



# P.S.V.O.A.



## NEWSLETTER

APRIL 2005

### CHIGNIK SALMON CO-OP OVERTURNED

Last month the Alaska Supreme Court overturned a 2002 decision by the Board of Fisheries (BOF) to establish a salmon co-op for the Chignik purse seine fishery. Responding to a perceived economic crisis in the fishery, the BOF allowed a majority of permit holders to form a joint fishery or co-op to reduce overhead costs and improve fish quality. Each co-op fishermen received an equal quota or share of the annual harvest. Those not participating in the co-op were allocated the remaining harvest in an open fishery. Two high earning fishermen who did not participate in the co-op filed an action in Juneau superior court to invalidate the co-op. The lower court held that the co-op was valid and the fishermen appealed.

The court in a 4 to 1 opinion, which came as a surprise to many, invalidated the co-op on two separate grounds: 1) The BOF did not have the statutory authority to establish the co-op and 2) the co-op is inconsistent with the intended purpose of the Limited Entry Act. The court did not rule on the question of whether the co-op violated the equal access clause of the state constitution. The court's ruling can be briefly summarized:

#### No Authority to Allocate Within a Single Fishery

The Limited Entry Act (Act) allows the BOF to allocate fishery resources "among" personal use, sport, guided sport and commercial fisheries. The Act does not, however, allow the BOF to allocate "within" a single fishery nor does it provide guidance to evaluate sub-fisheries for purposes of allocation. The Chignik co-op and open fishery used the same type of gear in the same administrative area to take the same salmon resource. Therefore, the court held that an allocation to the co-op was an impermissible allocation within a single fishery.

*[The court expanded its decision beyond the lack of BOF authority by noting that the 2004 co-op fishery could use leads on purse seines. The court held this was a substantive difference between co-op and open fishing gear. Therefore, the initial claim that both fisheries used the same gear within a single fishery is now moot. However, the court then considered the co-op in light of the Act.]*

#### Co-op Contradicts the Intended Purpose of the Act

The Alaska Constitution holds that salmon belong to all Alaskans. This is why early attempts to limit participation in commercial fisheries were found unconstitutional. To address this concern, voters approved a constitutional amendment allowing the State to limit entry to prevent economic distress to fishermen who depend on the fishery for a livelihood. The Legislature then enacted the Act in 1974.

The Act directed the Commercial Fisheries Entry Commission (CFEC) to establish a standard for the initial issuance of limited entry permits. The Act further directed CFEC to assign priority classifications to individuals who were dependent on the fishery and actively participated. The repeated reference to participation and dependence demonstrates that the Legislature intended that permit holders be individuals who will fish.

The Chignik co-op is fundamentally inconsistent with this legislative intent because it allowed permit holders who were not actually fishing to benefit from the fishery. By allowing the permit holder to receive income without participation, it actually discourages participation. Moreover, the co-op allowed permit holders without gear or vessels to have someone else fish on their behalf, leaving them free to pursue other occupations. This scenario contradicts the model of the economically dependent fisherman whom the Act was intended to protect.

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## What Comes Next?

The Supreme Court seems to imply that only competitive "open" fisheries are authorized by the Act. The court was also concerned that the BOF could create a co-op for every salmon and other limited entry fisheries in Alaska and thus transform the limited entry permit into a mere ownership share in a cooperative organization. Before this can occur the court clearly states that the Legislature must first authorize the BOF or CFEC to approve cooperatives.

Co-ops are not the single answer or approach to restructuring Alaska's salmon industry. Yet there is credible evidence that co-ops can be more economically efficient than competitive fisheries. No doubt the 2006 Legislature will be asked to consider whether the BOF should have the authority to create co-ops or similar efficiencies to allow like-minded permit holders to mutually determine how their resources can be used most effectively. The question for PSVOA and other fishing groups is whether to support co-ops or similar efficiencies to improve profitability in limited entry fisheries? If so, then like fleet consolidation, such programs must be crafted to fit the unique factors of each region, fishery and class of permit holders.

### **CHALLENGES REMAIN FOR SOUTHEAST CONSOLIDATION**

Last year Congress approved legislation authorizing a loan to fund the consolidation "buyback" of the Southeast seine fleet. Unfortunately, the legislation failed to establish a firm loan amount or to expressly provide that the program can be implemented pursuant to Alaska law. These outstanding issues must be resolved before any consolidation plan can be implemented.

Last month the Southeast Revitalization Association (SRA) Board of Directors met in Juneau to re-evaluate the program in light of current circumstances. The SRA was created under a new Alaska law allowing permit holders within a region to develop and implement a fleet consolidation plan. Working in concert with SEAS, which developed an initial consolidation plan in 2003, SRA developed a revised set of policies and objectives:

1. Reduce the number of permits from 416 to 180 by purchasing 236 permits or a 57% reduction.
2. Total funding could reach \$30 million and will be

largely financed by a federal loan to be repaid by those remaining in the fishery.

3. The program will be developed and implemented pursuant to Alaska state law, including the rules for the referendum that must be passed by two-thirds of the permit holders before the loan could be utilized.
4. Without grant monies, the necessary loan amount may require increasing the assessment up to 3% from the originally intended 2%. *[There was recognition that the 1% ASMI tax is no longer in effect and that the Bering Sea crabbers had recently approved a 5% assessment to fund a \$100 million loan buyback, which will reduce capacity by only 11%.]*
5. Permits will be purchased for an equal fixed amount. An auction or bid process will be considered if total funding does not reach \$20 million.
6. Given reduced funding and the relatively price to be paid for permits, sellers can still participate in the fishery.
7. Past participation in the fishery will not be a consideration other than to possibly prioritize potential sellers.
8. Any loan program to permit holders in rural communities will be financed through grants and not loans.

Federal officials have not yet determined what loan amount can be financed, which is a function of the fishery's future value and resulting revenue generated by the assessment. Preliminary estimates show a 2% assessment could finance a \$15 million loan based on the fishery's most recent ten year average value of \$43 million. To increase the available loan amount, we have compiled information projecting higher future values based on a variety of factors. Over the next several months we will finalize the loan amount, continue to pursue grant funding and resolve any conflict between utilizing a federal loan to conduct a state consolidation program. The SRA hopes to develop a final draft plan by late fall and then seek input from permit holders and governmental agencies. Subject to two-thirds permit holder approval, we could implement the program prior to the 2006 season.

### **ALASKA LEGISLATURE**

HB 218: Subject to approval by the salmon hatchery operator, this bill would allow for the reduction

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or elimination of cost recovery fisheries through the creation of new common property fisheries within previous terminal harvest zones. These new common property fisheries would pay an increased landing tax or assessment not to exceed 40%, which would offset the revenue previously generated by the cost recovery fishery. The bill should also focus statewide discussion on current enhanced BOF salmon allocation plans for the individual gear groups. This bill is a PSVOA priority.

SB 113: Authorizes CFEC to allocate unequal, exclusive harvest shares to fishermen in the Gulf of Alaska (GOA) groundfisheries based on historical participation. Unlike IFQs, these shares could be revoked at any time. Supporters argue there is no way to rationalize the federal GOA fisheries if the state waters are not limited. Opponents question the constitutionality of such harvest shares in state waters, especially in light of the recent Chignik co-op decision.

HB 251: Authorizes the BOF to grant additional salmon fishing privileges to an owner of two limited entry permits for a fishery. PSVOA has taken no action on this legislation in deference to our affiliation with Bristol Bay Reserve. We understand that many Bristol Bay permit holders view this change as an economical way to achieve fleet consolidation. Conversely, this approach does not consider the underlying factors necessary to achieve meaningful fleet consolidation as contemplated under the Southeast plan.

SB 24: Allows for the reemployment of state retirees. ADF&G is no longer competitive with the salaries and benefits offered by federal resource agencies. Consequently, ADF&G cannot fill many vacated positions. This bill would help stabilize the professional staff until a successful recruiting and retention program is implemented.

### **PUGET SOUND UPDATE**

The Fraser River sockeye and pink run forecasts are estimated at 12.7 and 16.3 million, respectively. Setting aside a number of uncertainties, the non-tribal seine catch is estimated at 150,000 – 200,000. There should be ample pink harvest opportunities to meet any market demand.

The non-tribal chum catch in Puget Sound and Hood Canal has averaged 1 million over the past three years and the 2005 runs are again looking strong.

Purse seine openings in South Sound and the San Juans are scheduled to start the week of October 9<sup>th</sup> and Hood Canal the following week.

The Washington Legislature has appropriated \$700,000 to complete funding for the license buy-back portion of the 1999 U.S.-Canada Salmon Treaty agreement. Barring an unlikely veto by Governor Gregoire, these funds will allow for the purchase of six seine permits and reduce the remaining number to the 75 target level. We are pleased to close this chapter and secure payment for our members who have waited too long for payment. The Legislature also restored funding to the Minter Creek chum hatchery, which is now being maintained by membership donations and volunteer efforts.

### **WEST COAST REVIEW**

In June the Pacific Fishing Management Council will adopt a new framework to allocate the sardine harvest between California and Northwest fishermen. The current system generally allocates 66% to California and 33% to the Northwest. For 2005 California was allocated 91,000 metric tons, but will harvest only a fraction of that amount. The 2004 harvest was only 51,000 metric tons. Meanwhile the Northwest is very likely to harvest its entire 2005 allocation as more processing capacity enters the fishery. PSVOA seeks a new, flexible allocation scheme that achieves full utilization of the quota by increasing Northwest harvest opportunities while ensuring a stable California fishery.

On April 1<sup>st</sup> the California Fish & Game Commission adopted a final squid management plan, including a limited entry program that was seven years in the making. PSVOA will continue to assist membership with permit transfer and vessel capacity requirements. The 2004 squid harvest was 25,000 tons.

The West Coast Dungeness crab fishery continues to grow in value and is providing a needed outlet for surplus salmon vessels. The Oregon fishery experienced a second record-breaking year with landings reaching 30 million pounds. California crabbers are seeking drastic reductions in pot limits to slow the harvest and drive out larger vessels. Meanwhile, rapid growth in the Puget Sound recreational fishery has triggered the introduction of legislation to be heard during the 2006 session that would dramatically reduce commercial allocations and offer a low-budget buyback program.

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## 2004 ALASKA SALMON VALUES

The statewide harvest had a dockside value of \$240 million, up \$31 million from 2003. The increase in value can be traced to federally funded marketing programs and growing public concern over reports of contaminants in farmed salmon. Although encouraging, the increase should be viewed in light of historic values, which topped out at \$770 million in 1988. A summary of key fisheries follows:

<u>Area</u>	<u>Permits Fished</u>	<u>Ex-Vessel Value (millions)</u>
SE Seine	209	\$25.3
PWS Seine	104	\$6.9
Kodiak Seine	130	\$13.3
BB Driftnet	1411	\$63.7
SE Troll	688	\$23.4
PWS driftnet	513	\$16.4

## 2005 HALIBUT & BLACK COD

Ex-vessel values for 2004 Alaska halibut and black cod landings reached a record \$168 million and \$60 million respectively. Southeast halibut is selling for \$3.35 per pound. There is increased effort for black cod to meet demand for the May Japanese holiday seasons. Allocations and current landings are:

<u>Species</u>	<u>Allocation pounds</u>	<u>Catch to date</u>	<u># of IFQ Holders</u>
Halibut	56,976,000	9,496,000	4,830
Sablefish	37,765,000	6,578,000	1,052

The IFQ system has been an incredible boon to the current quota holders. However, Congress placed a moratorium on new IFQ programs in 2000 in large part due to controversy over the halibut system. Of course an exception to the moratorium was allowed

last year to facilitate the Bering Sea crab quota system for both harvesters and processors. NMFS officials now say that future management lies in quota systems and they will seek to lift the moratorium during reauthorization of the Magnusson-Stevens Act.

## NEWS BRIEFS

⇒ The Sitka sac roe herring fishery harvested 11,200 tons of herring with the final 1,000 tons taken under a cooperative style fishery involving all 51 permit holders.

⇒ The 2004 Seine Vessel Reserve (SVR) financial statement will be available next month. SVR is now enjoying a third consecutive year of low claims, declining reinsurance expense and controlled growth.

⇒ Governor Murkowski has appointed McKie Campbell as Commissioner of ADF&G to replace Kevin Duffy.

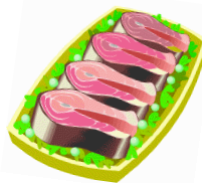


## ASSOCIATE MEMBERS

*\*Also members of the Pacific Salmon Treaty*

Alaska General Seafoods*	Norquest Seafoods*
Ballard Hardware & Supply	Northwest Farm Credit
Bank of America	Ocean Beauty Seafoods*
Cloud Trading	Peter Pan Seafoods, Inc.*
Covich-Williams Co., Inc.	Petersburg Shipwright, Inc.
Delta Marine Industries	Phil Hingston, CPA
Fishing Vessel Owners	Puget Sound Hydraulics
Marine Ways	Radtke Marine, Inc.
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Icicle Seafoods*	Seattle Marine Supply
LFS, Inc.	Stew Ellison, Merrill Lynch
Monterey Fish Company	Trident Seafoods*
Norcoast Marine Services	

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***Have a great season.***

**ADDRESS CORRECTION REQUESTED**