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SENATE

RESOURCES

Table 5. Catch and effort by gear type from the Kodiak Area state-waters Pacific cod fishery, 1997-2003.

Year	Gear	Vessels	Landings	Pounds	Price per pound
1997	Jig	73	481	1,972,638	\$0.26
	Pot	40	231	5,522,243	\$0.24
1998	Jig	91	663	2,114,833	\$0.20
	Pot	52	31	6,385,069	\$0.22
1999	Jig	119	794	2,294,870	\$0.40
	Pot	81	465	8,438,912	\$0.34
2000	Jig	146	1,227	2,814,748	\$0.40
	Pot	69	482	5,748,549	\$0.38
2001	Jig	70	433	1,254,910	\$0.34
	Pot	36	239	3,656,702	\$0.30
2002	Jig	51	340	1,389,838	\$0.38
	Pot	33	212	7,436,013	\$0.44
2003	Jig	102	689	3,196,069	\$0.27
	Pot	42	149	4,959,262	\$0.32

2004	JG	120	960	4,212,416
	POT	47	160	5,823,605
2005	JG	106	—	—
	POT	53	120	3,977,834

Table 11. Catch and effort by gear type from the South Alaska Peninsula Area state-waters Pacific cod fishery, 1997-2003.

Year	Gear	Vessels	Landings	Pounds	Price per pound
1997	Jig	45	179	347,119	\$0.18
	Pot	56	494	9,112,587	\$0.20
1998	Jig	28	124	437,708	\$0.16
	Pot	51	307	8,192,803	\$0.17
1999	Jig	27	166	706,951	\$0.28
	Pot	53	388	11,115,028	\$0.29
2000	Jig	28	145	757,953	\$0.48
	Pot	67	505	14,286,151	\$0.32
2001	Jig	69	16	3,034,026	\$0.28
	Pot	55	311	10,421,593	\$0.26
2002	Jig	70	324	2,065,554	\$0.24
	Pot	50	277	10,699,395	\$0.22
2003	Jig	65	413	3,633,007	\$0.24
	Pot	41	191	7,927,656	\$0.22

2004

81

317

1,671,401

86

278

10,786,947

2005

26

0000

40

0000

Table 8. Catch and effort by gear type from the Chignik Area state-waters Pacific cod fishery, 1997-2003.

Year	Gear	Vessels	Landings	Pounds	Price per pound
1997	Jig	4	14	35,002	\$0.18
	Pot	10	60	1,098,970	\$0.18
1998	Jig	11	59	167,283	\$0.22
	Pot	33	230	5,130,396	\$0.18
1999	Jig	11	5	218,408	\$0.34
	Pot	33	397	6,217,279	\$0.30
2000	Jig	5	12	38,453	\$0.31
	Pot	19	150	1,737,326	\$0.30
2001	Jig	15	57	287,106	\$0.25
	Pot	16	123	2,332,744	\$0.26
2002	Jig	13	59	320,339	\$0.20
	Pot	12	139	3,903,246	\$0.20
2003	Jig	16	106	433,067	\$0.27
	Pot	15	151	4,034,504	\$0.27

2004

14
17

57
243

141,697
5,592,997

23

2005

18

OPEN

Senate Resources Committee, legislators, and citizens of the State of Alaska,

It is well known that the state wants to rationalize the state water fisheries before the feds finish their own rationalization of the Gulf of Alaska (GOA). The parallel fish should be allocated from the federal water so we don't have to spend a bunch of money to create a new program to rationalize the state water fisheries. If dedicated access privileges were introduced a major portion of the state water quota would be placed into the hands of possibly 100 people. This sounds like the lobbyism for the trawl fleet is strong and convincing. The trawl fleet will receive the majority of the federal allocations of groundfish. My question is when is enough enough? Only when the trawl fleet owners have their arms around both the federal and state water allocations will they be happy. This is pure greed and doesn't take in the concerns of the rest of the fishing fleet in the GOA.

In regards to the issues of discussion of the state water groundfish rationalization. At the present time there is not a race to fish in the pot and jig fisheries. Those that participate in these competitive fisheries execute them in a safe and reasonable manner. We can't prosecute these fisheries in rough weather as it is not safe or productive. I personally watched the trawl fleet leave the night after the last hearing was initiated. The trawl fleet was leaving into 25 ft. seas. They're the ones with the race to fish. Here is the number of vessels that were engaged in the groundfish fisheries within in the past 8 years. The pot and jig fleet have 53 and 106 harvesters in the Kodiak area at the present time. The all-time high number of registered vessels was 81 (1999) and 146(2000) respectively. The trawl fleets in Kodiak and AK Peninsula have shrunk from 85 vessel in 1998 to the present 43 in 2005. Actually there has been a decrease in effort. If there is a decrease in effort why would there be a need to rationalize fisheries that are limiting themselves economically.

Maximization of the economic values of fish only applies to the trawl caught fish. The quality of pot and jig caught fish is at it's all time high. The trawl caught fish are of lesser quality and value, so why should they even fish in the state waters. In the past 2 months buyers from Iceland and Norway have visited Kodiak to investigate the possibility of purchasing cod. Both parties stated that the fish are worth \$1.00 per pound at the dock, for the pot and jig caught fish. The price at dock at present is \$.31-.34 per lb. They aren't even interested in the trawl caught fish because of the quality issue. The issue of value added products has no backing. The surimi, fishsticks, and fillets produced are the values added products already in the market place. The pot and jig fishery have almost no bycatch, and what is brought aboard is returned alive. The trawl fishery has a history of enormous amounts of bycatch. I have trawled and personally witnessed the waste and dumping of dead bycatch.

There will be great economic distress to all the coastal communities if dedicated access privileges are endorsed. At the present time most of the communities are just getting back on their feet after the rationalization of halibut and black cod of 1995. Anytime you take a public resource and make it a private industry many jobs are lost and the trickle down effect is substantial.

Limited entry has worked for all the fisheries that it has been attached to in the past. Why can't the criteria for limited entry be changed, so it is proactive to an overcapitalization of a fishery? The global market place for consistent supply and quality in the marketplace already exist and are at the their maximum efficiency in groundfish in GOA. Limited entry with the tools already in the Alaska Board of Fish's' pocket are all that are necessary to keep these fisheries in check.

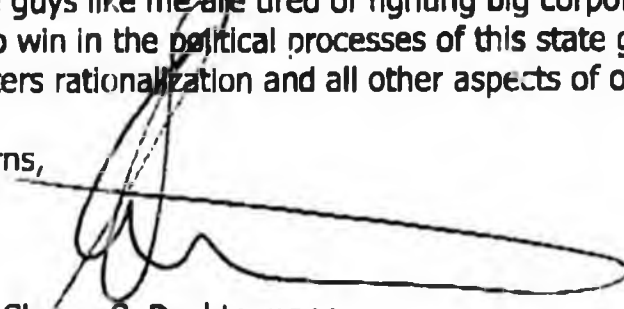
How will this dedicated access privilege benefit the resource? Also the users and communities dependent on these resources?

If you take a fish allocation and you give 5 people apiece rather than 20:then you are making it economically more difficult for the other 15 plus the businesses that are supported by them. This legislation gives the BOF the power to allocate the resource and hurt the economies of the communities. Yes, we do need to be concerned with biological and resources of these fisheries. The next concern should be the people that are engaged and affected by the fisheries, such as fisherman, processors, support businesses, and all others in the coastal communities. It's my belief that the people are the state and their concerns come first before state government. Remember that the government is there to protect and serve. I feel that in this case they are halting our abilities as fisherman to engage in harvesting a public resource. The state would be taking ownership of a public resources and it making it a private industry within a state government. Doesn't that sound wrong to you? It sure does to me!

The best way to fix this problem is to administer limited entry to the pot and jig fisheries and put the trawlers outside 3 miles. Limited entry would be the present right to participate, so all that participants fish until the TAC is caught. There is another issue that needs to be resolved and that is the BOF. The Alaska board of fish should be made up of 13 elected officials from the demographics of the state fish and game commercial and subsistence areas.

This new provision should be drafted into this bill to protect all fisherman that will be affected by DAP if this bill is passed into law. That would make it less likely for special interests groups to be involved in issues pertaining to commercial fisheries. I believe that the BOF doesn't always do what is in the best interest of the people of this state. There is far too much corruption in lobbying and all the little guys like me are tired of fighting big corporations and associations that stand to win in the political processes of this state government with regards to state waters rationalization and all other aspects of our lives.

With the gravest concerns,



Shawn C. Dochtermann
Kodiak, Alaska
P.O. Box 3886

SB113 "An Act relating to PRIVILEGED AND UNEQUAL ACCESS to the Gulf of Alaska groundfisheries"

Let's take a real walk of the dock... and talk about Senate Bill 113. SB113 is about changing the State of Alaska's public policy on who qualifies for the ability to use a resource. SB113 is about the Alaska Board of Fish receiving the authority to allocate ground fish and the right to choose to whom the fish will be given. This bill, if passed is about trading equal access to our resources, for leased unequal access.

If there is a hitch in the road to Gulf of Alaska Rationalization, it is the Federal Parallel ground fishery executed within state waters. The Constitution of the State of Alaska guarantees equal access to its resources to all Alaskans. Therefore IFQ's are unconstitutional. The Federal Parallel fishers stand to receive no history in the game of rationalization because their fish has been caught inside three miles. This will leave them without ownership rights like their counterparts fishing just outside of three miles.

Senate Bill 113 attempts to reconcile this with a leased access privilege called DAP or dedicated access privilege. This is constitutional because it's a privilege and can be revoked without compensation. So far ok?

Under the State Constitution, it is not ok to grant access rights to anyone other than individuals. SB113 gives the authority to give access rights to "persons or vessel owners" (line 10, page 2). The word persons under the legal definition means any entity... this could be an individual, association, corporation, group, etc. **THIS IS WHERE THE CHANGE IN PUBLIC POLICY AND THE IMPINGEMENT TO THE CONSTITUTION STARTS.** No longer will individual fisherman be the card holders... businesses and corporations will be enabled to own and lease these rights.

Equal access (to resources) is guaranteed in the State of Alaska. We could not even attempt to solve unequal access for subsistence... Therefore we allowed the Federal government to take control (of our subsistence rights). Now, it seems when monetary value is involved, we can solve our "problems". Senate Bill 113 creates unequal access through allocating history based "privileges" (non-permanent IFQ's). DAP is as close as the State has gotten to IFQ's without a Constitutional amendment. Unequal access will lead to consolidation of the fishing fleet. Our communities will suffer economically. This bill is written to benefit a few and encourage the continuation of Gulf Rationalization.

As a Federal Parallel Fisher, we do not feel SB113 will give us the benefit/security that is promised. This program will marginalize small boat fishermen. It will encourage selling out (consolidation) and lead to co-operatives due to marginalization. As a Federal Parallel Fisher, we prefer to be given our IFQ's in the Federal Program and fish them outside three miles. Thereby, we would not be compromising the State's constitution.

There are several points we'd like to address: Protection, Safety, Biology, and Race for Fish

First, there is the protection SB113 is promised to be. SB113's professed purpose is to protect State Waters from the Rationalized Federal program.... We say sideboards (or rules) can be enacted to prevent boats from adversely affecting State Waters. It is also true that the Feds are not supposed to enact a program fishery that may adversely affect another. Sideboards were created in previous rationalization programs and can be here.

Secondly, safety has been cited as a concern for the Gulf's ground fishery. As fishers we are always safety minded. Safety in our Gulf of Alaska ground fishery is not a problem. We have a great track record. New Coast Guard regulations and the enforcement of those regs have and are working. When looking at Halibut and Sablefish fisheries, we could point out that safety concerns there are considerably less due to the consolidation of the fleet (5000 vessels > 1800vessels) after rationalization.

Next, is the biology of our ground fish. The Alaska Dept of Fish and Game is generally neutral on issues that concern allocation. They did weigh in favor of SB 113, even though SB113 is unquestionably the most allocative movement in the last 30 years. Their list of reasons (for supporting SB113) include diverse group of fishers, race for fish, market place, benefit to fishers and the coastal communities, and innovative allocation and management. It should be noted that while the race for fish concerns Fish and Game that at this time Fish and Game has "NO BIOLOGICAL CONCERNS ABOUT THE EXISTING GRC JND FISH STOCKS". To generalize, Fish and Game is more apt to support management issues for biology, and stay neutral when allocation is brought into play.

This leads us nicely into the problematic "race for fish". Ground fish will always be harvested when and how it is economically feasible. When the fish are worth their most they will be caught. Allocation and IFQ's will not slow down the fishery. Simple restrictions such as not allowing deck loads or full cod ends, having other gear restrictions such as pot limits, etc. can address the quality & marketability of the fish and also reduce pace of the fishery.... Without DAP or IFQ's.

As a commercial fishing family and a parallel fisher, we have a lot at stake; but coastal communities have as much and more. Hopefully, our above letter interests you and involves you in the process that is going on. This bill involves everyone. It involves not just fishermen, but also every resident of Kodiak and of Alaska. Is the benefit of a DAP/IFQ program to a select user group worth the compromise to our Constitution?

Ron & Julie Kavanaugh
Owners: FV Sylvia Star LLC
PO Box 3890, Kodiak Ak 99615

***The Kavanaughs have been Kodiak residents for 36 and 22 years respectively. Their fishing history goes back to 1976. Ron has participated in a diverse group fisheries throughout the years. He actively runs the family boat and is on the water 8-10 months out of the year. Julie is an at home mom of four children. She manages their second business, Anchor K Stables, and enjoys crewing on the boat in the summer.

Against Legislative Bill 113

I am here to speak against Senate Bill 113. It is my understanding that this bill will allow the Board of Fish to make decisions without going through the legislature. Our legislative system is set up to protect us and if we allow that protection to be taken away- then we are going against our state constitution and our rights will no longer be preserved or protected. This is not constitutionally sound and should not be allowed to happen under - ANY circumstances. Thank you.

Mr. Justy Jones 13 years old
1524 Nompala St
Kodiak, AK 99615

Against-Senate Bill 113

My name is Leigh Thomet, My family is 100% dependent on commercial fishing for a living. We are against Senate Bill 113 for many reasons. This bill clearly goes against our state constitution in two ways-first it bypasses our basic right to our legislative process by allowing the Board of Fish to make decisions that should be made on the legislative level and second, it allows the allocation of our State Fishery resources, that equating to the privatization of our public resources. Both of these issues are seriously impingent to my rights as an Alaskan citizen.

It has been eluded to that this will benefit coastal communities-The benefit to specific user groups is outweighed by the economic loss to our local residents and our communities. We do not see this as beneficial to the majority of stake holders that being our fishermen, their families and our local community. This Senate Bill will only benefit a select few and the bill itself is not even clear as to who those are.

If our State is in need of a new program to address issues within the fishery it should follow the normal process of starting at the local level to see what would be the most beneficial to the communities and those that are involved. Any program that is implemented needs the support of all those that will ultimately be affected. Thank you for taking the time to listen to my testimony and I hope that my ideas will be taken into consideration.

LEIGH GORMAN THOMET
KIP AND LEIGH@YAKKO.COM
P.O. BOX 3258
KODIAK, AK . 99615

Testimony to the Senate Resource Committee – SB 113

March 16, 2005

My name is Theresa Peterson and I am here to testify on behalf of myself and my family in opposition to SB 113.

While my overall concerns with this bill are very similar to many of our local fishermen, concerned citizens and business owners alike, let me share the concerns of how this may impact one coastal family, my own.

My husband was born and raised on Douglas Island. He started commercial fishing when he was 12, set netting with his brother on the South end of Kodiak Island in the summer and continues fishing to this day. We met out long lining in the Bering Sea in 1985 and a couple years later pooled our crew shares, bought our own boat and thought we had it made as seining salmon around Kodiak Island in 1988 was our first season.

Well as those of us who invested in salmon know we had some tough years ahead financially but we diversified to other fisheries, continued crewing on larger vessels with IFQ's and generally did whatever we could to stay afloat. One of the moves was to invest in pots and participate in the federal p cod season where we always fished inside 3 miles due to the constraints of a 42 foot vessel in the winter. While our history isn't very strong in that many smaller vessels don't generally produce much p cod during rough winter seasons, his ability to fish was also curtailed when one season was lost to take care of his father after surgery and part of another was lost to the death of his mother and the need to return to Douglas for awhile.

If this is to be a historical based program then we need to be made aware long before any tools are given to the Board of fish as to what the qualifying years will be, who the participants are and an idea as to what they may receive. The we need take a look at what's left over for the small boat fleet.

As Lisa Murkowski said, and I quote, "We must all work to protect Alaska fisheries from unfair attacks that seek to weaken our ability to manage our stocks for the benefit of Alaskans and the nation. Fishing is the heart of Alaska's way of life and if I have it my way, that heart will beat even stronger in 2005."

Well our hearts are beating here in Kodiak all right, to the level of an anxiety attack for the most part. Many of us may not have much history but we are Alaskans. Shouldn't we be protected? This bill seeks to skirt around the intent of the constitution in granting unequal access rights and an inequitable distribution of a public resource. We do not want to have any part with a program that strips the opportunity to get into fishing for future generations.

I quote Governor Murkowski "Alaskans deserve to be heard at all levels of the debate over fisheries management."

Well there's a very diverse group of people that have been speaking out here in Kodiak and around the state against this bill. I sure hope someone is listening.

Governor Murkowski goes on to say "This bill protects Alaska's interest. If our groundfish fisheries in state waters are going to be developed to maximize the state's interest, and the interests of the fisheries' participants, passage of SB113 is necessary."

Well I just illustrated above that this bill will not protect, but will marginalize our level of participation in the fishery, not to mention the fact that we would be willing to give our history up rather than go down this road.

I believe the state has proven itself well the ability to protect the states fisheries and there are plenty of tools in place to protect Alaska's interest and that of coastal fishermen from the impact of the federal program. I will not attempt to go into these due go to time constraint and the obvious myriad of complexities, all of which I believe can be solved without SB 113 and its dedicated access privilege program.

We cannot discount the face of the water front now, in 2005. We have a diversified small boat fleet that has come to depend on this groundfish resource, most of whom are Kodiak fishing families. Will we be thrown a crumb?

If the only ones in the industry who support this bill have something to gain and the bulk of the fleet, even those with something to gain, along with businesses and active concerned citizens, unite together against it, shouldn't that tell us all something? It's time to take a look at who this will benefit before anyone gets the keys to the car.

Thank - you

A handwritten signature in cursive script that reads "Theresa Peters". The signature is written in dark ink and is positioned below the typed text "Thank - you".

Legislative Information Office-Regarding Senate Bill 113

My name is Donna Jones and I speak simply as a concerned citizen. My greatest concern is for that of our Community-its future constituents that being our children and their children's, children. I am against Senate Bill 113 for many reasons.

I do not support any Bill or Resolution that allows the Board of Fish the ability to take control over our State Legislatures decisions in regards to the allocation of fishing rights within State Waters. It is unconstitutional for any Board to have jurisdiction to bypass our legislative process in regards to any issue regarding our basic rights, in this case our rights over our State waters and the equal access that we are guaranteed according to our State constitution. To try and allocate our State water fisheries is ultimately stealing the food right out of the mouth of our children, we would be pilphering their future to satisfy a very select group. This is a very good example of why we need the legislative process as a protection for our State, our Community and its resident's best interest.

I do not agree or support the concept of creating a Dedicated Access Privilege. This particular subject of allocating our State Waters is being fueled out of the concern for the issues at the Federal level in regards to the Parallel Fishery. The concern is for the boats that fished in both the federal and state waters during the Federal fishery. It seems quite clear that although some of the fish were caught within state waters, it was a federal fishery-with federally allocated quota. These vessels should be given the full allocations through the federal program. At which point the state could decide whether they will continue to open the state waters or whether to have those boats fish the full allocation in federal waters. This specific issue should not encourage our State to feel pressured into an allocation system that is not supported by the public and is against the State's best interest.

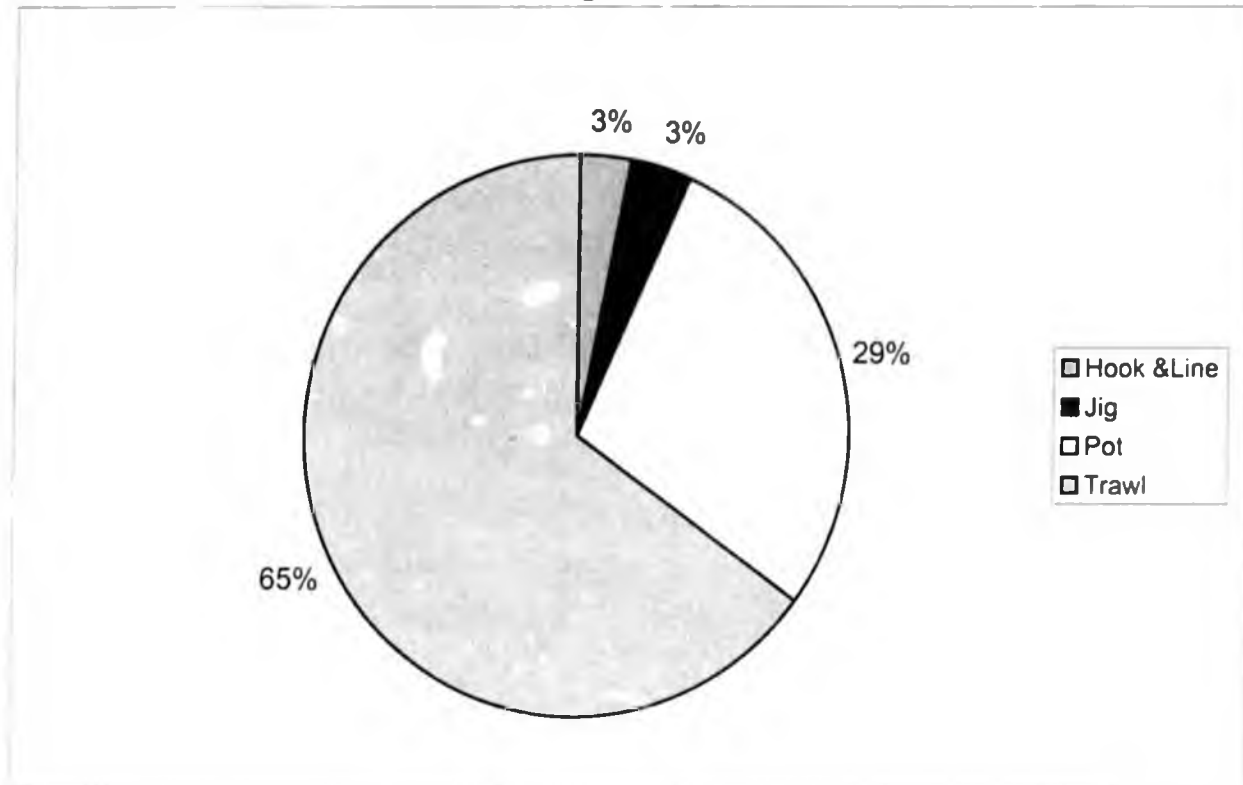
One of my greatest concerns in this Senate Bill 113 is that it advocates the privatization of our public resources. These state fishing rights should be left open to be fished by all residents. I believe that the pressure incurred due to Federal Gulf Rationalization has forced our State to feel that they must follow or they will be at a loss. We must slow down this process long enough to inform the public, analyze and consider the many concerns that we all have.

If the Board of Fish feel they need to create a program to better suit the fishermen within the State-they should go directly to the fishermen, work with them and the Community to build a plan that would be suitable. At that point the Board of Fish could take this plan to our legislatures for support and approval. **Under no circumstances should we bypass on legislative process.**

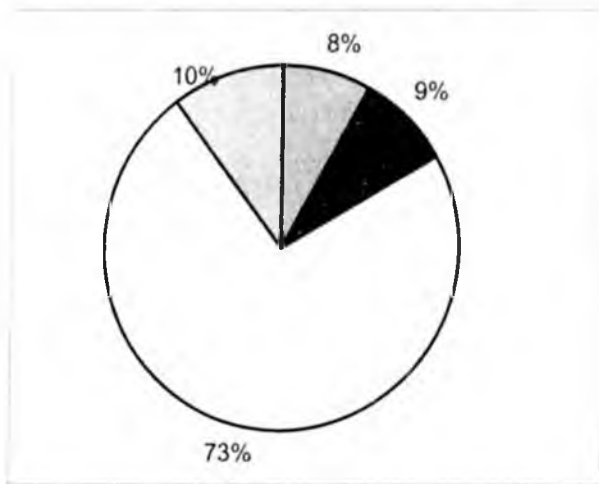
1524 Usmanov St
Kodiak, AK 99615

Gulf of Alaska groundfish¹ commercial harvest in state waters
(state managed and parallel fishery)
1998-2002

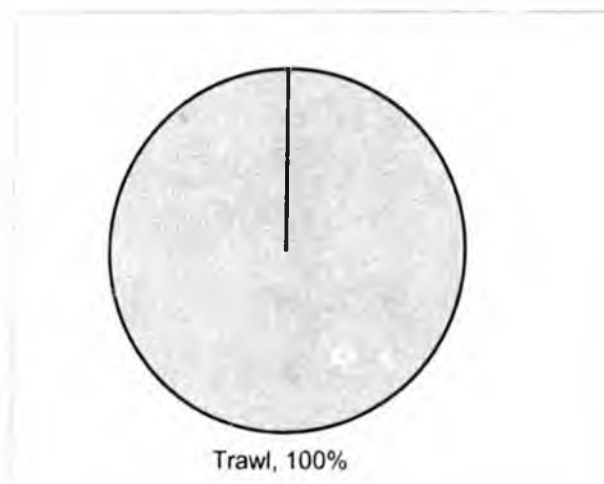
All groundfish



Pacific cod



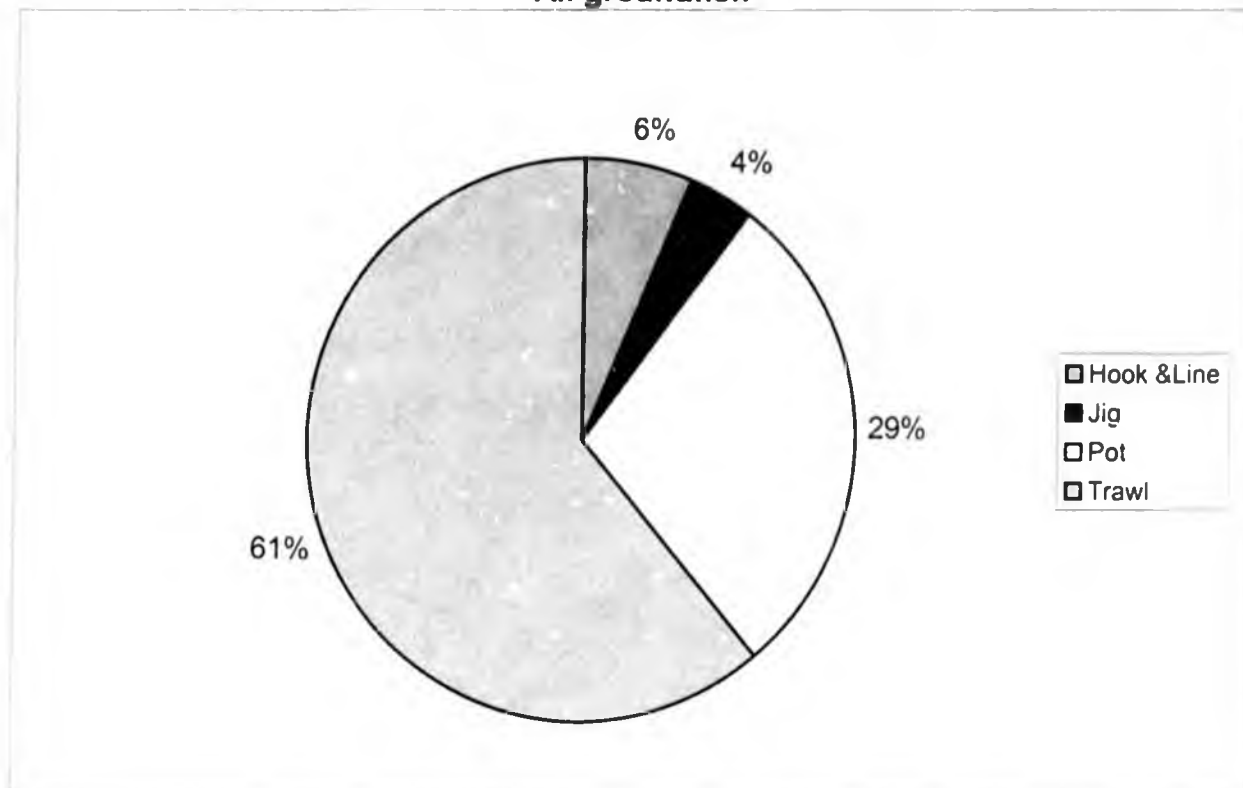
Other groundfish (primarily pollock)



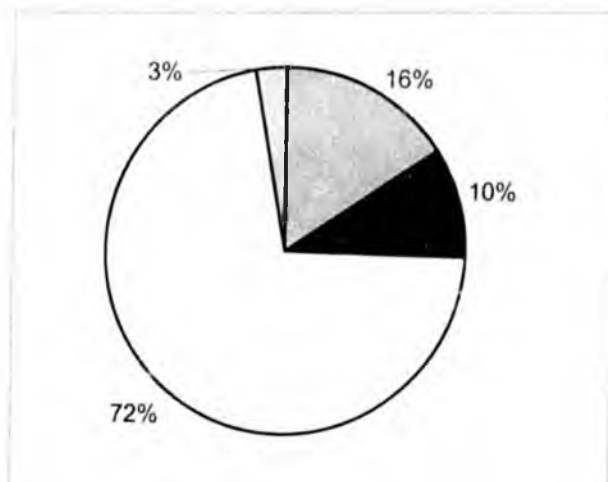
¹Halibut are not considered groundfish.

Central Gulf of Alaska groundfish¹ commercial harvest in state waters
(state managed and parallel fishery)
1998-2002

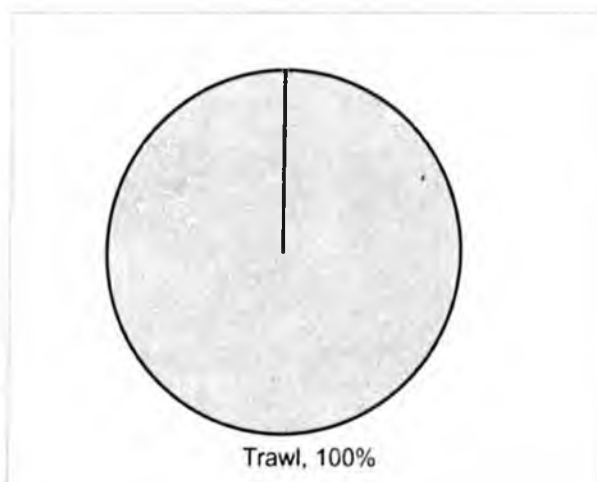
All groundfish



Pacific cod



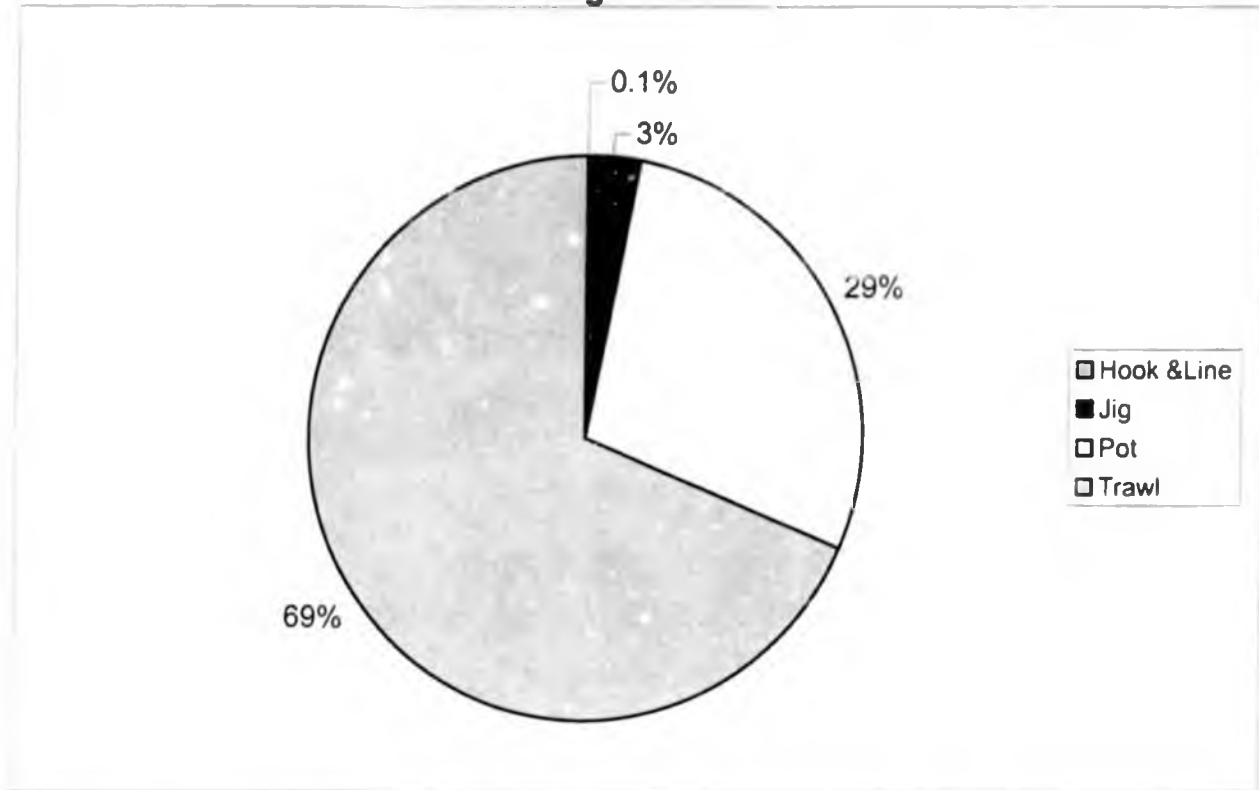
Other groundfish (primarily pollock)



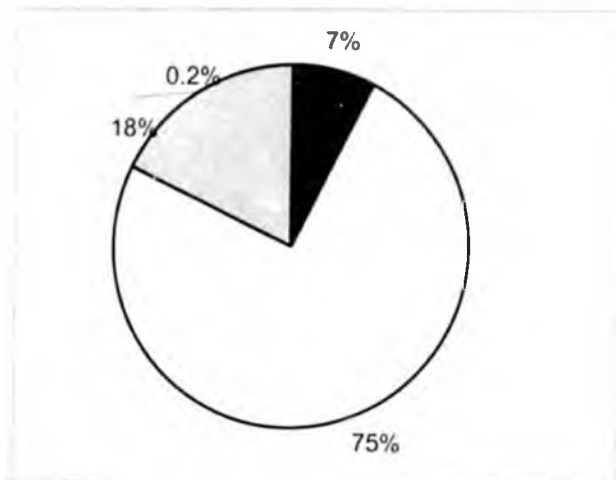
¹Halibut are not considered groundfish.

Western Gulf of Alaska groundfish¹ commercial harvest in state waters
 (state managed and parallel fishery)
 1998-2002

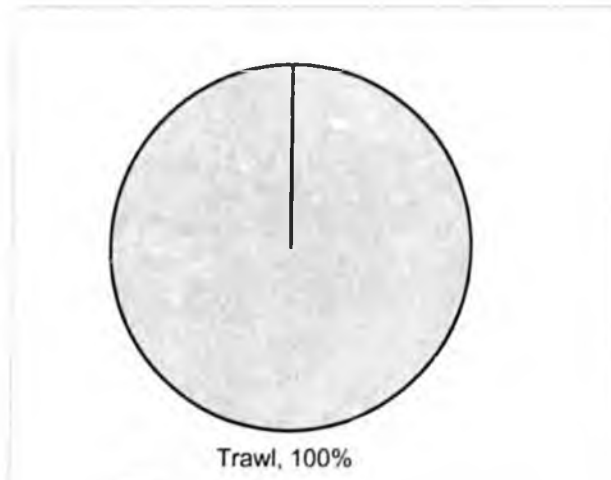
All groundfish



Pacific cod



Other groundfish (primarily pollock)



¹Halibut are not considered groundfish.

Commercial harvest of Gulf of Alaska groundfish in state water and parallel fisheries

1998-2002 commercial retained pounds

Central Gulf - Pacific cod						Western Gulf - Pacific cod					
	H&L	Jig	Pot	Trawl	Total Central Gulf		H&L	Jig	Pot	Trawl	Total Western Gulf
1998						1998					
State water	0	2,355,048	10,975,358	0	13,330,404	State water	0	c	8,904,859	0	8,904,859
Parallel	4,060,618	68,371	5,856,629	1,064,368	11,049,984	Parallel	30,584	c	4,200,408	3,866,278	8,097,268
Total 1998	4,060,618	2,423,417	16,831,987	1,064,368	24,380,388	Total 1998	30,584	440,329	13,105,265	3,866,278	17,442,456
1999						1999					
State water	0	2,404,027	14,916,056	0	17,320,083	State water	0	794,973	11,422,512	0	12,217,485
Parallel	4,681,782	48,583	9,708,784	1,272,959	15,712,108	Parallel	18,166	0	3,495,308	5,308,288	8,821,762
Total 1999	4,681,782	2,452,610	24,624,840	1,272,959	33,032,191	Total 1999	18,166	794,973	14,917,820	5,308,288	21,039,247
2000						2000					
State water	0	2,757,621	8,578,352	0	11,335,973	State water	0	784,412	14,117,511	0	15,101,923
Parallel	4,361,814	80,699	5,535,243	247,788	10,225,524	Parallel	67,434	11,499	5,732,085	6,745,033	12,556,051
Total 2000	4,361,814	2,838,320	14,113,600	247,788	21,561,502	Total 2000	67,434	795,911	20,049,596	6,745,033	27,657,974
2001						2001					
State water	0	1,408,576	6,515,804	0	7,924,380	State water	0	3,066,276	10,733,478	0	13,799,755
Parallel	2,571,557	22,416	3,233,695	224,381	6,052,029	Parallel	46,818	340,882	3,305,292	2,387,400	6,060,402
Total 2001	2,571,557	1,430,992	9,749,499	224,381	13,976,409	Total 2001	46,818	3,407,171	14,038,768	2,387,400	19,860,157
2002						2002					
State water	0	1,536,751	11,150,005	0	12,688,756	State water	0	2,181,813	11,744,439	0	13,926,252
Parallel	1,879,687	6,047	2,818,047	293,152	4,996,933	Parallel	2,232	397,490	6,108,558	762,657	7,270,937
Total 2002	1,879,687	1,542,798	13,968,052	293,152	17,683,689	Total 2002	2,232	2,579,303	17,852,997	762,657	21,197,189
Total Pacific cod 98-02	17,555,456	10,688,137	79,287,978	3,102,608	110,634,179	Total Pacific cod 98-02	165,234	8,017,687	79,964,446	19,049,656	107,197,023
Gear % of total harvest	16%	10%	72%	3%	100%	Gear % of total harvest	0.2%	7%	75%	18%	100%
Average 98-02	3,511,091	2,137,627	15,857,596	620,522	22,126,836	Average 98-02	33,047	1,603,537	15,992,889	3,809,931	21,439,405
Central Gulf Trawl - Other species*						Western Gulf Trawl - Other species*					
	H&L	Jig	Pot	Trawl		H&L	Jig	Pot	Trawl		
1998						1998					
State water	-	-	-	0		State water	-	-	-	0	
Parallel	-	-	-	71,231,271		Parallel	-	-	-	38,425,063	
Total 1998	-	-	-	71,231,271		Total 1998	-	-	-	38,425,063	
1999						1999					
State water	-	-	-	0		State water	-	-	-	0	
Parallel	-	-	-	40,755,672		Parallel	-	-	-	27,986,561	
Total 1999	-	-	-	40,755,672		Total 1999	-	-	-	27,986,561	
2000						2000					
State water	-	-	-	0		State water	-	-	-	0	
Parallel	-	-	-	4,522,680		Parallel	-	-	-	37,655,008	
Total 2000	-	-	-	4,522,680		Total 2000	-	-	-	37,655,008	
2001						2001					
State water	-	-	-	0		State water	-	-	-	0	
Parallel	-	-	-	18,555,911		Parallel	-	-	-	49,915,319	
Total 2001	-	-	-	18,555,911		Total 2001	-	-	-	49,915,319	
2002						2002					
State water	-	-	-	0		State water	-	-	-	0	
Parallel	-	-	-	31,573,748		Parallel	-	-	-	18,905,416	
Total 2002	-	-	-	31,573,748		Total 2002	-	-	-	18,905,416	
Total other species 98-02				166,639,282		Total other species 98-02				172,887,367	
Average 98-02				33,327,856		Average 98-02				34,577,473	
Total Pcod + Other species	17,555,456	10,688,137	79,287,978	169,741,890	277,273,461	Total Pcod + Other species	165,234	8,017,687	79,964,446	191,937,023	280,084,390
Average 98-02 Pcod + other species	3,511,091	2,137,627	15,857,596	33,948,378	55,454,692	Average 98-02 Pcod + other species	33,047	1,603,537	15,992,889	38,387,405	56,016,878
Gear % of total harvest	6%	4%	29%	61%	100%	Gear % of total harvest	0.1%	3%	29%	69%	100%

c - Confidential

* All other groundfish primary species except Pacific cod. Walleye pollock constitutes approx. 99% of other species harvested
Prepared by Alaska Dept. of Fish Game from data compiled by North Pacific Fishery Management Council staff

Alaska State Legislature – Juneau, Ak
Senate Resource Committee
10:00 Hearing, Saturday, April 23, 2005

Re: Senate Bill 113A- An Improper Act Needing Withdrawal
Title: "An act relating to entry into and management of Gulf of Alaska groundfish fisheries"

For the record
PUBLIC COMMENT OF:

SHAWN C. DOCHTERMANN
907.486.8777
drdrmann@hotmail.com
PO Box 3886
Kodiak, Ak 99615
JigPermit# M26B21162W
F/V ISANOTSKI ADFG# 61661

INTRODUCTION:

Mr.Chairman,

I'm Shawn Dochtermann from Kodiak Island, representing my jig permit holder rights. I have fished statewide for 28 years and hold halibut IFOs, a Bristol Bay Drift permit, and fish crab in the Bering Sea. I'm also on the board of directors at the Alaska Jig Association.

Please read my attached Summary Analysis of SB113A's flaws in the 3 page handout before you.

As presented, this bill represents (1) a disenfranchisement of fish harvester rights, (2) negatively impacts jobs and the communities economic well-being, and (3) avoids accountability and transparency.

I'd like to challenge you to answer. (a) Why ^{is} this Ben Stevens' sponsored bill once again being fast tracked? Any such policy should originate at the Kodiak Fisheries Advisory Board, not from unknown authorship. (b) Who wrote this bill and what is their agenda? (c) Where are the guarantees of Total Allowable Catch (TAC) apportionments and will they even occur for the jig fleet? (d) Why does it appear we are being opted-out and could receive nothing? The jig fleet never asked to be opted-out of this bill. Ben Stevens and his backers have not yet written the jig fisherman into economic demise. The rest of you have the power to stop this bill here and now!

First, this dedicated access privilege (DAP) program would impinge on my rights to equal access and clearly allows for special privileges to be issued in contravention of the first sentence of article VIII section 15 of the Alaska State Constitution. Second, allocating apportionments to associations, co-ops, and/or processing groups is in direct violation of the Limited Entry Act amendment of 1972, rights to fish can only be issued to an individual to prosecute a fishery. The reversal of the Chignik Co-op should remind us all of the care required in formulating such powers.

Public hearings will have no meaning if the Alaska Board of Fisheries(BOF) and the Commercial Fisheries Entry Commission (CFEC) have no mandates or guidelines. Without full disclosure of the plan for DAP this bill should not be passed into law. Likewise, most of the groundfish stakeholders group appointed by the NPFMC does not constitute a legitimate cross-section representative of the harvesting sectors interests. A new stakeholders group must be appointed through a democratic process, including full representation from the harvester sectors and small businessman who's livelihoods depend upon us.

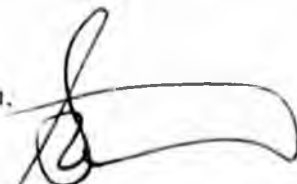
The Magnuson-Stevens and Sustainable Fisheries Acts prohibit policies whose primary purpose is economic reapportionment. The concern over a Race to fish is a façade about safety, used for political leverage to shift rights to processors. Yet, processors have already stated that we'll have 2 weeks to catch and deliver the Bering Sea king crab quota, regardless of weather and potential loss of life at sea. This contravenes the stated goal of achieving safety.

I believe the Senator Ben Stevens does NOT represent fixed-gear harvesters' best interests.

The handout includes a 3 year summary of his form AL-0117 financial disclosures. It shows over 1 million dollars received, mostly from those who do not represent harvester, community, and state interests. Did he also receive undisclosed payments from the United Fisherman of Alaska (UFA), or Southeast Seiners Association (SEAS), or other groups?

In conclusion, this bill is an improper act needing immediate withdrawal under your powers.

Thank You,



Shawn C. Dochtermann

Included in the packet: (1) Article from Cascadia Times (2) Fishermans' News April 2005 pgs. 8-9 by Victor Smith "Ocean Reform and Stevens' Ocean's Eleven" (3) pg.1 by M. Baumen "Chignik Co-op gets shut down" , Ludger Dochtermann testimony on SB113

Senate Resources Committee, legislators, and citizens of the State of Alaska,

It is well known that the state wants to rationalize the state water fisheries before the feds finish their own rationalization of the Gulf of Alaska (GOA). The parallel fish should be allocated from the federal water so we don't have to spend a bunch of money to create a new program to rationalize the state water fisheries. If dedicated access privileges were introduced a major portion of the state water quota would be placed into the hands of possibly 100 people. This sounds like the lobbying for the trawl fleet is strong and convincing. The trawl fleet will receive the majority of the federal allocations of groundfish. My question is when is enough enough? Only when the trawl fleet owners have their arms around both the federal and state water allocations will they be happy. This is pure greed and doesn't take in the concerns of the rest of the fishing fleet in the GOA.

In regards to the issues of discussion of the state water groundfish rationalization. At the present time there is not a race to fish in the pot and jig fisheries. Those that participate in these competitive fisheries execute them in a safe and reasonable manner. We can't prosecute these fisheries in rough weather as it is not safe or productive. I personally watched the trawl fleet leave the night after the last hearing was initiated. The trawl fleet was leaving into 25 ft. seas. They're the ones with the race to fish. Here is the number of vessels that were engaged in the groundfish fisheries within in the past 8 years. The pot and jig fleet have 53 and 106 harvesters in the Kodiak area at the present time. The all-time high number of registered vessels was 81 (1999) and 146(2000) respectively. The trawl fleets in Kodiak and AK Peninsula have shrunk from 85 vessel in 1998 to the present 43 in 2005. Actually there has been a decrease in effort. If there is a decrease in effort why would there be a need to rationalize fisheries that are limiting themselves economically.

Maximization of the economic values of fish only applies to the trawl caught fish. The quality of pot and jig caught fish is at it's all time high. The trawl caught fish are of lesser quality and value, so why should they even fish in the state waters. In the past 2 months buyers from Iceland and Norway have visited Kodiak to investigate the possibility of purchasing cod. Both parties stated that the fish are worth \$1.00 per pound at the dock, for the pot and jig caught fish. The price at dock at present is \$.31-.34 per lb. They aren't even interested in the trawl caught fish because of the quality issue. The issue of value added products has no backing. The surimi, fishsticks, and fillets produced are the values added products already in the market place. The pot and jig fishery have almost no bycatch, and what is brought aboard is returned alive. The trawl fishery has a history of enormous amounts of bycatch. I have trawled and personally witnessed the waste and dumping of dead bycatch.

There will be great economic distress to all the coastal communities if dedicated access privileges are endorsed. At the present time most of the communities are just getting back on their feet after the rationalization of halibut and black cod of 1995. Anytime you take a public resource and make it a private industry many jobs are lost and the trickle down effect is substantial.

Limited entry has worked for all the fisheries that it has been attached to in the past. Why can't the criteria for limited entry be changed, so it is proactive to an overcapitalization of a fishery? The global market place for consistent supply and quality in the marketplace already exist and are at their maximum efficiency in groundfish in GOA. Limited entry with the tools already in the Alaska Board of Fish's pocket are all that are necessary to keep these fisheries in check.

How will this dedicated access privilege benefit the resource? Also the users and communities dependent on these resources?

If you take a fish allocation and you give 5 people apiece rather than 20: then you are making it economically more difficult for the other 15 plus the businesses that are supported by them. This legislation gives the BOF the power to allocate the resource and hurt the economies of the communities. Yes, we do need to be concerned with biological and resources of these fisheries. The next concern should be the people that are engaged and affected by the fisheries, such as fisherman, processors, support businesses, and all others in the coastal communities. It's my belief that the people are the state and their concerns come first before state government. Remember that the government is there to protect and serve. I feel that in this case they are halting our abilities as fisherman to engage in harvesting a public resource. The state would be taking ownership of a public resources and it making it a private industry within a state government. Doesn't that sound wrong to you? It sure does to me!

The best way to fix this problem is to administer limited entry to the pot and jig fisheries and put the trawlers outside 3 miles. Limited entry would be the present right to participate, so all that participants fish until the TAC is caught. There is another issue that needs to be resolved and that is the BOF. The Alaska board of fish should be made up of 13 elected officials from the demographics of the state fish and game commercial and subsistence areas.

This new provision should be drafted into this bill to protect all fisherman that will be affected by DAP if this bill is passed into law. That would make it less likely for special interests groups to be involved in issues pertaining to commercial fisheries. I believe that the BOF doesn't always do what is in the best interest of the people of this state. There is far too much corruption in lobbying and all the little guys like me are tired of fighting big corporations and associations that stand to win in the political processes of this state government with regards to state waters rationalization and all other aspects of our lives.

With the gravest concerns,

Shawn C. Dochtermann
Kodiak, Alaska

LEGISLATIVE FINANCIAL DISCLOSURE STATEMENTS = BEN STEVENS

Based on [REDACTED] Filings for STATE SENATE in Alaska, signed by Ben Stevens

[REDACTED] Filer:		2002	2003	2004	TOTAL
Employer's Name:					
State of Alaska - Legislature	Member	\$ 8,325.36	\$ 28,250.67	\$ 26,827.50	\$ 63,403.53
2001 Special Olympics World Winter Games	President & CEO	\$ 236,225.78			\$ 236,225.78
Stevens & Associates	President/Owner	\$ 20,000.00	\$ 48,000.00	\$ 48,000.00	\$ 116,000.00
		\$ 264,551.14	\$ 76,250.67	\$ 74,827.50	\$ 415,629.31
correct for transfers from below Business Name		\$ (20,000.00)	\$ (48,000.00)	\$ (48,000.00)	\$ (116,000.00)
Subtotal A (adj.) =		\$ 244,551.14	\$ 28,250.67	\$ 26,827.50	\$ 299,629.31

Sources Over \$5,000.00					
AFDC, LLC - Seafood Broker/Trader		\$ -		\$ -	\$ -
Advance North LLC		\$ -		\$ -	\$ -
BAS Inc. (Ben A. Stevens)				\$ -	\$ -

BEN A. STEVENS - Filer:					
Business Name: Stevens & Associates Inc.					
VECO Corporation	Consulting Services	\$ 52,500.00	\$ 47,500.00		\$ 100,000.00
VECO Corporation	Business Services			\$ 47,500.00	\$ 47,500.00
At-Sea Processors Association	Consulting Services	\$ 16,000.00	\$ 38,000.00		\$ 54,000.00
South West Alaska Municipal Conference	Consulting Services	\$ 12,800.00			\$ 12,800.00
North Pacific Crab Association	Consulting Services	\$ 12,000.00	\$ 44,000.00	\$ 44,000.00	\$ 100,000.00
Cook Inlet Regional Corporation (CIRI)	Consulting Services	\$ 72,920.00			\$ 72,920.00
Special Olympics Inc.	Consulting Services	\$ 42,000.00	\$ 15,000.00		\$ 57,000.00
NorQuest Seafoods Inc.	Consulting Services	\$ 25,002.00			\$ 25,002.00
Adak Fisheries Development Inc.	Consulting Services	\$ 15,000.00			\$ 15,000.00
Adak Fisheries LLP	Business Services		\$ 80,000.00	\$ 120,000.00	\$ 200,000.00
Aleut Enterprises Corporation	Member BODirectors	\$ 875.00	\$ 1,050.00		\$ 1,925.00
Highland Light Fisheries, Inc.	Business Services		\$ 4,200.00	\$ 25,200.00	\$ 29,400.00
Glacier Fish Company	Business Services		\$ 4,200.00	\$ 21,000.00	\$ 25,200.00
Semco Energy/Enstar Natural Gas Co.	Director/Citiz Advisory Bd		\$ 5,000.00		\$ 5,000.00
Subtotal B =		\$ 249,097.00	\$ 238,950.00	\$ 257,700.00	\$ 745,747.00

TOTALS - ANNUAL & GRAND (3-yr)	\$ 493,648.14	\$ 267,200.67	\$ 284,527.50	\$ 1,045,376.31
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Real Property Interests	
6654 Lakeway Drive, Anchorage, AK 99502	Owner = rental
6218 12th Road North, Arlington, VA 22215	Owner = rental
4901 Sportsman Drive, Anchorage, AK 99502	Owner = residence
10433 N. Crystal Shores Rd., Willow, AK	Owner = Rental Cabin
10455 N. Crystal Shores Road, Willow, AK	Owner = Rental Cabin

Ben and Ted's Ethically Challenged Adventures

Ted Stevens' son, Ben, worked in the fishing industry for 15 years, working his way up from dockhand to captain of a crab boat. In 1994, Ben started his own lobbying firm in Washington, D.C., and began working for several fisheries-related companies among other clients. In 2002, Ben was appointed to the Alaska State Senate and is now the Senate's majority leader. Over the years, the fishing industry and Ben-and-Ted have worked their connections to their own great reward:

Adak Seafood Interests

Ted sponsored legislation that granted the Aleut Corporation ownership of all pollock caught in the Aleutian chain, worth at least \$10 million annually. Ben is on the board of directors of the Aleut Enterprise Corp., a subsidiary of the Aleut Corporation whose sole function is to develop the Aleutian pollock fishery. The corporation plans to build a processing plant at a former Navy base at Adak, located 400 miles west of Dutch Harbor. Two companies involved in the Adak fish project are Adak Seafoods and Adak Fisheries, which combined paid Ben \$120,000 between 2000 and 2002 as a consultant.

At Sea Processors In 1998, Ted sponsored legislation allocating 40 percent of the Bering Sea pollock catch to the 19-members of the Seattle-based At-Sea Processors Association. In 2001, Ted sponsored legislation making that allocation permanent. For 2001 and 2002, the At-Sea Processors paid Ben \$54,000 in consulting fees.

Crab Boat Owners In 2000, Ted included funding for the buyout of unprofitable crab boats after Ben was hired as a consultant by the Bering Sea Crab Reduction Fund, a trade association for crab harvesters. The crabbers paid Ben \$42,500 for his work.

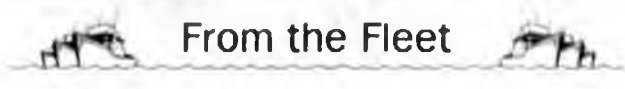
Pollock Industry In 2000, Ted chose Southwest Alaska Municipal Conference (SAMC) to distribute \$30 million federal disaster relief money following what he considered a "poor" fishing season. Most of the funds went to fishing companies, while the Pribilof Aleuts, who live in the center of Bering Sea fisheries, got nothing. SAMC paid Ben \$12,800 for consulting work in 2000. During this so-called "disaster," a near record 1.31 million tons of pollock were caught.

Seafood Marketers In 2003, Ted earmarked \$10 million to market Alaska seafood. His bill also required the military to purchase only domestic seafood. This benefited consulting clients who paid Ben \$549,976 from 2000 through 2002. Ben is a board member of the Alaska Seafood Marketing Institute.

Trident Seafoods

In 2003, Ted attached a rider to a spending bill to benefit crab processors by creating quotas for how much of the harvest they were entitled to process. The North Pacific Crab Association, a processor trade group that supported the rider, paid Ben \$56,000 for helping out. The rider gave about 24 seafood processors exclusive rights to purchase 90 percent of the snow and king crab harvest in the Bering Sea. Trident Seafoods, a lobbying client of Trevor McCabe — a former member of Stevens' staff — was awarded the largest share of the catch by the North Pacific Fishery Management Council. One of the council's 11 members is David Benson, a Trident employee in Seattle. A Native Aleut company based in the Pribilof Islands, which leases a major processing plant to Trident on St. Paul Island, received none of the processing shares. Brad Gilman, a friend of Ben's since fifth grade, also lobbies for Trident Seafood.

Sources: Alaska Public Offices Commission, Anchorage Daily News, Los Angeles Times



From the Fleet

There will be No Ocean Reform without Reform School for Senator Stevens' Ocean's Eleven

By Victor Smith

"From the Fleet" is intended to allow individuals and organizations the opportunity to express their opinions on commercial fishing-related issues and concerns. The views expressed herein are the opinions of the author, and do not reflect nor represent those of Fisherman's News staff and/or any related constituents.

Coming soon to a fishery near you

Since about 2001, it's been clear that Alaskan seafood processors—with complicit backing from specific fishermen's association leaders—intended to use fleet reduction plans (like the recently approved crab buyback program) as the carrot in a bait-and-switch scheme to acquire Processor Quota shares (PQS). Anyone who's followed this will remember that it was to be only for crab and only for safety. And anyone who's followed the spread of PQS will realize now that was baloney. PQS are about the money and they are for every fishery their proponents can apply them to. For crabbers, the stick was forcing those remaining to join "cooperatives" selling 90% of their catch to a few PQS holders.

Crab rights "restructuring" and the fleet buyback plan were joined at the hip by a shared dependence on US Senator Ted Stevens' power to forge Appropriation riders that legislated and funded the inseparable schemes. But Stevens doesn't deserve all the credit. Both of those deals were brokered through the National Marine Fisheries Service (NMFS) and the North Pacific Fisheries Management Council (NPFMC), who both answer to NOAA. So the policy is

also NOAA's.

"It was pretty obvious from the way the promised crab buyback money kept disappearing that it wouldn't occur until PQS were secured for processors," said Oliver Holm, a former United Fishermen of Alaska (UFA) vice president. "At one point, the money got shunted aside for use to pay trawlers and processors for supposed losses from the sea lion closures. Kodiak pot cod fishermen suffered the greatest losses from those closures in our region and didn't receive a dime. Of course, the pot cod fishermen weren't colluding with the processors like the trawlers were to lock up the resource rights."

"When I advanced a resolution, four years ago, against processor quotas in the Bering Sea Crab fishery at the UFA board [UFA president Bob Thorstenson, Jr.] came unglued. So did [UFA executive director] Tom Gemmel; he said, 'It would ruin everything.' Later that same year, UFA approved salmon restructuring. I was UFA vice president and had not been included in any of the discussions. The whole thing was obviously worked out by someone else."

Randy Babich, a widely respected seiner, told me that he had watched Thorstenson fishing fall chums in lower Hood Canal, well below quality cut off lines for other boats fishing for Nor-

Quest, the company Thorstenson was selling to. When he inquired with another fisherman as to why there were no other NorQuest boats, he said they were not allowed to go below a Canal line, 12 to 15 miles further out, due to quality concerns. Thorstenson was getting this apparent special treatment in Alaska, too, at a time when other fishermen were on strict limits.

Knowing this, I was concerned to learn that Thorstenson was at NorQuest's offices in Seattle in March of 2002. "He was just coordinating our positions for the Governor's Salmon Summit," quipped John Sund. "Whose positions?" It was NorQuest brass who had also just written several industry white papers seemingly intended to coordinate salmon processor's incredible market and pricing consolidation that put so many fishermen out of business that winter. And of course, NorQuest was a key player in coordinating the crab plan. It was the Salmon Summit that formally kicked off salmon industry restructuring and the Salmon Task Force, and where Thorstenson claimed the permit of his fishermen constituents didn't give them the right to fish.

"It was a setup," said Holm. "Get the UFA board to endorse an idea of restructuring, and then the real control would be in the processor's hands."

"I was at first surprised at the opposition to my processor quota resolution from all the SE seine groups, Petersburg Vessel Owners Association (PVVA), Purse Seine Vessel Owners Association (PSVOA) and South East Alaska Seiners

(SEAS)," Holm continued.

Surprised because at that time it appeared as if only a few fishermen's association executives were in on a dirty little secret that the eleven-member NPFMC—Senator Stevens' own Ocean's Eleven—had been seemingly rigged for a unanimous vote of approval for the BSAI plan that transferred rights to crab from fishermen to processors.

Conflicts of interest ran so deep and unchecked on the Council that the economic gospel endorsing PQS as the preferred option for the BSAI plan was written by an economist who referred to fishermen simply as parasites, or in his exact words, "those most egregious rent seekers."

The Council's unanimous vote wouldn't have been even plausibly credible if fishermen were opposed to it, so with the complicit aid of fishermen's association leaders they appeared to be colluding with processors made sure fishermen didn't "wreck everything" by weighing in.

"It later became clear that [Southeast seiners] were expecting to get bought off by receiving a big buyback payment from Senator Stevens... They were evidently perfectly willing to sell out other Alaska fishermen for their payoff," Holm said.

Payoff and the rest of the story on the seine buyback

Details of the seine buyback became public knowledge on November 13,

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From the Fleet

2004, in Lynnwood, Washington, as nearly 80 members of the PSVOA attentively listened to executive director Rob Zuanich's discussion of the annual meeting's main agenda item: the Southeast seine buyback. Although the seine buyback originated with SEAS when its board made fleet reduction a priority in 2001, SEAS membership has sagged under the heavy-handed leadership of Thorstenson necessitating PSVOA's assistance.

In his short presentation, Zuanich expressed cautious optimism that seiners might get a fleet reduction plan before the start of the 2005 salmon season. He also expressed confidence that buyback could be kept under control, in U.S. Senator Ted Stevens' hands, despite jurisdictional protests from NMFS over its administration. Then it became known that Ted's son, Alaska state senator Ben Stevens, was in the middle of the deal; a deal that has begun to look less like a payoff to seiners than a scam to funnel money into Ben's future Senate campaign war chest, and to support his continued efforts to transfer Alaskan state fisheries resources to processors.

Convoluting defined

"How are we going to pay the \$500,000 administration fee to Ben Stevens?" Randy Babich asked Zuanich. Zuanich replied it would "take some convoluted accounting" but he was "confident the payments could be kept off the books." He then approached Babich and suggested that a public meeting might not be the place for more such questions. It was soon discovered in the federal Congressional Record that exactly \$500,000 was set aside for the Pacific Salmon Treaty by language that Ted Stevens wrote in the Omnibus rider that funded the \$50 million buyback program and other pork. Knowing ahead of time about the fees arrange-

ment, it is only fair to ask, "Could this be a coincidence?" Or, is it the 'convoluted accounting' design creating those administrative fees?

Part of the reason SEAS hired Ben was said to have been because of his success in getting the crab plan funded and his obvious access to his father and the Congress. But when knowledge of Stevens' porcine riders were first made public, the senior Senator claimed he didn't know his son was involved in lobbying for the seine appropriation, so if part of Ben's sales pitch was that he had access it was either bravado, or someone wasn't telling the truth.

But in spite of Ben Stevens only getting seiners an ineffectual 130-word bill seemingly designed to fail, SEAS had another vote in December to continue the deal with Ben to get a grant in the next Congress.

If Oliver Holm was right that the crab buyout was held up until the Stevens could secure PQS in crab for the processors, perhaps salmon seiners like cooperative leaders at UFA are about to get their wish. On February 25th, with Thorstenson's and UFA's approval, Ben Stevens filed SB113A, "an Act relating to entry into and management of Gulf of Alaska groundfish fisheries."

According to Holm, "If this bill is passed, it could grant broad powers to the Board of Fisheries to make quota allocations in State managed fisheries directly to processor controlled 'associations' very similar to 'pollock coops' or federal 'groundfish coops' proposed for federal Gulf of Alaska groundfish." Certainly if you imagined PQS were going to be allocated to Alaskan salmon processors you might expect the processors to be kicked off with a similar move. Could SB113 apply to other fisheries? What about halibut?

"Last fall, trawlers in the Kodiak region had an outrageous bycatch of halibut while targeting pacific cod," Holm

said. "Doug Hoedel's boat was one of the worst offenders. Afterwards, when a ruckus was raised locally by halibut fishermen, the response of both Doug and Julie Bonney (of the Alaska Groundfish Data Bank) was that the trawlers "needed" 8,000 MT of halibut bycatch instead of the 2,000 MT allowed now. They have also been pursuing being allowed to retain halibut, at least initially, to give to food banks. Doug sits on the North Pacific Management Council, which allocates halibut bycatch. You can see that 8,000 MT is 17,600,000 lbs. that would come out of area 3A and 3B quota. The trawlers have opted for rationalization which includes processor coops and they would get a big boost in revenue from selling the halibut and the processors would gain a guaranteed cheap supply. I believe that it would be a big enough share of the resource to wreck the open competitive halibut market."

Couldn't happen? That's exactly what Thorstenson was telling salmon fishermen several years ago. And rest assured every single pound of product acquired by Stevens' favored group of processors under this scheme works against the competitive markets of every other fishery.

"Thorstenson and the UFA board have endorsed Stevens' bill despite there being practically no guidelines as to how the BOF or the Entry Commission would allocate those fishing rights," said Holm. "This whole thing is nuts for fishermen. An intelligent board doesn't just endorse an unspecified concept for politicians to pursue. You work out the specifics of what you want first while you still have control." Exactly!

The UFA's is an intelligent board and that's exactly what Thorstenson has done on this and many other issues—worked out the specifics with his Seattle Seven friends who have control, and apparently it's all legal. Hoedel's and the trawlers halibut bycatch is an illuminat-

ing recent example. While it may be a matter for discussion, "There is no violation to investigate... (and) we do not investigate conflict of interest matters," said one official within NOAA's Office of Law Enforcement. "Conflicts of interest are the responsibility of a 'designated official', defined in the Magnusson-Stevens Act as a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, in consultation with the Council...the MS Act addresses conflicts of interest, but it does not make them a crime...The fish allocation process is always sticky because typically, someone gains and someone loses. Unfortunately, that isn't illegal either."

Which leaves one to wonder what is illegal? It's hard to believe no distinction is possible between personal conflicts of interest and deal making by those with conflicts. Before the Magnuson Act was hyphenated there was undoubtedly no idea conflicts on the Council would reach such an apparent level of influence. Sadly, as we have seen, the only control that exists now is that of a complicit Government and few big corporations' intent on reducing fishermen to the status of share-cropping field hands. It is a one-way street when NMFS plays along with processors to link cooperative losses to buyback gains, without demanding processors give up their bargaining powers when receiving Title XI financing.

"Any input from fishermen to the Alaska legislature against the changes in fishing rights ownership that SB 113 would permit would be very helpful," Holm concluded.

Victor Smith is a life-long Alaskan fisherman, reluctantly retired in 2003, who now resides in Friday Harbor, WA, and has been a frequent contributor to industry media since 2001. He can be reached at 360-378-8124 or email guide@rockisland.com.



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Received
3/21/05
VIA FAX

To whom it may concern:

I am opposed to Senate Bill NO 113 !!!

My name is Ludger Dochtermann. I have lived in Kodiak for 32 years. I am a fixed gear fisherman. I am the owner of two 90' vessels that operate in the Gulf of Alaska and BSAI, long lining for halibut and groundfish and pot fishing for crab and codfish.

Senate Bill 113 encompasses all state waters and is inclusive of the state water fisheries for codfish, which is prosecuted by only two gear types, pot and jig. During the Federal Groundfish Fisheries trawling and long lining is allowed in state waters. The exclusive state water fishery which commenced with the 1997 season was requested by fisherman from Kodiak to allow entry level participation by ENVIRONMENTALLY responsible gear types that are target specific and virtually by catch free. The purpose was to take crab predator cod fish out of state waters without harming crab stocks and through these efforts bring about a resurgence of our crab resources. The crafters of this fishery also deliberately excluded long lining for cod in the state water fishery because of the high by-catch of halibut. After initially receiving a 10 % allocation of the cod TAC we were able to request an increase to 25 %, which is the present share. A 60-pot limit was instituted for the state water fishery to prevent large boats from taking an unfairly large share. The 25 % state water catch was also divided fairly between pot and jig gear type fishing.

There was vociferous opposition from the trawl fleet to any state water fishery, since it took away a quarter of the quota of which they were catching the lions share.

Around Kodiak all the bays and other crab sensitive areas are off limits to the trawl fleet for hard on bottom trawling.

The positive impact of the state water cod fishery has been that we are seeing a resurgence of the tanner crab stocks, which has allowed a small fishery to be prosecuted the past 5 years. This has been a needed infusion of dollars into the community.

The other positive result is that it provides an entry-level fishery for the future fisherman of Alaska. These are local people who otherwise would have no starting point into the fishing life. This has been a boon to most coastal communities.

It is clear to everyone in this community that the hard on bottom cod trawl fleet could take the entire federal and state water quota in a few days. The federal pot fishery in the GOA is only possible because the TRAWLERS requested a stand down for the first 20 days of January. This year the quota was taken in 4 days once the trawlers entered the fray. The fishing power of a trawl is awesome. When a trawl is hard on bottom it is also all-inclusive with obscene by catch of everything that lives in the net's pass.

Page Two

The driving force behind the federal and state groundfish rationalization program is the trawl industry. Their lobby is very powerful. In Kodiak the non-trawl fishers call the GOA rationalization process the trawlers retirement program. The trawl sector wants to get a guaranteed share of the groundfish resources.

Times are changing and we are all becoming more conscious of our environment. The handwriting is on the wall. There will be more and more restrictions once the general public realizes the terrible impact of hard on bottom trawling. Can there be a better way of forestalling restrictions on their fishing practices then to privatize the resource and chisel it in stone?

This brief history was necessary for the majority of the legislators who come from non-fishing communities and who might be hoodwinked into buying into Senate Bill 113 because of not knowing the facts.

SB 113 Page 1 line 6: What are the changes in the significant economic conditions facing the fisheries? There has not been any increase in effort in either the trawl, pot, logline and jig fisheries in the central and westward region of the State.

I include here the data from the ADFG that shows the effort for all these fisheries.

Page 1 line 10: The economic health of fisherman will be detrimentally affected because the state wants to charge royalties, which will make it impossible for the jig, pot and long line fisherman to operate an already marginal profitable fishery. This would only benefit the trawl fleet, which has smaller labor, and fuel costs then the rest of the industry. They could outbid the more labor-intensive fisheries.

Page 1 line 12: Ensure conservation of biological and capital resources.

The NPFMC sets the quotas in most Alaska fisheries. WE catch what they give us for quotas. How would this program conserve the resource? This bill would sanction obscene by-catch in the trawl sector instead of reducing it, which would help biological conservation.

Page 1 line 13: Capital resources of the fishery.

Since there has been virtually no effort change in the fishing fleet, how would this bill affect the capital resources of the fishery? The negative impact would be that by having to pay resource fees marginally profitable mostly small operators would be forced out of business. The resulting trickle down effect on the local businesses supplying goods and services will be devastating. The resulting consolidation, especially in the trawl sector, will cause shrinkage in the fleet as new owner barons sell their quotas and/or fishing rights and retire to other climes.

Page 2 Sec 5.6.7: This is the old-fashioned money grab. The LLP program controls access into most fisheries. There is no entry unless you are already qualified. The state water cod fishery is the only one that allows free entry as the crafters had intended. The statistics prove my point. There is fluctuation, but the effort now is lower then it was at the beginning of the fishery.

Page Three

Page 2 Sec 8 I addressed lines 16,17 and 18 above. Promoting Safety: I do not see how this bill promotes safety. When the weather is bad the fleets here do not go out and fish. The foolish people have either left or are dead.

The rest of SB 113 goes into specifics to establish this new bureaucracy and justify its perpetuation.

If the reason for Senator Ben Stevens introduction of this bill is to get more tax money from the fishing industry, then it would be a lot cheaper to just increase the fish tax for which there is a bureaucracy already in existence. I think that approach would be a lot more palatable to fisherman then to establish more paper work, more licenses, more laws and regulations of which we are burdened with already. The State of Alaska is already bloated with regulatory agencies; logic would suggest to stop now with this nonsense bill.

If on the other hand SB 113 is only there to guarantee wealth and retirement benefits for the already wealthy fishing industry vessel owners then I consider this to be abject irresponsibility on part of the legislature to pass this bill or even give it serious consideration.

In order for costal communities to maintain their economic vibrancy it is essential that the Federal and State RATIONALIZATION process must be STOPPED!

When all is said and done,
and this bill and rationalization should go through,
the carpetbaggers will be gone and leave us with another empty basket.

My suggestion is for an immediate increase of the state water cod fishery to 40 % of the TAC and an eventual phase out of the trawl fishery of directed cod fishing in the GOA. To be generous I will concede them 25 % of the quota so they can keep their by-catch of cod in their other fisheries.

Respectfully,



Ludger W. Dochtermann
Owner Operator F/V Stormbird and F/V North Point

FROM : F/U NORTH POINT F/U STORMBIRD PHONE NO. : 907 486 2272 FAX NO. 907 235 2448
 Mar. 28 2005 02:42PM P4 P. 02

State Managed Season Cook Inlet Area

Year	Vessels	Landings	Jig/troll	Vessels	Landings	Pot	Harvest	State GHL	% of GHL
1997	46	233	561,947	10	136	276,966	838,913	2,549,646	32.9 %
1998	29	123	188,209	13	183	542,260	730,469	2,434,565	30.0 %
1999	14	51	127,229	24	278	1,390,678	1,517,907	2,637,445	57.5 %
2000	5	12	13,885	17	219	1,135,903	1,149,788	2,160,255	53.2 %
2001	5	13	19,428	9	196	875,923	895,351	1,917,195	46.7 %
2002	6	15	18,163	9	306	1,310,684	1,328,847	1,571,455	84.6 %
2003	15	160	429,684	10	140	1,023,854	1,453,538	1,438,516	101.04%
2004	18	20	326,298	12	170	1,785,386	2,111,684	2,367,765	89.2%

2005

5

9

State Managed Season Prince William Sound Area

Year	Vessels	Landings	GHL	Pots	Jig ^b	Total
1997	9	36	880,000	192,142	8,378	200,520
1998	9	33	860,000	385,817	33,177	418,994
1999	7	27	930,000	314,987	79,147	394,134
2000	12	36	2,950,000	268,765	22,377	291,142
2001	3	3	2,620,000		228	228
2002	0	0	1,900,000			
2003			Confidential Data			
2004			Confidential Data			

^bincludes mechanical jig and hand troll

11

Westward Region Registration by Year and Area 3/16/05
Trawl Vessels

2005

Kodiak 26
SAP 17
Chignik 1

2004

Kodiak 48
SAP 13
Chignik 0

2003

Kodiak 41
SAP 19
Chignik 0

2002

Kodiak 40
SAP 24
Chignik 0

2001

Kodiak 54
SAP 17
Chignik 0

2000

Kodiak 36
SAP 19
Chignik 0

1999

Kodiak 66
SAP 21
Chignik 0

1998

Kodiak 74
SAP 23
Chignik 0

Table 5. Catch and effort by gear type from the Kodiak Area state-waters Pacific cod fishery, 1997-2003.

Year	Gear	Vessels	Landings	Pounds	Price per pound
1997	Jig	73	481	1,972,638	\$0.26
	Pot	40	231	5,522,243	\$0.24
1998	Jig	91	663	2,114,833	\$0.20
	Pot	52	317	6,385,069	\$0.22
1999	Jig	119	794	2,294,870	\$0.40
	Pot	81	465	8,438,912	\$0.34
2000	Jig	146	1,227	2,814,748	\$0.40
	Pot	69	482	5,748,549	\$0.38
2001	Jig	70	433	1,254,910	\$0.34
	Pot	36	239	3,656,702	\$0.30
2002	Jig	51	340	1,389,838	\$0.38
	Pot	33	212	7,436,013	\$0.44
2003	Jig	102	689	3,196,069	\$0.27
	Pot	42	149	4,959,262	\$0.32

2004	Jig	120	960	4,212,416	
	POT	47	160	5,823,605	
2005	Jig	106	—	—	
	POT	53	120	3,977,836	

Table 11. Catch and effort by gear type from the South Alaska Peninsula Area state-waters Pacific cod fishery, 1997-2003.

Year	Gear	Vessels	Landings	Pounds	Price per pound
1997	Jig	45	179	349,119	\$0.18
	Pot	56	494	9,112,587	\$0.20
1998	Jig	28	124	437,708	\$0.16
	Pot	51	309	8,192,803	\$0.17
1999	Jig	27	166	706,951	\$0.28
	Pot	53	388	11,115,028	\$0.29
2000	Jig	28	145	757,953	\$0.48
	Pot	67	505	14,286,151	\$0.32
2001	Jig	69	416	3,034,026	\$0.28
	Pot	55	311	10,421,593	\$0.26
2002	Jig	70	324	2,065,554	\$0.24
	Pot	50	277	10,699,395	\$0.22
2003	Jig	65	413	3,633,007	\$0.24
	Pot	41	191	7,927,656	\$0.22

2004
 51 317 1,671,401
 46 2,778 10,786,947
 2005
 26 - 0
 40 - 0

14

Table 8. Catch and effort by gear type from the Chignik Area state-waters Pacific cod fishery, 1997-2003.

Year	Gear	Vessels	Landings	Pounds	Price per pound
1997	Jig	4	14	35,002	\$0.18
	Pot	10	60	1,098,970	\$0.18
1998	Jig	11	59	167,283	\$0.22
	Pot	33	230	5,130,396	\$0.18
1999	Jig	11	56	218,408	\$0.34
	Pot	33	397	6,217,279	\$0.30
2000	Jig	5	12	38,453	\$0.31
	Pot	19	150	1,737,326	\$0.30
2001	Jig	15	57	287,106	\$0.25
	Pot	16	123	2,332,744	\$0.26
2002	Jig	13	59	320,339	\$0.20
	Pot	12	139	3,903,246	\$0.20
2003	Jig	16	106	433,067	\$0.27
	Pot	15	151	4,034,504	\$0.27

2004 114 50 141,697
 17 243 5,552,997 23

2005 17 OPEN

1. Speech – pale green
2. 3 page summary analysis of SB113A
3. Ben Stevens' financial disclosure
4. Cascadia Times article
5. Victor Smith "Ocean Reform and Stevens' Ocean's Eleven"
6. Chignik Co-op article
7. Ludger Dochtermann's testimony on SB113
8. Backing Sheet

cod 10% part of jig
0 90% drag.

drag is #2 product

Roland Lewis

Joe Childers = Support SB113

West Gulf of Alaska fishermen
Article 2, section 1 and 2: see below

2 forms Bd of Fish website

Stevie TOFFIN [GRAND Swell Fisheries
Movement]

= Fisherman's News

SITE: KODIAK LIO
 COMMITTEE:
 DATE:

SUBJECT OF MBBTNG:

PAGE 4
 OF

PLEASE SIGN IN

TESTIFY?
Y or N

PRINT YOUR NAME: MAILING ADDRESS: REPRESENTING:

Jane Sample	PO Box 1234 Kodiak 99615	Group Name Business or Self	Y (for Yes) N (for No)
Email address: (Please Print)	jane@gci.net		
Norm Botz	njbotz@gci.net	F/V Silversword	Y
Email address: (Please Print)			
MIKE LONGRICH	P.O. Box 730 Kodiak AK 99615	F/V SPITFIRE	Y
Email address: (Please Print)	KILLFISH@MSN.COM		
Jon & Berie Botz	PO Box 571 Kodiak, AK 99615	F/V Miss Michelle	N
Email address: (Please Print)			
Steve Mathieu	Box 3584	F/V Kghuya	Y
Email address: (Please Print)			
KRISTOPHER BLESSUM	2500 E LEONORA MESA, AZ 85213	F/V FALCON	N
Email address: (Please Print)	God Blessum@aol.com		
Steve Farnsworth	wormatologist.com	F/V Tapedel	N
Email address: (Please Print)			

ALASKA STATE LEGISLATURE



Official Business

SENATE RESOURCES COMMITTEE

Senator Tom Wagoner, Chair

State Capitol, Room 427

Juneau, AK 99801-1182

Phone: (907) 465-4907 Fax: (907) 465-4779

Senator Ralph Seekins, Vice-Chair
Senator Ben Stevens
Senator Kim Elton

Senator Fred Dyson
Senator Bert Stedman
Senator Gretchen Guess

Letter of Intent – April 25, 2005

SB 113: Gulf of Alaska Groundfish Fishery

The Memorandum of Understanding between the Alaska Board of Fisheries (BOF) and the Alaska Commercial Fisheries Entry Commission (CFEC), with respect to the Gulf of Alaska Groundfish Fisheries, is hereby adopted as a Letter of Intent.

A copy of that four page document, signed by Bruce Twonley, Chair of the CFEC and Arthur N. Nelson, Chair of the BOF, dated April 5 and 6 2005 respectively, is attached and made part of this document.

Alaska State Legislature
PRESIDENT OF THE SENATE

Interim:

716 WEST 4TH AVENUE
ANCHORAGE, AK
99501-2133
(907) 269-0200
FAX (907) 269-0204


Session:

STATE CAPITOL
JUNEAU, AK
99801-1182
(907) 465-4993
FAX (907) 465-3872

SENATOR BEN STEVENS

MEMORANDUM

TO: Senator Tom Wagoner, Chair
Senate Resources Committee

FROM: Senator Ben Stevens 

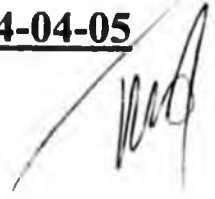
DATE: February 25, 2005

RE: Senate Bill 113

I respectfully request the scheduling of Senate Bill 113 – “An Act relating to entry into and management of Gulf of Alaska groundfish fisheries.” – for a hearing at your earliest possible convenience.

SB

126

A handwritten signature in black ink, appearing to be 'MAD', is written over the date 'dated 4-04-05'.

Changes made by the CS to original version \G

1. Page 1, line 9:
Delete "acquire ownership of,"

2. Page 3, line 6:
Insert ",on the site," after stock

3. Page 3, line 7:
Delete "on the site"

24-LS0597\F
Utermohle
4/4/05

CS FOR SENATE BILL NO. 126(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR STEDMAN

A BILL

FOR AN ACT ENTITLED

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

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

3 * Section 1. AS 16.40.100(b) is amended to read:

4 (b) A permit issued under this section authorizes the permittee, subject to the
5 conditions of AS 16.40.100 - 16.40.199 and AS 17.20, to

6 (1) acquire, purchase, offer to purchase, transfer, possess, sell, and
7 offer to sell stock and aquatic farm products that are used or reared at the hatchery or
8 aquatic farm; and

9 delete language (2) except as provided in (f) of this section, harvest and, without
10 further cultivation, sell an insignificant population that may be present at the
11 aquatic farm site of a wild stock of a shellfish species intended to be cultured at
12 the site [. A PERSON WHO HOLDS A PERMIT UNDER THIS SECTION MAY
13 SELL OR OFFER TO SELL SHELLFISH STOCK TO THE DEPARTMENT OR TO
14 AN AQUATIC FARM OR RELATED HATCHERY OUTSIDE OF THE STATE].

15 * Sec. 2. AS 16.40.100(e) is amended to read:

1 (e) Upon the expiration or termination of a permit issued under this section, a
2 person who holds a permit for an aquatic farming site where wild stocks of shellfish
3 indigenous to the site are cultured shall, as a condition of the permit, restore the wild
4 stock of shellfish, as consistent with sustained yield management of the wild stock, to
5 the population level that existed on the site when the permit for the site was initially
6 issued by the commissioner. A permit holder is not required to restore that
7 portion of the wild stock of shellfish that was removed from an aquatic farming
8 site by a common property fishery conducted after the issuance of the permit for
9 the aquatic farming site.

10 * Sec. 3. AS 16.40.100 is amended by adding a new subsection to read:

11 (f) If the wild stock of a shellfish species to be cultured at an aquatic farm site
12 exceeds the amount determined by the department to be an insignificant population
13 and if the commissioner determines in writing that removal from the site of that
14 portion of the stock that exceeds an insignificant population would benefit the public
15 and that removal of the stock by a person other than the permittee would unreasonably
16 interfere with the operation of the aquatic farm, the commissioner may authorize the
17 permittee to remove and sell the excess amount of the wild stock from the site, if the
18 permittee pays reasonable compensation, as defined by the department, to the
19 department for the harvest and sale of the excess wild stock. The department shall
20 deposit the money received under this subsection into the general fund. The
21 legislature may appropriate the money received under this section to the department
22 for shellfish management and enhancement.

23 * Sec. 4. AS 16.40.105 is amended to read:

24 **Sec. 16.40.105. Criteria for issuance of permits.** The commissioner shall
25 issue permits under AS 16.40.100 on the basis of the following criteria:

26 (1) the physical and biological characteristics of the proposed farm or
27 hatchery location must be suitable for the farming or the shellfish or aquatic plant
28 proposed;

29 (2) the proposed farm or hatchery may not require significant
30 alterations in traditional fisheries or other existing uses of fish and wildlife resources;

31 (3) the proposed farm or hatchery may not significantly affect

1 fisheries, wildlife, or their habitats in an adverse manner; [AND]

2 (4) the proposed farm or hatchery plans and staffing plans must
3 demonstrate technical and operational feasibility; and

②

insert
delete

4 (5) the proposed farm site may not include more than an
5 insignificant population of a wild stock, on the site, of a shellfish species intended
6 to be cultured.

7 * Sec. 5. AS 16.40 is amended by adding a new section to read:

8 **Sec. 16.40.155. Records and reports confidential.** Records required by
9 statute or by a regulation adopted by the department concerning aquatic farm stocks or
10 production, prices, and harvests of aquatic farm products and wild stocks, and annual
11 statistical reports of individual aquatic farms or hatcheries required by statute or by a
12 regulation adopted by the department are confidential and may not be released by the
13 department, except that the department may release the records and reports

14 (1) to the Department of Revenue and the Department of Natural
15 Resources to assist the departments in carrying out their respective statutory
16 responsibilities;

17 (2) as necessary to comply with a court order;

18 (3) provided by an aquatic farm or hatchery permit holder to the permit
19 holder whose activity is the subject of the records or reports;

20 (4) regarding cumulative annual harvests of wild stocks at individual
21 aquatic farm sites.

22 * Sec. 6. AS 16.40.199 is amended by adding a new paragraph to read:

23 (9) "insignificant population" means a population of shellfish that, in
24 the determination of the commissioner, would not attract and support a commercial
25 fishery for that species of shellfish and the harvest and sale of the shellfish would not
26 result in significant alteration in traditional fisheries or other existing uses of fish and
27 wildlife resources if the population were included within an aquatic farm site.

28 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 **APPLICABILITY.** Until expiration or termination of the permit, AS 16.40.105,
31 added by sec. 4 of this Act, does not apply to an aquatic farm permit issued under

- 1 AS 16.40.100 before the effective date of this Act.
- 2 * Sec. 8. This Act takes effect July 1, 2005.

SENATE BILL NO. 126

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY SENATOR STEDMAN

Introduced: 3/2/05
Referred: Judiciary, Resources

A BILL
FOR AN ACT ENTITLED

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9 (2) except as provided in (f) of this section, acquire ownership of,
10 harvest, and, without further cultivation, sell an insignificant population that
11 may be present at the aquatic farm site of a wild stock of a shellfish species
12 intended to be cultured at the site [. A PERSON WHO HOLDS A PERMIT
13 UNDER THIS SECTION MAY SELL OR OFFER TO SELL SHELLFISH STOCK
14 TO THE DEPARTMENT OR TO AN AQUATIC FARM OR RELATED
15 HATCHERY OUTSIDE OF THE STATE].

①

~~acquire ownership of,~~ delete

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 16 and that removal of the stock by a person other than the permittee would unreasonably
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30 (2) the proposed farm or hatchery may not require significant
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1 (3) the proposed farm or hatchery may not significantly affect
2 fisheries, wildlife, or their habitats in an adverse manner; [AND]

3 (4) the proposed farm or hatchery plans and staffing plans must
4 demonstrate technical and operational feasibility; and

5 (5) the proposed farm site may not include more than an
6 insignificant population of a wild stock of a shellfish species intended to be
7 cultured on the site.

②
delete
insert

ON THE SITE

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13 regulation adopted by the department are confidential and may not be released by the
14 department, except that the department may release the records and reports

15 (1) to the Department of Revenue and the Department of Natural
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18 (2) as necessary to comply with a court order;

19 (3) provided by an aquatic farm or hatchery permit holder to the permit
20 holder whose activity is the subject of the records or reports;

21 (4) regarding cumulative annual harvests of wild stocks at individual
22 aquatic farm sites.

23 * Sec. 6. AS 16.40.199 is amended by adding a new paragraph to read:

24 (9) "insignificant population" mean a population of shellfish that, in
25 the determination of the commissioner, would not attract and support a commercial
26 fishery for that species of shellfish and the harvest and sale of the shellfish would not
27 result in significant alteration in traditional fisheries or other existing uses of fish and
28 wildlife resources if the population were included within an aquatic farm site.

29 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 **APPLICABILITY.** Until expiration or termination of the permit, AS 16.40.105,

- 1 added by sec. 4 of this Act, does not apply to an aquatic farm permit issued under
- 2 AS 16.40.100 before the effective date of this Act.
- 3 * Sec. 8. This Act takes effect July 1, 2005.

The National Sea Grant Law Center

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No Exclusive Rights to Harvest Wild Alaskan Shellfish

Alaska Trademark Shellfish, LLC, et. al. v. State of Alaska, 2004 Alas. LEXIS 51, (Alaska April 16 2004).

Jason Savarese, J.D.

The Supreme Court of Alaska recently held that the Alaska Aquatic Farming Act and its operator stock acquisition permit provisions did not give exclusive rights to geoduck farmers seeking to harvest and sell pre-permit, wild shellfish found on their farms.

Background

Alaska's Aquatic Farming Act requires a permit in order to open an aquatic farm in the state, and the Alaska Department of Fish and Game (the Department) has authority over permit issuance decisions. The Department indicated to some potential shellfish farmers that those receiving permits would have the right to harvest all existing wild shellfish on their farm when the permits were issued. Alaska Trademark Shellfish, LLC, (ATS) and other farmers applied for aquatic farm permits from the Alaska Department of Fish and Game. ATS wanted to farm a type of slow-growing shellfish of considerable size, with high market value, known as geoducks. The Department considered the permit requests, and conditionally approved them, upon the farmers' development of a way to differentiate between "common property geoducks already in the farmers' waters, and the new clams they intended to grow.

The concern expressed by the Department's condition was that farmers might have a higher-than-necessary density of pre-permit geoducks on their farm, and that these should remain an Alaskan common property resource for "other uses." ATS objected to the condition, and offered some alternatives. The Department rejected the alternatives, and relayed to ATS the general principles the Department would use in deciding ATS's permit applications. These included limiting the use of pre-permit geoducks to "brood stock or for active cultivation." These principles were later proposed and officially adopted as regulations in the Alaska Administrative Code. ATS claimed the condition attached to the clam permits would preclude any geoduck farming, and ATS demanded their applications be approved without condition. The Department denied their permit applications.

The Lawsuit

ATS appealed the Department's decision to the superior court, putting forth two claims. First, ATS claimed that the Department was in violation of the Alaskan Aquatic Farming Act, by requiring the farmer seeking to open a shellfish farm to maintain pre-permit shellfish as common use property. In addition, ATS asserted an estoppel charge against the Department, since it had assured potential farmers that once a permit was obtained, any existing, wild geoducks would be harvestable. The superior court upheld the Department's decision.

Reasoning its decision on a constitutional basis, the superior court found that the "real question" was not whether the legislature intended to allow [stock acquisition permit] holders to harvest wild stock, but whether the legislature is permitted to do so.² The judge held that the state constitution's "common use" clause barred ATS from having the exclusive right to harvest wild geoducks. ATS appealed the decision to the Supreme Court of Alaska.

The Supreme Court heard ATS's arguments that the superior court had misapplied the common use clause in the Alaska Constitution and the public use doctrine in not allowing farmers to harvest existing geoduck stocks on the property. ATS claimed that wild geoducks would qualify as "farmed" shellfish under the statutory definition of "stock," and that the stock acquisition permit statute allows the harvesting of wild geoducks to make such farming viable. ATS also reiterated its estoppel assertion against the Department.

Alaska Trademark Shellfish's Arguments

ATS explained that the Aquatic Farming Act's statutory definition of "stock" as those "intended for for...further growth or propagation"³ included wild geoducks, since some growth would occur between the time the permit was issued and the time of harvesting. The Court found this argument to be without merit, and stated that an actual intent to "use" the wild clams "for" further growth was required.⁴ Allowing the clams to continue their natural growth is not enough to bring wild geoducks under the "stocks" statutory definition.

ATS argued that the stock acquisition permit statute commanded the Department to issue such a permit if "wild stock is necessary to meet the initial needs of farm or hatchery stock."⁵ In their view, for commercial geoduck farming to succeed, wild, pre-permit geoducks would have to be harvested. This argument proved unpersuasive, as the Court pointed out the statute only addressed the farm's need for stock, not for "general startup needs."⁶

Thus, the statute did not give the farmers a right to harvest wild, existing geoducks on the property. With regard to the estoppel claim, the Court declined to rule on the disputed meaning of statements made by the Department before permit applications were filed. The justices simply found, under a "totality of the circumstances test", that estoppel was not appropriate. The Alaskan Court decided the case without considering the Alaska Constitution's common use clause and the public use doctrine.

Conclusion

The Supreme Court of Alaska held that the Alaska Aquatic Farming Act does not give the Alaska Department of Fish and Game the power to authorize aquatic farmers to harvest and sell wild geoduck stocks growing on their property. The Court pointed out a section of the Aquatic Farming Act which specifically allows the Department's commissioner to "attach conditions to a permit issued under the statute that are necessary to protect natural fish and wildlife resources."⁷ The Court went on to hold that the statute governing operation permits does not include an implied right to take wild shellfish. The decision did not reach the issue of whether the grant of such an exclusive right would violate the Alaska Constitution. The decision of the Department of Fish and Game to deny Alaska Trademark Shellfish geoduck farming permit application was upheld.

Endnotes

1. Alaska Admin. Code tit. 41, §240 (2003).
2. *Alaska Trademark Shellfish, LLC, et. al. v. State of Alaska, et. al.*, 2004 Alas. LEXIS 51, at *8 (April 16, 2004).
3. Alaska Stat. § 16.40.199(8) (2003).
4. *Alaska Trademark Shellfish*, 2004 Alas. LEXIS 51, at *19.
5. Alaska Stat. § 16.40.120(f) (2003).
6. *Alaska Trademark Shellfish*, 2004 Alas. LEXIS 51, at *20.
7. Alaska Stat. § 16.40.100(c) (2003).

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THE SUPREME COURT OF THE STATE OF ALASKA

ALASKA TRADEMARK)	
SHELLFISH, LLC, and GARY)	Supreme Court No. S-10308
ZAUGG, LANCE PIHLMAN,)	
STEPHEN LaCROIX, RYAN)	Superior Court No.
MORIN, and KURT MORIN,)	IKE-00-211 CI
)	
Appellants,)	
)	
v.)	<u>OPINION</u>
)	
STATE OF ALASKA, ALASKA)	[No. 5795 - April 16, 2004]
DEPARTMENT OF FISH AND)	
GAME, COMMISSIONER FRANK)	
RUE, DOUG MECUM, SCOTT)	
MARSHALL, and JOHN DOES 1-10,)	
)	
Appellees.)	
)	

Appeal from the Superior Court of the State of Alaska,
 First Judicial District at Ketchikan, Michael A. Thompson,
 Judge.

Appearances: Bruce B. Weyhrauch, Juneau, for
 Appellants. Stephen LaCroix, pro se, Ketchikan. Blaine H.
 Hollis, Assistant Attorney General, and Bruce M. Botelho,
 Attorney General, Juneau, for Appellee.

Before: Fabe, Chief Justice, Matthews, Eastaugh, Bryner,
 and Carpeneti, Justices.

BRYNER, Justice.

I. INTRODUCTION

This case requires us to determine whether Alaska law gives shellfish farmers the exclusive right to harvest wild stocks already growing on their farm sites. Several applicants asked the Alaska Department of Fish and Game for aquatic farm permits allowing them to grow and commercially harvest geoduck clams in Alaska waters. When the Department of Fish and Game declined to give them exclusive rights to the wild geoducks on their proposed farm sites, the applicants appealed to the superior court. The superior court upheld the department's decision, concluding that the Alaska Constitution bars the department from giving geoduck farmers exclusive rights to commercially harvestable stocks already on their farms. The applicants filed this appeal. We affirm the superior court's ruling but rest our decision on narrower grounds, holding that, no matter what the constitution might permit, the department lacked statutory authority to give aquatic farmers exclusive rights to the existing wild stocks.

II. FACTS AND PROCEEDINGS

Alaska's Aquatic Farming Act¹ sets out procedures for obtaining permits to start aquatic farms in Alaska waters. The act puts the Department of Fish and Game in charge of the permitting process, which includes the issuance of a coastal zone consistency certification, an aquatic farm lease, a special area permit, an aquatic farm operation permit, and a stock acquisition permit. In the case at issue here, Alaska Trademark Shellfish, LLC, applied to the Department of Fish and Game for aquatic farm permits to allow the company to raise geoducks — an unusually large, slow-growing species of clam that commands high market prices — on several

¹ AS 16.40.100-.199.

proposed farm sites in Southeastern Alaska waters; at about the same time, several other applicants requested permits in various different locations. In prior communications with prospective shellfish farmers, the department had suggested that applicants who received permits would be given the right to take all wild stocks already on their farms when the permits were issued. Thus, in the present case, most of the applicants proposed to harvest and sell the wild geoducks already growing on their selected sites.

After reviewing the applications, the department notified the applicants that it would conditionally approve their permits: each applicant would be required to develop a practical method of distinguishing their farmed geoducks from the wild, "common property," geoducks already on their property; and each applicant would have to agree to use their proposed method when they started farming. The department explained that it believed these conditions to be necessary "[b]ecause the density of geoducks on your site may exceed that necessary to provide seed stock for propagation." Specifically, the department stated, "it is likely that a portion of the wild geoducks at your proposed sites would remain a common property resource, which should be made available for other uses." The department asserted that the Aquatic Farming Act allowed aquatic farmers to take wild resources from their sites only if they were issued a stock acquisition permit under AS 16.40.120, which, in the department's view, allowed farmers to use existing stocks solely to "further growth" and for "propagation." According to the department, allowing aquatic farmers a broader right to harvest standing stocks might violate the Alaska Constitution:

It is important to clarify that an aquatic farm permit does not, in itself, give a farmer the exclusive right to harvest, for a commercial purpose, the wild fishery resources that are located at the farm site. A contrary

conclusion is inconsistent with the laws that govern aquatic farming, and it may contradict the Alaska Constitution's prohibition against exclusive rights in fisheries.

The applicants responded that they found the department's conditions of approval to be unreasonable. They proposed several alternative arrangements. After holding a teleconference to discuss these and other options, the department sent the applicants a letter summarizing the general principles that it proposed to use to "guide the department's actions on your pending permit applications."² For present purposes, the most important principle was that the department would permit the applicants to use existing geoducks only for brood stock or for active cultivation:

Pertinent statutes do not authorize a farmer to use standing, wild stocks of geoducks for harvest and sale without having first "propagated, farmed, or cultivated" the wild geoducks. The statutes define an "aquatic farm" as "a facility that grows, farms, or cultivates aquatic farm products in captivity under positive control." It would not be consistent with those statutes to allow a farmer to harvest wild geoducks without first having done anything to improve their abundance, growth rate, or any other aspect of productivity. Therefore, the department will issue stock acquisition permits only for the purposes of providing brood or seed stock or for growing-out under controlled, enhanced cultivation.

The applicants replied that the department's proposal to condition approval of their applications on these principles would preclude them from operating successfully. They demanded an unconditional decision on their pending applications. In response, the Commissioner of Fish and Game issued a final decision

² The department eventually circulated these general principles as proposed regulations and ultimately adopted them. 5 Alaska Administrative Code (AAC) 41.240 (2003). The validity of the current regulations is not at issue here.

denying the permits, ruling that the applicants had no right to claim wild geoducks already on their proposed sites:

The practical difficulties of choosing to operate an aquatic farm where there [is] an abundance of wild stocks of geoducks do[] not provide a basis for circumventing state law with regard to a common property resource. An aquatic farmer cannot, under state law, harvest wild geoducks that [the applicant] has done nothing to cultivate under the auspices of an aquatic farm permit. The Alaska Constitution and statutes that govern aquatic farm operational permits prohibit the harvest of standing stocks of wild geoducks, unless the farmer has a valid stock acquisition permit (which can be obtained under limited circumstances) or if the farmer has cultivated the wild geoducks.

The applicants appealed the commissioner's decision to the superior court, insisting that the department had violated the Aquatic Farming Act by conditioning their farm operation permits on their willingness to make wild geoduck stocks available for common use. Alternatively, the applicants argued, the department should be estopped from prohibiting them from harvesting their standing stocks, since its earlier communications had promised that all successful applicants for shellfish farming permits would automatically receive the right to harvest wild stock.

Superior Court Judge Michael A. Thompson affirmed the commissioner's ruling, relying on a constitutional theory. Finding that "[t]he real question . . . is not whether the legislature intended to allow [stock acquisition permit] holders to harvest wild stock, but whether the legislature is *permitted* to do so," Judge Thompson passed over the disputed statutory issues, ruling instead that the Alaska

Constitution's common use clause³ precluded the department from giving geoduck farmers exclusive harvest rights to any commercially significant wild geoduck stocks.

The applicants appeal this decision.

III. DISCUSSION

A. Standard of Review

In resolving administrative appeals from decisions issued by the superior court as an intermediate appellate tribunal, we review the administrative agency's decision directly.⁴ We apply our independent judgment to decide questions of law involving statutory and constitutional interpretation.⁵

B. Parties' Arguments

The applicants challenge the superior court's ruling that the Alaska Constitution's common-use clause forbids giving newly permitted geoduck farmers harvest rights to geoduck stocks already growing on their farms. They maintain that the superior court misunderstood the relationship between the Alaska Constitution's common-use clause and no-exclusive-right clause.⁶ Pointing to cases like *State v.*

³ Alaska Const. art. VIII, § 3.

⁴ *Alaska Pipeline Serv. Co. v. DeShong*, 77 P.3d 1227, 1231 (Alaska 2003).

⁵ *State Commercial Fisheries Entry Comm'n v. Carlson*, 65 P.3d 851, 858 (Alaska 2003).

⁶ Alaska Const. art. VIII, §§ 3, 15.

Ostrosky,⁷ *Owsichek v. State*,⁸ *CWC Fisheries v. Bunker*,⁹ and *McDowell v. State*,¹⁰ the applicants insist that the common-use clause and public trust doctrine do not prevent the department from giving standing stocks to aquatic shellfish farmers. Alternatively, the applicants argue, estoppel bars the department from denying their applications.

The state counters by arguing that the court's constitutional analysis was sound. Alternatively, renewing the statutory arguments that the superior court declined to decide, the state asserts that the Aquatic Farming Act does not give the department authority to grant exclusive standing-stock rights to the applicants.

C. Procedural Objections to a Decision on Statutory Grounds

The applicants raise a procedural objection to the state's statutory argument. They maintain that the state cannot properly rely on this theory, since the superior court declined to decide it and since the theory is not raised in the applicant's statement of points on appeal. The applicants urge us to confine our review to the constitutional issue decided below. Alternatively, they ask us to allow supplemental briefing if we reach the statutory issue.

But the trial court's choice of a particular legal theory does not define the scope of our appellate review. An appellate court may uphold the trial court's judgment on any legal theory supported by the record — even one that the trial court

⁷ 667 P.2d 1184 (Alaska 1983).

⁸ 763 P.2d 488 (Alaska 1988).

⁹ 755 P.2d 1115 (Alaska 1988).

¹⁰ 785 P.2d 1 (Alaska 1989).

expressly rejects.¹¹ Here, the state's brief discusses a statutory point that it properly raised in the superior court. Both parties briefed and argued the point below. Although the superior court elected to rest its ruling on constitutional grounds, we have often recognized that appeals should ordinarily not be decided on constitutional

¹¹ As we held in *Ransom v. Haner*, one of our earliest cases, it is a rule of law that an appellee may urge, and the appellate court should consider in defense of a decree or judgment any matter appearing in the record, even if rejected below and even if appellee's argument may involve an attack upon the reasoning of the lower court or an insistence upon matter overlooked or ignored by it.

362 P.2d 282, 285 (Alaska 1961). Our subsequent cases have consistently recognized and applied this rule. See, e.g., *Dixon v. Pouncy*, 979 P.2d 520, 525 n.6 (Alaska 1999); *Pering Strait Sch. Dist. v. RLI Ins. Co.*, 873 P.2d 1292, 1295 (Alaska 1994); *Municipality of Anchorage v. Higgins*, 754 P.2d 745, 748 (Alaska 1988); *McGee v. State*, 614 P.2d 800, 806 n.10 (Alaska 1980); *Carlson v. State*, 598 P.2d 969, 973 (Alaska 1979); *Pistro v. State*, 590 P.2d 884, 888 n.13 (Alaska 1979); *Stordahl v. Gov't Employees Ins. Co.*, 564 P.2d 63, 67 n.16 (Alaska 1977).

grounds when narrower grounds are available.¹² Given these circumstances, we reject the applicants' procedural objections. We thus turn to the statutory issues.

D. Relevant Statutory Framework

The Aquatic Farming Act authorizes the Department of Fish and Game to issue permits for aquatic farming; conversely, the act prohibits aquatic farming

¹² This principle of abstention is not unique to Alaska. See *Escambia County v. McMillan*, 466 U.S. 48, 51 (1984) ("It is a well-established principle governing the prudent exercise of this Court's jurisdiction that normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case."); *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 345-49 (1936) (establishing that constitutional questions should be avoided if there are narrower grounds for making a decision). Alaska's appellate courts have often invoked this principle. See, e.g., *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584, 594 n.18 (Alaska 1990) (civil rules constitute sufficient device for controlling discovery harassment, thus decline to reach broader constitutional issue); *State v. F/V Baranof*, 677 P.2d 1245, 1255 (Alaska 1984) (since owners were afforded due process, need not address constitutionality of statute); *Zerbe v. State*, 578 P.2d 597, 598 (Alaska 1978) (because of disposition of first point on appeal, need not address constitutional issue), *overruled on other grounds by Stephens v. State, Dep't of Revenue*, 746 P.2d 908 (Alaska 1987); *Puller v. Municipality of Anchorage*, 574 P.2d 1285, 1288 (Alaska 1978) (in light of construction of statute, do not reach constitutional issues); *State v. City of Anchorage*, 513 P.2d 1104, 1112 (Alaska 1973) (interpretation of statute makes it unnecessary to reach constitutional issue), *overruled on other grounds by State v. Alex*, 646 P.2d 203 (Alaska 1982); *Anniskette v. State*, 489 P.2d 1012, 1016 (Alaska 1971) (since conduct protected by constitution, do not reach broader question of statute's constitutionality); *Perry v. State*, 429 P.2d 249, 251-52 (Alaska 1967) (should not pass on constitutional issue unless determination essential to decision of case); *Robins v. Municipality of Anchorage*, 711 P.2d 550, 552 (Alaska App. 1985) (need not decide constitutional issue, since probable cause for arrest existed prior to giving breath test); *State v. Williams*, 653 P.2d 1067, 1069 (Alaska App. 1982) (do not reach constitutional issue since case can be resolved by applying Alaska Rules of Criminal Procedure), *aff'd in part*, 681 P.2d 313 (Alaska 1984).

except as permitted.¹³ The act authorizes the department to issue two distinct kinds of permits: permits to operate aquatic farms and permits to acquire stock for aquatic farms.¹⁴

1. Operation Permits

Alaska Statute 16.40.100 describes the first kind of permit, an operation permit, providing, "A person may not, without a permit from the commissioner,

¹³ At the times relevant to this case, AS 16.40.100 provided:

(a) A person may not, without a permit from the commissioner, construct or operate

(1) an aquatic farm; or

(2) a hatchery for the purpose of supplying aquatic plants or shellfish to an aquatic farm.

(b) A permit issued under this section authorizes the permittee, subject to the conditions of AS 16.40.100 — 16.40.199 and AS 17.20, to acquire, purchase, offer to purchase, transfer, possess, sell, and offer to sell stock and aquatic farm products that are used or reared at the hatchery or aquatic farm. A person who holds a permit under this section may sell or offer to sell shellfish stock to the department or to an aquatic farm or related hatchery outside of the state.

(c) The commissioner may attach conditions to a permit issued under this section that are necessary to protect natural fish and wildlife resources.

(d) Notwithstanding other provisions of law, the commissioner may not issue a permit under this section for the farming of, or hatchery operations involving, Atlantic salmon.

¹⁴ See AS 16.40.100 and AS 16.40.120.

construct or operate . . . an aquatic farm.”¹⁵ An operation permit issued under this section allows aquatic farmers to acquire and sell “stock and aquatic farm products that are used or reared at the hatchery or aquatic farm.”¹⁶ The act assigns precise meanings to the terms “aquatic farm product” and “stock”:

“aquatic farm product” means an aquatic plant or shellfish, or part of an aquatic plant or shellfish, that is propagated, farmed, or cultivated in an aquatic farm and sold or offered for sale;

....

“stock” means live aquatic plants or shellfish acquired, collected, possessed, or intended for use by a hatchery or aquatic farm for the purpose of further growth or propagation.¹⁷

In deciding whether to issue an operation permit under section .100, the department must consider four criteria:

- (1) the physical and biological characteristics of the proposed farm or hatchery location must be suitable for the farming or the shellfish or aquatic plant proposed;
- (2) the proposed farm or hatchery may not require significant alterations in traditional fisheries or other existing uses of fish and wildlife resources;
- (3) the proposed farm or hatchery may not significantly affect fisheries, wildlife, or their habitats in an adverse manner; and

¹⁵ AS 16.40.100(a)(1).

¹⁶ See AS 16.40.100(b). Moreover, with respect to operating permits, AS 16.40.100(c) gives the department broad discretion to “attach conditions to a permit . . . that are necessary to protect natural fish and wildlife resources.”

¹⁷ AS 16.40.199(2), (8).

(4) the proposed farm or hatchery plans and staffing plans must demonstrate technical and operational feasibility.¹⁸⁾

2. Stock Acquisition Permits

Alaska Statute 16.40.120 describes the second kind of permit required for aquatic farming, an "aquatic stock acquisition" permit. Section .120 provides that "[a] person may not acquire aquatic plants or shellfish from wild stock in the state for the purpose of supplying stock to an aquatic farm or hatchery required to have a permit under AS 16.40.100 unless the person holds an acquisition permit."¹⁹ An aquatic stock acquisition permit enables permit holders to acquire wild stock, but only "for the purposes of supplying stock . . . to an aquatic farm or hatchery required to have [an operating] permit under AS 16.40.100 . . . [or to] the department."²⁰ Any wild shellfish acquired under a stock acquisition permit "become the property of the permit holder and are no longer a public or common resource."²¹

E. Department's Authority To Authorize Harvest of Wild Stocks

The state asserts that these statutes leave the department no authority to grant shellfish farmers a right to harvest and sell the wild geoducks already populating their farm sites. The state's argument has merit.

The act describes only two ways for the department to give — and for aquatic farmers to receive — access to wild geoduck stocks: through an operation permit issued under AS 16.40.100 or through a stock acquisition permit issued under

¹⁸ AS 16.40.105.

¹⁹ AS 16.40.120(a).

²⁰ AS 16.40.120(b).

²¹ AS 16.40.120(g).

AS 16.40.120. If the applicants have any claim to the wild stocks on their proposed sites, then, their claims must arise under these provisions.

The operation permit statute, AS 16.40.100, neither states nor implies that a right to harvest and sell wild stocks arises from an operation permit. It allows farmers to acquire and sell aquatic farm products and stock only when the products or stock are "used or reared at the hatchery or aquatic farm."²² By requiring all aquatic "farm products" and "stock" acquired or sold by an aquatic farm to be "used or reared at" the farm, this provision precludes harvesting unfarmed, wild geoduck stock for the purpose of sale. Similarly, no right to harvest wild geoducks for general commercial purposes emerges under the stock acquisition permit statute, AS 16.40.120. As we have seen, stock acquisition permits issued under this section only allow their holders to acquire wild stock for limited purposes: to supply stock to the department or to a licensed aquatic hatchery or farm.²³

In arguing their case before the department, the applicants proposed several theories for finding that a stock acquisition permit would authorize harvesting and selling the wild geoduck stocks on their sites. For example, pointing to the act's definition of "stock," which would only encompass geoducks that were "intended for use . . . for . . . further growth or propagation,"²⁴ the applicants suggested that the wild geoducks they intended to harvest and sell would qualify as stock covered by their acquisition permits because the geoducks would undergo "further growth" between the time the permits were issued and the time the harvest and sale occurred. Yet by

²² AS 16.40.100(b).

²³ AS 16.40.120(b).

²⁴ AS 16.40.199(8).

requiring stock to be “intended for use for further growth or propagation,” the statutory definition of “stock” demands something more than passive growth. Its express terms command an intent to “use” the wild stock “for” further growth. These purposive words unmistakably signal an intended use that will produce growth through action — an active “use” of the stock by the farmer “for” promoting its further growth. A mere waiting period between issuance of a permit and commercial harvest would not meet this definition.

The applicants also claimed a right to harvest existing geoduck stocks under another provision of the stock acquisition permit statute, AS 16.40.120(f). This provision directs the department to issue a stock acquisition permit if “wild stock is necessary to meet the initial needs of farm or hatchery stock.” Contending that commercially harvesting wild stocks is necessary to make geoduck farming a viable enterprise, the applicants reasoned that subsection .120(f) would allow them to receive permits to harvest wild geoduck stocks. Thus, in the applicants’ view, the department acted unlawfully in proposing to condition their permits on their willingness to surrender existing geoduck stocks.

But this argument disregards the specific terms of AS 16.40.120(f). Subsection .120(f) authorizes the department to issue acquisition permits for wild stock when necessary to meet a farm’s “initial needs of farm . . . stock.” Hence, this provision does not address a farm’s general startup needs; it only addresses a farm’s initial needs for “stock.” A “stock,” as discussed above, may only be used “for further growth or propagation.”²⁵ Here the applicants’ proposal to harvest and sell

²⁵ *Id.*

wild geoducks from their sites and to plow their earnings back into their farms has no direct relation to their initial needs for farm stock.

Nor do the applicants' arguments fare any better under the statutory provision governing operation permits, AS 16.40.100. As already explained in discussing the relevant statutory framework, an operation permit issued under section .100 does not generally authorize geoduck farmers to sell wild geoduck stocks; instead, it only permits them to acquire or sell "stock" and "aquatic farm products" if they "are used or reared at the . . . aquatic farm." Although the applicants maintained below that their proposed harvest and sale of wild geoducks would amount to a "use" under subsection .100(b), their argument strains the statute's plain meaning beyond plausible limits. Moreover, the argument disregards the need to interpret subsection .100(b)'s references to "stock" and "aquatic farm products" in light of AS 16.40.199's provisions defining those terms: to qualify as salable "stock," a wild geoduck would have to be "intended for use by [an] . . . aquatic farm *for the purpose of further growth or propagation*"; and to qualify as "a farm product," the geoduck would have to be "propagated, farmed, or cultivated in an aquatic farm."²⁶

In short, no provision of the aquatic farming act empowers the department to grant — or entitles the holder of an operation or stock acquisition permit to claim — exclusive rights to harvest and sell existing wild geoduck stocks. We thus conclude that the commissioner properly denied the disputed applications. Our reliance on this statutory ground makes it unnecessary to decide whether the Alaska Constitution would be violated by giving geoduck farmers exclusive rights to existing wild stocks.

²⁶ AS 16.40.199(2) and (8).

F. Estoppel

A final point of equity remains to be considered. The applicants assert that the department should be estopped from denying them the exclusive right to harvest wild geoducks because it repeatedly assured them that they would acquire the right with their permits. Although the department vigorously disputes the applicants' interpretation of its prior communications, we need not decide the dispute as to the meaning of the department's statements. We have previously recognized that private parties may invoke estoppel against the state in certain exceptional cases.²⁷ But when a party's request for estoppel would require the government to take unlawful or otherwise unauthorized action, we have carefully restricted the defense's use to circumstances in which the balance of equities manifestly favors the requesting party and estoppel is necessary to avoid further injustice.²⁸ Considering the totality of the circumstances here, although the department's prior representations have understandably caused considerable disappointment, we cannot say that the equities weigh heavily in the applicants' favor; nor do we see any compelling need to invoke estoppel as a means to prevent waste or avoid injustice.²⁹

Thus, even assuming that the applicants reasonably interpreted the department's prior representations as unequivocal promises, we conclude that the

²⁷ See, e.g., *State v. Schnell*, 8 P.3d 351, 356 (Alaska 2000); *Wassink v. Hawkins*, 763 P.2d 971, 975 (Alaska 1988).

²⁸ *Municipality of Anchorage v. Schneider*, 685 P.2d 94, 98 (Alaska 1984) (reinstating otherwise unlawful building permit by estoppel against Municipality when warranted by strong equities and necessary to avoid injustice).

²⁹ We find the applicants' reliance on *State v. Schnell* unavailing, since our ruling there simply approved an application of estoppel to temper the state's otherwise lawful disciplinary action against a licensee. 8 P.3d at 356.

balance of the equities would fall well short of justifying an order compelling the state to issue permits for exclusive fishing rights that the legislature has not authorized it to grant.³⁰

IV. CONCLUSION

For these reasons, we **AFFIRM** the department's decision denying the disputed applications for aquatic farming permits.

³⁰ In reaching this conclusion, we note that the applicants have advanced no claims for narrower forms of equitable relief such as money damages tailored to compensate them for direct costs actually sustained as a result of their reliance on the department's prior representations; they have demanded only the unqualified right to hold the state to its alleged promises to grant exclusive harvest rights.

AMENDMENT NUMBER 1

Offered in the Senate Resources Committee

By Senator Stedman

To CSSB 126(RES):

Page 1, Line 1: Delete entire line and insert: "An Act relating to aquatic plant and shellfish farming; and providing for an effective date."

SB 126 Packet

- Sponsor Statement: 1 page
- Sectional Analysis: 2 pages
- Fact Sheet: 1 page
- 3-03-05 ADF&G Letter: 1 page
- Support Letter: South East Alaska Regional Dive Fishers Ass'n.: 3 pages
- 3-15-05 Support Letter: ASGA: 2 pages
- Agreement Letter & Compromise: ASGA & SARDFSA: 3 pages
- SB 186: 4 pages
- #1 Fiscal Note: ADF&G: 3-21-05: 1 page

ALASKA STATE LEGISLATURE

SESSION

State Capitol, Rm 30
Juneau, Alaska 99801-1182
(907) 465-3873 Phone
(907) 465-3922 Fax
(877) 463-3873 Toll Free
Senator Bert Stedman@legis.state.ak.us



INTERIM

50 Front Street
Ketchikan, AK 99901-6442
Phone (907) 225-8088
Fax (907) 225-0713

SENATOR BERT STEDMAN

SPONSOR STATEMENT

SB 126

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

Senate Bill 126 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 (SARDFA), the Alaskan Shellfish Growers Association 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 SB 126 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.

The Department of Fish and Game is conducting a commercial dive fishery on designated mariculture sites, to remove the commercially significant population of wild geoducks from these small areas. This fishery is open to all commercial geoduck divers in Southeast Alaska. Section 2 of SB126 makes it clear that the aquatic farmers will not have to replace the shellfish that are harvested in this common property fishery.

SB 126 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 pay “reasonable compensation, as defined by the department,” to ADF&G.

The bill 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. It makes records and reports concerning aquaculture confidential, except in certain circumstances. In addition, SB 126 defines an “insignificant population” as one that would not support a commercial fishery.

Senate Bill 126 is supported by the Southeast Alaska Regional Dive Fisheries Association, the Alaskan Shellfish Growers' Association and the Alaska Department of Fish and Game.

Contact: Tim Barry, Aide to Senator Bert Stedman at (907) 465-3873

DISTRICT A

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LEGAL SERVICES

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

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


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 8, 2005

SUBJECT: Sectional summary of SB 126; An Act relating to aquatic farming
(Work Order No. 24-LS0597\G)

TO: Senator Bert Stedman
Attn: Tim Barry

FROM: George Uternohl 
Legislative Counsel

You have requested a sectional summary of SB 126; an Act relating to aquatic farming.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill 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 of the bill 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 of the bill amends AS 16.40.100 by adding a new subsection (f) to provide that the commissioner of fish and game may authorize 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 is to pay reasonable compensation to the Department of Fish and Game for the harvest and sale of the excess wild shellfish. The money received by the department is to be deposited into the general fund and may be appropriated to the department for shellfish management and enhancement.

Section 4 of the bill 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

Senator Bert Stedman

March 8, 2005

Page 2

than an insignificant population of a wild stock of a shellfish species intended to be cultured on the site.

Section 5 of the bill amends AS 16.40 by adding a new section (Sec. 16.40.155) to provide that, except under certain circumstances, records and reports submitted by aquatic farm and hatchery permit holders are confidential.

Section 6 of the bill amends AS 16.40.199 by adding a definition of "insignificant population."

Section 7 of the bill provides that AS 16.40.105, as amended by sec. 4 of the bill, does not apply to aquatic farm permits issued before the effective date of this bill.

Section 8 of the bill provides that this bill takes effect July 1, 2005.

GU:med

05-161.med



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Bert Stedman
Current Version: SB 126
Contact: Tim Barry, 465-3873

Fact Sheet for: Senate Bill 126

Short Title: DIVE FISHERY MANAGEMENT ASSESSMENT

Summary:

- Amends state Aquatic Farming Act so shellfish farms can harvest "insignificant" numbers of wild geoducks within aquatic fish farm areas.
- Permits Alaska Department of Fish & Game to hold commercial geoduck dive fisheries within shellfish farm areas.
- Prevents shellfish farmers from replacing wild geoduck stocks harvested during commercial dive opening.

Benefits:

- Creates a win-win situation for shellfish farmers, commercial dive fishermen and the state.
- Settles a long running legal dispute regarding wild geoduck stocks within shellfish farm areas.

Background:

- In April 2004, the Alaska Supreme Court ruled the Aquatic Farming Act prevents shellfish farmers from having exclusive rights to wild geoduck stocks within their farm area. A deal was struck between the Alaska Department of Fish & Game, the Alaskan Shellfish Growers Association and the Alaska Regional Dive Fisheries Association that allows shellfish farmers to harvest an "insignificant" amount of wild geoducks located within farm areas. The department will also hold commercial geoduck dive fish openings inside shellfish farm areas. SB 126 also prevents shellfish farmers from having to replace wild stocks of geoducks.

STATE OF ALASKA

FRANK H. MURKOWSKI
GOVERNOR

DEPARTMENT OF FISH AND GAME
OFFICE OF THE COMMISSIONER

P.O. BOX 25526
JUNEAU, AK 99802-5526
PHONE: (907) 465-4100
FAX: (907) 465-2332

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.

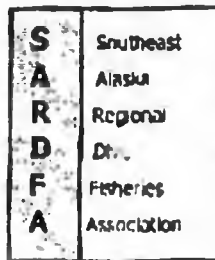
Under the previous administration, Alaska's mariculture industry was largely ignored. The industry, which was constantly at odds with the Alaska Department of Fish and Game (ADF&G) over regulatory matters, was unable to get the support that it needed from the Governor's office to move forward. As the 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



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

Alic Derker, Executive Director
Box 2130, Wrangell, AK 99929
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.

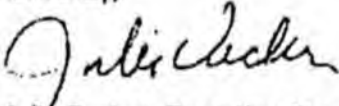
In comparison, the last geoduck auction held by the State of Washington (WA) on January 6, 2005, saw high bidders pay the State of WA an average of \$6.61 per pound for the right to harvest wild geoducks. If an average first wholesale value for live geoducks was approximately \$8 per pound, the "compensation" 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

Alaskan Shellfish Growers ASSOCIATION



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 siting 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 HB198.

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 • Phone: (907) 463-3600
Fax: (907) 586-1097 • Cell: (907) 957-0704 • email: rodgerpainter@hotmail.com

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

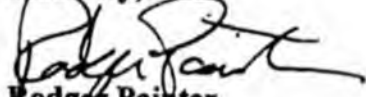
Dear Alaska Policymakers:

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.

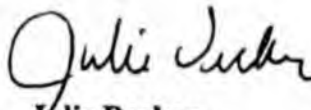
We urge quick action in approving the legislation and adopting the regulations necessary to carry out the agreement.

Sincerely,



Rodger Painter

ASGA vice president



Julie Decker

SARDFA executive director