has the meaning given to "non-persistent or Group I oil" in 33 C.F.R. 155.1020;
- (12) "nontank vessel" means a self-propelled watercraft of more than 400 gross registered tons; in this paragraph, "watercraft" includes commercial fishing vessels, commercial fish processor vessels, passenger vessels, and cargo vessels, but does not include a tank vessel, oil barge, or public vessel;
- (13) "oil" means oil of any kind and in any form, whether crude, refined, or a petroleum by-product, including but not limited to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquefied natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity; (emphasis added)
- (14) "oil barge" means a vessel which is not self-propelled and which is constructed or converted to carry oil as cargo in bulk;
- (15) "oil terminal facility" means an onshore or offshore facility of any kind, and related appurtenances, including but not limited to a deepwater port, bulk storage facility, or marina, located in, on, or under the surface of the land or waters of the state, including tide and

submerged land, that is used for the purpose of transferring, processing, refining, or storing oil; a vessel, other than a nontank vessel, is considered an oil terminal facility only when it is used to make a ship-to-ship transfer of oil, and when it is traveling between the place of the ship-to-ship transfer of oil and an oil terminal facility;

(16) "operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(17) "persistent product" has the meaning given to "persistent oil" in 33 C.F.R. 155.1020;

(18) "person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership, association, firm, trust, estate, or any other entity;

(19) "pipeline" means the facilities, including piping, compressors, pump stations, and storage tanks, used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels;

(20) "production facility" means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances on other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons in or on the water of the state or on land in the state, and gathering and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility;

(21) "public vessel" means a vessel that is operated by and is either owned or bareboat chartered by the United States, a state or a political subdivision of that state, or a foreign nation, except when the vessel is engaged in commerce;

(22) "railroad tank car" means rolling stock used to transport oil in bulk as cargo by rail;

(23) "response action" means an action taken to respond to a release or threatened release of oil, including mitigation, cleanup, or removal;

(24) "self-propelled" means propelled either by machinery aboard the vessel, or by a tug or other vessel secured into the cargo-carrying vessel through special hull design;

(25) "service" means a function performed or service provided by the state, including functions not previously performed and services not previously provided by the state;

(26) "tank vessel" means a self-propelled waterborne vessel that is constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships, and combination carriers when carrying oil; the term does not include vessels carrying oil in drums, barrels, or other packages, or vessels carrying oil as fuel or stores for that vessel;

(27) "train" means connected rolling stock operated as a single moving vehicle on rails; for purposes of this paragraph, "connected rolling stock" includes railroad tank cars.

(28) "vessel" includes tank vessels, oil barges, and nontank vessels;

(29) "village" means a place within the unorganized borough or within a borough as to a power, function, or service that is not exercised or provided by the borough on an areawide or nonareawide basis that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of commerce, community, and economic development under regulations adopted by the Department of Commerce, Community, and Economic Development to determine and give official recognition of village entities under AS 44.33.755(b);

(30) "waters of the state" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.

History

(§ 2 ch 116 SLA 1980; am §§ 25 - 27 ch 191 SLA 1990; am §§ 13, 14 ch 83 SLA 1991; am § 2 ch 39 SLA 1992; am § 14 ch 83 SLA 1992; am § 69 ch 58 SLA 1999; am §§ 2 - 4 ch 128 SLA 2000; am § 8 ch 45 SLA 2003; am §§ 54, 58 ch 49 SLA 2004)

Annotations

Revisor's notes. Formerly AS 46.04.120. Renumbered in 1989. Reorganized in 1990, 1991, 1992, 2000, 2003, and 2004 to maintain the defined terms in alphabetical order.

In 2004, "commissioner of community and economic development" was changed to "commissioner of commerce, community, and economic development" and "Department of Community and Economic Development" was changed to "Department of Commerce, Community, and Economic Development", in accordance with § 3, ch. 47, SLA 2004.

Administrative Code. - For financial responsibility for oil discharges, see 18 AAC 75, art. 2. For oil discharge prevention and contingency plans and nontank vessel plans, see 18 AAC 75, art. 4.

Effect of amendments. The 1999 amendment, effective July 1, 1999, in present (29)(B)(iii) substituted "economic development" for "regional affairs" in two places and made a section reference substitution.

The 2000 amendment, effective September 1, 2000, in paragraphs (14) [now (15)] and (27) [now (28)], inserted references to nontank vessels and added what are now paragraphs (11), (12), (17), (21), (22), and (27).

The 2003 amendment, effective June 7, 2003, added a definition of "shallow natural gas" that appeared in former paragraph (25).

The 2004 amendment, effective June 5, 2004, repealed paragraph (25), which defined "shallow natural gas"; and added paragraph (31), renumbered as paragraph (10).

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI,
GOVERNOR

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March 22, 2005

Representative Ralph Samuels
House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: HB 197

Dear Co-Chairman Samuels:

You asked that the Attorney General's Office provide a response to a question raised by Representative Seaton in the March 21, 2005, House Resources Committee Hearing on HB 197. Representative Seaton asked a question concerning the definitions of "oil", "crude oil" and "natural gas" in sections 4 and 5 of the bill. Because the legis'ative teleconference system went offline, I was unable to respond to the Representative Seaton's question. I appreciate this opportunity to explain these provisions of the bill.

The existing provisions in AS 46.04.050 provide two exemptions to the oil discharge prevention and contingency plan (C plan) (AS 46.04.030) and financial responsibility (AS 46.04.040) requirements. The first exemption is for "oil terminal facilities" with an oil storage capacity of less than 5,000 barrels of crude oil or less than 10,000 barrels of noncrude oil. The second exemption is for natural gas production and terminal facilities. In addition, there is a C-plan exemption for natural gas exploration and production facilities in AS 46.04.030(a) that, prior to HB 531 applied to shallow natural gas facilities, and now, applies to "nonconventional gas" which is defined as "coal bed methane, gas contained in shales or gas hydrates." AS 38.05.965.

Representative Seaton's question involves the exemptions in AS 46.04.050 which provides as follows:

Sec. 46.04.050. Exemptions.

(a) The provisions of AS 46.04.030, 46.04.040, and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 5,000 barrels of crude oil or less than 10,000 barrels of noncrude oil.

Co-Chairman Samuels

March 22, 2005

Page 2

(b) The provisions of AS 46.04.030 and 46.04.040 do not apply to a natural gas production facility and a natural gas terminal facility; for purposes of this subsection the terms "natural gas production facility" and "natural gas terminal facility"

(1) mean a platform, facility, or structure that is used solely for the production, compression, storage, or transport of natural gas;

(2) do not include a platform, facility, or structure that produces, stores, or transports natural gas in combination with oil.

Subsection (b) exempts natural gas production and terminal facilities. Subsection (b) defines those facilities as "a platform, facility, or structure that is used solely for the production, compression, storage, or transport of natural gas" but as not including a platform, facility, or structure that produces, stores, or transports natural gas in combination with oil. AS 46.04.050(b)(2) (emphasis added).

Sections 4 and 5 of HB 197 make two clarifications to the exemption. First, section 5 moves the natural gas exploration and production facility exemption in AS 46.04.030(b) to a new subsection (c) in AS 46.04.050. Second, sections 4 and 5 clarify what is meant by the "exclusion" to the exemption for facilities that handle natural gas "in combination with oil." AS 46.04.050(b)(2). It is important to note that oil is defined very broadly in AS 46.04.900(13): as "oil of any kind and in any form, whether crude, refined, or a petroleum by-product, including but not limited to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquified natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity."

Sections 4 and 5 attempt to resolve any ambiguity in these provisions by defining "in combination with oil" as a facility that stores, produces, explores for, or transports natural gas in combination with crude oil and that crude oil does not include natural gas. New subparagraph (ii) addresses a natural gas exploration or production facility that stores refined petroleum products by providing that it would only need a C-plan or financial responsibility if it stores refined petroleum products in volumes exceeding those in AS 46.04.050(a) (10,000 barrels of noncrude oil). This reflects the Department of Environmental Conservation's interpretation of those provisions since the exemption in AS 46.04.050 was amended in 1992 to address natural gas facilities.

In sum, the definitions in sections 4 and 5 are attempts to clarify the current application of these requirements in light of the existing statutory definitions in AS 46.04.900. As a result, it is not necessary to amend sections 4 and 5 of the bill.

Norman
AOGCC

Co-Chairman Samuels

March 22, 2005

Page 3

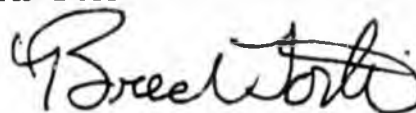
It is also worth noting that -- like any other facility in the state -- a facility exempted from the C-plan requirements must still immediately contain and cleanup oil spills as required by AS 46.04.020 and is strictly liable for the costs and damages from a spill under AS 46.03.822.

I hope that this responds to the question raised by Representative Seaton. If I can provide additional assistance, please let me know.

Sincerely,

SCOTT J. NORDSTRAND
ACTING ATTORNEY GENERAL

By:



Breck C. Tostevin
Assistant Attorney General

BCT/cam

cc: Rep. Kohring
Rep. Ramras
Rep. Seaton
Acting Comm. Fredriksson
Larry Dietrick
Dan Seamont
David Marquez
Deborah Behr
Rob Mintz
Kevin Jardell

HB

1988

ALASKA STATE LEGISLATURE

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REPRESENTATIVE JIM ELKINS

Sponsor Statement for HB 198 Dive Fishery Management Assessment

“An Act relating to aquatic farming; and providing for an effective date.”

House Bill 198 amends the state's Aquatic Farming Act (AS 16.40.100 – 199) to allow aquatic farms to continue to operate in compliance with a recent Supreme Court decision.

In mid-April, the State Supreme Court ruled that the Act requires the Department of Fish and Game to deny shellfish farmers exclusive rights to significant populations of wild geoducks on their proposed farm sites. Since then, the Southeast Alaska Regional Dive Fisheries Association (SARDF), the Alaskan Shellfish Growers Association (ASGA) and the Department have negotiated an agreement that would allow these farmers to harvest “insignificant” populations of standing stocks of geoducks. In order to be implemented, this agreement would require a change in statute. Section 1 of HB 198 amends the Aquatic Farming Act to allow shellfish farmers to own, harvest and sell “insignificant populations” of wild shellfish stocks on their aquatic farm sites.

On February 11, 2005, the Department of Fish and Game announced that it will conduct a commercial dive fishery on designated mariculture sites, to remove the commercially significant population of wild geoducks from these small areas. This fishery will be open to all commercial divers in Southeast Alaska. Section 2 of HB 198 makes it clear that the aquatic farmers will not have to replace the shellfish that are harvested in this common property fishery.

Section 3 gives the Department the authority, when it determines it would be beneficial to do so, to let shellfish farmers remove all but an “insignificant population” of wild stock from their sites themselves and give the proceeds from their sale to ADF&G. Section 4 codifies the requirement that proposed farm sites can only get permits if there is an “insignificant population” of the shellfish species to be cultured there, and Section 7 says that this section applies only to permits issued after July 1, 2005.

This legislation, the product of industry members and the administration working to find a compromise, will help ensure the future of this new fishery in Southern Southeast Alaska for years to come and I urge the members support.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE JIM ELKINS

Sectional Analysis

Section 1 - Amends AS 16.40.100(b) to provide that an aquatic farm permit authorizes the permit holder to acquire ownership of, harvest, and sell wild shellfish from an aquatic farm site if the wild shellfish is present in an "insignificant population" and the wild shellfish is of the same species of shellfish that is intended to be cultured at the site.

Section 2 - Amends AS 16.40.100(e) to provide a limited exception from the requirement that an aquatic farm permit holder restore wild shellfish populations to the levels that existed on the site at the time that the permit was initially issued, so that the permit holder is not required to restore that portion of a wild shellfish population that was removed from the site by a common property fishery.

Section 3 - Amends AS 16.40.100 by adding a new subsection (f) to authorize the commissioner of fish and game to allow an aquatic farm permit holder, under certain circumstances, to remove and sell excess wild shellfish from an aquatic farm site if the population of the wild shellfish species is more than an insignificant population. The permit holder will pay a reasonable amount to the Department of Fish and Game for the harvest and sale of the excess wild shellfish. The money received will be deposited in the General Fund and may be appropriated to the department for shellfish management and enhancement.

Section 4 - Amends AS 16.40.105 by adding a new paragraph to provide that, in addition to the existing criteria for issuance of an aquatic farm permit, the commissioner of fish and game may not issue a permit for a proposed farm site if the site contains more than an insignificant population of wild stock of a shellfish species intended to be cultured on the site.

Section 5 - Adds a new Section AS 16.40.155 to provide, in certain circumstances, confidentiality for aquatic farm and hatchery permit holders.

Section 6 - Adds the definition of "insignificant population" in regards to shellfish populations.

Section 7 - Provides that AS 16.40.105, as amended by section 4 of the bill, does not apply to aquatic farm permits before the effective dates of the bill.

Section 8 - Provides for an effective date of July 1, 2005.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 198(FSH)
 (H) Publish Date: 3/21/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title An act relating to aquatic RDU Commercial Fisheries
and providing for an effective date Component Fisheries Development
 Sponsor Representative Elkins
 Requester House Fisheries Committee Component No. 1942

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Sarah Gilbertson Phone: 465-6137
 Division: Legislative Liaison Date/Time: 3/17/05 1:26 PM
 Approved by: Acting Commissioner Wayne Regelin Date: 3/17/2005
 Agency: Alaska Department of Fish & Game

STATE OF ALASKA

FRANK H. MURKOWSKI
GOVERNOR

DEPARTMENT OF FISH AND GAME
OFFICE OF THE COMMISSIONER

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March 3, 2005

The Honorable Bert Stedman
Alaska State Legislature
Room 30; State Capitol
Juneau, AK 99801

Dear Senator Stedman:

Thank you for introducing S.B. 126 on behalf of the Southeast Alaska Regional Dive Fisheries Association and the Alaska Shellfish Growers Association. As you know, passage of this legislation carries significant implications for the success of Alaska's mariculture industry.

Under the previous administration, Alaska's mariculture industry was largely ignored. The industry, which was constantly at odds with the Alaska Department of Fish and Game (ADF&G) over regulatory matters, was unable to get the support that it needed from the Governor's office to move forward. As the introduction of S.B. 126 demonstrates, this is no longer the case. The Murkowski Administration strongly supports Alaska's mariculture industry, in part, because it provides promising economic development opportunities for Alaska's fishermen and coastal communities. Over the last two years, ADF&G has been working cooperatively with the industry on a regulatory scheme that will foster the growth of the industry.

However, ADF&G's regulatory work and the industry's ability to develop have recently been slowed by a series of court rulings. The first of these, in the Superior Court, found that the state is required to provide access to insignificant amounts of naturally occurring shellfish to aquatic farmers. The most recent ruling by the Alaska Supreme Court found that existing statutes prevent ADF&G from allocating any naturally occurring stocks to aquatic farmers who are developing new sites, except for use as brood stock.

As you have recognized through the introduction of S.B. 126, in order for this industry to be successful, aquatic farmers should have the opportunity to plant crops where some level of natural stocks already occur. Therefore, ADF&G strongly supports the expeditious passage of S.B. 126 in order to clarify that ADF&G may indeed allocate "insignificant" numbers of wild stocks of shellfish to aquatic farmers. Thank you once again for your support on this matter.

Sincerely,


Wayne Regelin
Acting Commissioner

Acting Commission letter



March 15, 2005

**Representative Jim Elkins
Room 416
State Capitol
Juneau, AK 99801**

Dear Representative Elkins:

This letter is to provide a strong endorsement of House Bill 198 and your efforts to seek resolution of the long-standing controversy over the citing of geoduck clam farms in Alaska.

The Alaskan Shellfish Growers Association (ASGA) has been trying to resolve this bitter controversy for the past eight years as it spilled over into the court system, halls of the Capitol and front pages of local newspapers. The industry, state regulators, policymakers, commercial fishermen and the court system have invested innumerable hours wrestling with the difficult issues involved, and we're delighted at the opportunity to put the issue to bed.

Since a decision by the Alaska Supreme Court last spring, ASGA has been working closely with commercial fishermen and the Murkowski Administration to fashion a compromise acceptable to all parties. The result of this cooperative work is HB 198 which has support from farmers, commercial fishermen, Departments of Fish and Game and Law, and Governor Frank Murkowski. While there are many issues upon which we'll continue to disagree, we all support the concepts contained in HB 198.

The Department of Law has determined that the legislation does adequately address the issues raised by the Alaska Supreme Court in its 2004 decision. Some of the details wisely are left to be fleshed out in regulation, but ASGA thinks there is one more issue that is best decided by the legislature: the amount of compensation a farmer should pay for harvest of "standing stocks" of wild geoduck clams on the farmsite.

The new section HB 198 adds to AS 16.40.100 is designed to allow farmers to remove "standing stocks" from the farmsite, and provides that the farmer must pay "reasonable compensation" for any "excess wild stock." While we think it is appropriate that harvest of these "excess wild stocks" would result in a tax on the farmer, ASGA believes the amount of "fair compensation" is a legislative prerogative and not a decision to be made by fisheries managers.

We are preparing a proposed amendment to set an extraction tax rate on harvests of "excess wild stocks" of geoduck clams at 30 percent of the price paid fishermen during the most recent commercial fishery. This tax would be added to the Fisheries Business Tax rate of three percent paid by other harvesters. This combined tax rate would exceed the amount the state collects on Prudhoe Bay oil, including severance taxes, royalties and corporate income tax, and is several times higher than the amount paid by other

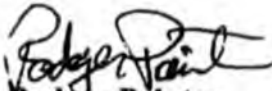
Rodger Painter • P.O. Box 20704 Juneau, AK 99802-0704
Fax: (907) 586-1077 • Cell: (907) 957-0704 • email:

Support Letters

harvesters.

Important to keep in mind is that the tax would affect only those situations where fisheries managers misjudged the amount of standing stocks on new farmsites and that new survey techniques supported by fishermen and farmers would help improve significantly the accuracy of these estimates.

Thank you for this opportunity to resolve this long-standing controversy. The major parties in this dispute are fully committed to setting aside past differences and working together on economic development strategies for Southeast Alaska.



Rodger Painter
Vice President

c.c. Julie Decker, SARDFA
Alan Austerman
David Bedford
ASGA Board of Directors



Mission Statement: To develop, expand, and enhance new and existing dive fisheries in Southeast Alaska.

Julie Decker, Executive Director
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Ph: 907-874-3110; Fax: 907-874-4270
info@sardfa.org
www.sardfa.org

Co-Chairs of the House Fisheries Committee
Representative Gabrielle LeDoux
Representative Bill Thomas

March 16, 2005

RE: Support for HB 198 / SB 126 – Aquatic Farming

Dear Representatives LeDoux and Thomas,

I am writing on behalf of the Southeast Alaska Regional Dive Fisheries Association (SARDFA) to support HB 198 / SB 126, companion bills related to aquatic farming. SARDFA is a non-profit, economic development corporation whose mission is to develop, expand and enhance new and existing dive fisheries in Southeast Alaska. SARDFA's Board of Directors represents the commercial harvest divers, processors, and communities of Southeast. Currently, three dive fisheries exist in Southeast: sea urchins (80 permit holders), sea cucumbers (330 permit holders), and geoducks (80 permit holders).

Over the past six years, there has been a deep controversy over which group has the right to harvest the wild stocks of geoducks on farm sites: farmers or fishermen. Judge Thompson ruled that insignificant wild geoducks could be taken by farmers, and significant stocks, or those that would "attract and support a dive fishery", could be taken by the common property dive fishery.

Last April, the Alaska Supreme Court upheld the Thompson ruling, but further stated "the department lacked statutory authority to give aquatic farmers exclusive rights to the existing wild stocks". Since then, ***SARDFA has worked with the State and the farmers to compromise on an acceptable implementation of the Courts' rulings. HB 198 / SB 126 are the result of that work.***

HB 198 / SB 126 are necessary for three reasons. First, this legislation will give the department the statutory authority to allow aquatic farmers to harvest insignificant wild stocks on sites. Second, this legislation will end confusion for farmers, the department, and the courts regarding approval or denial of future farm applications. Third, this legislation will deal with the mess leftover by inconsistent decisions regarding the siting

of the current 20-30 geoduck farm permits by allowing farmers who have already planted on sites, which may contain more than an insignificant amount of wild stocks, to harvest those stocks and pay "reasonable compensation" to the state as a levy.

SARDFA understands the farmers also support this legislation, but would like to see the bill amended to specify the amount of "reasonable compensation" (Section 3, line 19). SARDFA does not believe it is necessary to set this "reasonable compensation", or levy, in statute. As the Department of Law has explained it, the State is approaching the development of this particular resource in a completely new way with this levy and SARDFA believes it would be more practical to allow flexibility to the Department of Fish and Game (ADF&G) to set the levy in regulations.

However, if the Legislature believes it is necessary to fix the levy in statute, **SARDFA strongly encourages the Legislature to set the levy as high as possible.** SARDFA believes the higher the levy is, the smaller the net profit to the farmer will be, and consequently the less incentive there will be to the farmer to poach wild geoducks from off of farm sites. Poaching of geoducks by licensed farms in remote areas of Alaska is a serious concern for SARDFA. Geoduck poaching has been a big problem for the State of WA, as a quick search on the Google web site will show you. Proper enforcement of farm site boundaries relative to the harvest of wild stock is highly unlikely for farmers operating 365 days per year. In other words, what's to stop a farmer from sliding down the beach a half mile from his farm site to harvest wild geoducks, making a substantial profit?

The Alaska Shellfish Growers' Association (ASGA) agreed to a compromise with SARDFA last spring. Part of that compromise states: "In the event a site contains more than 12,000 pounds (of geoducks), the farmers would be allowed to harvest everything, but the net proceeds from anything over the cap (12,000) would go to the state's general fund. In other words, the farmer would be allowed to harvest and sell the 'overages', but would be required to give any sales proceeds over direct harvesting, transporting and processing expenses to the general fund" (see attached compromise). Although this agreement does not state the exact rate of levy, the essence of the agreement is that there should be **no net profit** by farmers on wild stocks that are considered significant, or common property resource.

Farmers have suggested setting the levy at 30% of the average ex-vessel value (or price paid to fishermen) during the most recent commercial fishery. However, farmers are not fishermen. Farmers are a combination of fishermen and processors, and will receive a price similar to the first wholesale value that processors in the geoduck fishery receive. Therefore, if the levy is based on the ex-vessel value, the rate should be higher to reflect the difference between the values.

In comparison, the last geoduck auction held by the State of Washington (WA) on January 6, 2005, saw high bidders pay the State of WA an average of \$6.61 per pound for the right to harvest wild geoducks. If an average first wholesale value for live geoducks was approximately \$8 per pound, the "compensation" paid to the State of WA for wild geoducks would be 82.6% of the first wholesale value. SARDFA recommends setting the levy at 80% of the average ex-vessel value of the most recent commercial

fishery, which is one step below the wholesale value and would properly allow for fluctuations in the market.

The most important concept to remember when discussing the rate of levy is that a higher rate will give less incentive to farmers to poach geoducks.

Thank you for your time and consideration. SARDFA supports passage of this bill in its current form.

Sincerely,

Julie Decker, Executive Director

Members of: Southeast Conference United Fishermen of Alaska Pacific Coast Shellfish Growers Assoc. Interstate Shellfish Sanitation Conference

Cc: Senator Bert Stedman
Representative Jim Elkins
Alan Austerman, Governor's Fisheries Policy Advisor
Tim Barry, Aid to Senator Stedman
Jim Van Horn, Chief of Staff, Rep. Elkins
David Bedford, Deputy Commissioner, ADF&G
Sarah Gilbertson, Legislative Liaison, ADF&G
Rodger Painter, Vice-President, ASGA
Mark Vinsel, Executive Director, UFA
Bobby Thorstenson, President, UFA
Board of Directors, SARDFA

**A Joint Letter of Agreement between
the Alaskan Shellfish Growers Association and
the Southeast Alaska Regional Dive Fisheries Association**

Dear Alaska Policymakers:

The Alaskan Shellfish Growers Association (ASGA) and Southeast Alaska Regional Dive Fisheries Association (SARDFA) agree to the following package of statutory and regulatory changes to resolve long-standing controversies over how the state should deal with "standing stocks" of geoduck clams on aquatic farm sites.

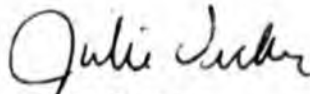
Both organizations are committed to supporting the implementation of the provisions of the agreement, including the passage of legislation and adoption of regulations.

We urge quick action in approving the legislation and adopting the regulations necessary to carry out the agreement.

Sincerely,



Rodger Painter
ASGA vice president



Julie Decker
SARDFA executive director

**Shellfish grower and diver
agreement**

Description of ASGA-SARDFFA Compromise

The Alaskan Shellfish Growers Association (ASGA) and Southeast Alaska Regional Dive Fisheries Association (SARDFFA) have reached agreement on a package of statutory, regulatory and administrative actions to resolve the long-standing controversy of how to handle natural stocks of geoduck clams on new aquatic farm sites.

The agreement was reached in the wake of an Alaska Supreme Court decision that already has resulted in the closure of geoduck farming operations near Ketchikan and cast a legal cloud over most other existing littleneck and geoduck farming operations. Complicating the issue is that seed purchases by the closed geoduck operations are considered vital to the viability of the shellfish hatchery in Seward.

While this agreement was negotiated directly by divers and farmers, it also has been endorsed by the parties involved in the original lawsuit and the Murkowski Administration. Here are elements of the agreement.

How the "Standing Stock" Issue is Resolved

The Supreme Court said current statutes do not provide the Alaska Department of Fish and Game clear authority to allocate any standing stocks of geoduck clams to aquatic farmers. While the decision was directed at geoducks, it has clear implications for other species, such as littleneck clams.

Statutes would be amended to allow aquatic farmers to select sites with "insignificant" amounts of wild stocks, essentially codifying an earlier superior court decision. This would be defined in statute as an amount less than what it would take to support a commercial fishery. ADF&G would further define what "insignificant" means in regulation.

How Existing Farms will be Affected

Existing geoduck farms would be allowed to continue operations, but would have to meet the provisions of the new statute and accompanying regulations.

How the State Will Determine How Many Clams are on a Farm Site

Population surveys will be conducted by the state or by the applicant with state oversight. The surveys will require a high confidence level to increase accuracy. The farmer will be required to pay for the surveys.

How Harvests of Standing Stocks will be Managed

The agreement would define "insignificant" as less than 12,000 pounds of geoduck clams per farm site. Harvests by farmers would be "capped" at 12,000 pounds. If the amount of standing stocks exceeds the 12,000-pound cap, the farmer would be able to continue harvesting to clear the sites for future crops, but the "net proceeds" of such sales would go into the state general fund.

SARDFA-ASGA Compromise

- 1. Insignificant populations of geoducks would be defined as 12,000 pounds or less.**

Legislation must provide ADF&G with the authority to allow farmers ability to harvest insignificant populations of wild stocks on farm sites. The language should be added to 16.40.100 Aquatic Farm and Hatchery Permits.

- 2. Harvest of standing stocks of geoducks would be limited to no more than 12,000 per farm site.**

This cap could be imposed by regulation as long as the language added to AS 16.40.100 gives ADF&G the ability to limit harvests by farmers.

- 3. In the event a site contains more than 12,000 pounds, the farmers would be allowed to harvest everything, but the net proceeds from anything over the cap would go to the state's general fund. In other words, the farmer would be allowed to harvest and sell the "overages," but would be required to give any sales proceeds over direct harvesting, transporting and processing expenses to the general fund.**

If net sales proceeds of overages are to flow into the state treasury, it will require some authorizing language in statute. While the funds could not be dedicated to support activities such as geoduck development programs, ASGA will work with SARDFA annually to ensure the legislature allocates the funds accordingly.

- 4. Surveys used to determine whether a proposed geoduck farm site contains 12,000 pounds of standing stocks would use a mid-point rather than lower bound estimate. This standard also should be applied to the commercial fishery.**

This is designed to increase the accuracy of the surveys and prevent the approval of sites with more than the 12,000-pound cap. This can be accomplished in regulation with no statutory changes necessary. However, it is uncertain whether ADF&G managers will agree to shift survey confidence levels for the fishery management of geoducks. ADF&G deputy commissioner David Bedford did agree the department would work with SARDFA to study ways to improve survey accuracy.

- 5. Existing geoduck aquatic farm permit holders should be "grandfathered in, but should be held to the cap.**

The goal is to ensure existing permits would be valid, but permittees would be held to the 12,000-pound cap. Harvests that occurred prior to the legislation would not be counted toward the 12,000-pound limit.

Amendment to HB198
Offered in the House Resources Committee
By Representative Elkins

Page 1, line 9, delete: "acquire ownership of"

Am 1, passed

Lance Nelson from the Department of Law said, "that after the last hearing, we had basically told the committee that upon issuance of a permit, the permittee would immediately acquire ownership of any wild geoducks that were less than a significant amount."

That opinion is consistent with the language of section 1 of the bill, but it is problematic in the sense that the farmer does not own the wild geoduck until actual harvest occurs. Otherwise, the permittee could claim ownership of unharvested wild stocks - to the exclusion of anyone else - even after the lease expired.

What we really want to convey is harvest rights, not opportunity.

Deletion of the phrase "acquire ownership of" from page 1, line 9. Will still allow Fish and Game to do what they intend to do without creating an unlimited ownership issue.

HB

218



REPRESENTATIVE BILL THOMAS

ALASKA STATE LEGISLATURE DISTRICT 5

e-mail: Representative.Bill.Thomas@legis.state.ak.us webpage: www.akrebublicans.org/thomas/

State Capitol

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Sponsor Statement HB 218

"An Act relating to cost recovery fisheries for private nonprofit hatchery facilities"

Salmon hatcheries in Alaska are successful examples of state assisted economic development programs. Over the years, hatcheries have provided great benefit to our commercial fishing industry and to other users of fish by enhancing the strength of salmon returns and by creating jobs in our communities. The commercial salmon industry has paid into this program through the Salmon Enhancement Tax since 1980.

HB 218 relates to the methods by which hatcheries generate revenue to cover their operating and capital expenses. These methods are referred to as "cost recovery." Under current practices, hatcheries generally contract with processors to purchase part of the returning run of fish that are caught in areas known as Special Harvest Areas immediately in front of hatcheries or at remote release sites where enhanced runs of fish have been developed. Typically only a handful of commercial vessels actually participate in the harvest of these cost recovery fish.

HB 218 provides language that would allow hatchery operators to choose to recover their costs through fisheries open to commercial fishermen, allowing the fleet to access more fish. Because each hatchery has a unique financial situation, this alternative type of cost recovery may not be applicable to all hatcheries. For this reason, HB 218 merely provides permissive language. It in no way will force a hatchery to change its current practices. However, the intent language in Section 1 of the bill states that the hatcheries should maximize the harvest of returning fish to fishermen and minimize the direct sale of salmon by the hatcheries themselves. This refers to the fact that hatcheries were created to enhance the productivity of salmon runs; productivity that should primarily benefit the users of the resource.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 218
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Private Hatchery Cost Recovery Fisheries RDU Investments (122)
 Component Investments
 Sponsor Thomas
 Requester House Fisheries Component No. 383

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box () if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would allow private non-profit aquaculture associations to utilize a new method of conducting their cost recovery operations. Although the Alaska Division of Investments (division) provides financing to private non-profit aquaculture associations under the Fisheries Enhancement Revolving Loan Fund, the associations make all cost recovery decisions without input from the division. As a result this bill will have no fiscal impact on the division.

Prepared by: Greg Winegar, Director Phone 907.465.2510
 Division: Investments Date/Time 4/14/05 7:08 PM
 Approved by: Edgar Blatchford, Commissioner Date 4/14/2005
 Agency: Commerce, Community, and Economic Development