

On Time Public Comment List
Statewide Finfish and Supplemental Issues Meeting
March 19- 24, 2013

Alaska Seine Boat Owners	PC 01
City and Borough of Yakutat	PC 02
Tongass Group of the Sierra Club and Alaska Wildlife Alliance	PC 03
Sitka Tribe of Alaska	PC 04
Jessica Gill	PC 05
Alaska Trollers Association.....	PC 06
United Fishermen of Alaska	PC 07
Kenai Peninsula Fishermen’s Association	PC 08
Andi Taylor & Randal Vasko (Mystic Adventures)	PC 09
Kenai Peninsula Fishermen’s Association	PC 10
Greg Indreland	PC 11
The Wildlife Society	PC 12
Marie Hermansen	PC 13
Karen McGahan	PC 14
Petersburg Vessel Owners Association.....	PC 15
Northern Southeast Regional Aquaculture Association, Inc.....	PC 16
Alaska Herring Conservation Alliance	PC 17
Senator Gary Stevens- Senate District R and Representative Alan Austerman- House District 35	PC 18
Charles E. Allen The Alaska Expedition Co.’s Driftwood Lodge	PC 19
Ahtna Incorporated.....	PC 20
Ronald J. Berg.....	PC 21
Organized Village of Kake	PC 22
Tsiu River Stakeholders Working Group/Sara E. Heideman	PC 23
Jimmy Rosenbruch.....	PC 24
David and Adam Scheer	PC 25
Oceana	PC 26
Daniel M. Zivanich.....	PC 27
Harold Perantie/Tsivat River Lodge	PC 28

On Time Public Comment List
Statewide Finfish and Supplemental Issues Meeting
March 19- 24, 2013

Yakutat Fisherman’s Alliance	PC 29
Todd W. Granger.....	PC 30
Todd Smith, Megan Smith, Sarah Hudkins, Brian Gabriel, Lisa Gabriel, Travis Every, Amber Every, Amanda Johnston.....	PC 31
Cook Inlet Aquaculture Association	PC 32
Native Village of Eyak.....	PC 33
Dave and JoAnn Wichers	PC 34
Ken Jones	PC 35
Alaskan Wilderness Outfitting Company	PC 36
Yakutat Tlingit Tribe	PC 37
Yakutat Fishermen’s Alliance Petition with 123 Signatures	PC 38
Adak Community Development Corporation	PC 39
Carolyn Reed.....	PC 40
Richard C. Mc Gahan, Sr.....	PC 41
Petition with 40 Signatures.....	PC 42
Petition with 61 Signatures.....	PC 43
Brian West.....	PC 44
Ron Smith.....	PC 45
Southeast Alaska Subsistence Regional Advisory Council	PC 46
Kenai River Sportfishing Association.....	PC 47
Southeast Alaska Fishermen’s Alliance.....	PC 48
Gary L. Hollier.....	PC 49
Dennis Gease	PC 50
Cordova District Fishermen United.....	PC 51
Dan Ernhart.....	PC 52
Petition with 301 Signatures.....	PC 53
Charles E. Allen The Alaska Expedition Co.’s Driftwood Lodge (duplicate)	PC 54
Christopher Wichers	PC 55
Petition with 526 Signatures.....	PC 56
Kenai River Sportfishing Association.....	PC 57



NORTHERN



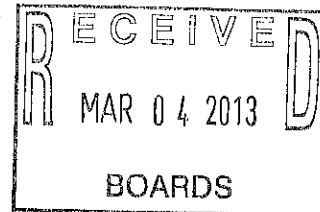
SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION, INC.

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1308 Sawmill Creek Road Sitka, Alaska 99835

March 4, 2013

Alaska Dept. of Fish and Game
Boards Support Section
PO Box 115526
Juneau, AK 99811



Board of Fisheries
March 19 – 24, 2013 Statewide Meeting

Re: Oppose Proposal 215 5 AAC 39.205. Allocation within Special Harvest Areas (SHA)

Dear Chairman Johnstone and Board of Fish Members:

Northern Southeast Regional Aquaculture Association (NSRAA) opposes Proposal 215 for these reasons: 1) the proposer appears to have an issue with one specific SHA in Resurrection Bay; however, changing this regulation would have implications for SHA's throughout the state; 2) SHAs are adopted subsequent to a rigorous public process, and are adequately regulated by ADF&G and BoFish to benefit of the public; 3) SHAs adhere to a BoFish defined area for the purpose of economic harvest and broodstock management; and 4) without management control of cost recovery and broodstock within the SHA an enhancement organization is at very high risk of broodstock failure to perpetuate the program, and/or cost recovery failure which can undermine the entities' fiduciary responsibilities, including paying back State of Alaska loans.

By way of example, all NSRAA SHA's are open to sport, personal use, & subsistence fisheries, as well as multiple commercial gear. In some cases a very small portion of an SHA is closed to fisheries by time and area as delineated in the ADF&G Annual Management Plan. NSRAA minimizes the SHA area closed to maximize the benefit to common property fisheries. Several facilities in the state have only one SHA and therefore are solely dependent on that one site for the two critical operations. All enhancement organizations are dependent on some portion of an SHA for their existence. Each enhancement program is unique and manages their SHAs to meet their program and financial needs according to their circumstances; and importantly with the approval of ADF&G.

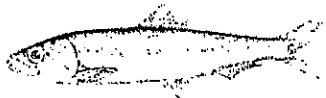
NSRAA looks forward to working with the board regarding Proposal 215 at the March meeting in Anchorage,

Sincerely,

Steve Reifenstuhl, General Manager
Northern Southeast Regional Aquaculture Assoc.



ALASKA HERRING CONSERVATION ALLIANCE



P.O. BOX 61
Sitka, Alaska 99835
Tel. No. 907-738-3509



March 4, 2013

Alaska Dept. of Fish and Game
Boards Support Section
PO Box 115526
Juneau, AK 99811

Re: Oppose Proposal 243 – Inclusion of Herring in Forage Fish Management Plan

Dear Chairman Johnstone and Board of Fish Members:

The Alaska Herring Conservation Alliance (AHCA) submits these comments in opposition to Proposal 243 that you will be considering at the March 19 – 24, 2013 meeting in Anchorage. AHCA is statewide member organization that represents herring sac roe permit holders, all the major herring processors, as well as tender men & boat owners, crew, and families associated with herring fisheries throughout the state. AHCA members participate in herring sac roe fisheries from Norton Sound to Togiak to Craig, Alaska. AHCA looks forward to working with the board at the March meeting in Anchorage, particularly pertaining to the forage fish issue.

In 1998, the board of fish adopted 5 AAC 39.212. Forage Fish Management Plan which established nine marine fish families as forage fish which in 1998 were not commercially harvested, and therefore by definition would be excluded from future commercial fisheries. At the same time the board of fish intentionally did not include herring, shrimp, and Pollack, among many other species in 5 AAC 39.212. Forage Fish Management Plan. Existing/ongoing fisheries were left out recognizing that ADF&G had biologically driven, abundance based management plans on those species. Designation of a family in the FFMP dictated it would not be developed for commercial harvest. This designation was not definitional in the sense of species or marine fish-family ecological niche. The goal was and should be sustainable management and scientifically based harvest guidelines.

Therefore, arbitrarily changing one species within Clupeidae to forage fish designation as Proposal 243 proposes, introduces considerable confusion and additionally overturns a former board of fish action that was consistent and logical. Proposal #243 appears to be more than semantics, or put forth for the sake of clarity, otherwise why not modify the entire Forage Fish Plan.

This proposal was rejected in its original form by Department of Law at the October work



session based on one or more of the three criteria:

- a) Conservation concern – There is not a conservation concern. Togiak is booming; Sitka Sound herring have increased in biomass since the state began managing it in 1960. The increase biomass of the Sitka Sound herring has been dramatic, by a factor of ten. Once the 2012 data are analyzed it may show a decline in biomass from the 2011 biomass, but one year does not make a trend. To manage otherwise would result in many salmon fisheries being shut down on a regular basis. Additionally, the proposal claims there will be no change in ADF&G management.
- b) Correct an error – The Board of Fish did not make an error as suggested by the original proposer, but rather the Board made a conscious decision to continue sustainable commercial fisheries on herring and Pollack. These are fisheries that communities from Nome to Kodiak to Ketchikan depend on for economic survival.
- c) Correct an effect unforeseen – what was unforeseen was how the Sitka Sound herring biomass would increase since the 1998 FFMP – herring biomass has doubled in the intervening 13 years, Togiak herring biomass is even larger.

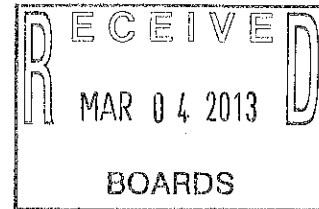
Proposal 243 is inconsistent with the current language in 5 AAC 39.212. Forage Fish Management Plan. It is true the language for inclusion of herring can be massaged to be the one exception in the FFMP, but for what biological, sustainability, or clarity/consistency reason? If the inclusion does not affect the harvest or GHIL or contribute to sustainable management, the proposal should not be adopted into regulation.

AHCA members and I will attend the Anchorage meeting and would be happy to meet with board members or serve on committee.

Thank you for your consideration in this matter.

Sincerely,

Steve Reifentuhl
Executive Director AHCA



Reference for Management Plan:

[http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://www.jnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=\[JUMP:'5+aac+39:2E212'\]/doc/{@1}?firsthit](http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://www.jnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=[JUMP:'5+aac+39:2E212']/doc/{@1}?firsthit)



Alaska State Legislature



Representative Alan Austerman
Alaska State Capitol, Room 505
Juneau, AK 99801-1182
(907) 465-2487
Fax (907) 465-4956

Senator Gary Stevens
Alaska State Capitol, Room 111
Juneau, AK 99801-1182
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House District 35 ~ Senate District R

March 1, 2013

Karl Johnstone, Chairman
Alaska Board of Fisheries
c/o Alaska Department of Fish & Game
PO Box 115526

Sent Via Fax To: (907) 465-6094

Dear Chairman Johnstone:

It is our understanding that the Board of Fisheries may be considering where to locate the next meeting for considering Prince William Sound proposals. This letter is requesting the Board to conduct the meeting in a community located in Prince William Sound.

Alaska Statute 16.05.300 states that the board "shall select the time and place in the state for the transaction of business." The statute further states that "the Board of Fisheries shall hold at least one meeting or hearing a year in each of the following general areas: (1) Upper Yukon - Kuskokwim - Arctic; (2) Western Alaska (including Kodiak); (3) Southcentral; (4) Prince William Sound (including Yakutat)."

The intent and policy is for the Board to conduct hearings in a location that affords those who are the most impacted to have the best possible chance to participate in the process.

Communities in Prince William Sound offer facilities, accommodations and hospitality to afford the Board and stakeholders with an opportunity for productive meetings. For example, Cordova just completed major renovations to Mt. Eccles Elementary School that include a new gymnasium/auditorium designed for multiple use. It offers capacity for 450 people, ADA compliance, a new audio sound system, wireless networking, and addition rooms for committee meetings.

As legislators that represent coastal fishing communities, it is imperative that the Board of Fisheries conducts hearings in locations that provide local people with an opportunity to participate in a process that heavily impacts their lives. We appreciate your consideration.

Sincerely,

Senator Gary Stevens
Senate District R

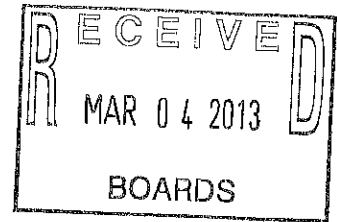
Representative Alan Austerman
House District 35





Debbie Carpenter

To: Charles Allen DB
Subject: RE: Tsiu River comments



Dear Monica Wellard:

Please note my comments that I would like to have entered into the record at the upcoming Board of Fisheries meeting. The following comments are solely the opinion of Charles E. Allen.

My name is Charles E. Allen and I am the owner of The Alaska Expedition Co.'s "Driftwood Lodge" located on the west side of the Tsiu River. I began operating on the Tsiu River in 1989. I believe I am in somewhat of a unique position for the following reasons:

1. I am a graduate wildlife biologist who practiced that profession for 13 years; 11 of which were as the Wildlife Programs Manager for St. Regis Paper Co. which required that we write management prescriptions for 6.5 million acres of company lands across the United States. Following this experience, I became the Director, Wildlife Division of Texas Parks & Wildlife Dept., with oversight responsibilities for all 189 biologists and technicians in the State of Texas with an \$8 Million annual budget. My background includes courses in limnology, aquatic ecology and ichthyology as well as resource management techniques and strategy and bioeconomics.
2. In my role as a biologist and resource manager, I was constantly involved in situations not unlike what is happening on the Tsiu River—that is, the attempt to equitably resolve conflicts of interest by different user groups.
3. I worked directly with the commercial fisheries on the Tsiu River in 1989 and 1990 flying set net caught salmon off the river both to Yakutat and to markets in Cordova I helped establish and thus, I have some experience with commercial fishermen's challenges and operational methodology.
4. In 1991, I established our commercial sport fishing operation through the approval of a DNR sanctioned lease site. The Alaska Expedition Co.'s lodge typically hosts 14 guests per week for eight weeks. I am also an Alaskan Registered Big-Game Guide.

STATEMENT OF FACT: USER CONFLICT

The conflict on the Tsiu River is one of two disparate user groups; i.e. commercial set-net fisheries operations and commercial recreational sport fisheries operations attempting to access, use, and extract coho salmon from a small, relatively short, and shallow river midway between Yakutat and Cordova, Alaska. Both operations are commercial and both operations have economic impacts on the City and Borough of Yakutat as well as for the commercial set net fishermen and commercial lodge owners themselves.

SIMILARITIES OF USER GROUPS

Both groups are commercial operations. Set-net fishermen benefit individually and according to comments by the recent "Tsiu River Working Group" there are approximately 10 to 12 set net fishermen now actually fishing the river. The fish processor in Yakutat benefits and this company employs an unreported number of local residents. Aircraft owners who fly fish from the River to Yakutat have an economic interest also. It is unknown and was unreported in the recent Working Group discussions on what lease fees and sales taxes the commercial set net fishermen pay to the Borough for their cabins and on the number of pounds of fish caught and sold. I am confident this number can be obtained by the Board if there is an interest.

Lodge owners (six different lodges operate on the river) and their employees benefit directly. Each lodge employs between three and 12 employees for the season. Lodges pay lease fees and sales taxes directly to the Borough. Economic multiplier effects occur from sport fishermen using lodging, restaurants, purchasing fishing and hunting licenses in Yakutat, Cordova and Anchorage. Air taxi operations in Yakutat, Cordova, and Anchorage benefit directly. In our case, we pay well over \$20,000 per season and by simple extrapolation with five other lodges on the river, I suspect the economic impact for the Borough is substantial.

NATURE OF THE ACTUAL CONFLICT

The number of outright "harassment" incidents on the river between commercial set-net fishermen and sport fishermen is extremely low—at least in our case. I discount outright animosity between user groups as the problem



The problem then is not one characterized by open hostility between the two user groups—the problem is spatial in nature. That is, these two disparate user groups attempting to occupy the virtually the same space, at the same time, with hugely different methods of fishing. The sport fisherman with an 8 weight fly rod attempting to catch a salmon from a quiet pool or run; the set net fisherman dropping a set net into the same pool and then circling not just that pool, but up and down river for hundreds of yards using a large skiff propelled by a 90hp outboard jet. Because other set net locations are below or above this set-net fisherman, the overall effect is a total overlapping of skiff traffic driving virtually all the fish in the river into the waiting nets in a very short period of time. The sport fishermen user group then as a whole (usually 60 to 100 sport fishermen), have no where to go to escape the overlapping skiff traffic. High speed skiff use with its attendant noise, wave action, and very fast rounding up and netting of available fish is the normal set-net fishing operational method on the Tsiu.

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SOLUTIONS: The following discussions and potential solutions have been suggested to address the conflict.

PROPOSAL 247: I am aware, through the Tsiu River Working Group discussion, that a proposal to restrict boat traffic to the lower 1/2 or so of the river has been proposed (Proposal 247). As this is a prime area for sport fishing, and because the river is constantly changing in water depth, clarity, and channel location due to the constantly shifting sand bottom and banks, I do not believe this area is the best area for a closure consideration. Furthermore as I pointed out to the Group, the fish entering the mouth of the Tsiu are virtually racing upstream to the large holding areas located 3/4 to 1 mile upstream and sport fishing has little effect in the lower section. Those fish are going to run upstream very quickly and by closing these waters to sport fishing and allowing unlimited set netting, this proposal would have serious detrimental effects on the sport fisheries upstream and thus, I am not in favor of this proposal. This was the consensus of the Working Group as well.

DEVELOP A BROCHURE: An information brochure explaining commercial set-net fisheries and Native/Tribal involvement with a historical perspective was proposed by some members of the Working Group.

WORKING GROUP TO MEET ON THE TSIU RIVER: In an effort to discuss the user group conflict "on the ground" and prior to the beginning of the fishing season, it was agreed that the Group should meet and review the situation. This has merit and when different user groups have closer interaction, sometimes solutions can be developed.

POLICE PRESENCE: A member of the Working Group represented local law enforcement and agreed that a greater presence might have a positive affect. However, by his own admission, the law states that "one cannot interfere or disrupt the hunting/fishing effort of a hunter or sport fisherman" and at the same time, another statute states that "one cannot interfere with the commercial fishing effort of a person"; in other words, we are at a legal and regulatory impasse. This is a Catch-22 situation for an officer on the Tsiu. Law enforcement personnel cannot write a citation to a person legally engaged in commercial fishing even if that person is disrupting a sport fisherman's opportunity and efforts by running a skiff within 10 feet of the sport fisherman.

REGULATION NEED: Unfortunately in my experience with conflicting user groups occupying the same space at the same time, I found that legislative or regulatory action was required to solve or mitigate the problem to an acceptable degree. In the case of the Tsiu River, obviously there is a problem. No amount of education, propaganda pamphlets, or law enforcement presence on the river will make a difference as long as the underlying spatial problem of two totally different user groups legally occupying the same small space exists. No laws are being broken. No problems exist biologically. Commercial set-net fishing on the river has a long and effective history and should continue. Commercial sport fishing on the river generates substantial income to the Yakutat Borough and will continue.

Intentional harassment between user groups does not seem to be occurring on a significant scale. However, in my opinion, the Board of Fisheries should consider action(s) that will either physically separate the two user groups, or at least eliminate the driving of fish into nets using skiffs. I believe that eliminating skiffs would

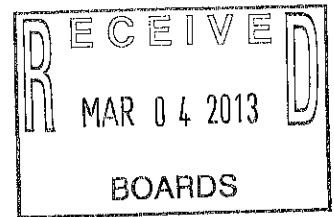


create undue hardship on the commercial set-net fisheries on this river thus a regulation that separates the two user groups would seem logical and preferred if the board chooses to begin regulatory efforts to solve this problem.

Thank you for the opportunity to address the Board of Fisheries.

I remain respectfully yours,

Charles E. Allen
President and Owner, The Alaska Expedition Co.
Registered Big-Game Guide #1210

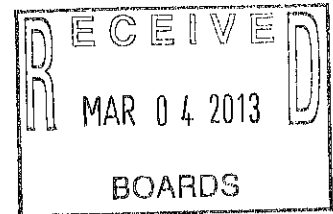




Ahtna, Incorporated



February 27, 2013



Boards Support Section
Alaska Department of Fish and Game
P.O. Box 115526
Juneau, Alaska 99811-115526

Dear Ms. Wellard:

Enclosed are comments from the Ahtna Tene Nene' Customary and Traditional Use Committee on the Alaska Board of Fisheries for the Statewide Meeting on Finfish on March 19-24, 2013 in Anchorage. Please distribute our comments to Board members.

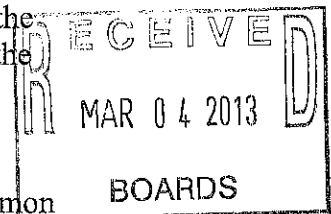
Sincerely,

Roy S. Ewan
for
Roy S. Ewan
Roy S. Ewan
Chair



Proposal 247 – 5 AAC 39.223. Policy for statewide salmon escapement goals. Manage statewide priority for management of king salmon as follows:

Have the BOF mandate that the Chinook salmon returns be managed AS A PRIORITY to meet the pre-season established goals AND on a yearly basis. STATEWIDE, raise the lower end escapement goals 2 percent for the next 15 years for all rivers to correct the last 25 years of mismanagement. We must manage Chinook salmon for abundance.



Comments:

We support Proposal 247 to mandate statewide priority for management of king salmon as requested in this proposal. King Salmon in the Copper River has been on the decline for the past 8 years and is continuing to decline. The sustainable escapement goal is 24,000 or more for King Salmon in the Copper River King Salmon Management Plan. Two percent of 24,000 King Salmon for the next 15 years would increase the escapement goal to 24,480 King Salmon per year. Two percent is not a large increase in an escapement goal plan for King Salmon.

We also agree that Jack kings should not be counted as a King Salmon or part of the sustainable escapement goal for King Salmon. Jacks are not as large as King Salmon. Jacks are a special fish to the Ahtna People and should not be counted in the sustainable escapement goal. Jacks generally do not spawn and should not be counted as part of the escapement goal.

Proposal 225 – 5 AAC 39.2XX. Policy for the implementation of permit stocking. Develop and require use of a statewide policy during consideration of permit stacking proposals as follows:

The Board of Fisheries will have to address the issue of permit stacking on a statewide basis and come up with the most appropriate policies and procedures for this issue that meets CFEC legal requirements.

Comments:

We support Proposal 225 over to have the “Alaska Board of Fisheries develop a Policy for the Implementation of Permit Stacking”. Establishing and creating such a policy will give the department authority to dis-allow limited entry permit to be re-used so that over harvest of King Salmon or over harvest of other fish will be curtailed. The department will have the authority to close fishing when allowable harvest is caught by fishermen.

Proposal 228 – 5 AAC 75.995. Definitions. Prohibit the practice of “high grading” by anglers as follows:

(4) “bag limit” means the maximum legal take per person per day, in the area in which the person is fishing, even though part of all of the fish are immediately preserved; a fish when landed and **not immediately released** [KILLED] becomes part of the bag limit of the person originally hooking it;

Comments:

We support Proposal 228 to change the definitions to prohibit anglers keeping smaller fish alive on stringers or in live-wells until they catch a larger fish and then releasing the smaller fish. Keeping smaller fish on a string causes harm and “unnecessary and unneeded mortality” to fish. All fish caught should immediately be counted against the fishermen’s bag limit. This also causes needless cruelty to the fish in the live well or on a stringer and is disrespectful to the resource.



Proposal 229 – 5 AAC 75.006. Harvest record for finfish with an annual limit. Specify harvest record reporting requirements for additional sport fishing licenses and harvest records as follows:

(b) A person obtaining a duplicate **or additional** sport fishing license or duplicate **or additional** harvest record shall record on that form information required by (a) (2) of this section for all finfish previously landed during that regulatory year that were subject to the harvest record reporting requirements of this section.

Comments:

We support Proposal 229 over Proposal 230 to add that harvest has to be recorded on a duplicate or sport fishing license or duplicate or additional harvest record for that regulatory year. Over harvest of finfish will occur if this is not corrected in regulation. Fishermen could lose a fishing license and get a duplicate fishing license and catch twice the harvest limit of finfish, if it wasn't recorded on the duplicate fishing license or additional harvest record.

Proposal 231 – 5 AAC 75.995. Definitions. Define the term “compensation” as follows:

(52) “compensation” means direct or indirect payment, remuneration, or other benefits received in return for services, regardless of the source; in this paragraph, “benefits” includes wages or other employment benefits given directly or indirectly to an individual or organization, and any dues, payments, fees, or other remuneration given directly or indirectly to a fishing club, organization, or individual who provides sport fishing guide services; and does not include reimbursement for the actual expenses for fuel, food, or bait;

Comments:

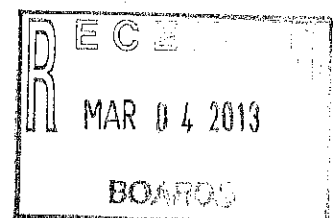
We support Proposal 231 to define “compensation” for services rendered by an individual or organization. The definition for payments for services to individuals and organizations will be unclear, if a definition is not established in regulation. Illegal activity will continue to happen, if a definition is not in place.

Proposal 233 – 5 AAC 75.022(d). Freshwater sport fishing. Create an exemption for the use of foot gear with felt soles for the disabled or handicapped fishermen as follows:

I would like to have an exemption made for handicap or disabled sport fishers. The requirement for disabled and handicap fishing license could be used as eligibility as the criteria to wear felt soles. The wading shoes that they use could be not used outside of Alaska.

Comments

We oppose Proposal 233 to create an exemption for the use of footgear with felt soles for the disabled or handicapped fishermen. If they are disabled or handicapped, they would not be able to use a felt sole to use while fishing. Felt soles will spread seeds of invasive plants if they are allowed to be used while fishing.





Proposal 234 – 5 AAC 75.020. Sport fishing gear. Ban use of lead weights in fresh salt waters of Alaska in sport fisheries as follows:

(X) Lead weights, weighing 1 oz. or less and jigs less than 1 inch along their longest axis are banned in all waters in the State of Alaska.

Comments:

We oppose Proposal 234 to ban use of lead weights in fresh waters and salt waters in Alaska. Lead weight use when a person is fishing in waters of the State of Alaska will not harm finfish. Lead weights were banned because lead shots had an impact upon water fowls when they were shot full of lead. Finfish will not be affected by lead weight in this manner. Furthermore, fishermen will have to buy other methods of weights to utilize when fishing for finfish.

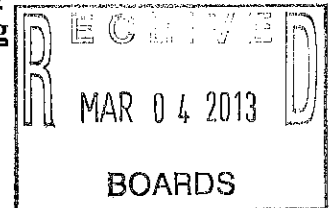
Proposal 235 – 5 AAC 75OXX. New Regulation 5 AAC 75.005. Possession of licenses, stamps and harvest records. Establish mandatory reporting system for sport fisheries statewide as follows:

5 AAC 75. OXX. Sport fishing reporting requirements. For all fishers required to possess a license under AS 16.05.330 or exempt from licensing under AS 16.05.400, the following reporting conditions shall apply to the harvest of any species for which the license is required, unless otherwise specified by the regulation in 5 AAC77:

- (1) Each fisher shall keep accurate daily records of the catch involved, showing the number of fish taken by species, location and date of the catch, and such other information as the department may require for management or conservation purposes.**
- (2) Sport fishing reports must be completed on forms provided by the department at the point of sale or any department office, and returned by mail within 5 days of the expiration date of the license, or by January 15th of each year for persons exempt from licensing under AS 16.05.400.**

5 AAC 75.005 Possession of licenses, stamps and harvest record.

- (a) All persons engaged in sport fishing or in possession or transportation of fish must show their sport fishing licenses, Harvest Records and special permits or stamps to any local representative of the department or to any peace officer of the state upon his request.**
- (b) Any licensee who fails to comply with the reporting requirements as required under 5 AAC 75.XXX is ineligible to receive a sport fishing license during the following calendar year, unless the licensee demonstrates to the department that failure to report was due to unavoidable circumstances.**



We support Proposal 235 to add a regulatory change to require a reporting system for statewide sport fisheries to keep “accurate daily records of finfish harvested” within 15 days of the expiration date of the license or by January 15th of each year for persons exempt from licensing under AS16.05.400; showing license to peace officer, and failure to comply with reporting requirement will result in ineligibility to receive a sport fishing license the next regulatory year.

Approving and passing such a regulatory change will greatly increase accurate and timely Sport fisheries reporting Finfish harvest. Sports fisheries do not have to report harvest in a

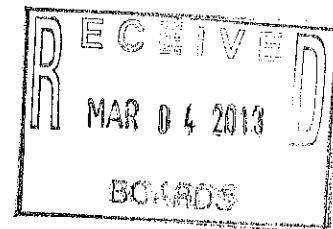


timely manner as do subsistence uses and commercial fisheries. Sport fisheries harvest of finfish is inaccurate when a period of time has elapsed and report is filled in months after harvest has occurred. Forcing sport fishermen to report harvest in a timely manner and to show fishing license to peace officers and making them ineligible to receive a sports fisheries license the following year will benefit all users, provide for more efficient management plans and Emergency Order actions, and allocation of resources.

Proposal 236 – 5 AAC 39.205; 5 AAC 75.17; 5 AAC 77.007. Criteria for the allocation of fishery resources among personal use, sport, and commercial fisheries. Establish allocation criteria with assigned point values to a user group as part of a weighted system when making allocation decisions among user groups in salmon fisheries as follows:
I would prefer to see a weighted system established where each of the criteria's is assigned values so that each point or points can be assigned to a user group.

Comments:

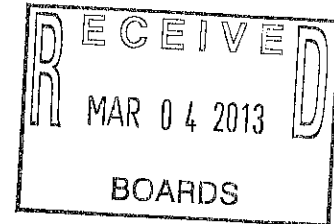
We oppose Proposal 236 to establish criteria for the allocation of fishery resources among personal use, sport and commercial fisheries. A Tier II type system will occur if this proposal is approved and pass by the Alaska Board of Fisheries. A criteria regulation is already in place for the allocation of fish resources among personal use, sport, and commercial fisheries. An additional criterion is not necessary for personal use, sport and commercial fisheries.





March 1, 2013

Alaska Department of Fish and Game
Boards Support Section
P.O. Box 115526
Juneau, AK 99811-5526



Dear Section Leader,

I support Proposal 243, which would add Pacific herring to the State of Alaska's Forage Fish Management Plan (FFMP). Adding herring to the FFMP would recognize the importance of herring in the marine ecosystem. The numbers of marine mammals, birds and other fish species that prey on herring are impressive. Here's a partial species list, provided by the National Marine Fisheries Service, Alaska Region:

MARINE MAMMALS

- Dall's porpoise
- Fin whale
- Gray whale
- Harbor porpoise
- Harbor seal
- Humpback whale
- Killer whale
- Minke whale
- Pacific white-sided dolphin
- Steller sea lion

BIRDS

- Bald eagle
- Black turnstone
- Common murre
- Glaucous-winged gull
- Harlequin duck
- Marbled murrelet
- Mew gull
- Pelagic cormorant
- Surfbird
- Surf scoter
- White-winged scoter

FISH AND INVERTEBRATES

- Arrowtooth flounder
- Great sculpin
- Greenland species
- Leather star
- Lingcod
- Pacific cod
- Pink salmon
- Chinook salmon
- Coho salmon
- Pacific halibut
- Pacific sandfish
- Sablefish
- Spiny dogfish
- Steelhead trout
- Turban snail
- Walleye Pollock

Other predators include crabs, sea anemones, sea cucumbers, snails, sea stars, sea urchins, chitons, and hydromedusae.

In turn, herring feed seasonally on phytoplankton and zooplankton, building up fat stores for periods of inactivity. They generally feed in surface waters at night in areas of upwelling. Young herring feed mainly on crustaceans but will eat decapods and mollusk larvae. Adults consume mostly large crustaceans and small fish.

Effects of herring exploitation on the ecosystem and local economies can be difficult to predict. Even in cases where herring are well-managed, removals may negatively affect the ecosystem as a whole. Adding herring to the FFMP would promote understanding of the importance of herring, and encourage conservation of this important species.

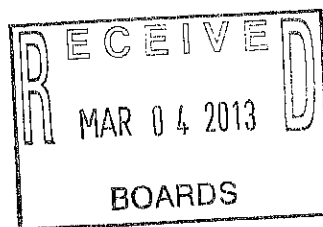


Sincerely,

Ronald J. Berg

Ronald J. Berg
10725 Horizon Drive
Juneau, AK 99801

Ronald.berg057@gmail.com





Organized Village of Kake

P.O. Box 316

Kake, Alaska 99830-0316

Telephone 907-785-6471

Fax 907-785-4902 / email KeeXKwaan@KakeFirstNation.org

(Federally Recognized Tribal Government serving the Kake, Alaska area)



February 19, 2013

Board of Fish Proposal 243

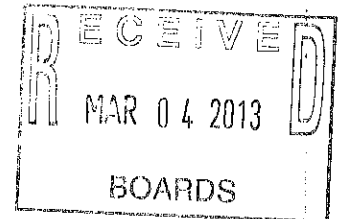
Adding Pacific Herring to the State's Forage Fish Management Plan

To Whom It May Concern,

I would like to encourage you to support Board of Fish (BoF) Proposal 243. Currently, Pacific herring are the only forage fish species that is commercially harvested in the State of Alaska. The State fails to acknowledge herring as a forage fish by not specifically listing them in its Forage Fish Management Plan (FFMP), however it does list exemptions in the Plan for all existing herring fisheries.

Biologist, fishery managers and governments around the world acknowledge herring as a forage fish. The federal government acknowledges their importance by listing them as a prohibited species in the Gulf of Alaska and Bering Sea trawl fisheries. Herring also meet the role of a forage fish as defined by the BoF in the FFMP (5 AAC 39.212 (d)):

"The board finds that forage fish perform a critical role in the complex marine ecosystem by providing the transfer of energy from the primary and secondary producers to higher trophic levels. The higher trophic levels include many commercially important fish and shellfish species. Forage fish also serve as important prey species for marine mammals and seabirds."



There are some who have the misconception that this listing will shut down the various herring fisheries within the State. This is not the case. As stated above, the current FFMP (attached) lists exemptions for all the herring fisheries in Alaska (5 AAC 03 - 5 AAC 39). Proposal 243 does not remove these exemptions it merely lists Pacific herring as a forage fish. At the October 10, 2012 Board of Fish meeting in Anchorage, ADF&G Regional Supervisor Scott Kelly testified that adding herring to the State's FFMP would not change the way the State manages the herring fisheries.

Listing Pacific herring on the FFMP will require fisheries managers to acknowledge herring as a forage fish and is the first step towards a more conservative management approach that prioritizes the needs of the marine ecosystem. Commercial (longline, troll, seine, etc.), sport, personal use, and subsistence fishers along with non-consumptive users would all benefit from more conservative management of this keystone species.

I've attached petition in support of Proposal 243 that can be mailed or faxed to the address/number below. You also have the option to completing an on line petition at <http://www.thepetitionsite.com/492/125/552/add-pacific-herring-to-alaskas-forage-fish->



Page 2

management-plan/. Written comments on Proposal 243 can be submitted to the BoF by March 5, 2013.

Send to:

Alaska Department of Fish and Game
Boards Support Section
P.O. Box 115526
Juneau, AK 99811-5526

or fax to:

(907) 465-6094

If you have any questions or would like to discuss this issue, I can be reached at the address on our letterhead or you can talk with the Organized Village of Kake's Natural Resource Director, Mike Jackson, at: majackson@kakefirstnation.org or at (907) 723-4324.

Thank You,

A handwritten signature in black ink that reads "Jeffrey Jackson".

Jeffrey Jackson
President



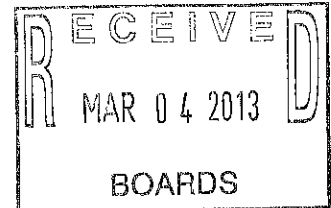


To: Board of Fisheries

Re: BGP 247/Tsiu River Stakeholders Working Group

On February 27, 2013, the representatives of the user groups on the Tsiu River and other interested parties met to discuss the various issues regarding the river, including Board Generated Proposal 247. Those present included owners of sport fishing lodges, commercial fishermen, the local owner of the Yakutat Seafoods processing plant, and representatives of the City and Borough of Yakutat, the Yakutat Tlingit Tribe and the State of Alaska Fish and Game:

Greg Indreland, owner, Yakutat Seafoods
Greg Dierick, owner, Dierick's Tsiu River Lodge
Charles and Jody Allen, owners, Alaska Expedition Company
Tom and Katie Prijatel, owners, Alaska Wilderness Outfitting Lodge
Victoria Demmert, President, Yakutat Tlingit Tribe
Jonathan Pavlik, commercial fisherman
Brandt Graber, commercial fisherman
Jeremiah James, commercial fisherman, Assembly Member, City and Borough of Yakutat
Skip Ryman, Borough Manager, City and Borough of Yakutat
Robert Baty, Chief of Police, City and Borough of Yakutat
Gordie Woods, State of Alaska, Fish and Game
Brian Marston, State of Alaska, Fish and Game
Nicole Zeiser, State of Alaska, Fish and Game



Those present agreed to form and be part of the Tsiu River Stakeholders Working Group – for the purpose of working together to ensure that all user groups on the river maintain fair and equitable access to the river and its resources, through improved communications and education.* As part of the Group, the City and Borough of Yakutat committed to improving its enforcement presence on the river during the commercial fishing season. The intent of the Group is to meet once or twice a year, preferably directly before and after each season, to foster relationships between the user groups, identify issues, and work to resolve them.

Neither the commercial fishermen nor the lodge owners are in favor of Board Generated Proposal 247, or any other similar Board proposal, at this time, and do not feel that it is presently necessary to restrict commercial fishermen to the lower one-half of the Tsiu River, a move which could have unintended and negative consequences.

They request that the Board respect the rights of the local stakeholders in this matter, and allow the interested parties the opportunity to resolve any existing issues without regulatory intervention by the Board of Fisheries. The Group intends to report back to the Board as part of the regular Southeast/Yakutat areas (All Finfish) regulatory cycle.

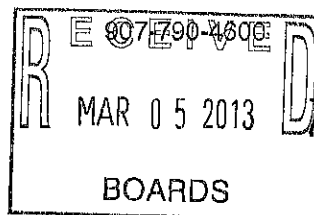
The ADF&G members of the group are neutral on the proposal as it is allocative. They take no position on proposal 247, and are members of the group in an advisory capacity only.

Submitted by,

Tsiu River Stakeholders Working Group

*Lodge owner Dennis Myers, Kiklukk Lodge, has since agreed to be a member of the Group. He could not participate in the Feb. 27th meeting due to telephone issues.

Attention Maniza Wellard



The *Owsichuk v. State, 1988* provides important information regarding the common use clause:

In *State v. Ostrosky, 667 P.2d 1184 (Alaska 1983)*, appeal dismissed, 467 U.S. 1201, 104 S.Ct. 2379, 81 L.Ed.2d 339 (1984), we addressed the constitutionality of limited entry fishing. Limited entry fishing bears an obvious similarity to the EGA scheme in that both place restrictions on the commercial harvesting of a natural resource by giving a special status to a limited number of licensees. In *Ostrosky* we stated:

[W]e have difficulty squaring the section 3 reservation of fish to the people for common use with a system which grants an exclusive right to fish to a select few who may continue to exercise that right season after season. We accept, therefore, at least for the purposes of this case, the proposition that limited entry is inconsistent with the command of article VIII, section 3.

Id. at 1189. In *Ostrosky* we held that the Limited Entry Act was not unconstitutional because of a 1972 constitutional amendment explicitly permitting limited entry to fisheries, notwithstanding section 3. *Id.* at 1190.

In a subsequent limited entry fishing case, *Johns v. Commercial Fisheries Entry Comm'n, 758 P.2d 1256 (Alaska 1988)*, we stated:

In *State v. Ostrosky, 667 P.2d 1184 (Alaska 1983)*, we noted that there is a tension between the limited entry clause of the state constitution and the clauses of the constitution which guaranty open fisheries. [Citing section 3 and 15 of article VIII] We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation.

Limited entry is ok with the Alaska constitution provision of common use because of the limited entry constitutional amendment and is possible as long as there is not the prevention of economic distress to fishermen and resource conservation. There has been no constitutional amendment to allow for permit stacking. In the next part of the case chief justice rabinowitz talks about common use.

The framers' reliance on historic principles regarding state management of wildlife and water resources is evident from a written explanation in the committee materials for the term "reserved to the people for common use." This discussion also highlights an intent to prohibit "exclusive grants or special privilege[s]."

Later the court case continues with:

In light of this historical review we conclude that the common use clause was intended to engraft in our constitution certain trust principles guaranteeing access to the fish, wildlife and water resources of the state. The proceedings of the Constitutional Convention, together with the common law tradition on which the delegates built, convince us that a minimum requirement of this duty is a prohibition against any monopolistic grants or special privileges. Accordingly, we are compelled to strike down any statutes or regulations that violate this principle.



Attention Monrea Wellard

When I read CFEC's report from last December and the memo they provided in February that shows landings by district there is one thing that seems very obvious to me. It looks like people who stack permits have an advantage that allows them to catch more fish than those that don't stack permits. even without those reports we all know very well that when we bring our fish in the stacked permit holders are really raking it in. those extra fish by people with two permits sure sound like a 'special privilege' and even to some degree a 'monopolistic grant' the board of fish is handing out. As if that wasn't a hard enough slap in the face in ugashik stackers make *four* times as much as regular fishermen!

Chairman Johnston pointed out that house bill 251, the legislative action that allowed the board of fisheries to determine what to do with the second permit, had intent of reducing gear. The way permit stacking has been put into place historically in Kodiak and Bristol Bay, and currently in Cook Inlet is inconsistent with this intent, because no gear has been reduced. Quite the opposite, when one looks at the tables that cfec produced, it is quite obvious that the amount of gear in the water has increased, not been reduced.

Cfec chairman Bruce twomley pointed out that for any permit stacking action to be constitutional, it needs to be in place either for the prevention of economic distress to fishermen or for resource conservation. during deliberations at the area m meeting, questions posed to adf&g members by board of fisheries members Webster and Jeffries, it was indicated that permit stacking does not hurt nor hinder management of the fishery, therefore there is no effect on resource conservation. In the absence of resource conservation, then we should consider if there is economic distress to fishermen. Permit stacking is an allocative measure, and as such does not increase the amount of fish that can be caught by set net permit holders as a whole. Because the total amount of fish caught be set netters does not change, we should very carefully see what the proportion of fish they do catch is affected. If the stackers catch more than twice that of single permit set netters, than that means that those who are single permit set netters are catching less than they would otherwise. In looking at the reports by cfec, indeed those permit stackers are taking a much larger piece of the pie of set net fish, and those fish are taken from the single permit set netters. Permit stacking is causing economic distress to a substantial segment of the fishermen!

while there is no affect on resource conservation, based solely on the fact that permit stacking causes economic distress on one group of fishermen by granting special privileges to others, those that stack permits, regulations to allow for permit stacking with a full second complement of gear should not be put into place. If permit stacking is to be implemented, then there should be a reduction of gear, such as board member Jeffries proposed in December for the s04t fishery, or not be put in place at all.

Sent in by:
Jimmy Rosenbruch
8144 Pinewood Drive
Juneau, AK 99801

790-4600
907. ~~4600~~

PC 25
1 of 1

Board of Fisheries Public Comment

Comments in response to ADFG Cook Inlet King Salmon user restrictions in proposal 249.

As East Side set netters (S04H 6474 and 5976 permits) our interests are affected , our livelihood is affected, and we have comments that are worth considering.

We respectfully propose that a "King Salmon safety corridor" be created within ½ mile of the beach to provide sufficient King Salmon escapement to Kenai River during the July sockeye salmon run. The ½ mile boundary has been used historically as a management tool , in Emergency Orders and will be an excellent solution that will allow ESSN participation in the sockeye fishery, while allowing King Salmon to naturally migrate along the beach.

Please consider this idea when considering any emergency order management options during the commercial sockeye season. Why not give it a try?

Thanks for your consideration.

Respectfully submitted,

David and Adam Scheer
Scheer Fisheries
907-317-3676

Handwritten signature of David Scheer in black ink.

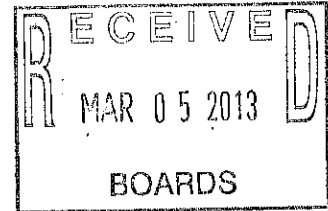
Handwritten signature of Adam Scheer in black ink.



PC 26
1 of 2

March 4, 2013

Mr. Karl Johnstone, Chairman
Board of Fisheries
Alaska Department of Fish and Game
Boards Support Section
P.O. Box 115526
Juneau, AK 99811-5526
(907) 465-6094 FAX



RE: Proposal 243 – 5 AAC 39.212. Forage Fish Management Plan

Dear Chairman Johnstone and Board Members:

Thank you for proposing to add Pacific herring (Family *Clupeidae*) to the State of Alaska's Forage Fish Management Plan. We are fully in support of your proposal. Pacific herring are one of the most important forage fish species in Alaska, and clearly deserve to be designated as 'forage fish' and included in the Forage Fish Management Plan.

Forage fish are vital links in the food chain and play an essential role in maintaining ecosystem health. By sustaining other commercially valuable species and fisheries, these fish have an economic value many times the value of their directed harvest.¹ In Alaska, herring provide a key link between trophic levels, consuming small zooplankton and transferring energy to upper trophic levels. Pacific herring are a vital component of the diets of Chinook and coho salmon, halibut, bald eagles, whales and many other species.² Additionally, herring eggs gathered during the spawning spectacle are one of the most important subsistence foods for Alaskan communities in the spring.

The Alaska Board of Fisheries exercised great foresight when it created a Forage Fish Management Plan in 1999 to mirror actions taken in federal waters.³ The Board recognized that abundant populations of forage fish are necessary to sustain populations of commercially important fish species, marine mammals, and seabirds. Now, fourteen years later, Proposal 243 presents the Board with an opportunity to fix an obvious oversight and include Pacific herring in the list of species in the Forage Fish Management Plan.

¹ Pikitch, E. K., Rountos, K. J., Essington, T. E., Santora, C., Pauly, D., Watson, R., Sumaila, U. R., Boersma, P. D., Boyd, I. L., Conover, D. O., Cury, P., Heppell, S. S., Houde, E. D., Mangel, M., Plagányi, É., Sainsbury, K., Steneck, R. S., Geers, T. M., Gownaris, N. and Munch, S. B. (2012), The global contribution of forage fish to marine fisheries and ecosystems. *Fish and Fisheries*. doi: 10.1111/fff.12004

² Aydin, K., S. Gaichas, I. Ortiz, D. Kinzey, and N. Friday. 2007. A Comparison of the Bering Sea, Gulf of Alaska, and Aleutian Islands Large Marine Ecosystems Through Food Web Modeling. NOAA Technical Memorandum NMFS-AFSC-178

³ In 1998 the NPFMC amended the Bering Sea/ Aleutian Islands and Gulf of Alaska Groundfish federal fishery management plans to prohibit directed fishing in federal waters for forage fish



Formal recognition of Pacific herring in the Forage Fish Management Plan would give important context for management decisions affecting Pacific herring stocks. This action would not adversely affect any existing stakeholder; inclusion in the Forage Fish Management Plan will not preclude commercial harvests for herring since current statutory exemptions allow for Pacific herring commercial fisheries.

The Forage Fish Management Plan should be modified in the Alaska Administrative Code at 5 AAC 39.212 to include a tenth category for Family *Clupeidea* (herring) in the list of forage species:

1. Family *Osmeridae* (eulachon, capelin, and other smelts),
2. Family *Myctophidae* (lanternfishes),
3. Family *Bathylagidae* (deep-sea smelts),
4. Family *Ammodytidae* (Pacific sand lance),
5. Family *Trichodontidae* (Pacific sandfish),
6. Family *Pholidae* (gunnels),
7. Family *Stichaeidae* (pricklebacks, warbonnets, eelblennys, cockscombs and shannys),
8. Family *Gonostomatidae* (bristlemouths, lightfishes, and anglemouths),
9. Order Euphausiacea (krill),
- 10. and Family *Clupeidea* (herring).**

Oceana is an ocean conservation organization that has been working with decision-makers in Alaska and all over the world to protect our ocean ecosystems while maintaining long-term sustainable fisheries. More than 1,500 Alaskans are members of Oceana. Thank you for considering this proposal to add Pacific herring (Family *Clupeidea*) the Forage Fish Management Plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Warrenchuk".

Jon Warrenchuk
Senior Scientist and Campaign Manager,
Oceana



RECEIVED

APR 18 2012

**BOARDS
ANCHORAGE**

To the Alaska Board of Fisheries and the Department of Fish and Game

Subj: Prohibition of felt soles on wading boots - Prop 233

*BoF - Public Comment
Submitted BoF
March 2013*

I respectfully request that the Board of Fisheries reconsider its decision to prohibit the use of the traditional felt-soled fishing boots in Alaska waters.

The non-felt sole is appropriate equipment for fishermen in certain conditions. For example, non-felt soles with spikes work well on ice and snow, or with or without spikes on muddy or wet grass trails. Non-felt soles work just as well as felt soles in rivers with even, gravel bottoms. But those streams are more the exception than the rule here. Many of the rivers Alaskans fish have uneven, rock-and-gravel bottoms. In those cases, non-felt boots with studs are unquestionably inferior to felt boots.

This is not simply a matter of comfort or ease of effort. With Alaska conditions of weather, temperature and remoteness, there is a serious issue of personal safety. Even slipping and falling into the current of the Upper Kenai River, for example, can quickly become a matter of life and death, especially for relatively inexperienced fishermen. I believe the Simms fishing equipment company, which had eliminated the sale of felt-soled boots, has resumed their production for just this reason.

The case against felt-soled boots is based on the theory that felt material is especially prone to pick up, retain and transfer bacterial and viral agents from one watershed to another. The



argument in Alaska is that fishermen from other states can import fish diseases and non-native vegetation to our waters on their felt-soled boots. This theoretical threat that has not been proven and I frankly doubt that it will be. At the same time, it is well understood that birds – seagulls or ducks, for example – can easily transport diseases from water to water over vast distances, and they do it without felt soles.

If we persist in banning felt bottoms, why get off in Chicago when you're going to New York; what about laces and the boot material that isn't the sole? There is no reason to assume that microscopic bugs can only attach themselves to felt soles. What about under insoles, in wader gaiters, on fly lines, reels, backing, fly boxes, cork handles and – here's a good one -- flies themselves? Better yet, what about my wool sweater, as I'm always wading too deep (for you non-fishermen that means swimming). Everything else in my waders gets wet too, and anything that gets wet while fishing can absorb water and the bugs this regulation hopes to contain.

Fishing in Alaska does not involve only auto or boat travel. We use airplanes (with and without floats), and rubber rafts. Non-felt, **STUDD**ED boots are dangerously incompatible with these modes of travel. If you're thinking "just don't use studs," then you haven't had much experience with non-felt boots. I've been told that Alaska Fish and Game employees have been exempted from the no-felt rule for work-safety reasons. That makes sense.

The goal here is worthy, but the approach the Board has taken simply cannot work. If we really want to prevent bugs from traveling from water to water, we should kill all water birds (is there a single one that isn't migratory?), restrict the migration of



animals, require the disinfecting of boats and airplanes, and mandate that fishermen wear some kind of disposable, latex moonsuit (or on warmer days they could fish naked with a shaved head and body, and very clean toe- and fingernails). I'm kidding, of course, but trying to make a serious point: this regulation indisputably endangers fishermen and imposes a substantial personal expense on tens of thousands Alaska residents and visitors (who get to replace boots at a cost of \$50 to \$300 a pair), and in the end it won't work.

Please believe me, no one cares about the health of Alaska's world-class fisheries more than I do. But I am a practical man, and it's apparent to me that banning felt-soled boots is a well intentioned effort that cannot accomplish its objective. Instead we will make it just a little more uncomfortable, a little more expensive and a little less safe to enjoy a great sport in Alaska.

For me personally, my safety while wading is very important. I'm a little guy, so I need all the help I can get. I see no choice but to continue fishing and wading the way I feel is safest for me. As things stand, I must be prepared to pay fines or go to jail if I want to continue fishing in Alaska, my home since 1961.

I'd like the Board to consider that with a little education most Alaska fisherman and visitors would be willing to take more personal responsibility for cleaning their equipment properly. That said, birds will continue to be birds, and the essential threat will remain.

I would very much appreciate the Board of Fisheries taking another look at this law and, I hope, reversing its decision on felt-soled wading boots. I'm confident that in saying this I



represent the feelings of many other Alaska sports-fishermen.

Respectfully,

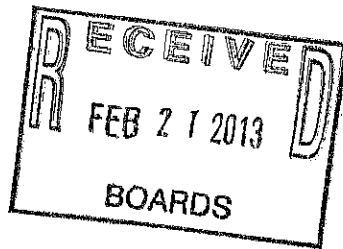
Daniel M Zivanich

12921 Midori Dr.

Anchorage, AK 99516

345.5570 H

440.0626 C



February 12, 2013

To: Chairman Karl Johnstone and members of the Alaska Board of Fisheries,

This letter serves to address my comments on the Alaska Board of Fisheries generated proposal 247.

I started commercial and sport fishing in the Tsiu River Area in 1990 and every consecutively since. I own a commercial set gillnet permit and am also the owner of the Tsvat River Lodge where I have returning friends and sport fishing clients year after year. After 23 years I cannot recall any of my clients complaining about the commercial fishery that takes place on the Tsiu River. In fact, most think it is a great opportunity and rare experience to be up close and personal with such a unique commercial fishery in such a remote setting. It saddens me to hear that some people are trying to change the dynamics of such a historical and traditional fishery.

I am opposed to your proposal 247 and believe there are other solutions to resolving the Tsiu River issue, if in fact you feel something needs to be done. First, I'd like to mention how unfortunate it is that it has come down to this and we are now dealing with an out-of-cycle **Board generated proposal**. Secondly, the fact that all the proposals submitted at the BOF meeting in 2012, then further submitted video that stemmed this out of cycle proposal, all came from ONE lodge and their clientele. Aside from that one lodge (and that lodge's clients), was there any other letters of complaints or submitted evidence from the other lodges on the Tsiu River? I believe to think not. It seems obvious to me, that there is only one lodge that seems to have a problem with the commercial fishermen. Taking away fishing area from the commercial fishermen and giving more benefits to the other user group is blatantly wrong and unconstitutional

As a lodge owner I do not have any complaints about the commercial fishermen or how the commercial fishery is conducted, nor do my clients. Any sport fisherman can catch his/her daily bag limit in quick time and be content with catch and releasing the rest of the day, even when the commercial fishery is taking place. The bottom line is that river etiquette should be practiced by all and BOTH user groups need to learn to cooperate and co-exist. As a commercial fisherman, I feel any changes to the commercial fishery or the existing regulation could have devastating effects on those who rely on that fishery to make a living

As both a commercial fisherman and a lodge owner, I believe there is an easy fix to stop the conflicts between the sport and commercial fishermen; however, proposal 247 is NOT the answer. This may not be the time to present a different proposal, but if there needs to be a change, my suggestion would be to put a cap on the amount of clients each lodge can run at a time because the Tsiu River is not a very big river and there is simply not enough elbow room for the number of sport fishermen who come to the Tsiu River each year, and definitely not enough room for an expediential increase of people in the future. I feel that each lodge should only be allowed to have 12 clients at any given time due to the nature and size of the river. This is still a lot of sport fishermen if



all six lodges run 12 clients each. I know that some of these lodges are running groups of over 20 clients at a time; this is just too many sport fishermen for the size of river period. If the lodge owners say they can't make a living on 12 clients at a time then perhaps they should look into other ways to generate revenue in the Tsiu River Area.

The Tsiu River is a playground for all people of all ages and the opportunities to generate other monies while operating a lodge (if necessary) are practically endless. Such examples include running Shore Birders in April & May, Eco trips, bear viewing in June & July, rafting trips down the Kaliakh River, surfing the ocean waves, beachcombing, glacier viewing or even just a unique, remote Alaskan "get-away". These alternatives would create less congestion on the river itself. I believe that **overcrowding** is the biggest problem that we are facing on the Tsiu River and is the main cause for conflict between the user groups. I think you need to look at this growing problem and not see the commercial fishery as the problem. There are less permits fishing the river today than there was decades ago, however the number of sport fisherman on the Tsiu River has exponentially increased within the past decade

There are many factors that need to be considered before the BOF members make their decision on proposal 247. One important factor is the constant changing and movement of the river. Over the 23 years I have operated on the river I have seen it become longer and I have seen it break out into the ocean at mid river, cutting the river length in half. If proposal 247 passes and the regulatory markers are placed at mid river, with commercial fishing only allowed in the lower half (and sport fisherman still being allowed to fish next to the commercial fishermen and anywhere they choose), what would happen if the river broke out and shortened in length again? It's inevitable that this will happen again sooner than later, but it is clear to me that there would not be enough room for all the sport fishing clients that are presently be run through the lodges, let alone enough room for a commercial fishery to take place. Needless to say, you are not solving the problem with proposal 247; you would only be creating more problems.

Weather is another factor that needs to be taken into consideration. By regulation, the commercial fishermen are allowed to fish only two 24 hour periods a week. Over 50% of the time weather gets in the way and commercial fishing is halted. Last year in 2012, inclement weather on the Tsiu River limited commercial fishing times and was only fished three out of the six weeks it was opened to commercial fishing. There are no processing facilities on the grounds and no ice making capability to keep the fish of quality for longer than a couple days. The nets can only be in the water when the weather is good enough for the planes to land and fly the fish to market. Perhaps a better proposal or suggestion would be to change the commercial fishing times to 12 hour openers to three days a week (6am to 6 pm on Monday, Wednesday, and Fridays) This would not only allow for a better weather window for commercial fishing, but also increase the days the sport fisherman get to fish on the river without the commercial fisherman, as well as more time for the fish to build up in the river after each commercial opener.



Another suggestion I'd like to propose as an alternative to the Board's proposal is to have no sport fishing on the days there is commercial fishing (which is presently only two days a week). Separating the user groups in this manner would in fact resolve the conflict issue indefinitely. This would not benefit me or any other lodge on the river, however, would solve the overlapping problem.

If proposal #247 passes it will NOT sit right with me or my sport fishing clients. The lower end of the river is indeed the place to go for fresh, chrome bright fish that both sport fishermen and the commercial fishermen prefer. To give that opportunity to both user groups is necessary and fair; however fishing at different times might be the solution. The Tsiu River needs to be commercially fished they way it has always been because it is what works. If given less opportunity to fish or you create a smaller area to be commercially fished, we could lose the fishery from over escapement, not to mention the capability to fish period! In turn, I will lose all my time and investment that I have put into building my lodge.

The Boards generated proposal 247 will NOT solve the problem on the Tsiu River; in FACT it will only cause more conflicts and more proposals being brought forth at the next BOF meeting in 2015.

As a person with interests and benefits from both the commercial and sport fisheries, my comments are not bias and are simply alternative suggestions that you should consider and would benefit both user groups without taking away fishing area from the commercial fisherman.

I think the members of the Board of Fisheries should look this proposal over very closely and rethink of a better way to solve the conflicts between the user groups that are fair to both parties. Splitting the river in half and taking away from one user group and giving an extra advantage to the other is purely allocative and simply unfair. Proposal 247 is certainly NOT the way to resolve the Tsiu River issues. There will still be user conflicts if this proposal is passed. I ask you to reconsider this proposal and think before you pass it and create more problems. I honestly believe the only major issue here is narrowed down to one lodge that has a problem with the presence of a commercial fishery taking place on the river and the fishermen who have been fishing these waters long before the sport fishing lodges showed up. So I ask where is the fairness in this proposal?

Thank you for considering my concerns,

Harold Perantie

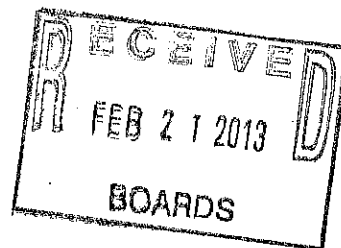
Tsivat River Lodge

A handwritten signature in black ink, appearing to be "HP", written over the printed name "Harold Perantie".

Yakutat Alaska Fisherman's Alliance
PO Box 93
Yakutat, AK 99689
February 19, 2013



PC 29
1 of 1



Alaska Department of Fish and Game
Board Supports Section
PO Box 115526
Juneau, AK 99811-5526
Fax: (907) 465-6094

Dear Board of Fish:

This letter is in response to Board of Fish proposal 247 concerning the Tsiu river, and serves as our official public comment.

The Yakutat Alaska Fisherman's Alliance (YAFA) opposes proposal 247, and feels no need exists for any regulatory changes to occur. The runs of salmon in this system are remaining strong, with both commercial and sport harvesters doing quite well. Commercial fishing has historically occurred on the Tsiu river dating back to the 1930's and sport lodges have been operating there since the early 1980's with few cases of conflict between user groups.

This out of cycle, Board generated proposal is based on the opinion and interests of one user group. It is the YAFA's position that this proposal is unnecessary and is a serious breach of integrity of the Board of Fish.

If adopted, Board of Fish proposal 247 would have far reaching negative effects on the commercial fishing fleet of Yakutat. The resulting impacts of this re-allocation of grounds traditional shared by all user groups could result in a loss of as much as 50% of Yakutat's commercial coho salmon harvest. Furthermore, this change in allocation would force Tsiu river commercial fishermen to other systems, namely the Situk river, resulting in additional pressure on already overcrowded systems. These changes to Yakutat's commercial fishing industry will result in a loss of revenue and will be detrimental to the already economically struggling community of Yakutat.

YAFA asks the Board of Fish to consider these significant impacts, and to not pass proposal 247.

Sincerely,

A handwritten signature in cursive script that reads "Larry Bemis".

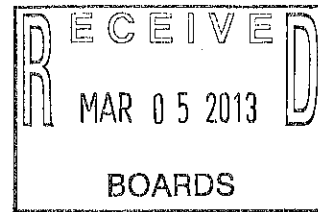
Larry Bemis-President-YAFA



State Board of Fisheries,

March 5, 2012

Public Comment, Statewide Finfish.



PROPOSAL 225 - 5 AAC 39.2XX. Policy for the implementation of permit stacking.

There is a great policy, it's the application that is at issue.

The policy for permit stacking and fleet reductions are all written into the Constitution, the Statute, and the Administrative Code.

A Final Report as written to the Alaska State Legislature from the Board of Fisheries "Regarding Salmon Industry Restructuring" was completed February 2006. This group met several times between September 2004 and October 2005. The first move in the Chignik Salmon Seine Fishery, in full disregard to the Limited Entry Act.

My Grandfather had a friend in Valdez, he wrote a letter Statewide. He graduated Valedictorian, in High School. "WILLIAM A. EGAN, GOVERNOR

TO THE COMMERCIAL FISHERMEN OF ALASKA: JULY 12, 1974

It is no secret that most of Alaska's commercial fisheries are sliding downhill, and that new measures are required to bring them back to their full economic potential. One root cause of this decline has been unlimited entry into the fisheries...

We hope that you will read and review these proposals carefully and make your views known by writing the commission or attending one of the public hearings which will be scheduled."

Page 12, of this report;

20 AAC 05.200 DISTRESSED FISHERIES; The commission designates the following fisheries as distressed fisheries based upon its estimates that the optimum number of entry permits for these fisheries will be less than the highest number of units of gear fished in these fisheries during any one of the four years immediately preceding January 1, 1973:

1. S03A, 2. S03T, 3. S03H, 4. S04H, 5. S01K, 6. S03M, 7.S03T, 8. S04T.

Authority; AS 16.43.110(a), AS 16.43.230

Page 23, then 26, for the maps of Alaska, Washington, Oregon, and California.

I currently fish in the S03T Bristol Bay Salmon Driftnet Fishery, this fishery is using a stacking program that was based on a sound economic study by the Department known



very well to the fleet as; Bristol Bay Drift Gillnet Optimum Number Report (CFEC Report 04-3N October 2004)

I have fished in California, Washington, and Alaska. Boat's used to have sails, now the propellor is more popular. I think?

All three have Permit Stacking, for socioeconomics. It's always tough to study the 1912 Bristol Bay Price, as adjusted to todays economic study's from the confused.

In 1912, the Bristol Bay Sail Boat Fleet, first broke a 20 million fish catch, of course back then they made fortunes, as adjusted to todays dollar, inflation, and the modern economic power of the U.S. Dollar, from 1913?

The 100 year average catch, 2013, is a prime example, approx 18 million fish, toss out a couple huge seasons, and huge price years, and wala, 1875, divided by 2=Optimum Number? If this Board took action like every other West Coast State.

"The Constitution does not expressly affirm anything on the subject; all that it contains is two incidental allusions to slaves. These are, first, in the provision establishing a ratio of representation and taxation; and secondly, in the provision relating to fugitives from labor. In both cases, the Constitution designedly mentions slaves, not at slaves, much less as chattels, but as persons. That this recognition of them as persons was designed is historically known, and I think was never denied. I give only two of the manifold proofs. First, JOHN JAY, in the Federalist says:

"Let the case of the slaves be considered, as it is in truth, a peculiar one. Let the compromising expedient of the Constitution be mutually adopted which regards them as inhabitants, but as debased below the level of free inhabitants, which regards the slave as divested of two-fifths of the man."

Yes, sir, of two-fifths, but only of two-fifths; leaving still three-fifths; leaving the slave still an inhabitant, a person, a living, breathing, moving, reasoning, immortal man.

The other proof is from the debates in the convention. It is brief, and I think instructive: AUGUST 28, 1787.

"Mr. BUTLER and Mr. PINCKNEY moved to require fugitive slaves and servants to be delivered up like convicts.

"Mr. WILSON. This would oblige the executive of the state to do it at public expense.

"Mr. SHERMAN saw no more propriety in the public seizing and surrendering a slave or a servant than a horse.

"Mr. BUTLER withdrew his proposition, in order that some particular provision might be made, apart from this article."

AUGUST 29, 1787

"Mr. BUTLER moved to insert after Article 15: 'If any person bound to service or labor in any of the United States shall escape into another state, he or she shall not be discharged from such service or labor in consequence of any regulation subsisting in the state to which they escape, but shall be delivered up to the person justly claiming their service or labor.'"



"After the engrossment, September 15, page 550, article 4, section 2, the third paragraph, the term 'legally' was struck out, and the words 'under the laws thereof' inserted after the word 'state,' in compliance with the wishes of some who thought the term 'legal' equivocal, and favoring the idea that slavery was legal in a moral view."-- Madison Debates, pp. 487, 492...

William H. Seward, Speech on the Floor of the U.S. Senate March 11, 1850.

California, Fish and Game Code, "8102. (a) The Legislature finds and declares that, in some limited entry fisheries, two or more partners may be operating with one of the partners holding the permit to participate in the fishery. The Legislature further finds and declares that undocumented, de facto, family partnerships are a longstanding custom in these fisheries. The Legislature further finds and declares that great hardship results when the permittee partner is no longer able to continue working and leaves the other partner without a permit to continue participating in the fishery."

Here again the California Code, they would never violate Alaska's Constitution's Article 8, Section 17. But then again, they would most likely know William H. Seward, has his Secretary's Seal on the Thirteenth Fourteenth and Fifteenth Amendment's.

Two Permits on a San Francisco Herring Vessel? 2 net's of 65 fathoms each, no "allocation within a single fishery" as defined by Alaska Supreme Court in Grunert.

Or Washington's Puget Sound Crab Fishery. Where Uniform Application really isn't that confusing. WAC 220-52-048 Commercial crab fishery-Gear Limits-Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Area.

- (1) Puget Sound licensing district commercial shellfish gear limit. It is unlawful for any person to take or fish for crab for commercial purposes in the Puget Sound licensing district if he or she is using, operating, or controlling any more than an aggregate total of 100 shellfish pots or ring nets. This limit applies to each license. This subsection does not preclude a person who holds two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 77.65.130.

Again, in Washington State; "no allocation within a single fishery" as explained in Grunert?

Both Permit Holders, always get two equal length nets in every State of the Union but One, as shown most interestingly in ADF&G's S03T program, with the 150 fathom man, as adjusted to the 50 fathom man?

When exactly did the the 3/5th Clause of Article I, Section 2, Clause 3, from 1789, become over-ruled by the William H. Seward Amendment's of 1865, 1868, and 1870?



"...which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."

So it's now one third of other Person? Can we exclude these D permit fishers, from voting too, do they get a 1/3rd of a gallon of gas pump too? Do they pay a 1/3 fee price to the CFEC renewal section, oh that's right, 30 years of Carlson, and 33 million dollars later, 1/3 is still a confusing 4th grade math concept, at the Alaska Department of Fish and Game.

Nice Job, on the 3-1 Fee Differential, at Carlson's CFEC offices too? Is the 1/3rd fee differential also applicable to the 1/3rd sharecropper, using the discriminatory program of Article 8; Section 15 of the Alaska Constitution?

U.S. Citizenship, what a concept. Like a Documented Vessel, from the laws of 1789?

In December 2012, why does the Court keep bringing up the same old Paper, 1959?

It applies in all the State, except for area T?

The Copper River, in Court?

AFWCF also challenges the regulation as a violation of the equal access provisions of article VIII of the Alaska Constitution, specifically citing sections 3 (Common Use), 18 15 (No Exclusive Right of Fishery), 19 and 17 (Uniform Application).²⁰ The superior court held that article VIII's equal protection and uniform application provisions were not implicated by the Board's classification of the Chitina fishery. The court explained that the equal access provisions protect disparate treatment of similarly situated users, not disparate classifications of fish stocks. As the court stated, "[t]here is no constitutional requirement that the resource itself be treated equally in each area where it is found." The fact that residents may have to travel to participate in a subsistence fishery outside their preferred area does not mean equal access has been denied or the constitution has been violated.²¹

Section 8.17 - Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

In 1941, while living in Juneau, the Peratroviches found more discrimination, having difficulty finding housing and seeing signs banning Native entry to public facilities. They petitioned the territorial governor, Ernest Gruening, to ban the "No Natives Allowed" signs then common at public accommodations in that city and elsewhere. The Anti-Discrimination Act was defeated by the territorial legislature in 1943. As leaders of the Alaska Native Brotherhood and the Alaska Native Sisterhood, the Peratroviches lobbied the territory's legislators and represented their organizations in their testimony.



Elizabeth Peratrovich was the last to testify before the territorial Senate voted on the bill in 1945, and her impassioned testimony was considered decisive.

I would not have expected that I, who am barely out of savagery, would have to remind gentlemen with five thousand years of recorded civilization behind them, of our Bill of Rights. [3]

She was responding to earlier comments by territorial senator Allen Shattuck of Juneau. He had earlier asked, "Who are these people, barely out of savagery, who want to associate with us whites, with 5,000 years of recorded civilization behind us?" [2] The Senate voted 11-5 for the House Resolution 14, providing "...full and equal accommodations, facilities, and privileges to all citizens in places of public accommodations within the jurisdiction of the Territory of Alaska; to provide penalties for violation." [2] The bill was signed into law by Governor Gruening, nearly 20 years before the US Congress passed the Civil Rights Act of 1964. Acts of the territorial legislature required final approval from the U.S. Congress, which affirmed it. (Bob Bartlett was noted for his efficiency in that regard.)

Or Washington's Puget Sound Crab Fishery. Where Uniform Application really isn't that confusing.

WAC 220-52-048 Commercial crab fishery-Gear Limits-Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Area.

- (1) Puget Sound licensing district commercial shellfish gear limit. It is unlawful for any person to take or fish for crab for commercial purposes in the Puget Sound licensing district if he or she is using, operating, or controlling any more than an aggregate total of 100 shellfish pots or ring nets. This limit applies to each license. This subsection does not preclude a person who holds two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 77.65.130.

"Affirmative words are often, in their operation, negative of other objects than those affirmed, and, in this case, a negative or exclusive sense must be given to them or they have no operation at all.

It cannot be presumed that any clause in the Constitution is intended to be without effect, and therefore such construction is inadmissible unless the words require it. (5 U.S. 137) Marshall, C.J. (1803)

Section 1.1 - Inherent Rights. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.



Section 1.3 - Civil Rights. No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section. [Amendment effective October 14, 1972]

Section 8.15 - No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Section 8.16 - Protection of Rights. No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

Section 8.17 - Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Where George Washington's Congress, was also a confusing subject matter at the University of Washington Law School?

"the benefits granted by any law of the United States."

United State's v. Locke (2000), another Captain William Bligh Special.
Justice Kennedy delivered the opinion of the Court.

"The State of Washington has enacted legislation in an area where the federal interest has been manifest since the beginning of our Republic and is now well established. The authority of Congress to regulate interstate navigation, without embarrassment from intervention of the separate States and resulting difficulties with foreign nations, was cited in the Federalist Papers as one of the reasons for adopting the Constitution. E.g., The Federalist Nos. 44, 12, 64. In 1789, the First Congress enacted a law by which vessels with a federal certificate were entitled to "the benefits granted by any law of the United States." Act of Sept. 1, 1789, ch. 11, §1, 1 Stat. 55. The importance of maritime trade and the emergence of maritime transport by steamship resulted in further federal licensing requirements enacted to promote trade and to enhance the safety of crew members and passengers. See Act of July 7, 1838, ch. 191, 5 Stat. 304; Act of Mar. 3, 1843, ch. 94, 5 Stat. 626. In 1871, Congress enacted a comprehensive scheme of regulation for steam powered vessels, including provisions for licensing captains, chief mates, engineers, and pilots. Act of Feb. 28, 1871, ch. 100, 16 Stat. 440..."

Or was it Montana, where fish are free, politicians, lawyers, and judges have no clue, and the voter in Montana, can't even find Montana on a map.



Thomas Jefferson's Corp of Discovery? No Salmon, No Commerce, the laws of Nature, as explained by Thomas Jefferson's Corp of Discovery.

Salmon; are Non Resident's, }

Justice Kennedy delivered the opinion of the Court. No. 10-218. Argued December 7, 2011—Decided February 22, 2012

This case concerns three rivers which flow through Montana and then beyond its borders. The question is whether discrete, identifiable segments of these rivers in Montana were nonnavigable, as federal law defines that concept for purposes of determining whether the State acquired title to the riverbeds underlying those segments, when the State entered the Union in 1889.

The three rivers in question are the Missouri River, the Madison River, and the Clark Fork River. The Missouri and the Madison are on the eastern side of the Continental Divide. The Madison flows into the Missouri, which then continues at length to its junction with the Mississippi River. The Clark Fork River is on the western side of the Continental Divide. Its waters join the Columbia River system that flows into the Pacific Ocean. Each river shall be described in somewhat more detail.

A

The Missouri River originates in Montana and traverses seven States before a point just north of St. Louis where it joins the Mississippi...

The Great Falls exemplify the rocky, rapid character of the Upper Missouri. They consist of five cascade-like waterfalls located over a stretch of the Upper Missouri leading downstream from the city of Great Falls in midwestern Montana. The waterfall farthest downstream, and the one first encountered by Meriwether Lewis and William Clark when they led their remarkable expedition through the American West in 1805, is the eponymous "Great Falls," the tallest of the five falls at 87 feet. W. Clark, Dear Brother: Letters of William Clark to Jonathan Clark 109, n. 5 (J. Holmberg ed. 2002) (hereinafter Dear Brother). Lewis recorded observations of this "sublimely grand spectacle":

"[T]he whole body of water passes with incredible swiftness. . . . over a precipice of at least eighty feet . . . [T]he irregular and somewhat projecting rocks below receives the water . . . and brakes it into a perfect white foam which assumes a thousand forms in a moment sometimes flying up in jets . . . [that] are scarcely formed before large rolling bodies of the same beaten and foaming water is thrown over and conceals them. . . . [T]he [rainbow] reflection of the sun on the spray or mist . . . adds not a little to the beauty of this majestically grand scenery." The Lewis and Clark Journals: An American Epic of Discovery 129 (G. Moulton ed. 2003) (hereinafter Lewis and Clark Journals); The Journals of Lewis and Clark 136-138 (B. DeVoto ed. 1981).



If one proceeds alongside the river upstream from Great Falls, as Lewis did in scouting the river for the expedition, the other four falls in order are "Crooked Falls" (19 feet high); "Rainbow Falls" (48 feet), which Lewis called "one of the most bea[ut]ifull objects in nature"; "Colter Falls" (7 feet), and "Black Eagle Falls" (26 feet). See Lewis and Clark Journals 131-132; Dear Brother 109, n. 5; P. Cut-right, Lewis & Clark: Pioneering Naturalists 154-156 (2003). Despite the falls' beauty, Lewis could see that their steep cliffs and swift waters would impede progress on the river, which had been the expedition's upstream course for so many months. The party proceeded over a more circuitous land route by means of portage, circumventing the Great Falls and their surrounding reach of river before returning to travel upon the river about a month later. See Lewis and Clark Journals 126-152....As it moves downstream over the Great Falls reach, a 17-mile stretch that begins somewhat above the head of Black Eagle Falls, the river quickly descends about 520 feet in elevation, see *Montana Power Co. v. Federal Power Comm'n*, 185 F. 2d 491 (CADC 1950); 2010 MT 64, ¶¶29-30, 108-109, 355 Mont. 402, 416, 442, 229 P. 3d 421, 433, 449, dropping over 400 feet within 10 miles from the first rapid to the foot of Great Falls, Parker, Black Eagle Falls Dam, 27 Transactions of the Am. Soc. of Civil Engineers 56 (1892). In 1879, that stretch was a "constant succession of rapids and falls." Warner, *supra*, at 75; see also 9 The Journals of the Lewis & Clark Expedition 171 (C. Moulton ed. 1995) (hereinafter *Journals of the Lewis & Clark Expedition*) ("a continued rapid the whole way for 17 miles"). Lewis noted the water was so swift over the area that buffalo were swept over the cataracts in "considerable quantities" and were "instantly crushed." Lewis and Clark Journals 136-137. Well above the Great Falls reach, the Stubbs Ferry stretch of the river from Helena to Cascade also had steep gradient and was "much obstructed by rocks and dangerous rapids." Report of the Secretary of War, 2 H. R. Doc. No. 2, 54th Cong., 1st Sess., pt. 1, p. 301 (1895).

B

The second river to be considered is the Madison, one of the Missouri River's headwater tributaries. Named by Lewis and Clark for then-Secretary of State James Madison, the Madison River courses west out of the Northern Rocky Mountains of Wyoming and Montana in what is now Yellowstone National Park, then runs north and merges with the Jefferson and Gallatin Rivers at Three Forks, Montana, to form the Upper Missouri. Lewis and Clark Journals 158; Rivers of North America 459;

C

The third river at issue in this case is the Clark Fork. That river, which consists in large part of "long, narrow streams confined by mountainous terrain," rises at an elevation of about 5,000 feet in the Silver Bow Mountains of southwestern Montana. 3 Encyclopaedia Britannica 352; Dept. of Interior, U. S. Geological Survey, J. Stevens & F. Henshaw, Surface Water Supply of the United States, 1907-8, Water-Supply Paper 252, pp. 81-82 (1910). The river flows northward for about 40 miles; turns northwest for a stretch; then turns abruptly northeast for a short stint, by which time it has descended nearly 2,500 feet in altitude. It then resumes a northwestward course until it empties into Lake Pend Oreille in



northern Idaho, out of which flows a tributary to the Columbia River of the Pacific Northwest. *Ibid.*; 1 *Columbia Gazetteer* 816. The Clark Fork is "one of the wildest and most picturesque streams in the West," marked by "many waterfalls and boxed gorges." *Federal Writers' Projects of the Works Progress Administration, Idaho: A Guide in Word and Picture* 230 (2d ed. 1950).

Lewis and Clark knew of the Clark Fork River but did not try to navigate it, in part because the absence of salmon in one of its tributaries made Lewis believe "there must be a considerable fall in [the river] below." H. Fritz, *The Lewis and Clark Expedition* 38-39 (2004). This was correct, for shortly before the Clark Fork exits to Idaho from the northwest corner of Montana, "the waters of the river dash madly along their rocky bed," dropping over 30 feet in a half-mile as they rush over falls and rapids including a "foaming waterfall" now known as Thompson Falls. O. Rand, *A Vacation Excursion: From Massachusetts Bay to Puget Sound* 176-177 (1884); C. Kirk, *A History of the Montana* As the litigation history of this case shows, Montana filed its claim for riverbed rent over a century after the first of the dams was built upon the riverbeds. Montana had not sought compensation before then, despite its full awareness of PPL's hydroelectric projects and despite the State's own participation in the projects' federal licensing process. While this Court does not reach the question, it may be that by virtue of the State's sovereignty, neither laches nor estoppel could apply in a strict sense to bar the State's much belated claim. Still, the reliance by PPL and its predecessors in title upon the State's long failure to assert title is some evidence to support the conclusion that the river segments were nonnavigable for purposes of the equal-footing doctrine....

The Montana Supreme Court's ruling that Montana owns and may charge for use of riverbeds across the State was based upon an infirm legal understanding of this Court's rules of navigability for title under the equal-footing doctrine. As the Court said in *Brewer-Elliott*, "It is not for a State by courts or legislature, in dealing with the general subject of beds or streams, to adopt a retroactive rule for determining navigability which . . . would enlarge what actually passed to the State, at the time of her admission, under the constitutional rule of equality here invoked." 260 U. S., at 88. The judgment of the Montana Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Todd W. Granger

2101 West Shore Drive

Lummi Island, Wa. 98262.