

Changes sought in structure of fish board

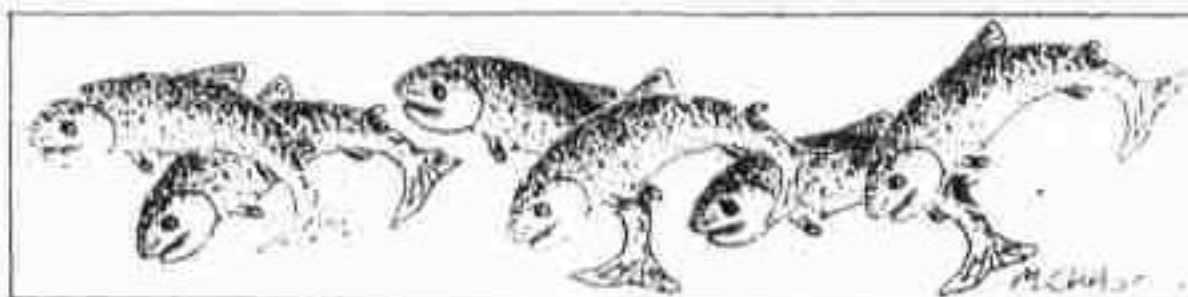
by Don Mitchell

Last month John Garner, former member of the Board of Fisheries, persuaded the board to adjourn its annual meeting to prevent a vote on a regulation to restrict the interception of western Alaska salmon at False Pass. Garner's procedural sleight-of-hand caused considerable controversy. But despite the shouting — whether some board members voted to restrict the commercial king salmon catch on the Kenai Peninsula in exchange for other members' votes to restrict the False Pass fishery, or whether Garner, who opposed restricting False Pass, was simply a poor loser — is unimportant.

What is important is the board. Four members, including Garner, have resigned. And whoever Gov. Steve Cowper appoints in their places must be confirmed by a legislature whose members, whether they'll admit it or not, will be out to protect fishermen in their districts no matter what the consequences for fishermen who live elsewhere.

However, rather than simply appointing new faces, Gov. Cowper and the legislature should use the opportunity to reform the regulatory process before the courts do it for them. Although it may have been appropriate in 1959, in today's world, letting unpaid, part-time volunteers regulate Alaska's fisheries is patently unconstitutional.

Commercial fishermen from False Pass and the Kuskokwim, Anchorage sport fishermen and subsistence fishermen from rural villages all have a right to due process of law, but the present board system violates due pro-



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cess in at least three respects.

First, there is no way to identify the information used to make a particular decision. Was a regulation adopted based on information presented at the board meeting, or an old report issued years previous, or on information a board member acquired in the bar of his hotel? No one knows for sure, and decisions can be made as easily in the Signature Room as they can in the board room.

Second, the legislature has delegated the board authority to regulate commercial, sport and personal use fishing without providing any standards for the exercise of that authority.

And third, the board is purposefully riddled with conflict of interest and bias. Few Alaskans remember that the statute enacted prior to statehood that created the first Board of Fish and Game required members to represent specific economic interests such as processors, Southeast commercial fishermen, trappers, etc. Congress was so appalled, it amended the Statehood Act to prohibit the state

from regulating hunting and fishing until the legislature enacted a statute that required the governor to appoint board members without regard to where they live or the economic interests they represent. The legislature did so, but for 26 years the prohibition has been honored in the breach. The theory is that since every member has some kind of conflict or bias, when all seven members vote, the conflicts or biases somehow cancel each other out and the decision they make is impartial. Depending on your point of view, a theory as hairbrained as that is either coldly cynical or hopelessly naive.

What should be done about all this? At least three things come to mind.

Board members should be required to base their decisions on information assembled in a manner considerably more formal than it is at present, and information on the biology of a fish stock should be segregated from information about the economic effect of proposals relating to the harvest of the stock.

The legislature should enact standards to control the exercise of the board's administrative discretion. Although it has done so for subsistence fishing, the legislature has not enacted standards to help the board resolve conflicts between commercial, sport and personal use fishermen. The present statute that delegates the board authority to adopt whatever regulations it 'deems advisable' is an abdication of the legislature's constitutional responsibility.

Lastly, board members must be truly impartial. Each year board decisions affect thousands of lives and hundreds of millions of dollars. Yet the decisions are made by unpaid, part-time volunteers appointed to the board to represent specific constituencies.

Unlike members of the Board of Fisheries, no member of the Commercial Fisheries Entry Commission has ever been accused of conflict of interest or bias. The reason is simple. Alaska law prohibits the governor from appointing any person to the commission who has an economic interest in a fishing permit, fishing vessel or processing facility. Commission members are also paid \$60,000 a year, work year round and make decisions based on evidence in an identifiable administrative record.

Until such time as the legislature or the courts require the Board of Fisheries to begin operating in a similar fashion, the controversy, confusion and charges of unfair dealing heard last December can only be expected to get worse.

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