

JOINT LEGISLATIVE SALMON INDUSTRY TASK FORCE:

Governance Sub-Committee; Meeting # 3, November 20th, 2003. 8:30am.

Minutes taken by Cameron Yourkowski, Staff (Rep. Seaton).

Members Present: Rep. Paul Seaton, Rep. Carl Morgan, Heather McCarty, Stephanie Madsen, Adelheid Herrmann, and Rob Zuanich, Duncan Fields, Rolland Maw.

Assets Utilized: Ed Dersham (BoF), Bruce Twomley (CFEC), Geron Bruce (ADF&G) Lance Nelson (Dep. of Law)

Agenda: 1) Fishing in more than one Admin. District per year
2) Salmon Cooperatives
3) HB 69 (added at meeting)
4) HB 70 (added at meeting)

1) Fishing in more than one Admin. District per year.

Ed Dersham reported that his legal council (Lance Nelson) agreed with both Legislative Legal's (G. Utermohle) and CFEC's (B. Twomley) opinions that the Legislature did have the explicit statutory authority to loosen this regulation.

Rolland Maw asked if this was something that had to be done through statute or if it could be done administratively. Several members/assets reported that it is an important enough change that it should be done explicitly in statute.

The Governance Sub-Committee agreed to recommend to the full Task Force that there is statutory authority to pursue this change and that there are no legal or constitutional problems with such a policy.

2) Salmon Cooperatives

A) Non-participation/absentee ownership.

The Committee briefly discussed the issue of cooperative members gaining economic benefits from a limited entry salmon permit and the conflicts that this seemed to present in relation to the intent of the Limited Entry Act to create a participatory industry. The Committee also discussed the possibility of fishermen with cooped permits entering other salmon fisheries in Alaska simultaneously and how this issue would relate to the possible relaxation of the current prohibition on fishing in more than one administrative district per year, as considered by the Production Sub-Committee.

Lance Nelson stated that it would depend, but that it would probably be best to explicitly state in the statutory language coming out of the Production Sub-Committee that the

provisions for allowing fishermen to fish in more than one administrative district per year does not construe Board of Fish salmon cooperative regulations.

The Committee continued to discuss the need to better define “non-participation” and “active involvement” in a cooperative salmon fishery (see posted cooperative issue paper). With respect to what “non-participation” means, the Committee agreed that salmon fishermen utilizing cooped permits should be allowed to “sequentially” fish in other administrative salmon districts, but not “simultaneously.” It was also decided that “actively involved” should be defined in statute with minimum standards, such as, “including, but not limited to catching, tendering, processing, marketing, and administration.” However, the Committee also felt that the Board of Fish and the cooperative itself should have the ability to further restrict this definition. Further, it was also agreed that the cooperative should not have the ability to unreasonably restrict any similarly situated permit holders from entering the cooperative.

Adelheid Herrmann voiced concern that the local Fish and Game Advisory Committees should have the ability to voice community concerns on cooperative issues as well.

Stephanie Madsen pointed out that the local Advisory Committees would have the ability to testify to the Board of Fish as specific cooperative regulations were proposed and considered.

B) 2/3 positive vote of similarly situated permit holders in favor of allowing for cooperatives with in a fishery before the Board of Fish may consider specific cooperative proposals.

The Committee agreed that this policy decision was important to protect the interests of the permit holders from having the management of their fishery altered by a small number of permit holders forming a cooperative.

Bruce Twomley stated that he felt it would be difficult to ever get 2/3s of permit holders to agree on anything.

Stephanie Madsen voiced concern that this policy should go a step further to mandate that a cooperative should not be allowed to control an excessive percentage of the total allowable catch, however, members of the Committee voiced concern that in some rural areas their may only be economic potential for one cooperative.

Ed Dersham stated that the Board of Fish does have the ability to control the harvest shares of each cooped permit and could address monopoly concerns in this manner rather than through statute that could be excessively prohibitive for some areas of the state.

C) Socioeconomic study to look at effects of salmon harvesting cooperatives on coastal communities.

There was no objection from the Committee to forwarding this recommendation (see cooperative issue paper) to the full Task Force as a Legislative Resolution.

Stephanie Madsen voiced concern that the proposed resolution would be too open-ended, especially with the potential loss of the Salmon Task Force forum. She suggested that a resolution could require the University of Alaska to report back to the Legislature and could also provide for an appropriation.

3) SB 69

Rep. Seaton expressed concern that as this bill was written it would allow Board of Fish members to become lobbyists. He stated that he could not support the bill as written.

Lance Nelson explained that the bill could be amended to differentiate between those conflicts that are participatory in nature versus those conflicts that are due to a member's status as a lobbyist.

Stephanie Madsen asked if she would then be excluded from being a Board of Fish member.

Rep. Seaton responded in the negative, explaining that she would only be recused on those issues for which she was a paid lobbyist.

Ed Dersham concurred with Rep. Seaton's concerns, but explained that the loss of knowledge due to participatory conflicts was too great and burdensome. He stated that he would support SB 69 with the lobbyist provisions.

Rolland Maw also stated that he would support SB 69 with the lobbyist provisions.

There was no objection from the Committee to recommending to the full Task Force that SB 69 should be amended to distinguish between lobbying conflicts of interest and participatory conflicts of interest.

4) SB 70

Lance Nelson stated that in his opinion the Judge Brown decision on KPFA/UCIDA vs State in favor of the plaintiff does not change the current law, but reaffirms that there must be new information or a biological emergency to allow the Commissioner to use his Emergency Order authority to depart from a Board of Fish area management plan. He further stated that he disagrees with the plaintiff's interpretation of the Judges decision to mean that the commissioner can use his Emergency Order authority whenever he wants.

The Committee decided to not take any action on this issue until Legislative Legal could respond to the following questions:

- 1) In light of the recent court case KPFA/UCIDA vs. Commissioner of ADG&G, does the BoF have regulatory authority to restrict/limit the powers of the ADG&G commissioner to issue E.O.'s over time and area?
- 2) In oral and written argument before the court, the state said that the BoF restrictions on the commissioner's E.O. authority were allocative decisions. Can the BoF use their allocative authority to limit the E.O. authority of the commissioner of ADF&G?
- 3) Given the wording in AS 16.05.060, can the BoF adopt any regulations under 16.05.251 that restricts the commissioner's E.O. authority?
- 4) Is there a need for legislation to clarify what constitutes new information?
- 5) What are the regulations related to the commissioner's authority to use E.O.s to remain within the new statutorily mandated missions and measures success determination of remaining within the escapement range of a given anadromous stream system.

The Governance Sub-Committee of the Joint Legislative Salmon Industry Task Force adjourned at 1:30 pm until the full Task Force meeting on December 7th and 8th.