

JAMES L. BALDWIN
ATTORNEY AT LAW

October 1, 2010

Local Boundary Commission
c/o Brent Williams
Division of Community and Regional Affairs
Department of Community, Commerce and
Economic Development
550 West 7th Ave., Suite 1770
Anchorage, AK 99501-3510

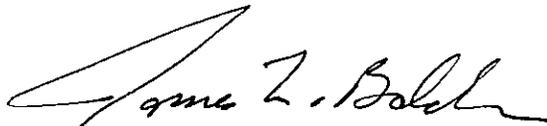
Re: In re Annexation Petition of the City of
Dillingham; filing of Native Village of
Ekuk's brief.

Dear Mr. Williams:

Enclosed you will find respondent's brief in the pending matter before the Local Boundary Commission described above. The petition is accompanied by an affidavit of mailing and an affidavit of respondent certifying to matters required by regulation of the Local Boundary Commission.

You will please note that the Native Village of Ekuk has designated the undersigned to act as its representative in this matter. The designation appears in the body of respondent's brief.

Sincerely,



James L. Baldwin
Counsel for the Native Village of Ekuk

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

IN THE MATTER OF THE PETITION OF)
THE CITY OF DILLINGHAM FOR)
ANNEXATION OF NUSHAGAK)
COMMERCIAL SALMON DISTRICT WATERS)
AND WOOD RIVER SOCKEYE SALMON)
HARVEST AREA WATERS, TOGETHER)
CONSISTING OF APPROXIMATELY 396)
SQUARE MILES OF WATER AND 3)
SQUARE MILES OF LAND)

AFFIDAVIT OF SERVICE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, James L. Baldwin, upon oath, depose and state that:

On October 1ST, 2010 I mailed via first class US mail ^{two copies of AZB, UR} the Native Village of Ekuk's

Responsive Brief along with its exhibits to:

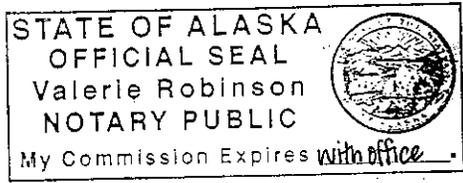
Alice Ruby, Mayor
City Hall
P.O. Box 889
Dillingham, AK 99576

Brent Williams
Division of Community and Regional Affairs
Department of Community, Commerce, and Economic Development
550 West 7th Ave., Suite 1770
Anchorage, AK 99501-3510

Dated at Juneau, Alaska this 1ST day of October, 2010.

James L. Baldwin
James L. Baldwin

SUBSCRIBED AND SWORN TO before me this 1ST day of October, 2010.



Valerie Robinson
Notary Public in and for Alaska

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

IN THE MATTER OF THE PETITION OF)
THE CITY OF DILLINGHAM FOR)
ANNEXATION OF NUSHAGAK)
COMMERCIAL SALMON DISTRICT WATERS)
AND WOOD RIVER SOCKEYE SALMON)
HARVEST AREA WATERS, TOGETHER)
CONSISTING OF APPROXIMATELY 396)
SQUARE MILES OF WATER AND 3)
SQUARE MILES OF LAND)

AFFIDAVIT OF RESPONDENT NATIVE VILLAGE OF EKUK

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, James L. Baldwin, upon oath, depose and state that:

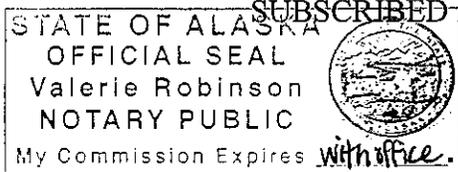
1. My name is James L. Baldwin. I am licensed to practice law in the State of Alaska. I represent the Native Village of Ekuk in connection with the Responsive Brief filed along with this affidavit.

2. To the best of my knowledge, information and belief, formed after reasonable inquiry, the Responsive Brief and exhibits attached to it are founded in fact and are not submitted to harass or cause unnecessary delay or needless expense in the cost of processing the Petition for Annexation filed by the City of Dillingham.

Dated at Juneau, Alaska this 1st day of October, 2010.

James L. Baldwin (handwritten signature)

SUBSCRIBED AND SWORN TO before me this 1st day of October, 2010.



Valerie Robinson (handwritten signature)
Notary Public in and for Alaska

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

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IN THE MATTER OF THE PETITION OF)
THE CITY OF DILLINGHAM FOR)
ANNEXATION OF NUSHAGAK)
COMMERCIAL SALMON DISTRICT WATERS)
AND WOOD RIVER SOCKEYE SALMON)
HARVEST AREA WATERS, TOGETHER)
CONSISTING OF APPROXIMATELY 396)
SQUARE MILES OF WATER AND 3)
SQUARE MILES OF LAND)

RESPONSIVE BRIEF OF THE NATIVE VILLAGE OF EKUK TO THE
ANNEXATION PETITION OF THE CITY OF DILLINGHAM FOR ANNEXATION
OF NUSHAGAK COMMERCIAL SALMON DISTRICT WATERS AND WOOD
RIVER SOCKEYE SALMON HARVEST AREA WATERS

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1 The Native Village of Ekuk, a federally recognized tribal government,
2 opposes the annexation petition filed by the City of Dillingham (hereinafter “Dillingham”
3 or “the petitioner”) to annex substantially all of the waters of the Nushagak Commercial
4 Salmon District and the Wood River Sockeye Salmon Harvest Area (WRSSHA).¹ The
5 water area of Nushagak Bay is of regional importance to the Village of Ekuk and other
6 nearby municipalities and villages.² Although Dillingham is an important center for
7 transportation and other purposes, Nushagak Bay and the Wood River are not a part of the
8 community of the City of Dillingham. The City is not alone in having important socio-
9 economic contacts with the territory covered by the petition. The annexation requested in
10 the petition would exclude other villages and municipalities in the region from the benefits
11 that could be derived from administration of these two commercial fishing districts by a
12 regional government or service area. Because the petition is styled as one which uses the
13 local option method requiring a local ratification vote, the residents of other communities
14 with socio-economic ties to Nushagak Bay and Wood River will not have an opportunity to
15 vote on the annexation question. For this and the other reasons set out below petitioner
16 asks the Local Boundary Commission (hereinafter the “LBC”) to protect the best interests
17 of the state by denying the petition.
18

19 _____
20 ¹ The Affidavit of Council President Robert Heyano is attached to this responsive brief as
21 Exhibit # 1. In his affidavit, Mr. Heyano explains the history and geography of Ekuk
22 Village.

23 ² Petitioner makes only passing reference in its petition of the justification for desiring to
24 annex the WRSSHA. Ekuk presumes this is because petitioner considers this territory to be
25 geographically a part of Nushagak Bay. Without this assumption, the annexation of Wood
26 River waters appears to be an afterthought with the main annexation effort directed to
Nushagak Bay Commercial Salmon District waters. Ekuk’s objections to the petition
extend as well to annexation of the WRSSHA as a naturally included part of the Nushagak
Bay region of Western Bristol Bay.

A. FACTS RELEVANT TO THIS PROCEEDING.

1 Dillingham petitions to annex approximately 396 square miles of water and
2 3 square miles of land. The territory to be annexed consists of two fishing districts in
3 Western Bristol Bay and uninhabited islands within those districts. Dillingham argues that
4 the annexation is in the best interest of the state because it would promote “maximum local
5 self government” and “long-term economic vitality of the city.”³ Respondent is the Native
6 Village of Ekuk, a federally recognized tribe governed by its tribal council. Ekuk is located
7 on the Eastern shore of Nushagak Bay. Members of the tribe reside in the municipalities
8 and villages of the Western Bristol Bay region and in places outside the Bristol Bay
9 watershed. Within the village and nearby are a number of set net sites operated by
10 members of the tribe. There is a salmon processing plant (Ekuk Fisheries) on land
11 bordering the village which processes primarily salmon caught at set net sites within
12 Nushagak Bay.
13

14 Dillingham asserts that this annexation will result in efficient and effective
15 delivery of services in the expanded city. The rationale for expansion is that it would allow
16 the city to obtain waters in which substantial sales of salmon occur during the short but
17 productive fishing season of Western Bristol Bay. The fishing season typically averages 40
18 days from early July through mid-August with periodic openings and closing of districts
19 causing vessels to remain on the grounds.⁴ Dillingham proposes to levy and collect a sales
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21
22 ³ Pet. at p.8.

23 ⁴ Exhibit # 2. For a complete list of ADF&G opening and closure announcements for
24 Bristol Bay West Side go to:
25 <http://csfish.adfg.state.ak.us/newsrelease/select.php?year=2010&dist=DIL&species=400&submit=Go>

1 tax on the sale of raw fish caught in the waters proposed for annexation. Dillingham
2 reasons that many of the fishermen operating in these waters come from outside the region
3 and they should bear the burden of paying for the facilities and services provided by the city
4 that also support the fishery.

5 The territory proposed for annexation contains the Nushagak Commercial
6 Salmon District which is one of the major fishing districts of Bristol Bay. The proposed
7 annexation would also include the WRSSHA. The WRSSHA is a fishing district of lesser
8 importance for revenue generation purposes because it opens only when necessary to
9 regulate escapement into the Wood River system. It covers the mouth of the Wood River, a
10 navigable waterway, to a point near the Southern boundary of the City of Aleknagik.

11 In its petition, Dillingham represents that it is the regional center for fishing
12 activity carried out in Nushagak Bay. However, persons engaged in that fishery are based
13 in other municipalities of the region as well. The Nushagak Bay fishery is not only made
14 up of drift boats, but also set net fishing enterprises. The drift net boats originate from the
15 Nushagak Commercial Salmon District and other districts including Naknek - Kvichak,
16 Ugashik, Egegik and Togiak. All of these districts have municipalities that provide services
17 to the fisheries. The set netters reside in the municipalities and communities of the region
18 as well. This diversity of participation shows that the Nushagak Commercial Salmon
19 District is a resource common to all persons residing in the region.

20 Dillingham argues that a significant amount of the state's fishery business
21 tax is lost to the region by virtue of the Nushagak Commercial Salmon District remaining
22 outside of municipal boundaries. Dillingham supports this contention with a statement that
23 56 to 66 percent of the salmon catch is delivered outside of the bay area for processing and
24
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1 represents tax proceeds that are lost to the region.⁵ However, this is not a correct analysis
2 of the allocation of the state fishery business tax. The tax proceeds attributable to fish
3 processed elsewhere may be lost to Dillingham, but this revenue source is not completely
4 lost to other cities in the Dillingham Census area. Each of those cities receives a share of
5 50 percent of the total that is not shared with a municipality in which processing occurs.⁶

6 Dillingham assumes it would not “receive a great increase in fisheries
7 business tax revenues” as a result of the annexation.⁷ However, floating processors operate
8 in Nushagak Bay and it is not known precisely whether they operate inside or outside of the
9 boundaries of an existing municipality. After annexation of the districts, Dillingham could
10 receive 50 percent of the fishery business tax proceeds attributable to some of this
11 processing activity. This increase would cause a reduction in the amount payable to
12 municipalities in regional fishery management areas of the state, including municipalities in
13 the Dillingham Census Area.

14 Dillingham argues that its plans to levy a sales tax on raw fish will result in a
15 more equitable allocation of tax burden to those outsiders who use the city’s harbors and
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18 ⁵ Pet. at p. 7. Petitioner on September 21 changed its petition to reflect these amounts.
19 The corrections were explained by Mayor Ruby as “small errors.” Ekuk does not want to
20 quibble over the fairness of allowing the city to add to its arguments late in the public
comment period and hopes that the city will extend similar courtesy to any other party or
commenter.

21 ⁶ AS 43.75.137 provides for an additional refund of fishery business tax proceeds to certain
22 municipalities in fishery management areas outside of organized municipalities. 3AAC
23 134.050(a) provides a statewide apportionment formula for additional refund amounts to
municipalities in these fisheries management areas.

24 ⁷ Pet. at p.52. Dillingham explains that it is not clear that there would be substantially
25 more processing within the expanded boundaries.

1 other fishery related facilities and services. At present, the city assesses user fees for
2 mooring in the harbor and use of the all tides dock. The city also levies property and sales
3 taxes and is in possession of a reserve fund amounting to approximately \$3 million.⁸ The
4 equitable reallocation of cost argument will appeal to those residents of the city who are not
5 directly engaged in the fishery. However, for residents of the Western Bristol Bay Region
6 who are directly engaged in fishing in the territory proposed for annexation it is an entirely
7 different story. Upon these persons, the tax burden would fall especially hard. This is
8 confirmed by a study prepared for the Bristol Bay Economic Development Corporation in
9 2009 by Northern Economics.⁹ The study reported:

10 (1) drift gill net vessels owned by local residents are on average
11 older, have lower horsepower, are smaller in terms of gross tons, have less
12 fuel capacity, and on average have less capacity for chilling fish than vessels
owned by permit holders residing outside the Bristol Bay watershed;

13 (2) revenue per fishing permit held by local residents is now less
14 than 70 percent of the fishery wide average – this is even more striking for
set net fishers, their revenue earned averages only \$27,000 per season;

15 (3) other non fishery related income for area permit holders is quite
16 limited relative to other income for permit holders who reside outside of the
watershed; and

17 (4) per capita revenue from the drift and set net fisheries of permit
18 holders residing in the watershed has fallen an average of \$516 per year
19 since 1984. Based on these statistics, what the tax scheme gains through
20 efficiency of requiring outsiders to contribute more, it loses in fairness to
21 fishermen of the region and others dependent upon them who will bear a
22 disproportionate burden.

23 ⁸ Pet. at p.32 (single asterisk following “Note 6”).

24 ⁹ Northern Economics, *The Importance of the Bristol Bay Salmon Fisheries to the Region*
25 *and its Residents*, (October, 2009). Only the pages covering the executive summary are
attached to this responsive brief as Exhibit #3.

1 Upon close examination of the petition, it is evident that very little in the
2 way of new services will be offered in the territory to be annexed. Dillingham disavows the
3 provision of any expanded police services. The city states that the Alaska State Troopers
4 will remain the agency responsible for providing public safety services. Dillingham does
5 not claim it will provide additional search and rescue services in the area to be annexed
6 either. Rather, it proposes to provide better "coordination" of search and rescue services
7 that are provided by other persons presumably located in Dillingham. Dillingham proposes
8 a one-time capital expenditure of \$20,000 to establish a cache of materials useful in
9 responding to oil spills.¹⁰

10 Dillingham predicts that it will spend amounts in the first fiscal year after
11 annexation to provide other services in the area to be annexed. However, this new service
12 consists of approximately \$100,000 in costs to be incurred preparing for the levy of a sales
13 tax on raw fish. A small amount (\$20,000) would be provided for police services and
14 \$120,000 for harbor expenses. In each succeeding fiscal year, the City contemplates
15 spending only \$145,000 additionally because of annexation (\$5,000 administration,
16 \$20,000 police, \$20,000 search and rescue coordination and \$100,000 for the harbor). Pet.
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22 ¹⁰ This oil spill cache would be in addition to the oil spill equipment container provided by
23 the state under a community spill response agreement negotiated with the Department of
24 Environmental Conservation. See <http://dec.alaska.gov/spar/perp/docs/perp.pdf>. Under this
25 agreement with the state, the city may use the oil spill response equipment at cost. The City
26 does not provide further information why an additional city funded cache is more efficient
and effective than the one provided by the state.

at p. 32. This is far less than the \$710,883 that it expects to receive from the levy of a 2.5% tax on the sales of raw fish.¹¹

B. DILLINGHAM HAS NOT SATISFIED THE STANDARDS IMPOSED BY LAW FOR ANNEXATION TO A CITY.

The LBC adopted administrative regulations under a delegation from the legislature to provide specific standards for annexation to a city. 3 AAC 110.090 – 3 AAC 110.150 (hereinafter “the LBC regulations”). Set out below is respondent’s position as to whether petitioner satisfies these standards.

1. The Boundaries of the Expanded City would not Contain Territory that Includes the Community Associated Exclusively with Dillingham.

Under the LBC regulations the petitioner must show that the proposed expanded boundaries include “all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. 3 AAC 110.130. Dillingham’s petition shows that all existing services and facilities for the city – other than tax collection, could be provided without the expansion of boundaries. Dillingham is not a poor municipality by area standards.

Of the factors that the LBC considers in reviewing the proposed boundaries, respondent asks the LBC to consider the circumstances of the other municipalities and communities located in the Nushagak Bay region. Certainly Dillingham feels the seasonal

¹¹ Pet. at p.12. Petitioner also discloses that in 2009 it incurred only \$330,000 in annual costs the help serve regional fisheries. Pet. at p. 44.

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effect of this fishery, but so do other municipalities and communities in the region.

1 Dillingham is not alone in providing services for this seasonal fishery. The Commission is
2 requested to take notice that the following municipalities on or near Nushagak Bay receive
3 limited amounts of shared fisheries business taxes from the state: Aleknagik, New
4 Stuyahok, and Manokotak.¹² By law, the state acknowledges that the receipt of this money
5 is to compensate municipalities that “suffer significant effects from fisheries business
6 activities.”¹³

7
8 The LBC is requested to consider the circumstances of Manokotak which is
9 linked by river to Igushik Beach on the Western side of Nushagak Bay.¹⁴ A significant
10 number of the set netters who operate on Igushik Beach are from Manokotak. A significant
11 number of set net sites are located on the western side of the bay in and around Ekuk
12 Village. This population does not use the boat harbor or other major facilities of
13 Dillingham during the fishing season. Yet, their sales of fish would be taxed by
14 Dillingham. This geography and use pattern is ignored in Dillingham’s petition.

15
16 While the expanded boundaries would not leave enclaves within the limits of
17 Dillingham, the proposed boundaries would add territory to the city in a way that
18 gerrymanders the Nushagak Bay region to the point of foreclosing other municipalities and

19
20 ¹² This information is derived from the Community Funding Database set out on Division
21 of Community and Regional Affairs webpage at
22 http://www.commerce.state.ak.us/dca/commdb/CF_Grants.htm.

23 ¹³ AS 29.60.450(a).

24 ¹⁴ Respondent was provided with a copy of Resolution #11-4 (September 17, 2010)
25 adopted by the City of Manokotak which was provided to the LBC as a public comment on
26 the petition. Ekuk incorporates and adopts by reference the facts outlined there for the
purposes of this brief.

1 communities from expanding their boundaries into Nushagak Bay. A prime example would
2 be the effect of the expanded boundaries on the City of Clark's Point. Based on discussions
3 with an elected official of Clark's Point and LBC staff, respondent was informed that
4 Clark's Point expressed intent to reassert an earlier petition to annex territory within
5 Nushagak Bay. These potentially conflicting claims highlight an important geographic
6 consideration affecting the annexation. Where the boundary is drawn between Dillingham
7 and Clark's Point may have a significant effect on taxpayer actions to avoid taxes. The
8 expansion of Dillingham's boundaries could push processors and tenders into the waters of
9 Clark's Point or vice versa, with attendant impacts to be dealt with. In this case, Clark's
10 Point is the municipality less able to deal with such impacts.

11 The proposed new boundaries would likely have deleterious effect on
12 Manokotak and Aleknagik. Manokotak has a long history of connection to Igushik Beach
13 on the West side of Nushagak Bay and considers this area and offshore waters to be part of
14 its community. The Wood River is a transportation corridor to Aleknagik and annexation
15 may be of concern to that municipality.

16 A serious question presented by the petition is whether Dillingham is
17 proposing to annex "territory comprising an existing community."¹⁵ Or, whether in reality
18 Nushagak Bay is territory belonging to a regional community in which many municipalities
19 and villages in the region share a common interest. A city is a community-based municipal
20 government rather than one that is based on geography.¹⁶

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22
23 ¹⁵ 3 AAC 110.130(c)(1).

24 ¹⁶ 3 AAC 110.005 ("Territory proposed for incorporation as a city must encompass a
25 community.").

The LBC applied the doctrine of community in a 1986 annexation proceeding involving Dillingham and Nushagak Bay which is not distinguishable from the present petition. The LBC observed:

The statutes speak to “a community” when addressing city incorporation and “an area” when addressing borough incorporation. The definition of the word “community” as provided in Black’s Law Dictionary is a “neighborhood” compared to the definition of the word “area” as “a territory, a region”. The instant situation speaks to local boundary actions motivated by problems affecting a territory of people, not a community of people. Clearly a city is not the appropriate vehicle to adequately address problems that are of regional concern.¹⁷

This decision rejected Dillingham’s attempt to annex both substantial amounts of land and water. The quote set out above was addressing the regional character of water area consisting of Nushagak Bay.

In 1987, the former Department of Community and Regional Affairs, acting as staff for the LBC, issued a report on the city’s amended petition to annex somewhat less territory but which also included the waters of Nushagak Bay. In the report, the department recounted the rationale of the LBC’s December, 1986 decision in which it acted upon separate proposals from the Cities of Dillingham and Clark’s Point for annexation of all or significant portions of Nushagak Bay. The department reported:

1. The size, configuration, level of development and other characteristics of Nushagak Bay are clear evidence that it is a region rather than part of a community. State laws governing municipalities provide that, to the extent territories are incorporated; regional territory shall be served by boroughs or unified municipalities, while community territory shall be served by cities. Thus annexation of all or substantial portions of Nushagak Bay by any city is inappropriate.

¹⁷ Statement of Decision for Annexation of Territory to the City of Dillingham para. 13 at page 6 (Local Boundary Commission, December 10, 1986) attached to respondent’s brief as Exhibit #4.

1 2. The need for municipal jurisdiction over Nushagak Bay is of a
2 regional nature. Issues of service delivery, revenue enhancement and
3 impacts to public health and safety are shared by the cities of Clark's Point
4 and Dillingham, as well as other areas bordering and or relying upon the
5 resources of Nushagak Bay. Thus, regional municipal government was
6 judged to be the most appropriate mechanism to address these needs. . . .¹⁸

7
8 After this recount of the LBC's rationale, the department concluded

9 [c]ircumstances have not changed since the commission made these
10 findings. Given the clarity of its position with respect to annexation of
11 significant portions of Nushagak Bay by any city, the department concludes
12 that there is no purpose in examining the annexation of this waterway as
13 presently proposed by the City of Dillingham. Rather it is presumed that the
14 commission will reject this aspect of the current proposal as it did four
15 months prior to the submission of the current petition.¹⁹

16 The department's presumption was correct. Dillingham was allowed to annex substantially
17 less water area than requested, leaving Nushagak Bay outside its boundaries. Dillingham
18 now contends circumstances have changed in the 23 years since its last attempt to annex
19 these waters because the fleet servicing facility in Clark's Point is now closed and it does
20 not now serve the drift net fleet as it once did. The problem with this changed circumstance
21 argument is that it addresses only the sad circumstances of a single city in the region and
22 fails to come to grips with the fact that the regional significance of Nushagak Bay has not
23 changed. Clark's Point, Ekuk, Manokotak, and other communities of the region continue to
24 have a common interest in the Nushagak Commercial Salmon District.

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¹⁸ Former Department of Community and Regional Affairs, Report and Recommendation
to the Alaska Local Boundary Commission on the Petition of the City of Dillingham for the
Annexation of Approximately 421.25 Square Miles of Territory (September, 1987) at p. 15
(on file with the Division of Community and Regional Development) (emphasis added).
An excerpt is attached as Exhibit # 5.

¹⁹ *Id.* at p. 15-16.

Recognition of Nushagak Bay as territory important to the region continued after the 1987 annexation proceedings. On December 4, 1992, the LBC identified the Dillingham Census Area as a “model borough” separate from the rest of the Bristol Bay region.²⁰ There was also action taken in 1997 by the City of Dillingham to annex the Dillingham Census area to the Lake and Peninsula Borough. However, the effort was judged to be divisive and therefore not feasible. As a part of that process, the department suggested that the Dillingham Census Area would be a region appropriate for a borough incorporation petition.²¹

The effect of granting the instant petition would be to transform Dillingham into a regional government without the responsibility for all of the territory of the region or for answering to the residents of other cities and villages that share interest in the waters proposed for annexation. To grant the petition may set in motion the Balkanization of Western Bristol Bay by forcing other municipalities in the region to seek the detachment of territory from Nushagak Bay in order to fairly allocate fishery related tax revenue to cover the impact of the fishery resource related to them.

Dillingham’s argument that Nushagak Bay is part of its community should be rejected because it has a legal flaw. Dillingham argues that temporary seasonal participants in the fishing industry of the region who use city facilities and impact city

²⁰ Model Borough Boundaries p.7 Local Boundary Commission (June 1997 revised).

²¹ *See*, Alaska Department of Community and Economic Development, Chronicle of Borough Developments in the Bristol Bay Region and Update of Revenue Projects Concerning the Proposed Annexation to the Lake and Peninsula Borough (March, 2000) (on file with the Division of Community and Regional Affairs at <http://www.commerce.state.ak.us/dca/lbc/pubs/BBstudy.pdf>).

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services form a community with Dillingham that extends to the area to be annexed. A community “is a social unit comprised of 25 or more permanent residents”.²² The petition describes the community within the territory proposed for annexation as “a seasonal commercial fishing community whose need for public services is limited to port and harbor facilities, landfill services, and public safety.”²³

A temporary workforce or persons comprising a transient fishing fleet are not domiciled in the city or the fishing districts to be annexed. They are domiciled elsewhere. Many members of the fleet and set net permit holders reside in other communities in the Dillingham Census Area. They are not a social unit of permanent residents in the sense intended by the annexation standards in the LBC regulations. Their presence or activity in the area sought to be annexed cannot be used to establish a community of interest between the existing City of Dillingham and the waters of the Nushagak Commercial Salmon District.

Dillingham contends that services and facilities supporting the Nushagak Bay fisheries are now provided “almost exclusively” by and through the City of Dillingham. There is no dispute with Dillingham that it incurs costs in order to provide services and facilities for the Bristol Bay salmon fishery. The LBC found in 1987 that Dillingham did indeed provide services to seasonal workers and members of the fishing fleet. The LBC wrote in its decision:

²² See 3 AAC 110.990(10) (a permanent resident must be domiciled in the city for at least 30 days); See also AS 01.10.055(a) (A person establishes residency by being physically present with the intent to remain indefinitely).

²³ Pet. at p. 48.

1 The seasonal processors and their crews may, on occasion receive some of
2 these services three months of the year. The critical issue is the relative
3 degree to which these services are required. With the exception of the
4 identified 40 square miles area northwest of the current boundaries of the
5 city, it has not been demonstrated that these services are required to the
6 extent that annexation is warranted.²⁴

7 A better example of the proof required can be found in the LBC decision regarding the
8 annexation of waters by the City of Togiak. In that case the LBC found that the severity of
9 alcohol abuse and offenses in the area to be annexed and the city's plans to provide services
10 to the remedy the problem justified annexation.²⁵ For Togiak the boundary expansion was
11 a matter necessary to remedy a clear and present threat to the public safety of the
12 municipality and the territory to be annexed. Dillingham has not put forward facts that
13 provide a similar justification.

14 Dillingham's contention that it is virtually the sole supplier of services and
15 facilities in the region is not entirely accurate. Other communities in the region have
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19 ²⁴ Report and Recommendation to the Alaska Local Boundary Commission on the Petition
20 of the City of Dillingham for the Annexation of Approximately 421.25 Square Miles of
21 Territory (Department of Community and Regional Affairs, September, 1987) on file with
22 the Division of Community and Regional Development (emphasis added) at p. 4. An
23 excerpt is attached as Exhibit #5.

24 ²⁵ Statement of Decision in the Matter of the Annexation by the City of Togiak, Alaska,
25 Consisting of Togiak Bay, Consisting of Approximately 183 Square Miles (Local Boundary
26 Commission, January 18, 1985) at p. 1 (on file with the Division of Community and
Regional Affairs).

1 residents who participate in the Nushagak Bay fishery.²⁶ Some of these persons operate
2 drift net vessels and some are land-based set net site operators. These communities provide
3 services and support for their residents and also experience the seasonal impact of fishery
4 activities in their community areas. Their permanent and seasonal residents do not use the
5 services and facilities of Dillingham to the extent that fisherman coming from outside the
6 watershed do. If Dillingham is allowed to annex the fishing districts of Nushagak Bay,
7 many year round residents of the region would pay the proposed sales tax on their catch to
8 pay for facilities in Dillingham that they use very little or not at all. Even though they
9 would be taxpayers of the city, they would not be represented by the City of Dillingham in
10 the same sense that the city represents its residents and qualified voters.

11 Other municipalities and villages in the region provide services to set net and
12 drift net gear holders and processors operating in Nushagak Bay. The village of Ekuk must
13 deal with the influx of approximately 200 persons engaged in the set net fishery and a
14 seasonally operated salmon processing plant as a neighbor.²⁷ It employs a health aide and
15 other employees to deal with refuse disposal, potable water, and for next season – ice for
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17 ²⁶ According to 2009 reports of the Commercial Fisheries Entry Commission, there are 396
18 limited entry permit holders who reside outside of Dillingham in places within the
19 Dillingham census area, while only 227 permit holders reside in Dillingham. *See* Exhibit 6.
20 In the Nushagak Bay area alone, the City of Manokotak has 84 permit holders and another
21 93 residents who serve as crew. *Id.* Aleknagik has 24 permit holders and another 34
22 residents who serve as crew. *Id.* New Stuyahok has 25 permit holders and another 39
23 residents who serve as crew. *Id.* Koliganek has 18 permit holders and another 25 residents
24 who serve as crew. *Id.* Clark's Point has 11 permit holders and another 17 residents who
25 serve as crew. *Id.* Set net permit holders in the Bristol Bay Region are more likely to
26 reside in the region. According to 2010 reports of 672 active set net permit holders only
131 were nonresidents. Commercial Fisheries Entry Commission - Permit Status Report at
www.cfec.state.ak.us/pstatus/14052010.htm.

²⁷ Affidavit of Heyano attached as Exhibit # 1.

1 fishing operations. Clark's Point has floating processors and tenders stationed adjacent to
2 and within its boundaries. It has a landfill, a health aide, and a state funded airstrip. Ekuk
3 and Clark's point are cooperating in the planning and fund raising for a road connecting the
4 two communities in order to provide a new landfill site to serve both.²⁸ Manokotak has an
5 active fleet of drift net boats and a sizeable number of residents involved in set net
6 operations. The set net operations of the residents of Manokotak are focused mainly on
7 Igushik Beach on the Eastern side of Nushagak Bay. It maintains haul-out facilities,
8 storage, road access to anchorages, health aides, and provides search and rescue services.

9 Reports from the Alaska Department of Fish and Game provide some
10 evidence that drift net boats registered in other districts in Bristol Bay come to Nushagak
11 Bay to fish. According to the commercial fisheries division of the department, 120 drift net
12 boats harvested salmon in both the Naknek-Kvichak District and in the Nushagak Bay
13 statistical areas.²⁹ Of the drift net boats harvesting salmon in the Naknek-Kvichak District
14 that season, nearly 38 percent of them reported their first deliveries of harvested salmon
15 were made in other fishing districts. Approximately 10 percent of these boats report first
16 deliveries in Nushagak Bay before engaging in fishing in the Naknek-Kvichak District.³⁰
17 This is evidence that the services for these vessels may not be centered in Dillingham, but
18 elsewhere in the region. The data reinforces Ekuk's contention that Nushagak Bay is a
19 region that is used and served by communities other than Dillingham. For these reasons,
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21 ²⁸ *Id.*

22
23 ²⁹ Telephone interview with Cathy Tide, statistical section of the Alaska Department of
24 Fish and Game (September 28, 2010).

25 ³⁰ Exhibit # 7.

1 the territory proposed for annexation does not comprise the community of Dillingham and
2 is not appropriate for annexation to a city.

3 **2. Petitioner Fails to Prove that the Territory has a Need for City Government.**

4 The petitioner tries very hard to tailor the facts to fit the standards for
5 annexation set out in the LBC regulations. However, expansion to include the vacant and
6 unoccupied water indentified in the petition does not support a conclusion that Dillingham
7 would be adding territory considered part of the community it serves. The petitioner is very
8 clear about its underlying intent – which is to generate revenue from sales of raw fish
9 within the two fishing districts proposed for annexation. Dillingham virtually concedes that
10 the territory to be annexed does not have a reasonable need for city government. The
11 petition states “there will not be any residential growth in the area proposed for
12 annexation.”³¹ Dillingham does not propose to assume new powers or responsibility for
13 new services in the area to be annexed, other than the collection of raw fish tax. Nor does it
14 propose to extend any services to the new territory that are now provided within the
15 existing boundaries. Dillingham concedes that the services presently provided to the area
16 sought to be annexed are adequate.³²

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19 The need for services described by Dillingham could be satisfied in part by
20 exercise of extraterritorial powers. Extraterritorial powers of a city must be taken into
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22 ³¹ Pet. at p.41.

23 ³² Petitioner cites to Alaska State Trooper reports for 2008 that document no public safety
24 responses and for 2009 there were only four calls for assistance, three of which were for
25 search and rescue. Pet. at p. 42.

1 consideration when determining the need for government in an area to be annexed.³³ For
2 example, the oil spill prevention services evidenced by the capital expenditures cited by the
3 city as justification for the annexation could be provided on an extra-territorial basis rather
4 than annexation.³⁴

5 The LBC regulations require an assessment of need for a requested
6 annexation that considers whether government could be provided to the territory by an
7 existing city or an organized borough.³⁵ Dillingham argues that this provision in the
8 regulations must be interpreted to consider only whether an existing city or an existing
9 borough could better provide government to the territory. However, the wording of the
10 provision does not support that interpretation. The section provides

11 Territory may not be annexed to a city if essential municipal services can be
12 provided more efficiently and more effectively by another existing city or by
13 an organized borough³⁶

14 Note that the provision does not add the word “existing” before the words “organized
15 borough” and that the two forms of municipalities are mentioned in separate independent
16 clauses. The clear implication is that a determination whether another entity could more
17 effectively and efficiently provide service should not be so artificially limited. A city may
18 only be considered as an alternative if it is in existence, but a borough as a means of
19 delivering municipal services may be considered even if it does not exist at the time of
20

21 ³³ 3 AAC 110.090(a)(5).

22 ³⁴ AS 29.35.020 (b)(2) (power to exercise extraterritorial power over containment, clean up
23 or prevent the release or threatened release of oil or hazardous substance).

24 ³⁵ 3 AAC 110.090(c).

25 ³⁶ *Id.*

1 evaluation. Dillingham interprets the LBC regulations to permit only consideration of the
2 ability of existing municipalities to provide government services in the territory. It
3 probably wants to avoid consideration of whether a new borough might be a better choice
4 to provide services in the territory. Ekuk urges the LBC to reject this interpretation and
5 continue with its long standing policy of encouraging the formation of a regional
6 government when it would be more efficient and effective.

7
8 **3. Petitioner does not Carry its Burden in Proving that the Territory**
9 **is Compatible in Character.**

10 The LBC's regulations provide that the territory must be "compatible in
11 character with the annexing city." 3 AAC 110.100. Of the seven subparagraphs of the
12 character standard set out in section 100, four pertain to population – which is likely not
13 relevant in this case because the territory does not have a permanent resident population.
14 The remaining three subparagraphs focus on the suitability of the territory for community
15 purposes, the extent of existing and reasonably anticipated transportation patterns and
16 facilities, and finally, natural geographical features and environmental factors.

17
18 The sole purpose that Dillingham proposes for the territory is to provide a
19 tax situs for revenue generation purposes. There are existing transportation patterns which
20 have a significant part of the persons and vessels operating in Nushagak Bay spending some
21 time using the facilities available in Dillingham. However, there does not appear to be
22 formally established plans to change the extent of the facilities beyond those in existence.
23 Even considering the capital facilities and use patterns indicated by petition, the natural and
24 geographical features of Nushagak Bay do not particularly favor annexation to Dillingham.

1 Rather, the bay is just as connected to other cities and villages of the region. The amount of
2 fish Harvested from the two fishing districts and delivered to processors located outside of
3 Nushagak Bay proves this point. To the extent these fish are delivered to land-based
4 processors, the municipalities in which they are located have as strong a connection to
5 Nushagak Bay as does Dillingham. Dillingham cannot make a strong case on the
6 “character” standard that it alone meets the requirements of section 100 of the LBC
7 regulations.
8

9 **4. Petitioner Fails to Prove that will it Devote Resources to Provide**
10 **Essential Services in the Territory.**

11 The LBC’s regulations provide that the economy within the proposed
12 expanded boundaries “must include the human and financial resources necessary to provide
13 essential municipal services on an efficient and cost effective level.”³⁷ Dillingham would
14 not satisfy this standard because it does not propose to offer services in the expansion
15 territory other than tax collection, search and rescue coordination (which it presently
16 provides), and a small expenditure on an oil spill cache (which supplements a state cache
17 already present). Dillingham desires to switch the funding source for many fishery related
18 services now provided from the general funds of the city to raw fish tax revenue.
19 Dillingham has adequate revenue to provide these fishery related facilities and services that
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³⁷ 3 AAC 110.110.
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1 it presently offers while generating a surplus.³⁸ It seeks the new territory only for revenue
2 generation purposes to make the city more “sustainable.” There should be no question
3 about the feasibility and plausibility of the city’s anticipated operating and capital budgets
4 because it appears that it will be taking in substantially more for the raw fish sales tax than
5 it proposes to spend, or even needs. Petition has the necessary resources without expanding
6 its boundaries and this will provide the existing necessary services. The LBC is requested
7 to find that Petitioner has not met its burden of satisfying the standards imposed by 3 AAC
8 110.110.

9
10 **5. The Population will not be Sufficiently Stable to Support Annexation.**

11 The LBC regulations require that the population within the proposed
12 boundaries must be “sufficiently large and stable to support the extension of city
13 government”.³⁹ This standard is largely irrelevant to Dillingham’s petition. The new
14 territory will not add new population to the City of Dillingham. Rather, the population that
15 Dillingham claims for the territory is an unstable and unpredictable seasonal workforce
16 involved in the fishery. This temporary population will be influenced by the strength of
17 salmon runs and markets for the catch. These factors are not necessarily associated with the
18 concept of stability.

19 Ekuk acknowledges that the annexation standard set out in 3 AAC 110.120
20 is intended to judge the viability of the expanded municipality and that Dillingham with
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23 ³⁸ See Affidavit of Erickson, Exhibit # 8, Attachment A (most recent audited financial
24 statement of Dillingham reports \$6.5 million of liquid reserves, an unrestricted surplus
25 equal to 109 percent of the city’s reported FY 09 expenditures).

26 ³⁹ 3 AAC 110.120.

1 over 2000 existing residents would likely have enough population to provide city
2 government within the territory to be added. However, if Dillingham is going to claim
3 seasonal workers as residents of the territory, it should also be answerable as to whether this
4 population is stable enough to meet the standards. For the foregoing reasons Ekuk requests
5 the LBC to find that Dillingham has not presented proof that it satisfies the standard set out
6 in 3 AAC 110.120.

7
8 **6. Annexation of the Territory is not in the Best Interests of the State because it**
9 **Harms the Viability of a Future Borough in the Region.**

10 The LBC regulations interpret and make specific the statutory requirement
11 that the commission consider whether an annexation to Dillingham is in the best interests of
12 the state. The LBC regulations provide that two factors bear on a best interest
13 determination: (1) whether the annexation will promote maximum local self-government
14 and (2) whether the annexation will result in a minimum of local government units.

15 Whether an annexation to a city promotes maximum local self-government
16 is a fairly simple determination. The LBC regulations provide:

17
18 for city ...annexation in the unorganized borough, whether the proposal
19 would extend local government to territory and population of the
20 unorganized borough where no local government currently exists.⁴⁰

21 The petitioner literally does not meet this standard because the government it intends to
22 provide in the territory, tax collection, will not be provided to any population resident there.
23 Dillingham fails to offer other justification for adding unoccupied territory such as an

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25 ⁴⁰ 3 AAC 110.981(7).

1 immediate need presenting a clear and present threat to the public, health, safety or welfare
2 of its community.

3 Respondent believes that the best interest determination must be interpreted
4 broadly to include the concept that best interests of the state may only be achieved by the
5 establishment of the appropriate kind of local government for the region. It cannot be in the
6 best interest of the state to allow a city to annex fishing districts that are socio-economic
7 centers shared with other communities as well, for the purpose of increasing the revenue
8 source of the city. This is contrary to the best interests of the state when other communities
9 are denied access to the wealth of a region that they have strong financial and social
10 interests in. Without access to this wealth, these communities and their residents are more
11 likely to remain dependent on the state for services.

12 A factor mentioned in the regulations which bears on the best interest
13 determination is whether the annexation would relieve state government of the
14 responsibility of providing local service.⁴¹ The instant annexation petition clearly would
15 not relieve the state government of a single expense. Dillingham makes it plain that the
16 Alaska State Troopers will continue to provide police protection in the territory to be
17 annexed. Nor, will Dillingham assume responsibility for financing the cost of search and
18 rescue in this territory. The capital expense for an oil spill cache to be funded from
19 expected tax proceeds is really supplementary to the state's own cache, so there would be
20 no savings for this either.

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⁴¹ 3 AAC 110.135(a)(3).

1 The commission can take notice of the history of attempted borough
2 formation in the Bristol Bay region and the part that Dillingham has played in that history.⁴²
3 Ekuk is mindful of the difficulties experienced by Dillingham in attempting to bring
4 regional government to its part of Bristol Bay. In light of the “marginal” financial viability
5 of a borough in the region, this annexation would have a “significant disincentive to
6 formation of a borough in the region.”⁴³ Contrary to the bare assertions made by petitioner,
7 little evidence of substance is provided that there would be enough revenue available from
8 the taxation of raw fish sales to support both Dillingham and a new borough.⁴⁴ With
9 Dillingham having done so much in the past to promote a regional government, it now has
10 possibly abandoned that effort and is seeking to make the city form of government a
11 substitute for a borough. In 1987, the LBC established the precedent that:

12 Annexation of all or substantial portions of Nushagak Bay by a city would
13 diminish the incentive for, and indeed the feasibility of, borough formation.
14 Thus, annexation of the area by any city was determined not to be in the best
15 interests of the state or the region.⁴⁵

16
17 ⁴² See Alaska Department of Community and Economic Development, Chronicle of
18 Borough Developments in the Bristol Bay Region and Update of Revenue Projects
19 Concerning the Proposed Annexation to the Lake and Peninsula Borough (March, 2000)
20 (on file with the Division of Community and Regional Affairs at
21 <http://www.commerce.state.ak.us/dca/lbc/pubs/BBstudy.pdf>).

22 ⁴³ Affidavit of Gregg Erickson, Attachment #1, attached as Exhibit #8.

23 ⁴⁴ *Id.*

24 ⁴⁵ Former Department of Community and Regional Affairs, Report and Recommendation
25 to the Alaska Local Boundary Commission on the Petition of the City of Dillingham for the
26 Annexation of Approximately 421.25 Square Miles of Territory (September, 1987) at p. 15
(on file with the Division of Community and Regional Development). (emphasis added)
Attached as Exhibit # 5.

1 While petitioner's motives are well intentioned, it should realize that the new boundaries it
2 desires would maximize its financial resources to the detriment of adjacent communities. If
3 it is allowed to tap into this source of tax revenue, Ekuk hopes that the LBC will inquire
4 whether the governing body of Dillingham will be supporting the formation of a regional
5 government or service area to benefit the Western Bristol Bay region. An annexation
6 which serves as a disincentive to borough formation in the Dillingham Census Area cannot
7 be in the best interests of the state.

8 For the foregoing reasons Ekuk requests the LBC to find the annexation
9 proposed in the petition is not in the best interests of the state.

10
11 **7. Other Annexations of Water Approved by the LBC are Distinguishable**
12 **from the Present Proceeding.**

13 Dillingham cites to examples of LBC decisions where existing
14 municipalities were allowed to annex unoccupied water area. The thrust of this argument is
15 that the LBC has established a precedent that such annexations are appropriate for a city
16 and therefore, the petition should be granted. This argument presumes that all annexations
17 of territory are similar in character and that a single determination will fit all succeeding
18 petitions. The better view is that each petition must be judged individually on the facts
19 presented. Merely because Togiak was allowed to annex 183 square miles of water should
20 not be the basis for allowing Dillingham to annex 396 square miles of water. A square mile
21 of water is not a fungible commodity. The annexation standards require a deeper analysis.

22
23 In resolving the Togiak petition the LBC believed that Togiak proved the
24 "frequency and severity of public safety problems attributable to heavy traffic in liquor in
25

1 Togiak Bay during the fishing season.”⁴⁶ There was also proof of the futility of efforts to
2 prevent the sale and importation of alcohol within the present municipal boundaries of
3 Togiak.” *Id.* The LBC found that “additional revenues generated by raw fish taxes would
4 enable Togiak to purchase needed equipment such as a boat and to hire trained personnel to
5 enforce the City’s prohibition of the sale and importation of alcohol in the community.”⁴⁷
6 Finally, the LBC indicated that it took this action in part because the legislature failed to
7 establish a special service area in Togiak Bay for the purpose of providing law
8 enforcement. The facts proven by Togiak are clearly distinguishable from the instant
9 petition.

10 Dillingham cites to an annexation approved for the City of St. Paul located
11 in the Pribilof Islands. St. Paul petitioned for the annexation of two islands and waters a
12 distance of three nautical miles out from its land area. The annexation was granted because
13 of the use St. Paul’s residents made of the waters, the need and desire of the city to exercise
14 coastal zone planning in the waters, and the necessity of the city to legally carry out search
15 and rescue powers in these waters to protect residents and others engaged in the developing
16 bottom fishery.⁴⁸ Again, St. Paul was requesting the territory for the legitimate purpose of

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20 ⁴⁶ Statement of Decision (Local Boundary Commission, January 18, 1985) at p. 1 (on file
with the Division of Community and Regional Affairs).

21 ⁴⁷ *Id.* at p. 2.

22 ⁴⁸ Statement of Decision In the Matter of the Petition for Annexation by the City of St.
23 Paul, Alaska of Approximately 194 Square Miles Consisting of Otter Island, Walrus Island
24 and the Territory Three Nautical Miles Seaward from These Islands (Local Boundary
25 Commission, January 19, 1986) (on file with the Division of Community and Regional
Affairs).

1 providing necessary services within the territory to be added. The St. Paul proceeding is
2 distinguishable for this reason as well.

3 Dillingham cites the original incorporation of the City of Egegik as
4 supporting its position that it may annex the waters of a fishing district and that it would not
5 be a disincentive to borough formation because Egegik serves as an example of a city and
6 borough exercising concurrent taxation over the sales of raw fish. As for the incorporation
7 of Egegik, it was proposed that the land area of the community be included in the municipal
8 boundaries along with area of the Egegik Commercial Salmon District. The petitioners
9 there supported this request showing a need for the raw fish tax revenues to cover the cost
10 of the new city's port development, land fill, and police powers because the new city would
11 have no other source of revenue. The LBC observed that there was no other community
12 within 40 miles of Egegik and that while the territory for the city was within an organized
13 borough, the borough did not object to incorporation with the territory indentified. In this
14 regard, the LBC stated:

15 The borough's policy stance supporting this incorporation is a significant
16 factor in determining whether the desired additional services can be provided
17 to the community by annexing to an existing city or to an existing service
18 area (of which there are none). According to borough officials, the borough
19 lacks the financial resources and personnel to provide these additional local
20 services on either an areawide or nonareawide basis.⁴⁹

21 The relationship between the Lake and Peninsula Borough and its included cities was an
22 important factor in the LBC's decision which was tailored to the facts presented there. The

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24 ⁴⁹ Statement of Decision In the Matter of the March 15, 1994 Petition for Incorporation of
25 the City of Egegik at p. 11 (Local Boundary Commission, January 11, 1995) (on file with
26 the Division of Community and Regional Affairs).

**C. THE METHOD OF REVIEW OR RATIFICATION OF THE
DECISION OF THE LBC.**

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In 1987, the Department concluded that the legislative review process was appropriate for the annexation of territory including Nushagak Bay because the annexation of land by Dillingham was not supported by affected residents.⁵⁰ A similar circumstance is present for this proceeding. Seasonal populations claimed by Dillingham to extend its community into the new territory may tend to not support Dillingham's petition. The territory to be annexed has no permanent residents. This leaves only residents of the existing city qualified to participate in the municipal election. This presents a fairness issue which the LBC should consider and resolve.

Another aspect of approval is the issue of statewide significance raised by Ekuk. The fishing districts sought to be annexed by Dillingham are in reality part of a larger community. That community extends at least as far as the boundaries of the Dillingham Census Area and perhaps as far as the entire Bristol Bay Region. If this annexation is sanctioned by the LBC, it may well develop that several municipalities will be carved out of this one regional community, each with a government of its own, resulting in a multiplication of facilities and services, increased tax burdens, and inevitable jurisdictional conflict and chaos. The LBC should carefully consider whether ratification of such a far reaching result should be left in the hands of the voters of the City of Dillingham or the Alaska State Legislature. Under these circumstances, the local option method may not provide adequate protection for the public interest.

⁵⁰ Report and Recommendation to the Alaska Local Boundary Commission on the Petition of the City of Dillingham for the Annexation of Approximately 421.25 square miles of Territory (September 1987) at p. 5.

Ekuk urges the LBC to deny the petition in its entirety, but if it decides to grant the petition for annexation of the Nushagak Bay Commercial Salmon District and the Wood River Sockeye Salmon Special Harvest Area, the LBC is requested to permit further briefing and comment on the question of the appropriate approval method.

D. DESIGNATION OF REPRESENTATIVE.

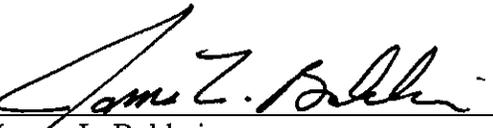
The Native Village of Ekuk designates the following person as its representative for purposes of this responsive brief and any proceedings regarding the Dillingham Annexation Petition:

James L. Baldwin
Attorney at Law
227 Harris Street
Juneau, Alaska 99801-1212
e-mail: redalderlaw@ak.net
Tel: 907-586-9988
Fax: 907-586-9988

The village requests that courtesy copies of all correspondence be also provided to the following person:

Robert Heyano
President
Native Village of Ekuk
PO Box 530
Dillingham, Alaska 99576

Dated this 1st day of October, 2010.

By: 
James L. Baldwin
Counsel for Native Village of Ekuk

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AFFIDAVIT OF ROBERT HEYANO PRESIDENT

NATIVE VILLAGE OF EKUK

STATE OF ALASKA)

)ss.

THIRD JUDICIAL DISTRICT)

I Robert Heyano, upon oath, depose and state that:

1. I am the president of the village council of the Native Village of Ekuk, a federally recognized tribe.

2. Ekuk is located on the east coast of Nushagak Bay, 17 miles south of Dillingham. It is spread out for about 2 miles along a narrow gravel spit that extends from the Ekuk Bluffs in the shape of a hook. The community lies at approximately 58.814986° North Latitude and -158.557684° West Longitude. (Sec. 12, T016S, R056W, Seward Meridian.)

3. The word Ekuk means "the last village down," reflecting that Ekuk is the farthest village south on the Nushagak Bay. The village is mentioned in Russian accounts of 1824 and 1828 as Village Ekouk and Seleniye Ikuk. It is thought that Ekuk was a major Eskimo village at one time. Russians employed Natives as guides for their boats as

they navigated up Nushagak Bay to the trading post at Aleksandrovsk after 1818. Before the North Alaska Salmon Company opened a cannery at Ekuk in 1903, many residents had moved to the Moravian Mission at Carmel. In addition, numerous canneries sprang up during 1888 and 1889 on the east and west sides of the bay, which drew many residents away from the village. Ekuk had a school from 1958 to 1974. Today, the cannery watchman's family are the only year-round residents. In the summer, the village comes alive with cannery crews, commercial fishing, and subsistence activities.

4. Historically a Yup'ik Eskimo village, Ekuk is now used only as a summer commercial and subsistence-use fishing site with an operational salmon processing plant. Many families have set net sites in Ekuk.

5. During the summer months the tribal government in partnership with Bristol Bay Area Health Corporation and Ekuk Fisheries maintains a health aide and clinic in the village area.

6. Air transport is the most frequent means of getting to Ekuk. Ekuk Village Council owns and maintains a 1,200' long by 40' wide dirt/gravel airstrip. Scheduled and charter flights are available from Dillingham during the summer months. A private dock is in use in connection with the processing plant. The cannery has two docks. Clark's Point, two miles north, can be reached by snowmachine during winter and all terrain vehicle in the summer.

7. The Wards Cove Packing Company closed in 2002. During its peak, it employed 200 workers each summer, providing a market for about 80 commercial fishing boats and over 160 beach set net sites. The cannery reopened in 2004 Under the

management of Ekuk Fisheries. The cannery is now the principal facility for processing salmon caught from set net sites on Ekuk Beach of Nushagak Bay.

8. Ekuk cooperates with the Clarks' Point Village council in an effort to resolve a landfill problem shared by these two communities. Ekuk is without a landfill to handle the trash produced from the various fishing operations and habitations in the vicinity of the village. Clark's Point has a landfill but has been notified that the landfill used by the residents of the City of Clark's Point must be relocated further from the state funded airport for safety reasons. Ekuk presently covers the cost of the operation of a waste disposal burn box that handles only a part of the trash accumulated in the village area. Ekuk and Clark's Point are actively planning for a new landfill to be operated by the city. As a part of this plan Ekuk and Clark's Point would jointly work for funding and construction of a road between Ekuk and Clark's Point which would provide access to the landfill and provide an all weather road connection between the two communities. A route alternatives map is attached to this affidavit which shows the intended road and landfill facility.

9. The road would also allow Ekuk and Clark's Point the option of sharing costs for services for police protection and public health aide services. Health aides are now located in both places during the summer months. This would permit these two communities to avoid duplication of services.

10. Ekuk maintains the only source of potable water outside of the cannery available to the set netters in the area of the village. Ekuk owns and, beginning with the

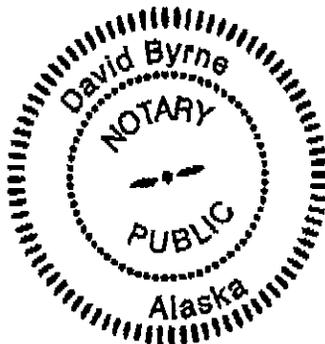
2011 season, will operate an ice machine that will sell ice to set netters involved in the Nushagak fishery.

11. During the fishing season approximately 200 persons are present in the vicinity of the village and are involved in set netting and subsistence activities. These persons reside in various places, including Dillingham, Aleknegik, outside the state of Alaska and other places within the state. A part of the set netters operating within the village are members of Ekuk village.

Dated at Dillingham, Alaska this 29 day of September, 2010.

Robert Heyano
Robert Heyano

SUBSCRIBED AND SWORN TO before me this 29 day of September, 2010.



David Byrne
Notary Public in and for the State of Alaska
My commission expires: 7-26-2014

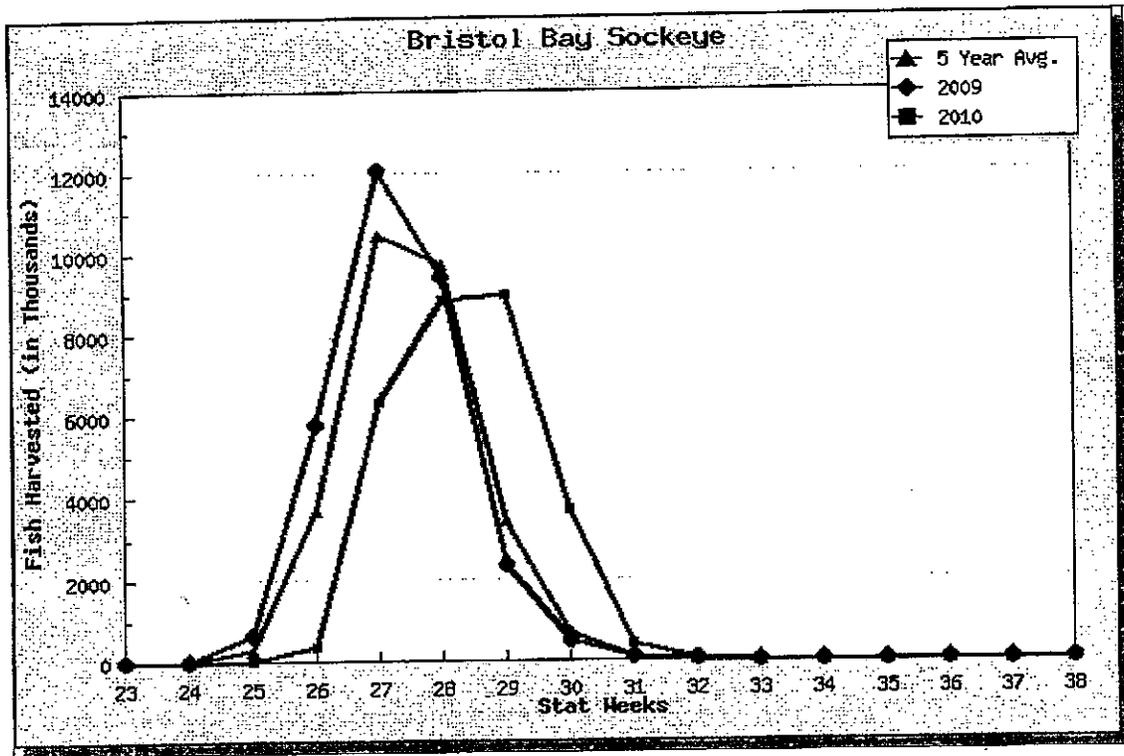


Commercial Fisheries

www.cf.adfg.state.ak.us

2010 Bristol Bay Inseason Sockeye Salmon Harvest Timing

(As Compared to 2009 and 5-year Average)



Total weekly catch is plotted on the last day of the statistical week.

- [2010 Preliminary Alaska Salmon Catches - Blue Sheet](#)
- [2010 Inseason Alaska Salmon Summary](#)
- [Related Statewide Salmon Catch Stats/Fishery Updates](#)

Inseason Harvest Timings for Other Fisheries or Areas of the State:

- [AK Peninsula Sockeye Salmon](#) | [Bristol Bay Sockeye Salmon](#) | [Chignik Sockeye Salmon](#) | [Cook Inlet Sockeye Salmon](#)
- [Copper River Sockeye Salmon](#) | [Kodiak Sockeye Salmon](#) | [Kodiak Pink Salmon](#) | [Kuskokwim Chinook Salmon](#)
- [Nushagak Chinook Salmon](#) | [PWS Pink Salmon](#) | [SE Pink Salmon](#) | [Statewide Sockeye Salmon](#)
- [Statewide All Salmon Species](#) | [Yukon River Chinook Salmon](#)

[CF Home](#) | [Salmon Forecast](#) | [Top of Document](#)
Regional Salmon Homes: [Southeast](#) | [Central](#) | [AYK](#) | [Westward](#)

Contact: dfg.dcf.info@alaska.gov

The Importance of the Bristol Bay Salmon Fisheries to the Region and its Residents

Prepared for the

Bristol Bay Economic Development Corporation

October 2009

Prepared by



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Executive Summary

This executive summary is organized by subject matter as follows:

- Key Findings
- Population and School Enrollment
- Cost of Living in Bristol Bay
- Capitalization of Drift Gillnet Vessels
- The Drift Gillnet Fishery
- The Set Gillnet Fishery
- Other Fishery Revenue and Employment
- Estimated Operating Costs in the Set and Drift Gillnet Fisheries
- Multiplier Effects of the Bristol Bay Salmon Fisheries
- Per Capita Revenue

Key Findings

Population in the Bristol Bay Region has, in general, remained relatively flat since 1984. Population in the Dillingham Census Area has increased slightly, while populations in the Bristol Bay Borough and Lake and Peninsula Borough have declined slightly. Forecasts of population for the region indicate that little overall change is expected. There has been some migration from smaller communities to larger communities, but this pattern has been less prevalent in Bristol Bay than in other Alaska regions.

School enrollments have generally followed population trends.

The cost of living in Bristol Bay is significantly higher than in Anchorage. Food costs in Dillingham are currently twice that of Anchorage, and are even higher in King Salmon, while fuel prices in the region approach or exceed 2 times Anchorage prices.

Drift gillnet vessels owned by local residents are on average older, have lower horsepower, are smaller in terms of gross tons, have less fuel capacity, and on average have less capacity for chilling fish, than vessels owned by permit holders living outside the Watershed.

Local permit holders in the drift gillnet fishery continue to decline and currently number fewer than 400. Gross revenue of local permit holders is about 15 percent of total gross revenue, and revenues per permit are now less than 70 percent of the fishery wide average.

Local permit holders in the set gillnet fishery have stabilized at about 375 after a long period of decline. Local permit holders generate about one-third of the fishery wide gross revenue, and generally earn an amount equal to the fishery-wide average.

Other income for local Bristol Bay permit holders is quite limited relative to other income for residents outside the watershed. In 2006, a total of 97 drift gillnet permit holders from the region were found to have other employment, while 94 local gillnet set permit holders had other jobs.

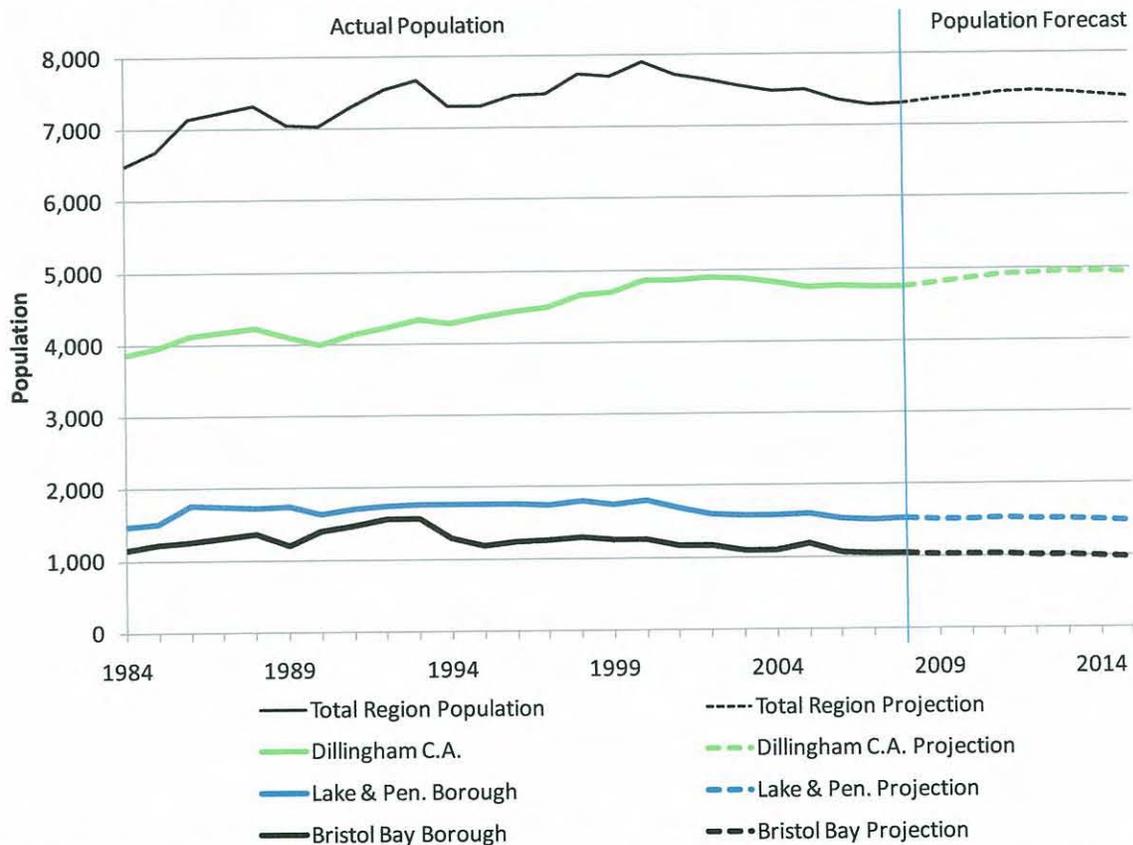
The multiplier effects of the Bristol Bay salmon fishery are significant. We estimate that salmon harvesting generates an additional \$5 million in economic activity and 200 additional jobs.

Per capita revenue from the Bristol Bay drift and set gillnet fisheries of permit holders residing in the Watershed after adjusting for inflation has fallen an average of \$516 per year since 1984. In the 1980's per capita revenue was over \$10,000, but since 2003 has fallen to an average of just \$2,700.

Population and School Enrollment

The total population in the Bristol Bay rose from 1984 through the turn of the century before slipping into a decade-long decline in population. The current population of the region is roughly the same as it was fifteen years ago. Each of the three Borough/Census Areas included in this analysis—the Dillingham Census Area (DCA), the Lake and Peninsula Borough (LPB), and the Bristol Bay Borough (BBB)—is experiencing unique trends within the overall changes experienced by the region as a whole. Compared to the LPB and the BBB, the DCA has held on to much of the population increase that the area saw between 1984 and the early 2000s. Population in the DCA has been roughly flat over the last five years while both the BBB and the LPB are exhibiting long-term declines in population that began roughly ten years ago.

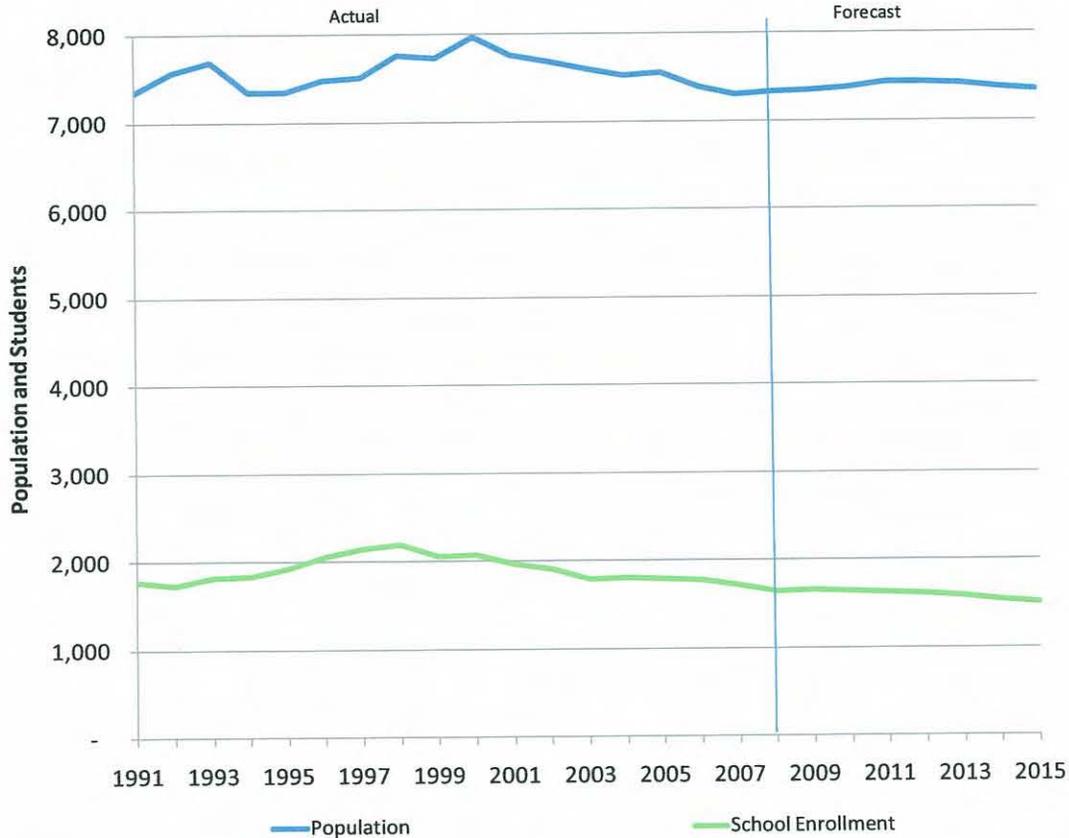
Figure ES-1. Population of the Bristol Bay Region 1984 – 2008 and Projections to 2014



Source: Figure developed by Northern Economics based on data from AK Dept of Labor and Workforce Development (ADOLWD, 1990 - 2008) and Dr. Scott Goldsmith of ISER (Goldsmith, 2009).

Overall changes in school enrollments have generally followed population trends with the exception that changes in overall school enrollment have been greater than changes in overall populations. For example, total school enrollment is down 20 percent from its peak while population is down roughly 10 percent from the peak. These data and trends indicate that the region is more likely to be losing young families with children that it is losing single-member households or older resident households.

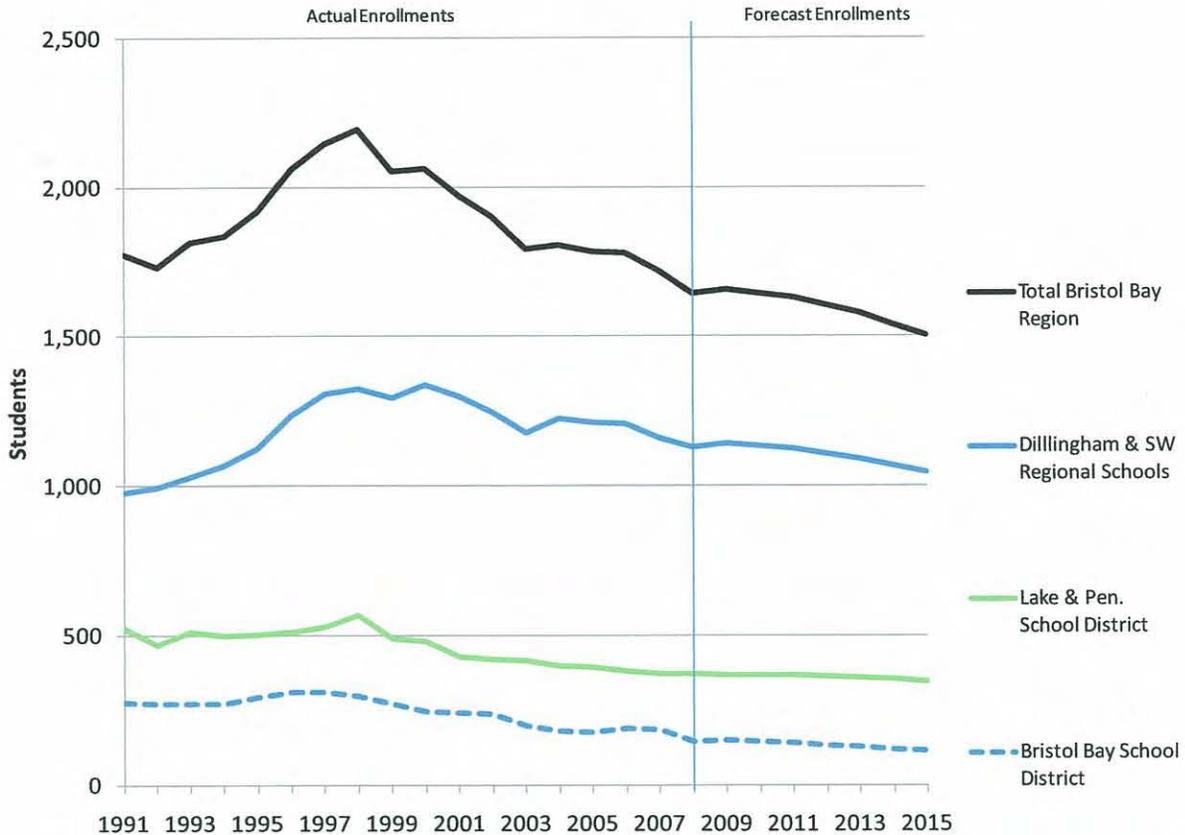
Figure ES-2. Actual and Forecast Population & School Enrollments in the Bristol Bay Region, 1991 - 2015



Source: Figure developed by Northern Economics based on data from AK Dept of Labor and Workforce Development (ADOLWD, 1990 - 2008), AK Dept. of Education and Early Development (ADEED, 1991 - 2008), and Dr. Scott Goldsmith of ISER (Goldsmith, 2009).

The enrollment trends in the individual school districts within the region follow the patterns established by the individual population trends for the DCA, BBB, and LPB. While overall enrollment is down, the Dillingham and SW Regional School system has been relatively stable in comparison to the Lake and Peninsula School District and the Bristol Bay School District. Schools in the DCA, while down from their peak, have been relatively stable over the past five years, while the other two districts continue to exhibit a long-term decline in enrollment that began a more than a decade ago. The study notes that declines in school enrollment tend to precede declines in population by a year or two.

Figure ES-3. School Enrollments & Forecasts for the Bristol Bay Region by Borough & Census Area, 1991 – 2015



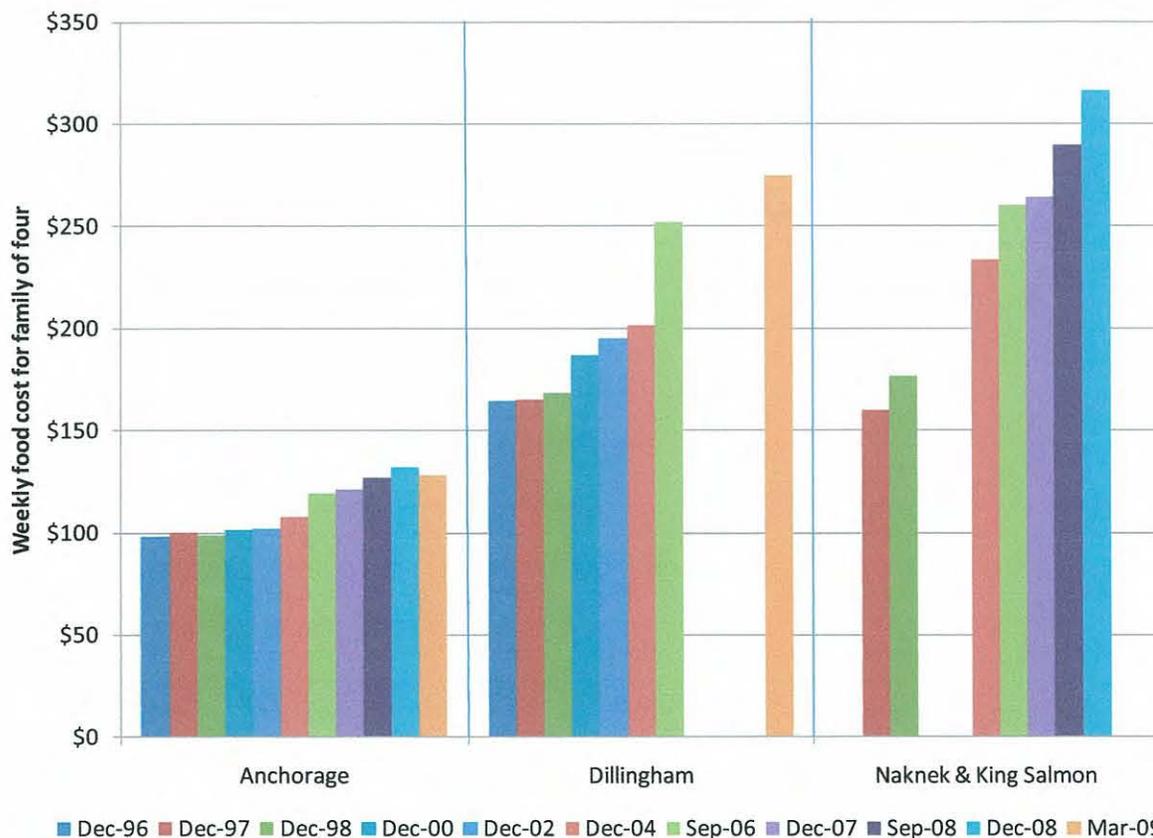
Source: Figure developed by Northern Economics based on data from AK Dept of Labor and Workforce Development (ADOLWD, 1990 - 2008), AK Dept. of Education and Early Development (ADEED, 1991 - 2008), and Dr. Scott Goldsmith of ISER (Goldsmith, 2009).

Cost of Living in Bristol Bay

The study used data from the University of Alaska-Fairbank’s Alaska Food Cost Survey to compare the long-term cost of food between Anchorage, Dillingham, and Naknek/King Salmon. While the study does not have continuous time-series for the Bristol Bay communities, the data make it clear that food costs have risen more quickly in Dillingham and Naknek/King Salmon than in Anchorage. A study conducted by 2008 by BBEDC (BBEDC, 2008) indicates that the costs of living in the coastal communities of the Bay outside of Dillingham are roughly seven percent higher than Dillingham, and it is reported that costs are even higher in inland communities such as New Stuyahok and Nondalton. Another recent study from the McDowell Group for the Alaska Department of Administration (McDowell Group, 2009) shows that the cost of living differential between Anchorage and Dillingham has increased since 1985.

Food costs in Dillingham are currently twice that of Anchorage, and are even higher in King Salmon. This additional increase is likely related to the increasing cost of shipping food to the region caused by rising fuel prices. At the same time, the data also make it clear that food costs are rising faster in Naknek/King Salmon than they are in Dillingham. In 1996, the cost of food in Dillingham and Naknek/King Salmon was roughly equal. Since that time the cost of food in Dillingham has risen nearly 70 percent while the cost in Naknek/King Salmon has increased by nearly 100 percent.

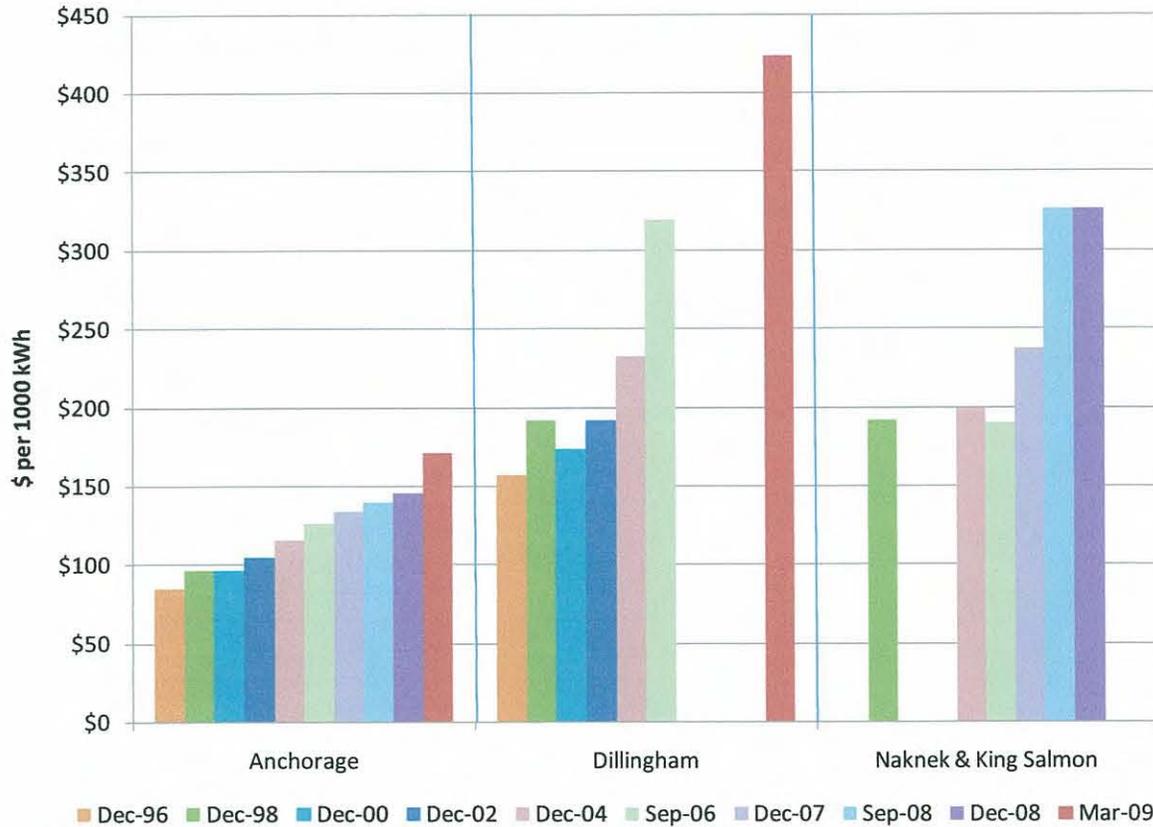
Figure ES-4. Comparison of Family Food Costs in Anchorage Dillingham and Naknek/King Salmon, 1996 - 2009



Source: Figure developed by Northern Economics based on data from UAF Cooperative Extension Service Alaska Food Cost Survey (UAF Cooperative Extension Service, 1996 - 2009).

As with food, the cost of electricity increased much more rapidly in Dillingham and Naknek/King Salmon than it has in Anchorage. Anchorage's utilities are powered by comparatively local natural gas supplies and hydroelectric facilities. Electricity costs in Dillingham are nearly 3 times the cost in Anchorage, while costs of electricity in King Salmon approach 2 times Anchorage costs. The primary reasons for the increasing cost of electricity in the region are the increasing cost of diesel and fuel oil and the increasing cost of shipping diesel and fuel oil. Unfortunately, a change in the commodity price for fuel hits the region twice; once through the price of the commodity itself and once through energy intensive process of transportation.

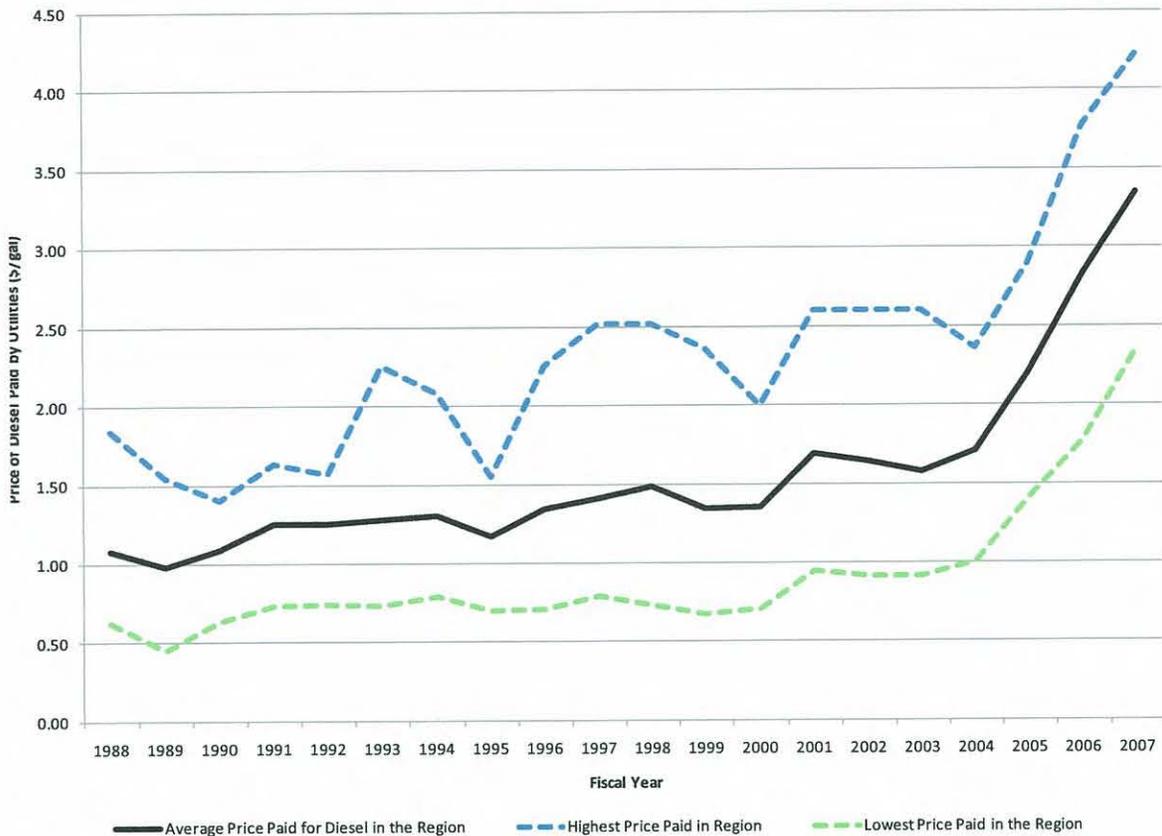
Figure ES-5. Comparison of Electricity Costs in Anchorage Dillingham and Naknek/King Salmon, 1996 - 2009



Source: Figure developed by Northern Economics based on data from UAF Cooperative Extension Service Alaska Food Cost Survey (UAF Cooperative Extension Service, 1996 - 2009).

The price paid for diesel by the region’s highest cost utilities is up to three times the price paid by the regions lowest cost utilities. In addition, the highest cost utilities experience greater swings in their overall fuel costs. This effect is likely a result of the magnifying effect of having to transport small amounts of fuel to a remote region. As noted above, in these cases the change in price is magnified as the retail price needs to reflect the change in the price of the commodity as well as the change in the price of transporting the fuel.

Figure ES-6. Highest and Lowest Prices Paid by Utilities for Diesel 1988 - 2007



Source: Figure developed by Northern Economics based on data from Statistical Reports of the Power Cost Equalization Program (AEA, 1988 - 2009).

Comparisons of Vessel Characteristics

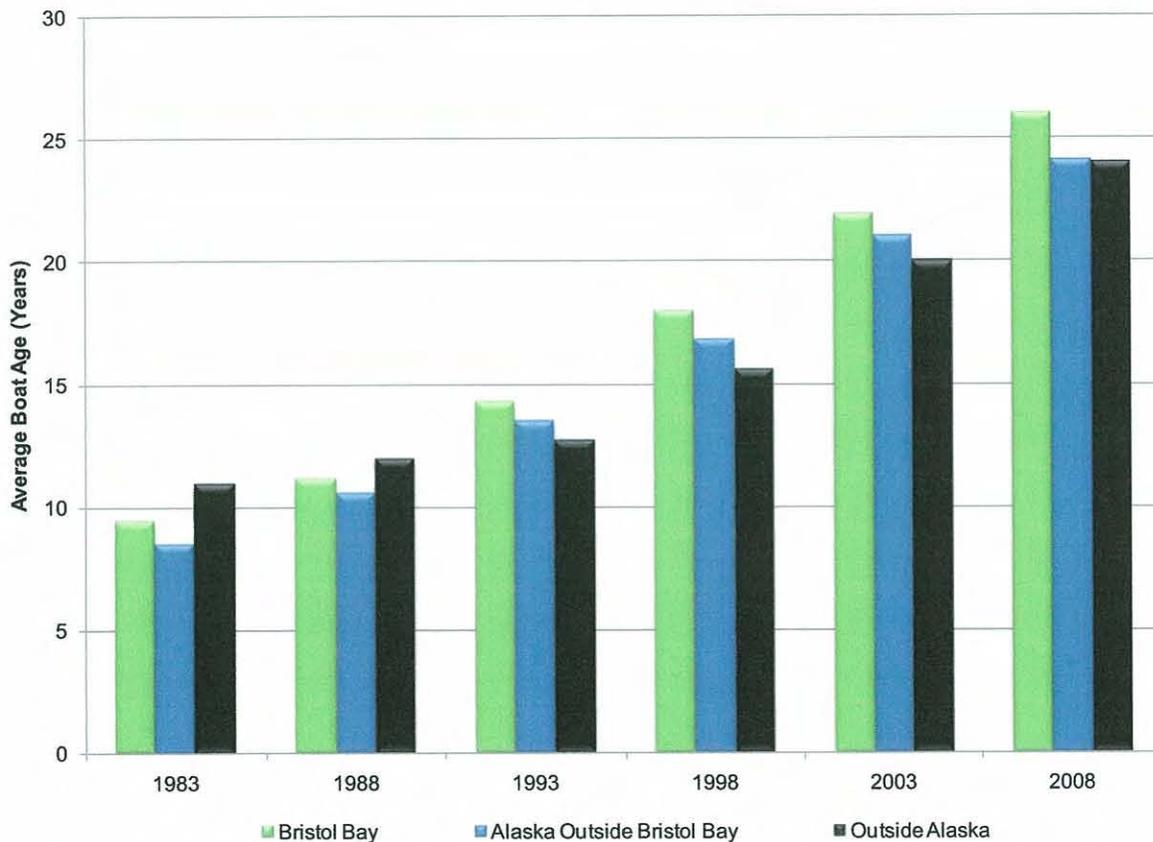
In this section we compare the characteristics of drift gillnet vessel across regions of residence:

- 1) Permit holders from **Bristol Bay**
- 2) **Other Alaska** permit holders
- 3) Permits holders from **Outside Alaska**

In general, vessels owned by Watershed permit holders are older, have lower horsepower, are smaller in terms of gross tons, have less fuel capacity and on average have less capacity for chilling fish.

In 1983 the average Bristol Bay resident vessel was 1.5 years (16.1 percent) younger than the average vessel from outside of Alaska. By 1998, the average Bristol Bay resident vessel was 2.4 years (13 percent) older as a greater proportion of non-Bristol Bay residents acquired newer boats. Since 2003, that average age difference has stayed approximately 2 years apart.

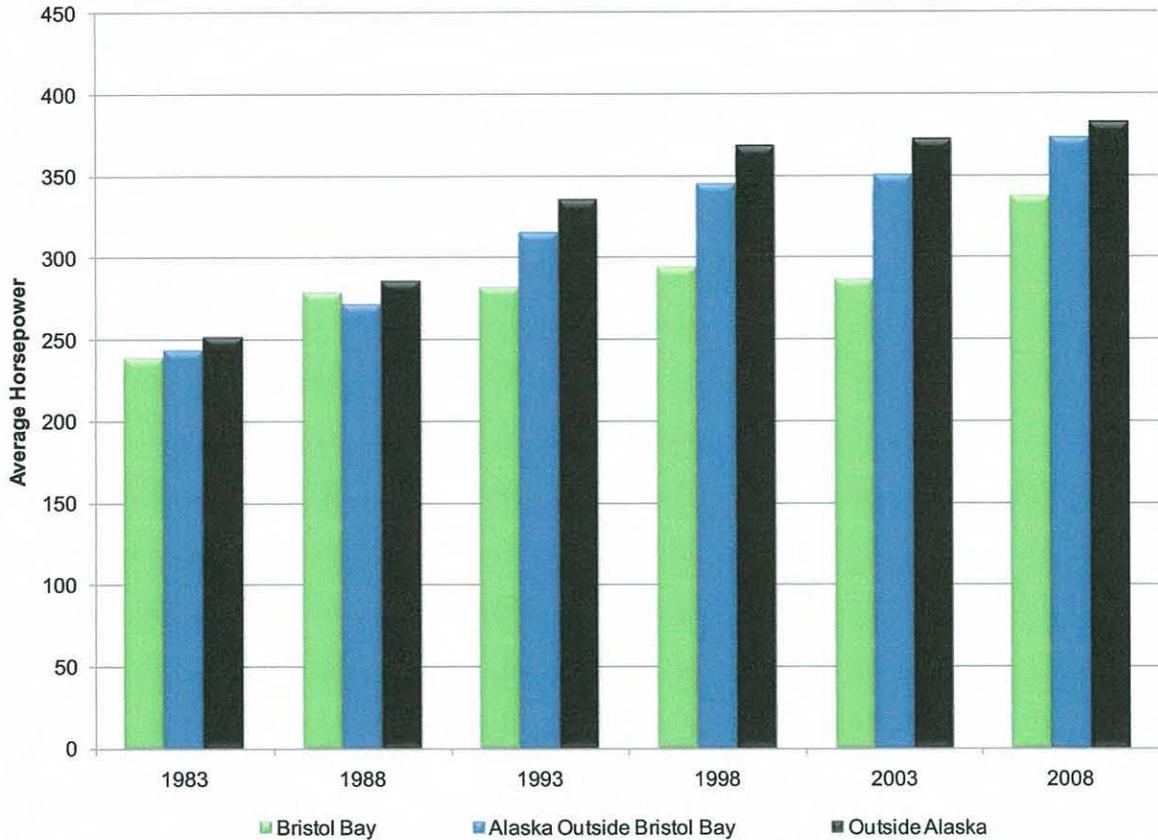
Figure ES-7. Average Age of Vessel by Residence, 1983 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1983 - 2008).

Non-Bristol Bay resident vessels added horsepower in the late 1980s and early 1990s. In 1983, Bristol Bay resident vessels were slightly underpowered (roughly 13 HP or 5 percent) compared to their non-resident counterparts, but by 2003 this number had grown to an average of just over 85 HP or 22.9 percent. In 2008, the average difference had shrunk to 11.8 percent as non-resident boat horsepower stabilized between 370 to 380 HP and resident vessels increased their average HP to over 330 HP.

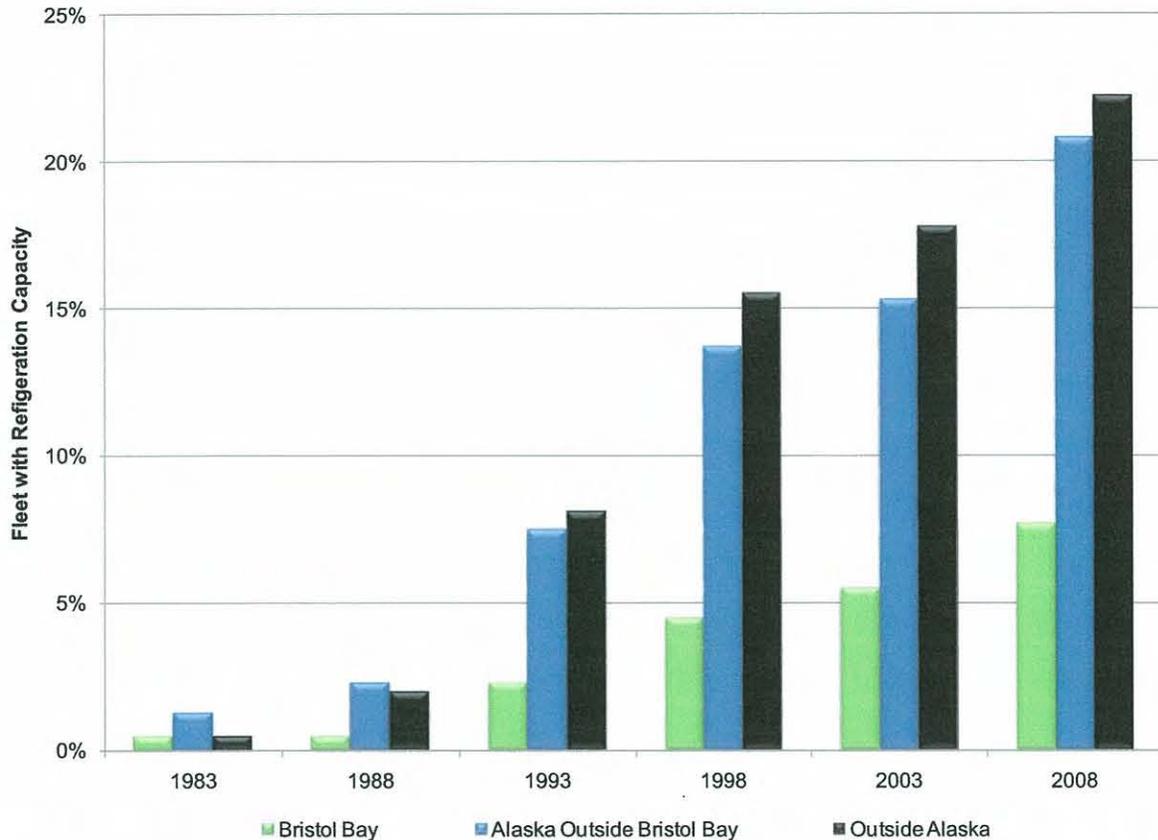
Figure ES-8. Average Horsepower of Vessels by Residence, 1983 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1983 - 2008).

The area in which Bristol Bay resident vessels lost the most ground is refrigeration capacity. In 1983, the same percentage of resident vessels and vessels from outside of Alaska were equipped with refrigeration capacity—0.5 percent. Non-resident vessels have added refrigeration capacity steadily, and by 2008 22 percent of the vessels from outside of Alaska had some form of refrigeration capabilities. Less than eight percent of Bristol Bay resident vessels could say the same in 2008. In an era in which the quality of delivered fish is becoming more and more important, the differences in refrigeration capacity may lead to further differences in ex-vessel prices received by residents of the watershed.

Figure ES-9. Percent of Vessels with Refrigeration Capacity, 1983 - 2008



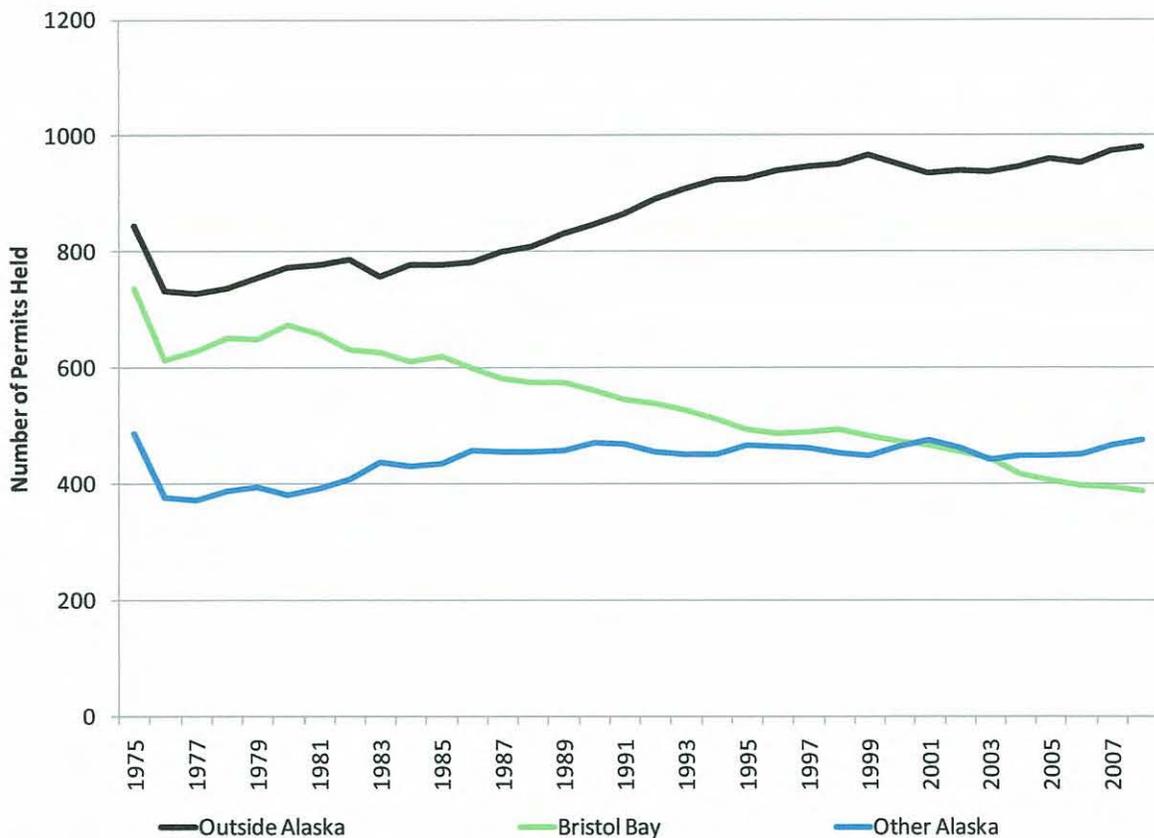
Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1983 - 2008).

The Drift Gillnet Fishery

In this section, we examine the drift gillnet fishery. Our discussion is centered on the same three regions of residence: (Bristol Bay, Other Alaska, and Outside Alaska).

The out-migration of drift gillnet permits is a long-term issue for the region. The study analyzed Commercial Fisheries Entry Commission (CFEC) data to determine the residency of drift gill net permit holders. The data reveal that the out-migration of permits from the Bristol Bay region has not slowed in recent years and has continued at a relatively constant rate over the past 30 years. The majority of these permits are eventually held by individuals who live outside of Alaska; the number of “other Alaska” permits has stayed relatively constant over the last decade. It is not clear whether these data represent an out-migration of individuals, an out-migration of permits, or both.

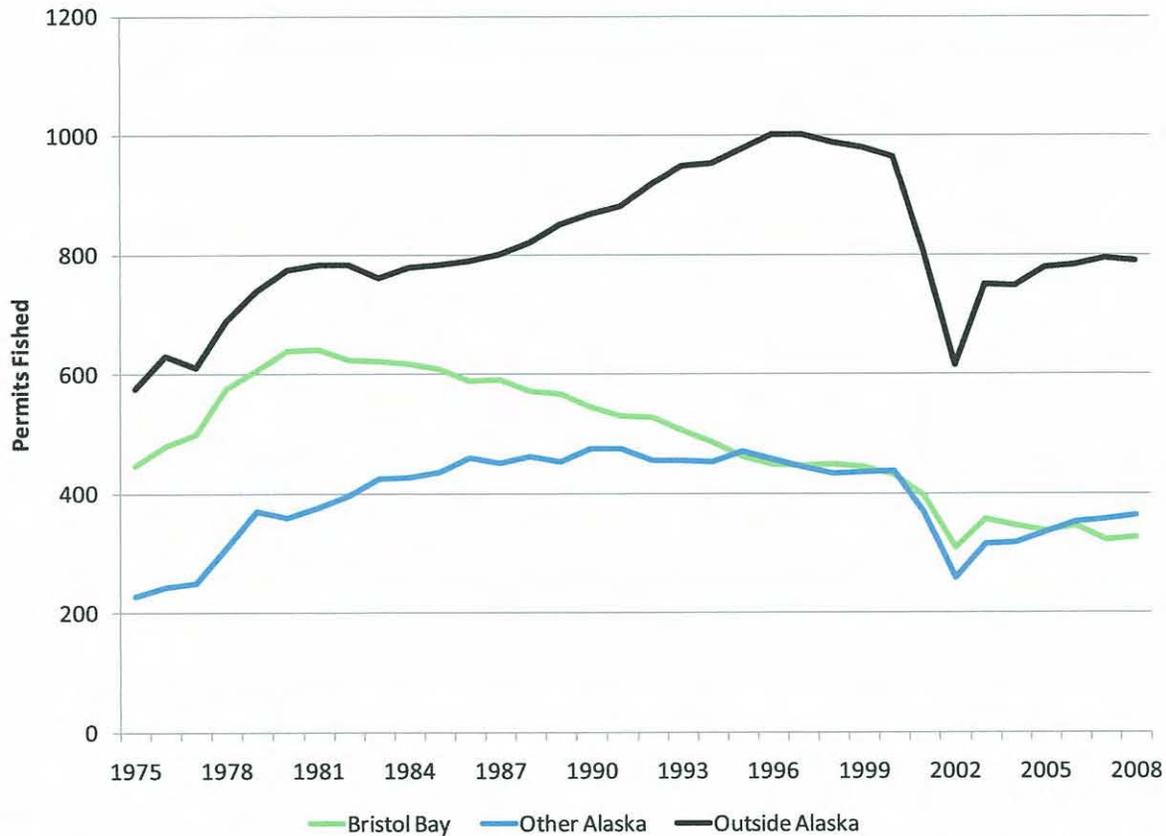
Figure ES-10. Number of Drift Gillnet Permits Held By Residence, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

The regional patterns of the actual fishing of drift gillnet permits is roughly equivalent to ownership patterns with the exception that in times of low prices, the participation rate tends to fall more amongst permit holders who live in the Other Alaska and Outside Alaska regions. This participation rate differential represents the higher cost for permits holders from outside the region to travel to the region. In addition, the differential likely represents the higher opportunity cost of fishing as “Outside” permit holders are likely to have other options to earn money.

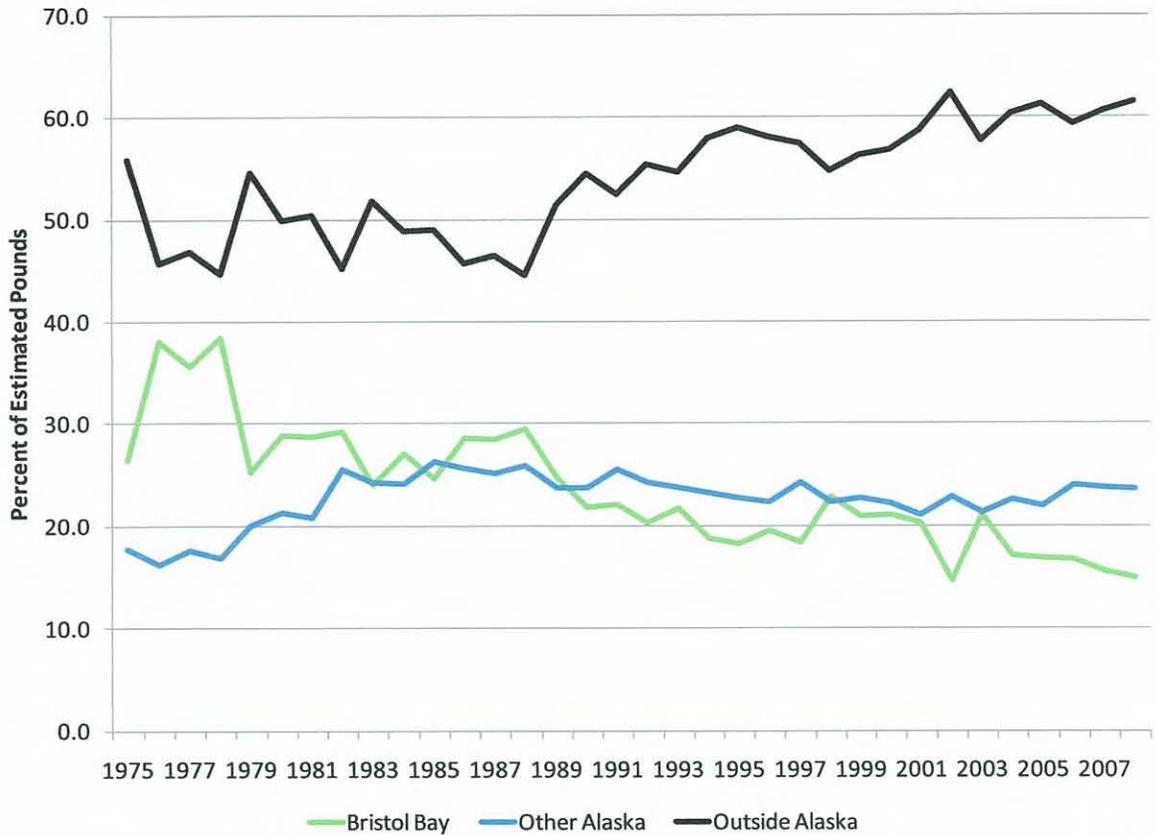
Figure ES-11. Number of Drift Gillnet Permits Fished By Residence, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

Not surprisingly, the portion of pounds harvested by region generally follows the portion of permits held by a given region with adjustments for participation rate and overall fishing efficiency. While “Outside” permit holders are less likely to participate in lower price years, they are most successful on average harvesting a higher number of pounds per permit.

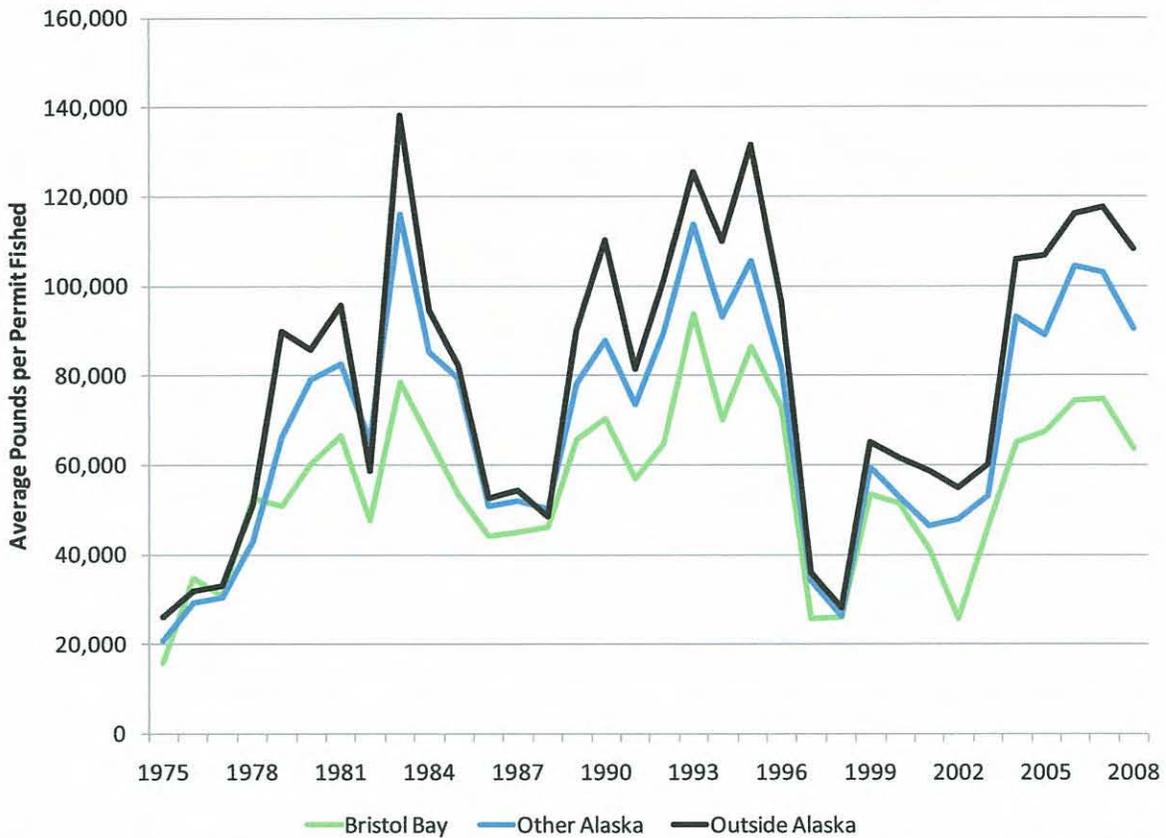
Figure ES-12. Percent of Total Pounds Harvested in the Drift Gillnet Fishery by Residence, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

As noted above, drift gillnet permit holders from the Bristol Bay Region traditionally harvest fewer pounds per permit than permit holders in other regions. In years of low abundance, this differential nearly disappears, but in years of higher abundance (i.e., higher average catches overall) the average permit holder from Outside Alaska can harvest up to 55 percent more fish than the average permit holder from the Bristol Bay region. This differential has increased in recent years; possibly because outside permit holders are investing more in their vessels.

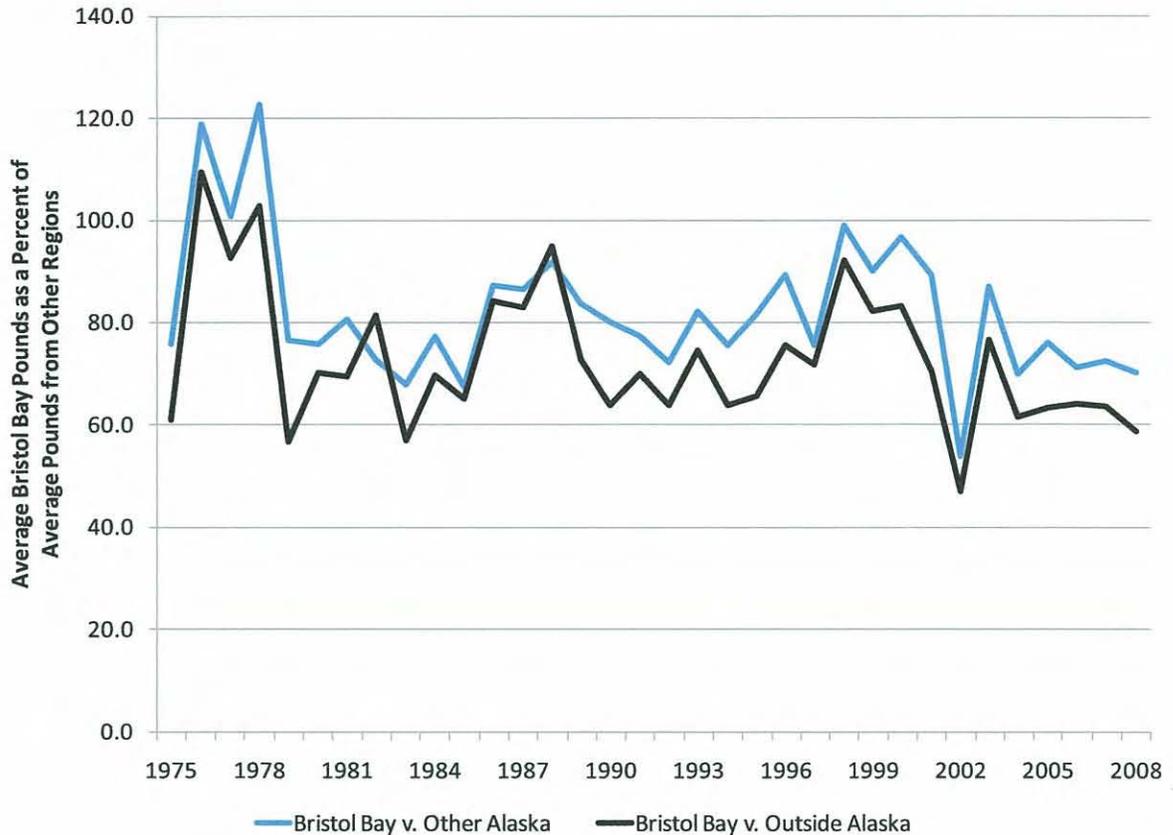
Figure ES-13. Average Pounds per Permit Fished in the Drift Gillnet Fishery by Residence, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

The figure below shows the average Bristol Bay drift gillnet permit holder harvest as a percentage of the harvest of both the average “Other Alaska” and “Outside Alaska” drift gillnet permit holder. The data show how the differential shrinks in years of lower abundance (e.g., 1998) and how the average Bristol Bay catch as a portion of other catches has shrunk in recent years. In recent years, the permit holders in the watershed have harvested only 60 to 70 percent of the average permit holder residing outside Alaska.

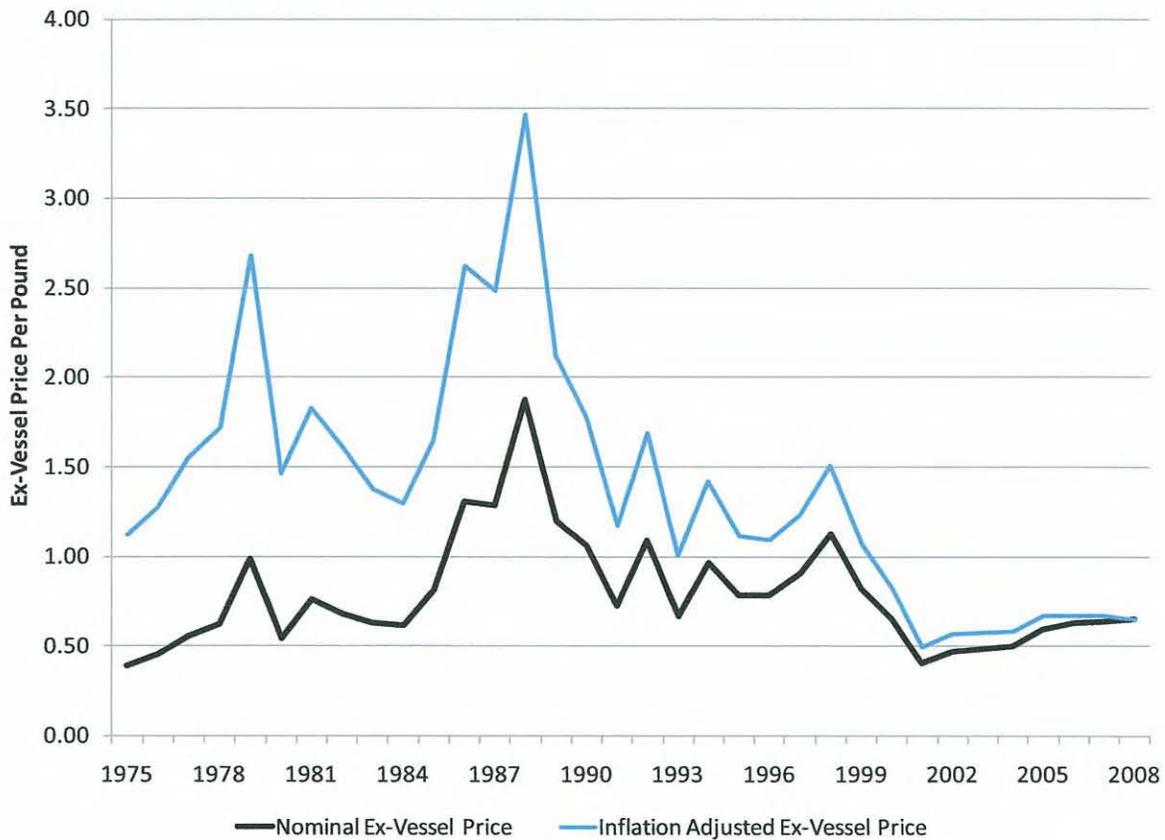
Figure ES-14. Average Lbs per Permit by Watershed Residents as a Percent of Average Lbs per Permit of Other Regions, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

This figure shows estimated ex-vessel revenue per pound of salmon landed in the Bristol Bay fishery. This is generally equivalent to the ex-vessel price of sockeye, but to the extent that other species are landed as part of the Bristol Bay fishery, they diverge from actual ex-vessel prices paid for sockeye. Both nominal and real prices are shown. (Real prices are adjusted for inflation based on 2008 dollars. Ex-vessel prices were at unprecedented levels from 1986 to 1988, and then fell precipitously from 1989 to 1991. The price declines in the late 80s and early 90s corresponded to increasing volumes of farmed fish in the global market coupled with high volumes of harvests in capture fisheries. Prices fell again beginning in 1999 to record lows in 2001. Since then, prices have been relatively stable, increasing slightly through 2008.

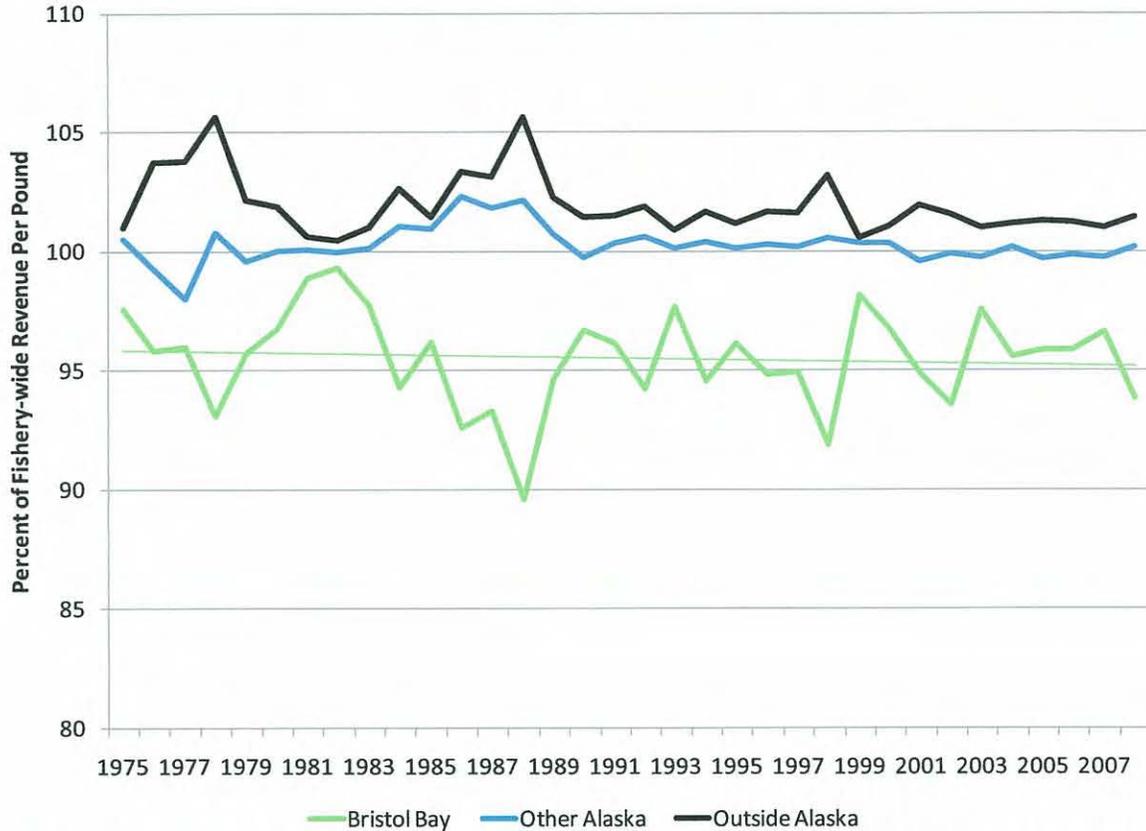
Figure ES-15. Imputed Nominal and Real (Adjusted for Inflation) Revenue per Pound Landed, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

This figure shows the average revenue per pound of salmon landed in the Bristol Bay drift gillnet fishery as a percent of the overall average revenue per pound. In general, residents of the watershed receive about 96 percent of the average revenue per pound. According to analysts at CFEC¹ (Iverson, 2009), the price differences shown here are due entirely to the fact that Bristol Bay residents are much more likely to fish the shoulder seasons, particularly later in the year, and thus are much more likely to deliver pinks, chums, and silvers as well as reds. Because permit holders from outside Alaska are much less likely to fish the shoulder seasons, a greater percentage of their landing are be sockeye and therefore the average revenue they receive per pound of salmon harvested is higher.

Figure ES-16. Revenue per Pound by Region as a Percent of Overall Revenue per Pound, 1975 – 2008

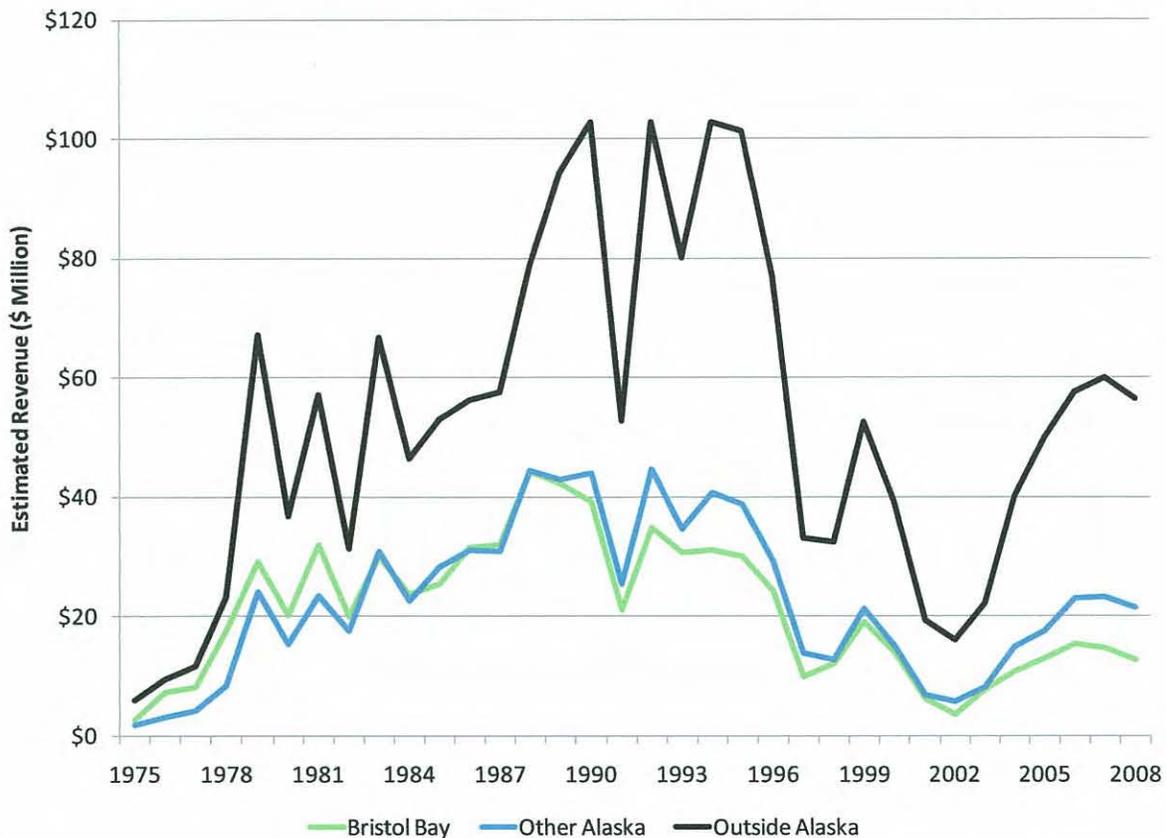


Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

¹ According to Kurt Iverson of the CFEC (Iverson, 2009), CFEC uses a single price for all deliveries of of each species of salmon (Sockeye, King, etc) over the entire fishery area (Area T) by gear (drift gillnet or set gillnet) and delivery code (whole, whole/bled, H&G, etc). Because of this, data from CFEC does not pick up any price difference that might be paid by different processors or for different levels of quality (e.g. chilled or unchilled). CFEC prices do include bonuses paid for production, roe or for chilled fish, but these amounts are averaged out over the entire fishery.

Permit holders from outside Alaska have generated the largest share of revenues since 1975. By 1983 Alaska residents from outside the watershed were generating more revenues than watershed residents, in spite of the fact that 621 watershed residents fished while only 424 permits were fished by other Alaska residents. Gross revenues were highest from 1987 to 1995 with the exception of a single bad year in 1991, when both harvested pounds and ex-vessel prices declined sharply. Revenues in the fishery bottomed out in 2002 and have been increasing since then. However, revenues of watershed residents have been increasing at a slower rate than revenues of other Alaska residents and residents for outside Alaska. The fact that revenues in the watershed are not increasing as fast as others is due primarily to that fact that permits held by watershed residents continue to decline, and participation levels of permit holders outside the watershed are increasing.

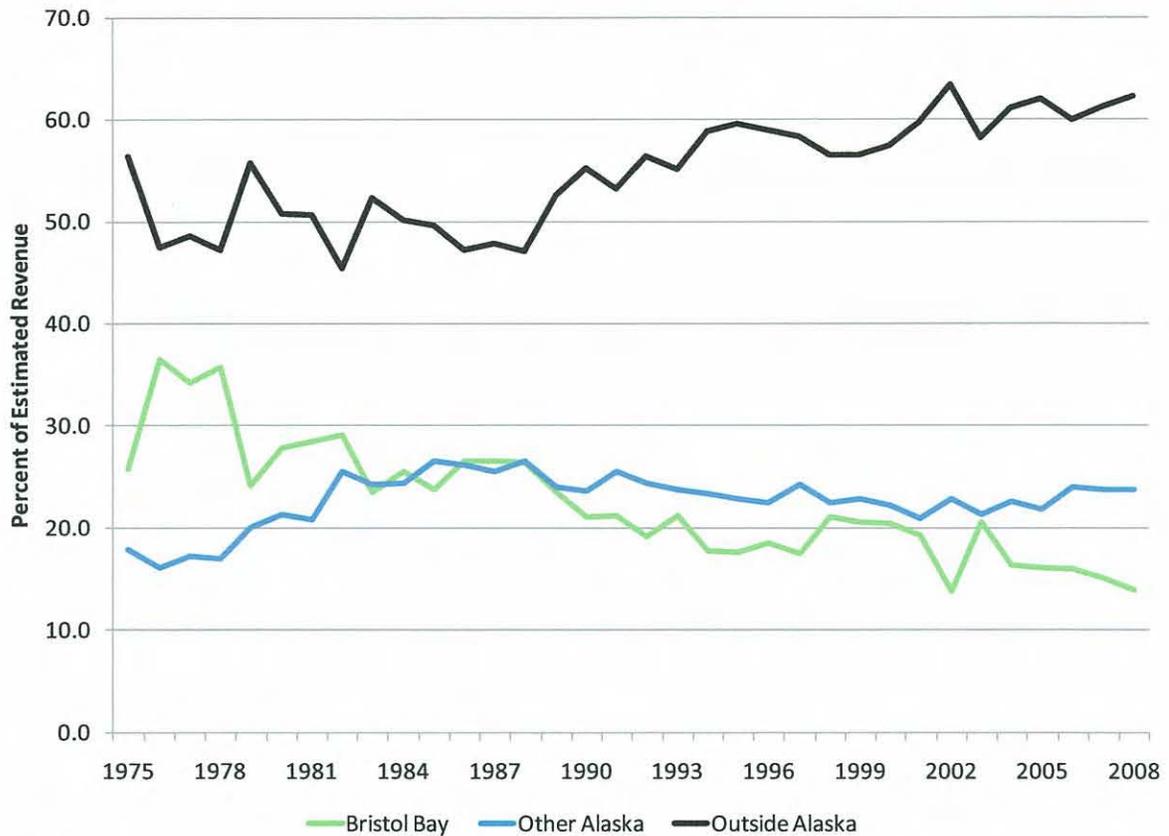
Figure ES-17. Ex-vessel Revenue in the Drift Gillnet Fishery by Region of Residence, 1975 – 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

This figure shows each residence group's revenue as a percent of total revenue in the drift gillnet fishery. The percentages closely track percentages of pounds landed by each residence group, except that the differences in average revenues per pound means that residents of Bristol Bays have received slightly lower revenues as a percent of total compared to their percentage of pounds, while residents from other areas have received slightly higher revenues as a percent total revenue, than their percentage of total pounds.

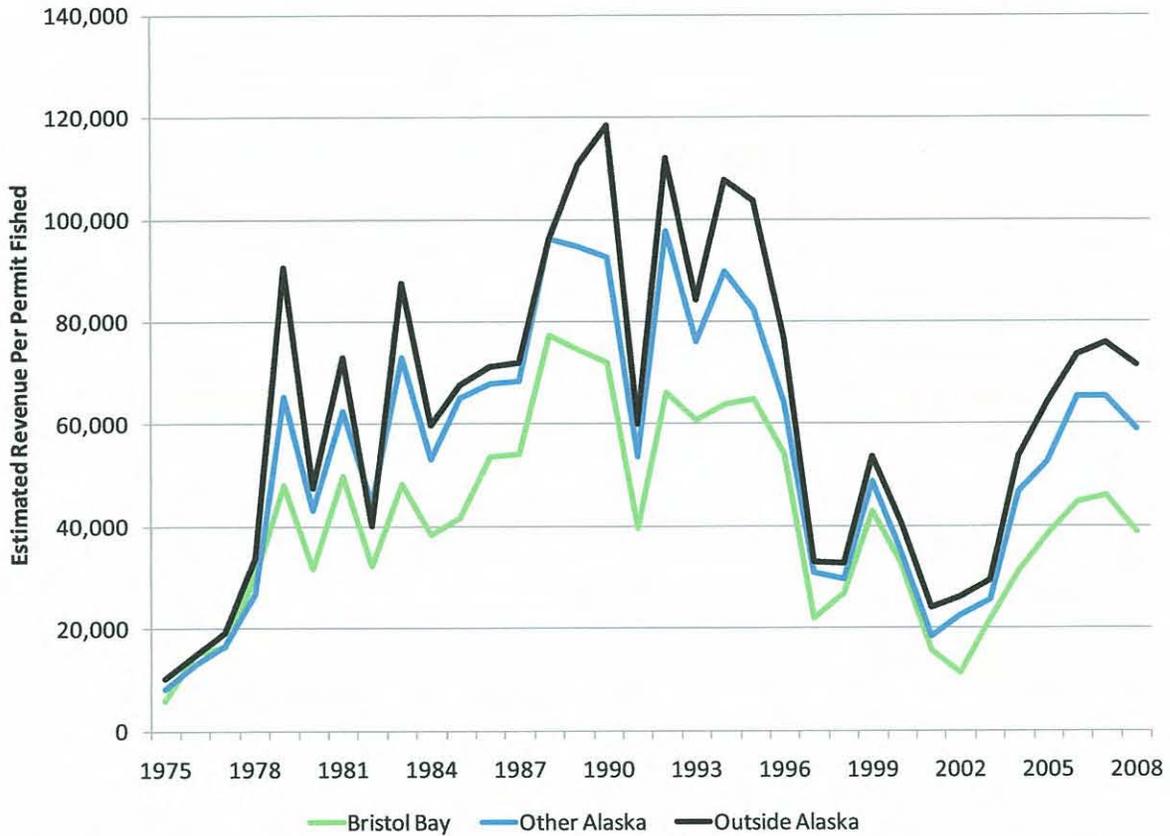
Figure ES-18. Percent of Total Revenue in the Drift Gillnet Fishery by Residence, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

As one would expect, the average revenue figures for permit holders by region mimics the average harvest trends in pounds per permit by region. From 2002 to 2008, the average permit holder from the watershed has generated only 58 percent of the revenue generated by the average permit holder from Outside Alaska and only 69 percent of the revenue generated by the average Alaska permit holders living outside the watershed. We do not have data that can fully explain these differences, but they are primarily due to lower overall catches per permit and not due to lower ex-vessel prices.

Figure ES-19. Average Revenue per Permit Fished in the Drift Gillnet Fishery by Residence, 1975 - 2008

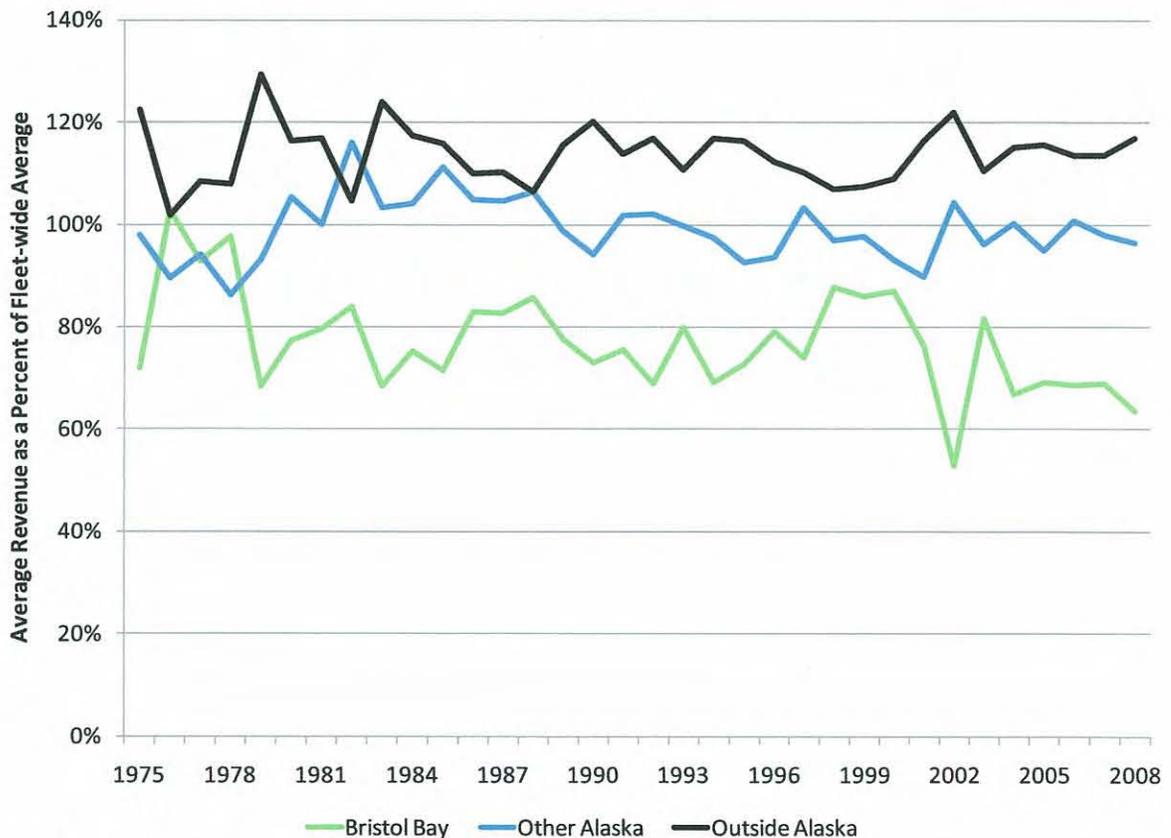


Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

The figure below displays the data discussed above in slightly different format.

- On average, a permit holder from outside of Alaska earns nearly 120 percent of the average revenue per permit for the fishery as a whole.
- On average, a permit holder from Alaska, but outside of the Bristol Bay region earns roughly the average revenue per permit for the fishery as a whole.
- On average, a permit holder from Bristol Bay region earns roughly 60 to 80 percent of the average revenue per permit for the fishery as a whole. From 2002 – 2008, the average permit holder from the watershed earned only 67 percent of the fishery-wide average.

Figure ES-20. Average Revenue by Residence as a Percent of Fishery-Wide Average Revenue, 1975 – 2008

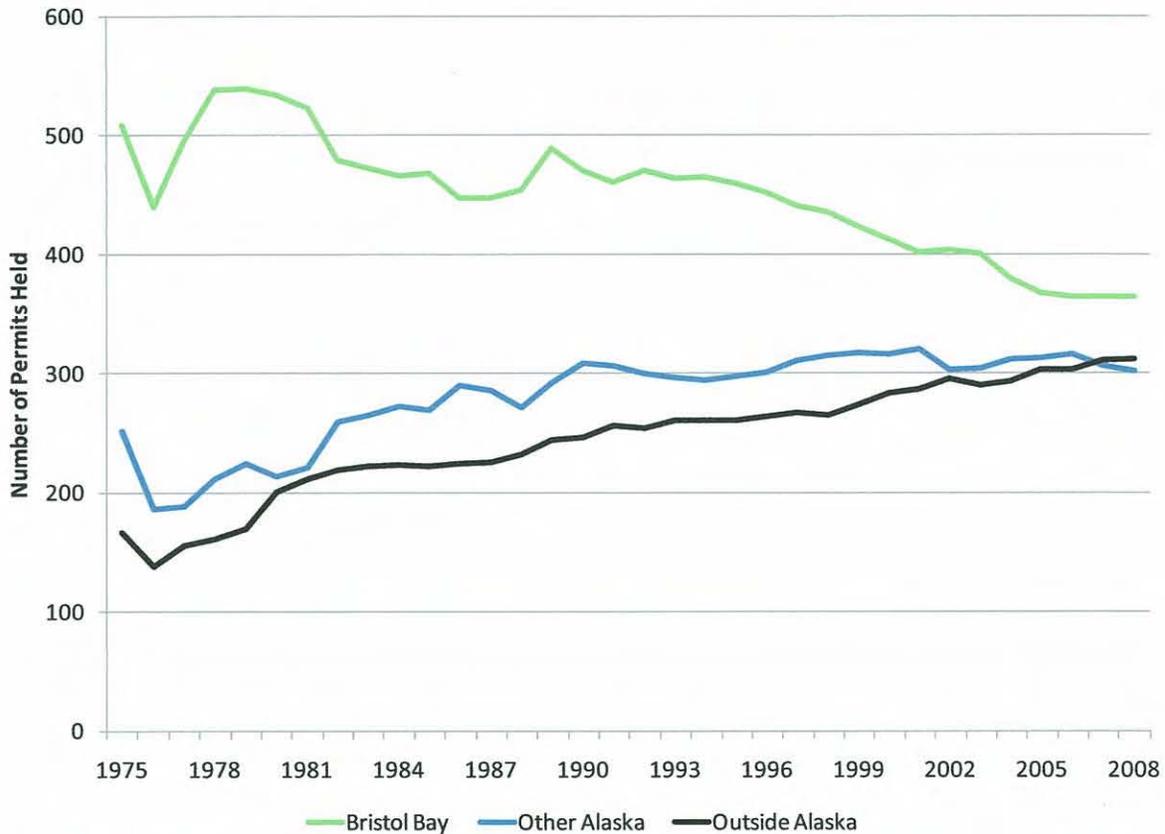


Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

The Set Gillnet Fishery

The out-migration of set gillnet permits from the Bristol Bay region is similar to the out-migration of drift gillnet permits with several important differences. First, the out-migration of set net permits was nearly zero in 2002 and 2003 then increased significantly during 2003 to 2004, and has been relatively flat from 2006 to 2008. Second, the destination of out-migrating permits has been roughly equally distributed between the “Other Alaska” and “Outside Alaska” groups. Third, Bristol Bay set net permit holders are still the largest of the three groups.

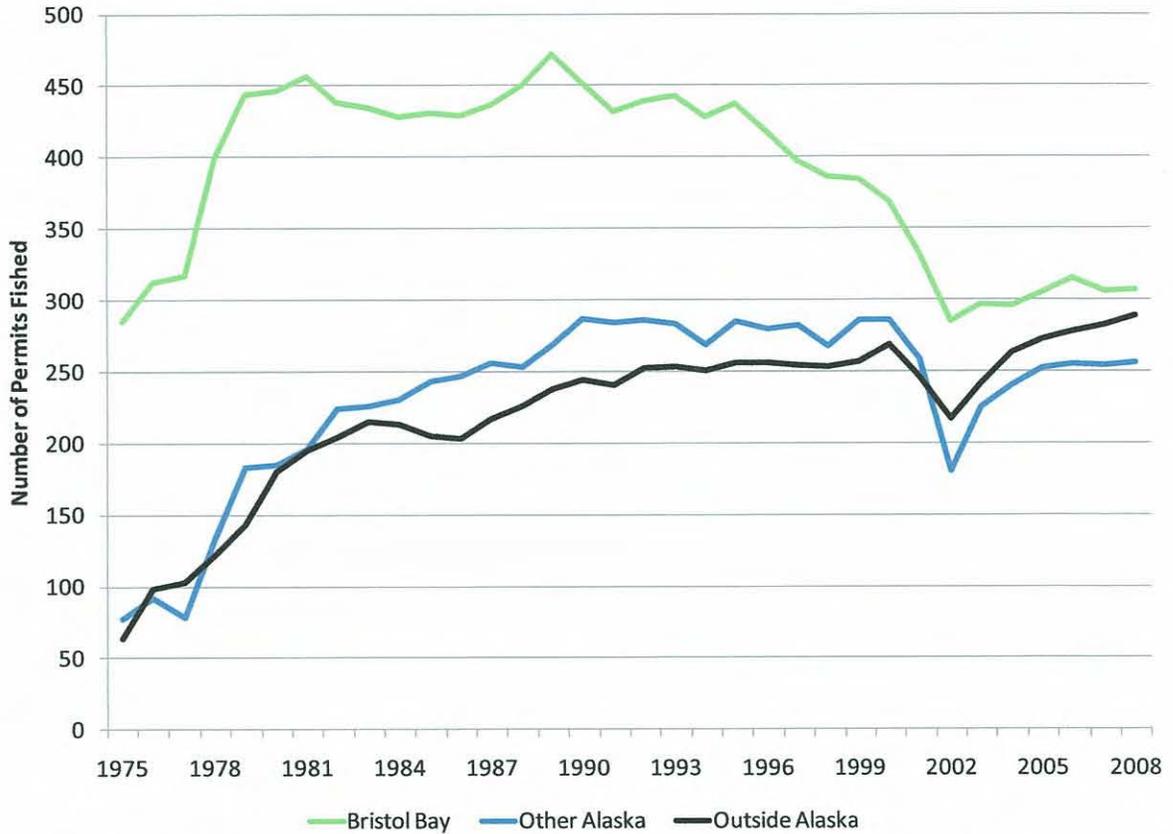
Figure ES-21. Number of Set Gillnet Permits Held By Residence, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

As with drift gillnet permits, the decline in participation rates seen in 2000, 2001, and 2002 was caused by the prospect of low ex-vessel prices. Surprisingly, the declines for watershed residents and other Alaska residents were greater than declines for residents of other states. Participation of Other Alaska residents and permit holders from outside Alaska rebounded in 2003, but a similar rebound was not seen for residents of the watershed. This could be partially explained by the relatively sharp decline in resident ownership of permits seen in 2004 and 2005.

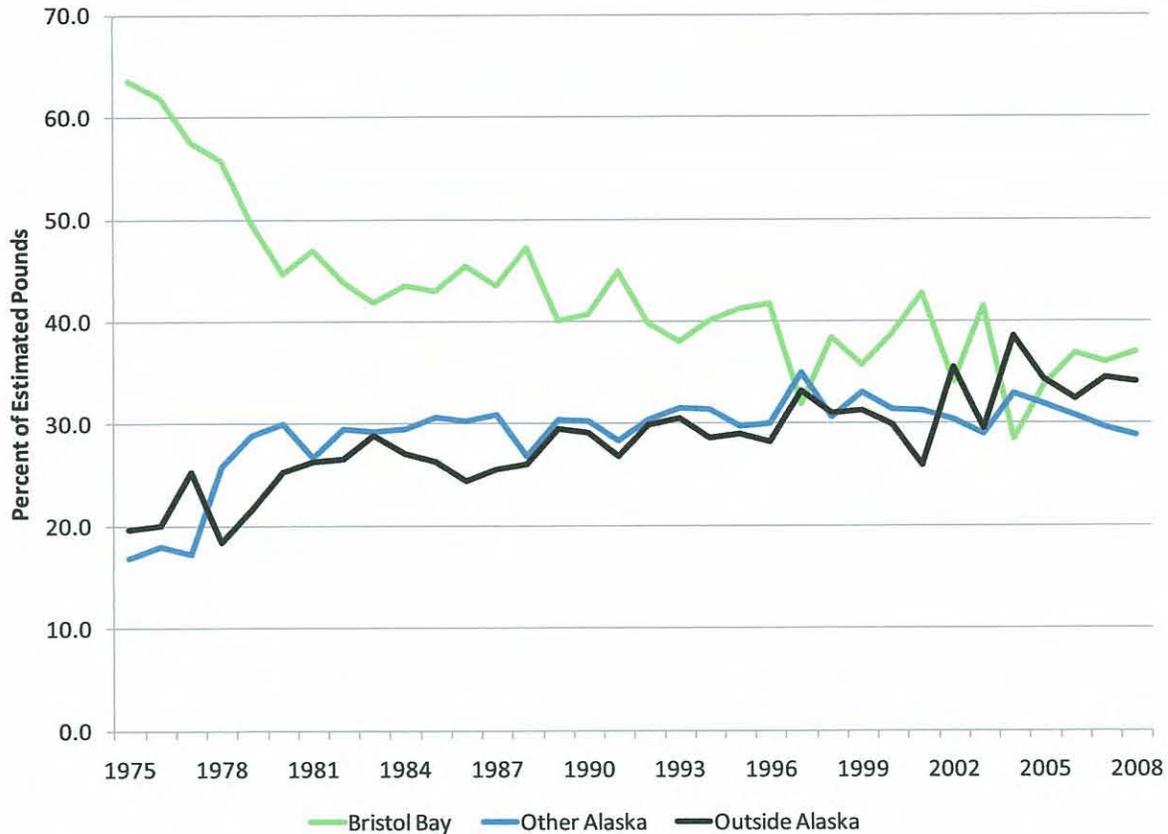
Figure ES-22. Number of Set Gillnet Permits Fished By Residence, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

The percentage of pounds harvested by residents of each region reflects ownership and participation rate data shown in the previous slides. In the long term, the portion caught by permit holders belonging to groups from outside of the Bristol Bay region is increasing while the portion harvested by permit holders from the Bay is decreasing. Since 1992 the average percentage harvested by residents of the watershed appears to have stabilized varying on either side of roughly 37 percent of the total.

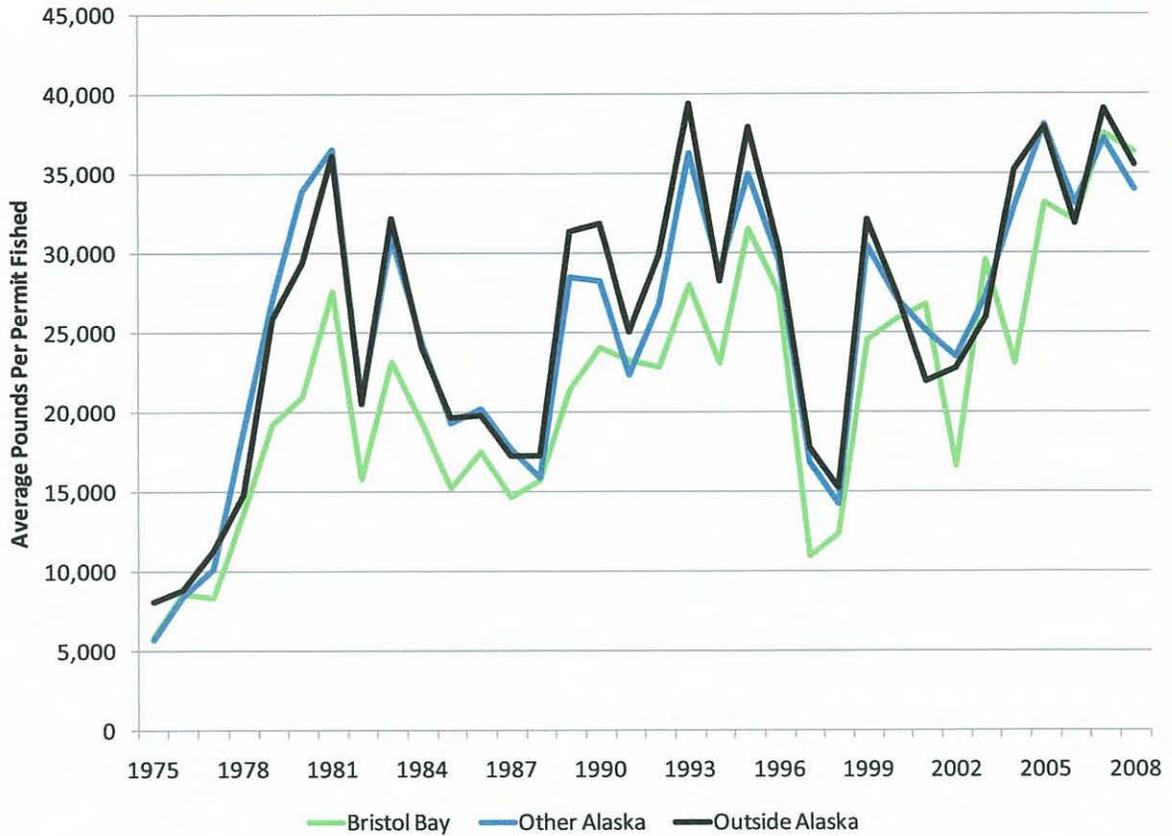
Figure ES-23. Percent of Total Pounds Harvested in the Set Gillnet Fishery by Residence, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

Historically, Bristol Bay set gillnet permit holders have harvested slightly less per permit than permit holders who live in other regions. However, unlike drift gillnet permit holders, this gap has narrowed significantly in recent years and even disappeared in 2001, 2003, and 2008.

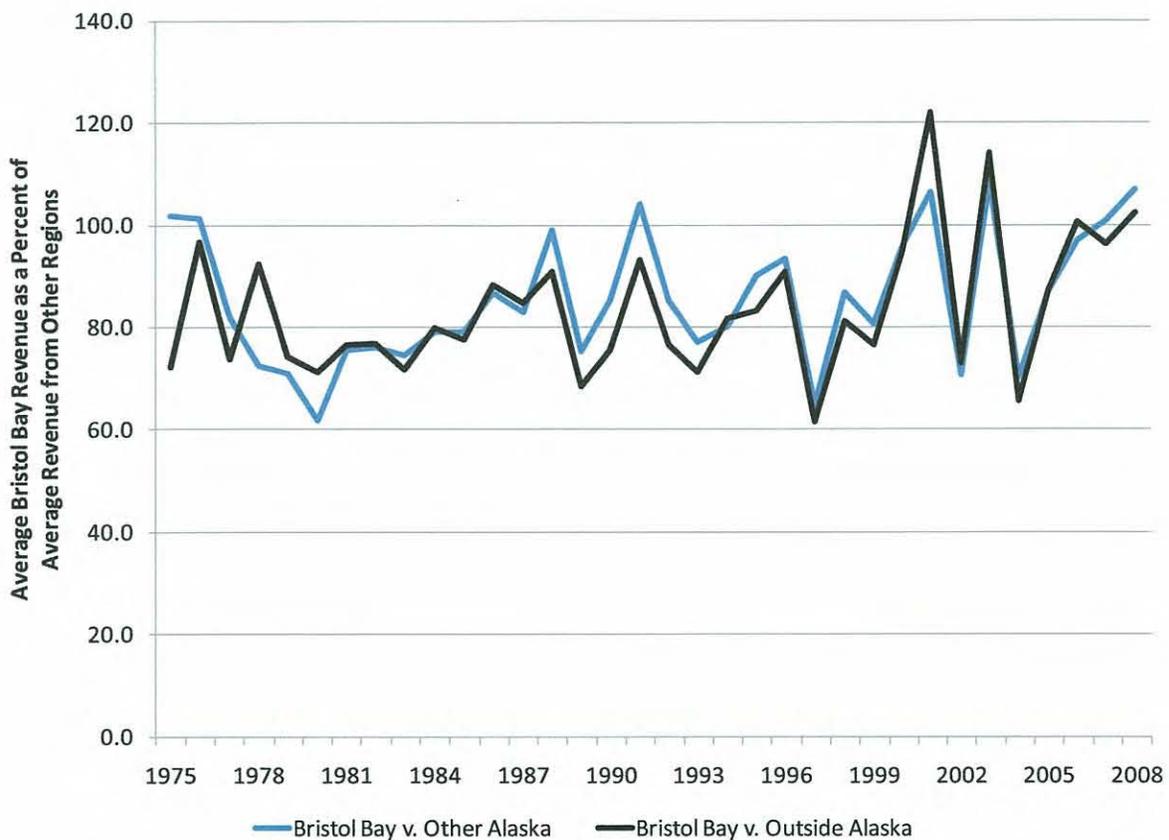
Figure ES-24. Average Pounds per Permit Fished in the Set Gillnet Fishery by Residence, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

As noted above, the gap in average pounds per set gillnet holder as a percentage of the average catch by permit holders from other regions has narrowed in recent years. In the early 1980s the gap was as high as 30 to 40 percent, but now Bristol Bay set net permit holders are as successful or more successful than permit holders in other groups in certain years. In the figure below, any time one of the lines crosses 100 percent, average harvests by Bristol Bay Permit holder are greater than averages for the other region—this relative performance improvement contrasts starkly with the increasing gap seen in the drift gillnet fishery. We believe a reason for this is that the set gillnet fishery is less technologically dependent than the drift gillnet fishery, and any advantage permit holders from outside the region might derive from increased access to capital (i.e., loans) would not translate into the same performance gains in the set gillnet fishery as it would in the drift gillnet fishery.

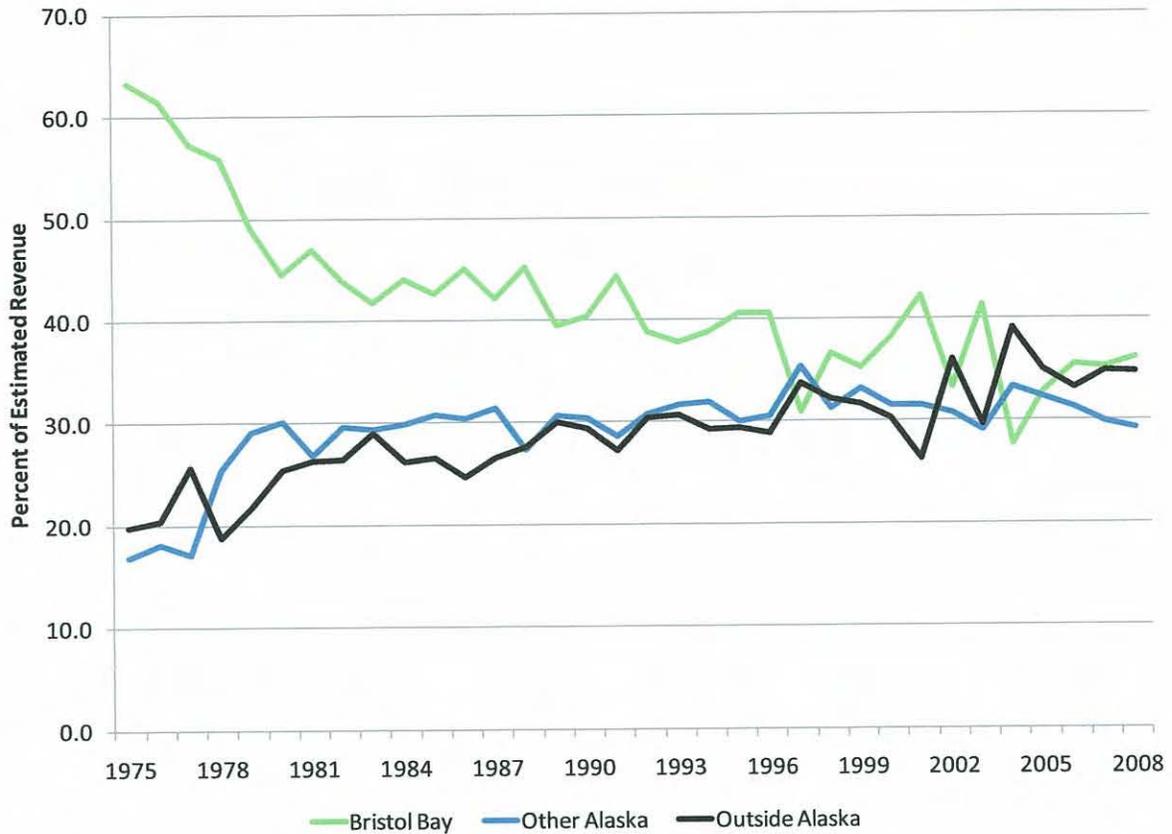
Figure ES-25. Average Lbs / Permit by Watershed Residents as a Percent of Average Lbs per Permit of Other Regions, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

The percentage of set gillnet revenue associated with residents of each region reflects ownership, average catch, and participation rate data. While watershed residents receive slightly less per landed salmon, the revenue per pound differential is less of a factor than with the drift fishery. In general, the average proportion of total revenue going to each of the three regions shown has remained relatively stable since 1997.

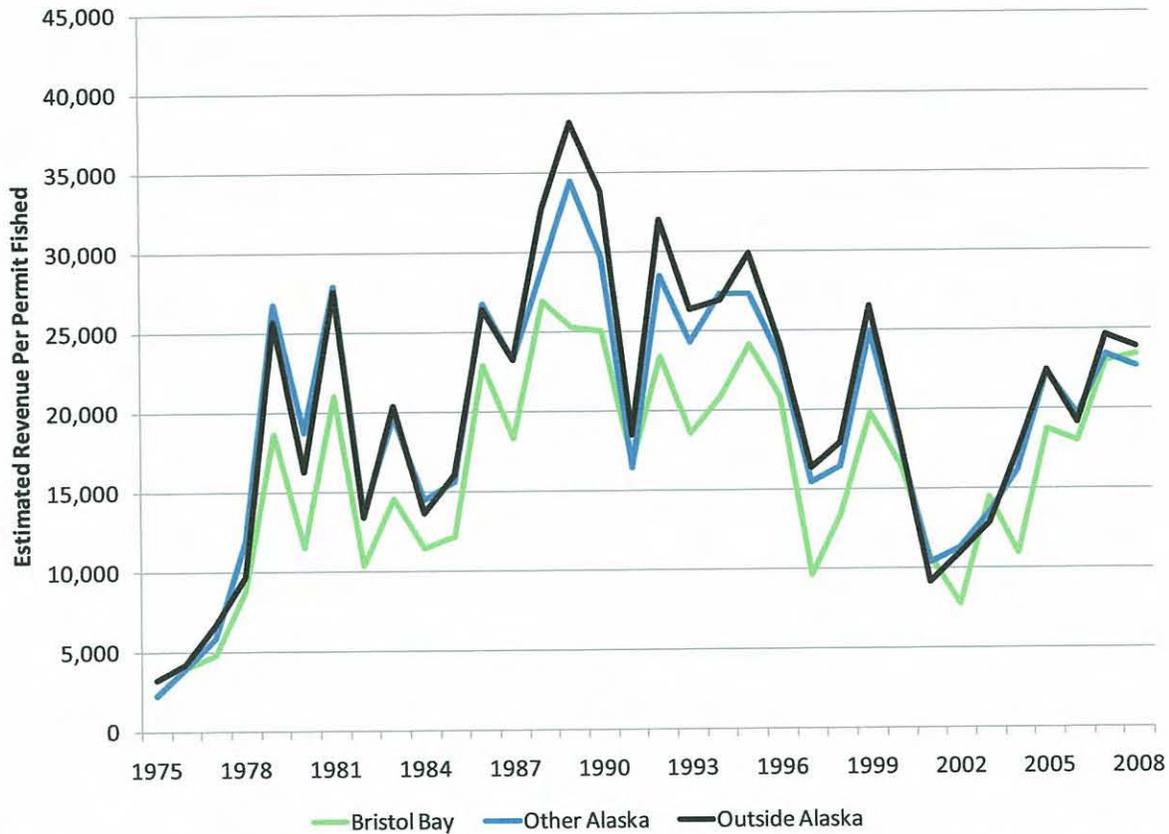
Figure ES-26. Percent of Total Revenue in the Set Gillnet Fishery by Residence, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

Historically, Bristol Bay set gillnet permit holders have earned slightly less revenue per permit fished, but the group has narrowed or eliminated that performance gap in recent years.

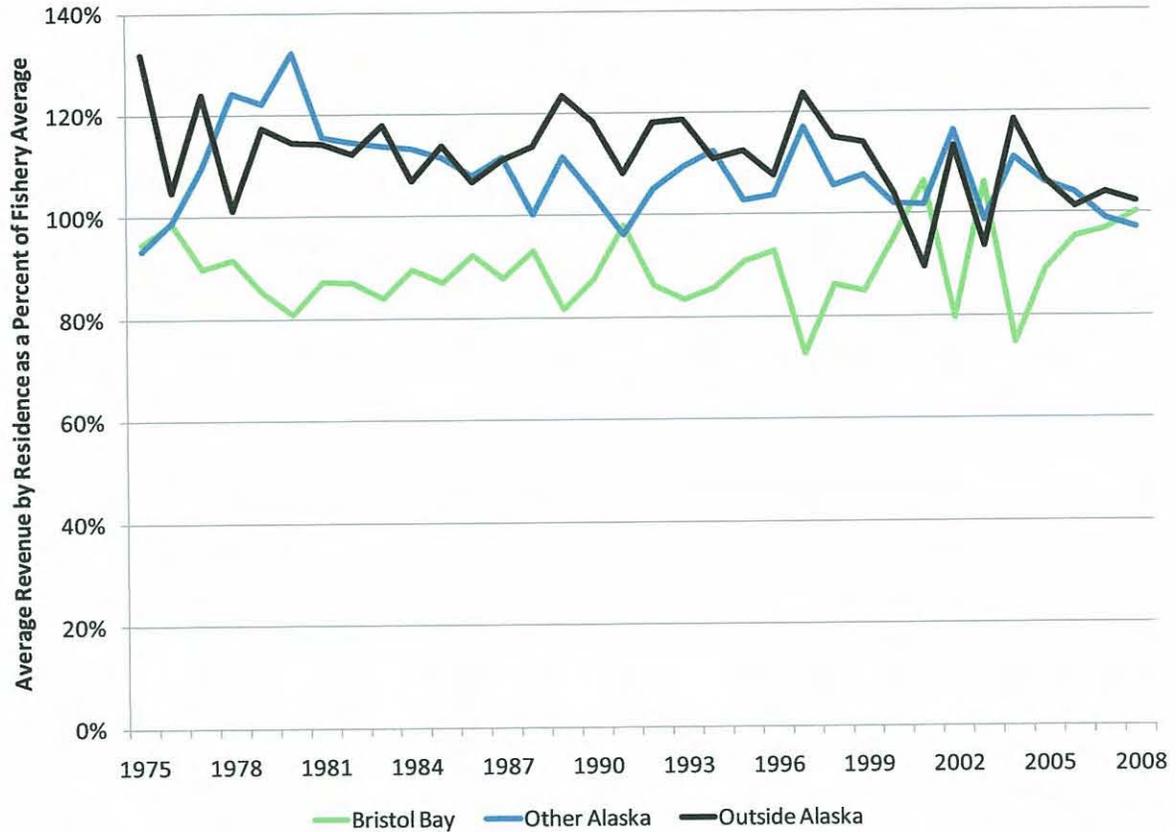
Figure ES-27. Average Revenue per Permit Fished in the Set Gillnet Fishery by Residence, 1975 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

The increasing relative performance of Bristol Bay set gillnet permit holders has resulted in a narrowing of the revenue gap as a portion of the average permit holder. In the past, permit holders from outside the Bristol Bay Region were likely to generate above-average revenues while local permit holders generated below-average revenues. In recent years, that gap has shown signs of disappearing but there are still years where a revenue gap exists.

Figure ES-28. Average Set Gillnet Revenues by Residence as a Percent of Fishery-Wide Average, 1975 - 2008

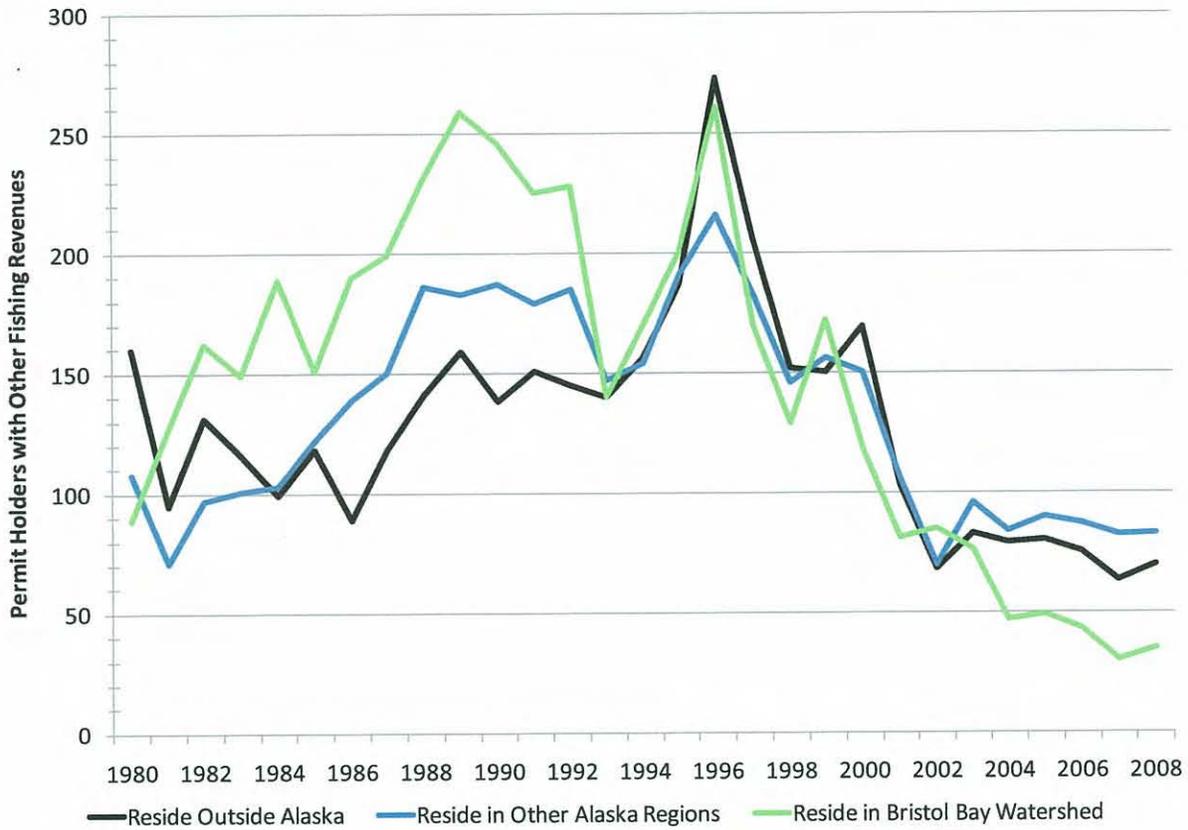


Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and (CFEC, 2009).

Other Fishery Revenue and Employment

The study obtained data from CFEC which show the number of Drift or Set Gillnet permit holders by region with revenue in other Alaska fisheries. The data show a decline in participation in other fisheries among all groups beginning in 1996. However, the decline among non-Bristol Bay groups appears to have stabilized since 2001, while the number has continued to decline for permit holders from the Bristol Bay region.

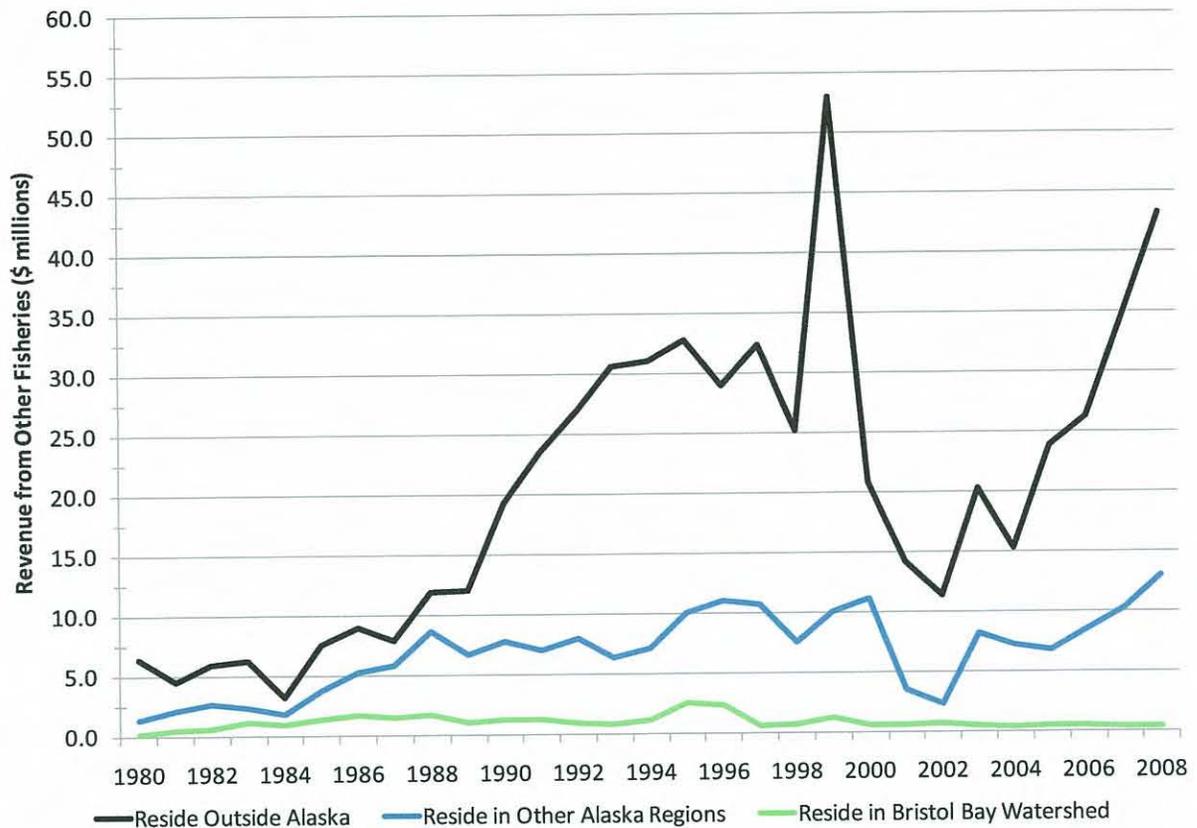
Figure ES-29. Bristol Bay Salmon Permit Holders with Revenue in Other Fisheries by Residence, 1980 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 2009).

Revenue earned by Area T permit holders that participate in other Alaska fisheries is highly skewed toward permit holders that live outside the watershed, particularly since around 1988. Many of the non-watershed residents appear to have diversified into groundfish, crab and halibut fisheries in the Bering Sea and Gulf of Alaska, while residents of the watershed appear to have remained in more localized fisheries. The change is most dramatic for residents from outside Alaska.

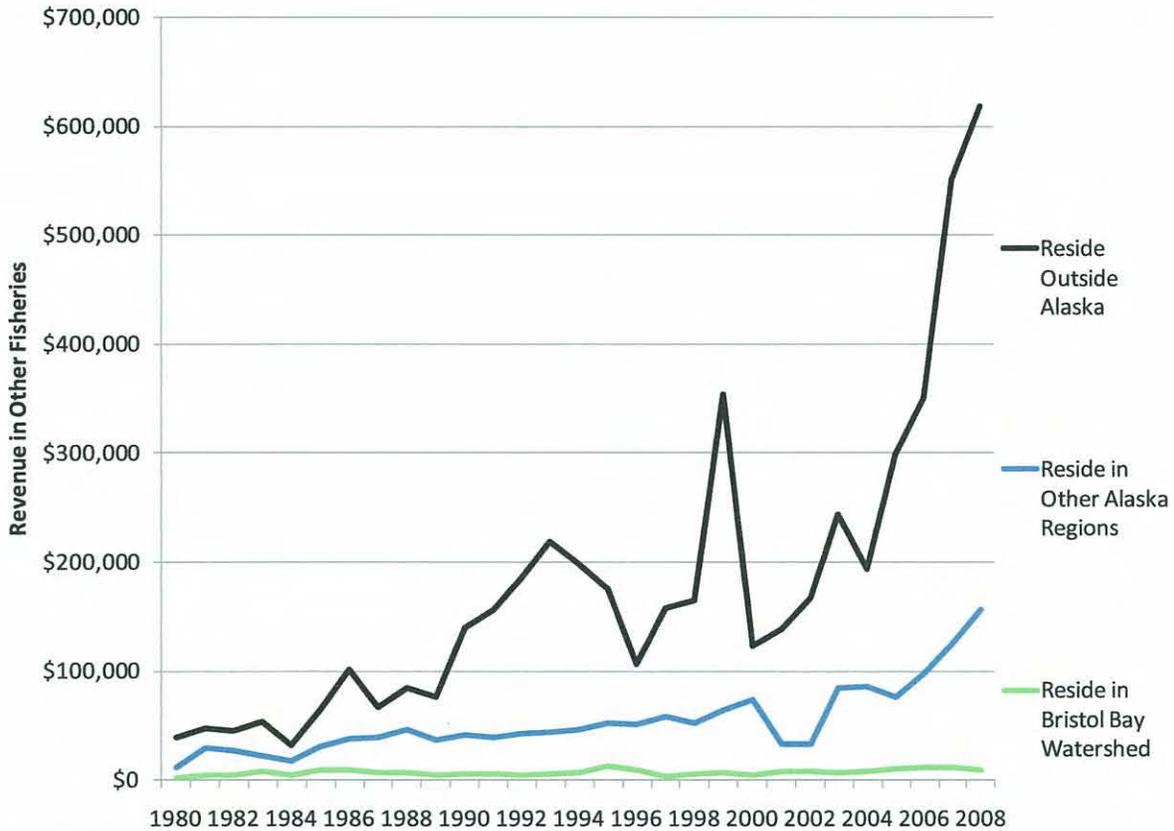
Figure ES-30. Revenue of Bristol Bay Salmon Permit Holders in Other Fisheries by Residence, 1980 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 2009).

This figure combines the data from the previous two figures to show that average amount of revenue that Bristol Bay permit holders who were active in other fisheries earned. In this decade, the average earnings in other fisheries for Bristol Bay residents was \$8,500; during the same period, Bristol Bay permit holder residing in of other parts of Alaska earned an average of \$85,000, while non-Alaska permit holders generated an average of over \$225,000.

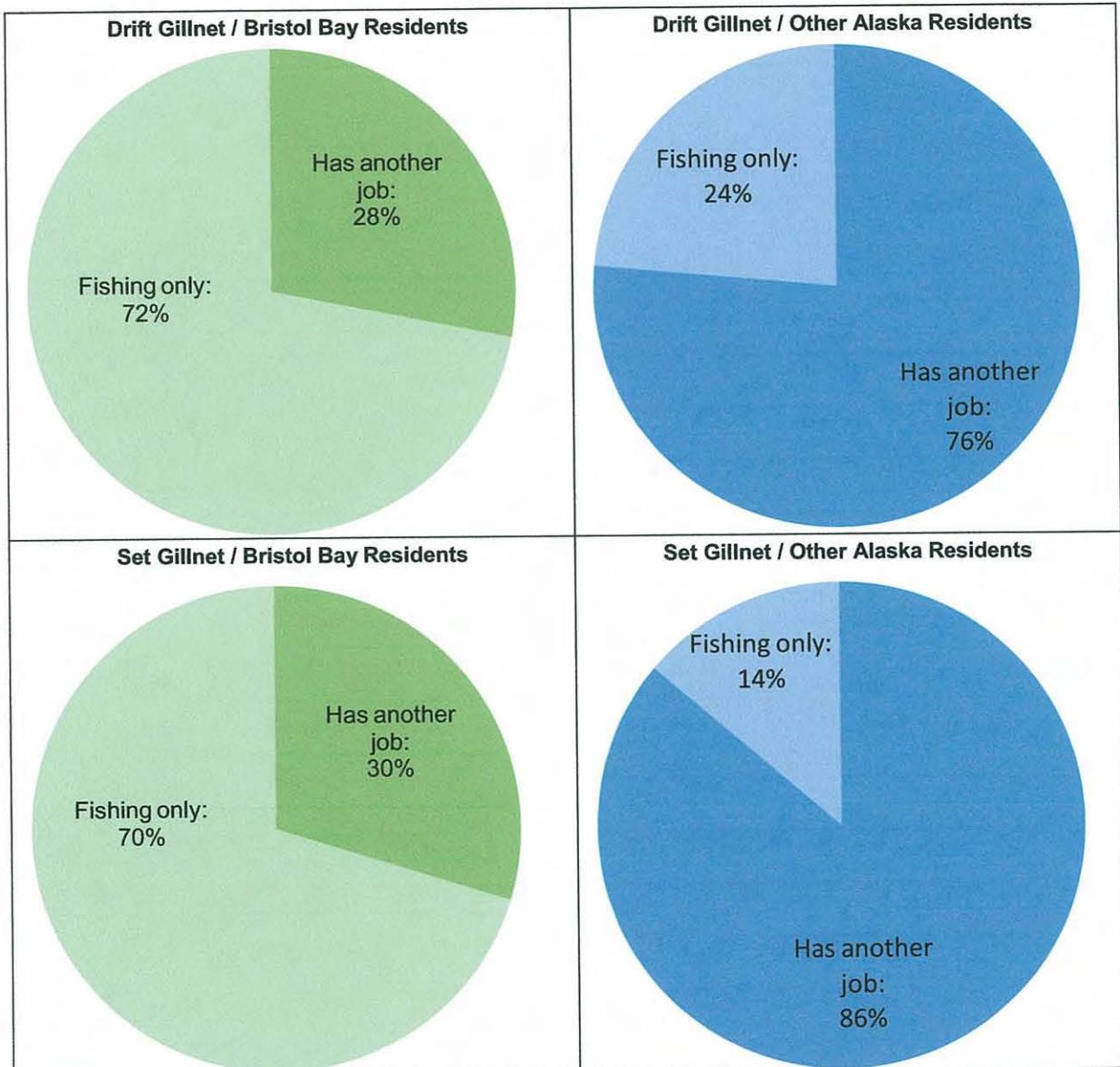
Figure ES-31. Average Revenue of Bristol Bay Permit Holders in Other Fisheries by Residence, 1980 - 2008



Source: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 2009).

This figure provides a snapshot from 2006 of other wage and salary employment of Bristol Bay drift and set gillnet permit holders that reside in Alaska. Similar data for residents of other states were not available. The data were compiled by the Alaska Department of Labor and Workforce Development (ADOLWD) using names, and birth dates, and places of residence from lists of permit holders obtained from CFEC. The data show that 28 percent (97) of the 398 drift gillnet permit holders residing in the watershed were found in ADOLWD files that list wage and salary employment. In the set gillnet fishery 30 percent (94) of the 315 local permit holder were found to have had another job. The contrast between residents of the watershed and other residents of Alaska is significant. Of the 353 drift permit holders residing in other parts of Alaska, 76 percent (270) were found to have other wage and salary jobs. Similarly 86 percent (220) of the 255 non-watershed residents of Alaska had other jobs in 2006.

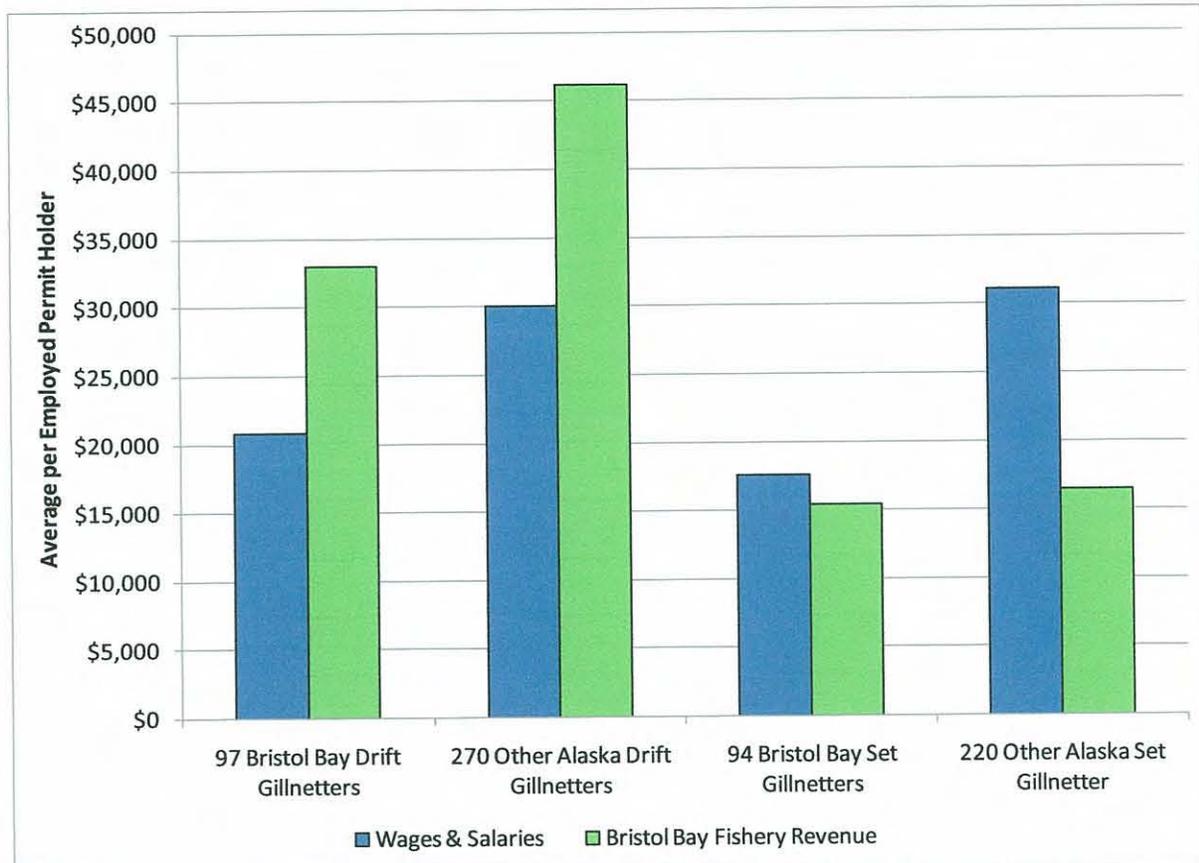
Figure ES-32. Wage and Salary Employment of Drift and Set Gillnetter Residing in Alaska, 2006



Source: Figure developed by Northern Economics based on data from ADOLWD (ADOLWD, 2009).

In general, gillnetters with other jobs had gross fishery revenues that were about one-third higher than their wages and salaries. On average, the 97 resident gillnetters that had other wage and salary jobs in 2006 earned a little more than \$20,000 in wages and salaries and had gross fishery revenues of \$33,000. The 270 non-resident Alaskan gillnetters averaged \$30,000 in wages and salaries, and on average grossed \$46,000 in the fishery. Setnetters from both areas earned more in their wage and salary jobs than they grossed in their fisheries.

Figure ES-33. Income and Revenues of Alaska Resident Permit Holders in Bristol Bay Fisheries with Other Wage/Salary Employment, 2006



Source: Figure developed by Northern Economics based on data from ADOLWD (ADOLWD, 2009).

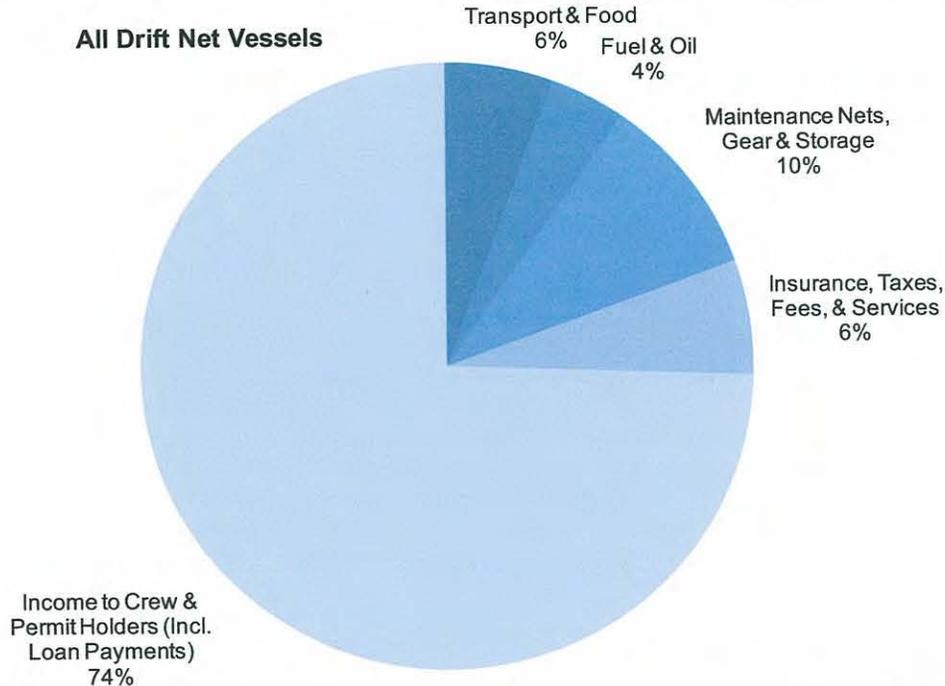
Operating Costs

In this section, we describe operating costs in the drift and set gillnet fisheries. While a more detailed analysis of operating costs was deleted from the scope of work, it was necessary to develop estimated operating costs in order to estimate the economic contribution and multiplier effects of fish harvesting to the region's economy. Our estimates of operating costs relied on a survey conducted by the CFEC during their optimal numbers study and later augmented by Northern Economics during the 2003 Bristol Bay Salmon Fishery Restructuring Study and our Staltonstal-Kennedy projects in 2004. Both these projects were supported by the Bristol Bay Economics Development Corporation (BBEDC).

We updated the cost estimates from 2003 by applying indexes that take into account changes in the cost of production due to inflation. We developed our own fuel price index based on data from the State's Power Cost Equalization (PCE) program. All other operating costs from 2003 were adjusted based on the US producer price index (PPI) for seafood processing businesses.

The figure below provides a breakdown of estimated operating costs and income to crew and permit holders in the drift gillnet fishery for 2008. Incomes to crew members and permit holders accounted for 74 percent of gross revenue with crew shares accounting for 19 percent. Surprisingly, fuel was only 4 percent of gross revenues (15 percent of overall non-crew costs) even though our index for fuel nearly doubled from 2003 to 2008. In 2003, the year of the CFEC survey, fuel was 9 percent of overall non-crew costs. It should be noted that loan payments for permits and vessels and all other interest costs were not explicitly estimated, but are assumed to be paid from the amount estimated as income to permit holders. We estimated that the permits in the Bristol Bay fishery had a total of just over \$16,000 in the operating costs shown in the figure not including payments to crew.

Figure ES-34. Breakdown of Drift Gillnet Operating Costs and Incomes to Crew and Permit Holders for 2008

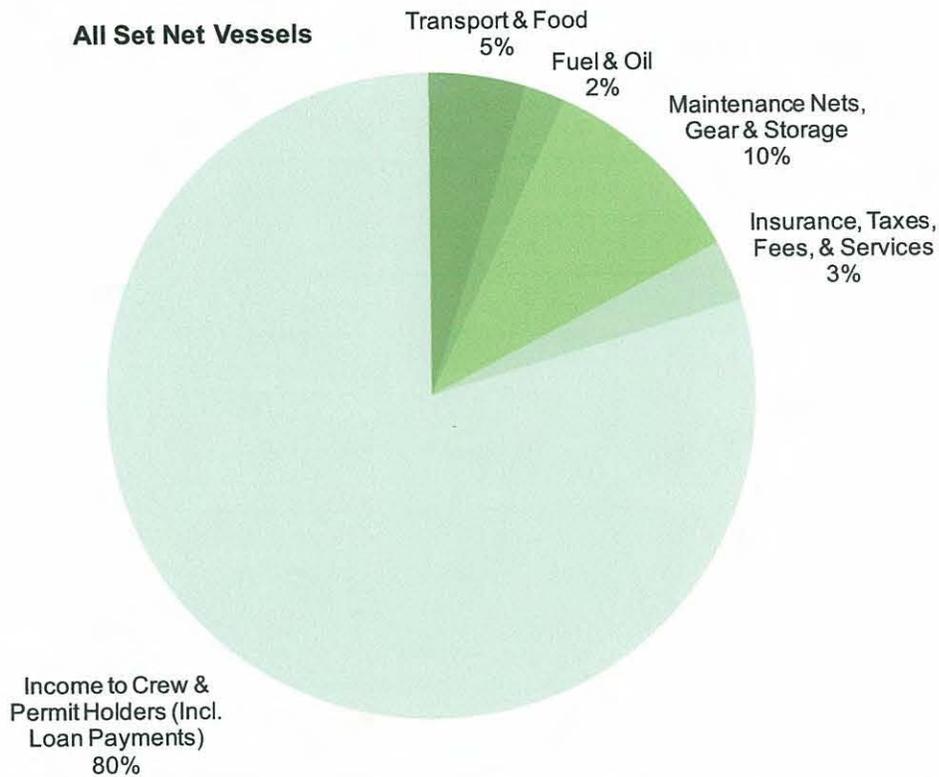


Source: Figure and data developed by Northern Economics based on data originally from CFEC (CFEC, 2002) as well as information from AEA (AEA, 1988 - 2009), US Bureau of Labor Statistics (US BLS, 1980 - 2008) and CFEC (CFEC, 1980 - 2008).

This figure shows a breakdown of set gillnet operating costs. We used the same basic methodology to estimate costs for the set net fishery, but because the CFEC did not conduct a survey of the set gillnet fishery, we relied much more heavily on data from the Restructuring Study as the basis for cost information. As with the drift fishery, costs have been adjusted using indexes for fuel (based on PCE costs in the region) and the US producer price index for seafood processing.

The set net fishery is less costly to operate than the drift fishery. We estimated that in 2008 the average set net operation spent just under \$5,000 in non-crew costs, or roughly 20 percent of gross revenue. The largest portions of these costs are for gear, maintenance and equipment storage.

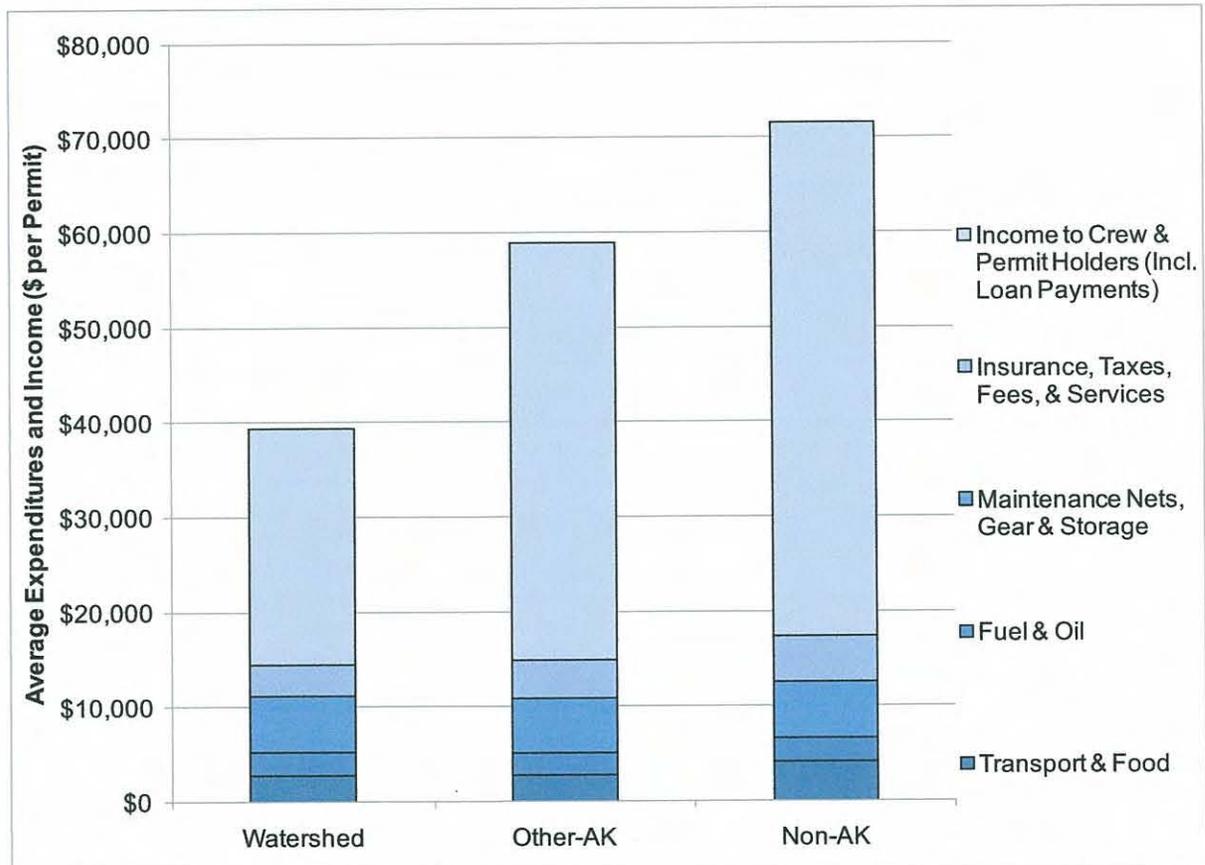
Figure ES-35. Breakdown of Set Gillnet Operating Costs and Incomes to Crew and Permit Holders for 2008



Source: Figure and data developed by Northern Economics based on data originally from earlier work by Northern Economics in (Northern Economic, Inc, 2003), as well as information from AEA (AEA, 1988 - 2009), US Bureau of Labor Statistics (US BLS, 1980 - 2008) and CFEC (CFEC, 1980 - 2008).

In the process of estimating the economic contribution (multiplier effects) of fish harvesting in the region, we need to break down operating costs by the permit holder's region of residence. Again, this was not a key component of the study, but because we developed the information, we thought it would be worthwhile to provide this information to BBEDC. In the figure below, the total height of the bar represents the average gross revenue for permits within each region in 2008. In general, estimated average operating costs (excluding crew costs) are relatively close across the three regions, ranging from \$14,500 for permit holders from the watershed to \$17,300 for permit holders from outside Alaska. Operating costs excluding crew costs as a percent of gross revenue are estimated to be significantly higher for watershed residents (37 percent) compared to non-Alaska permit holders (24 percent).

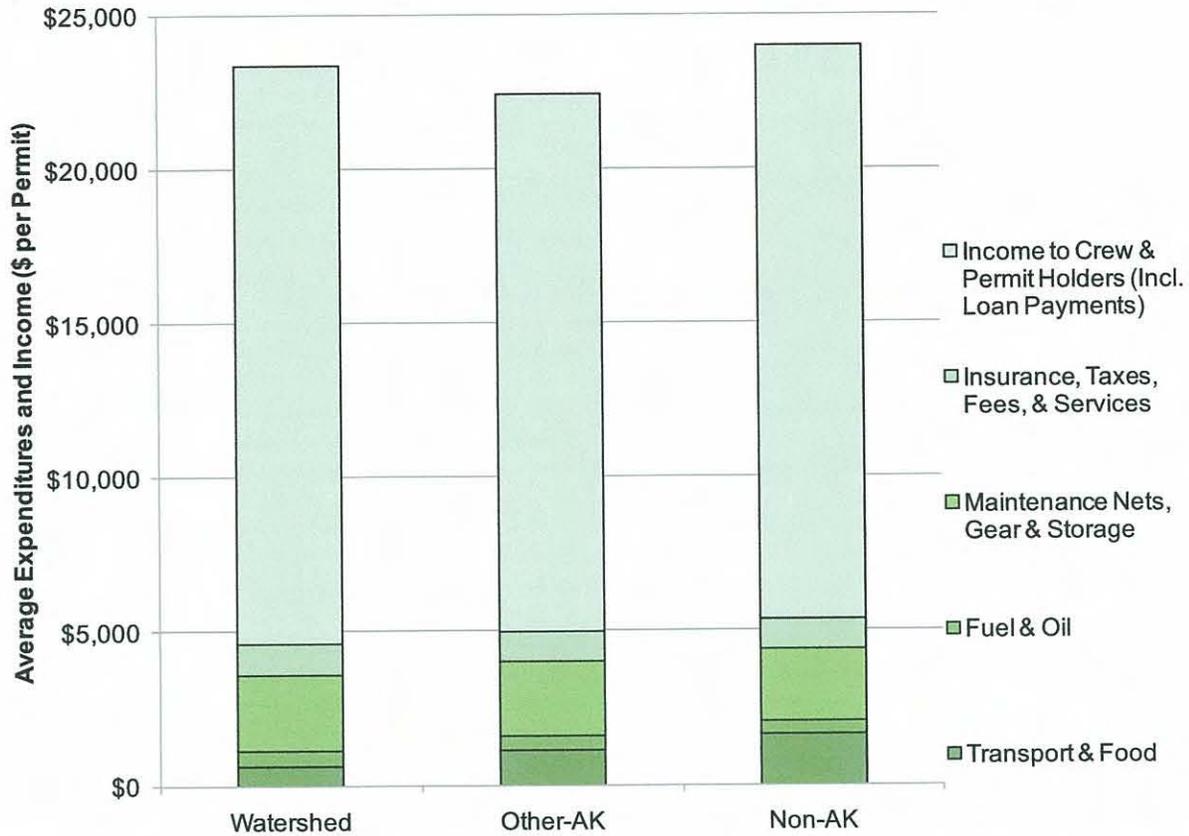
Figure ES-36. Estimated Average Drift Gillnet Fishery Costs and Income per Permit by Region, 2008



Source: Figure and data developed by Northern Economics based on data originally from CFEC (CFEC, 2002) as well as information from AEA (AEA, 1988 - 2009), US Bureau of Labor Statistics (US BLS, 1980 - 2008) and CFEC (CFEC, 1980 - 2008).

Overall, the differences by region in estimated set net operating costs are not significant. Operating costs range from \$4,600 for watershed resident to \$5,300 for non-Alaska residents.

Figure ES-37. Estimated Average Set Gillnet Fishery Costs and Income per Permit by Region, 2008



Source: Figure and data developed by Northern Economics based on data originally from earlier work by Northern Economics in (Northern Economic, Inc, 2003), as well as information from AEA (AEA, 1988 - 2009), US Bureau of Labor Statistics (US BLS, 1980 - 2008) and CFEC (CFEC, 1980 - 2008).

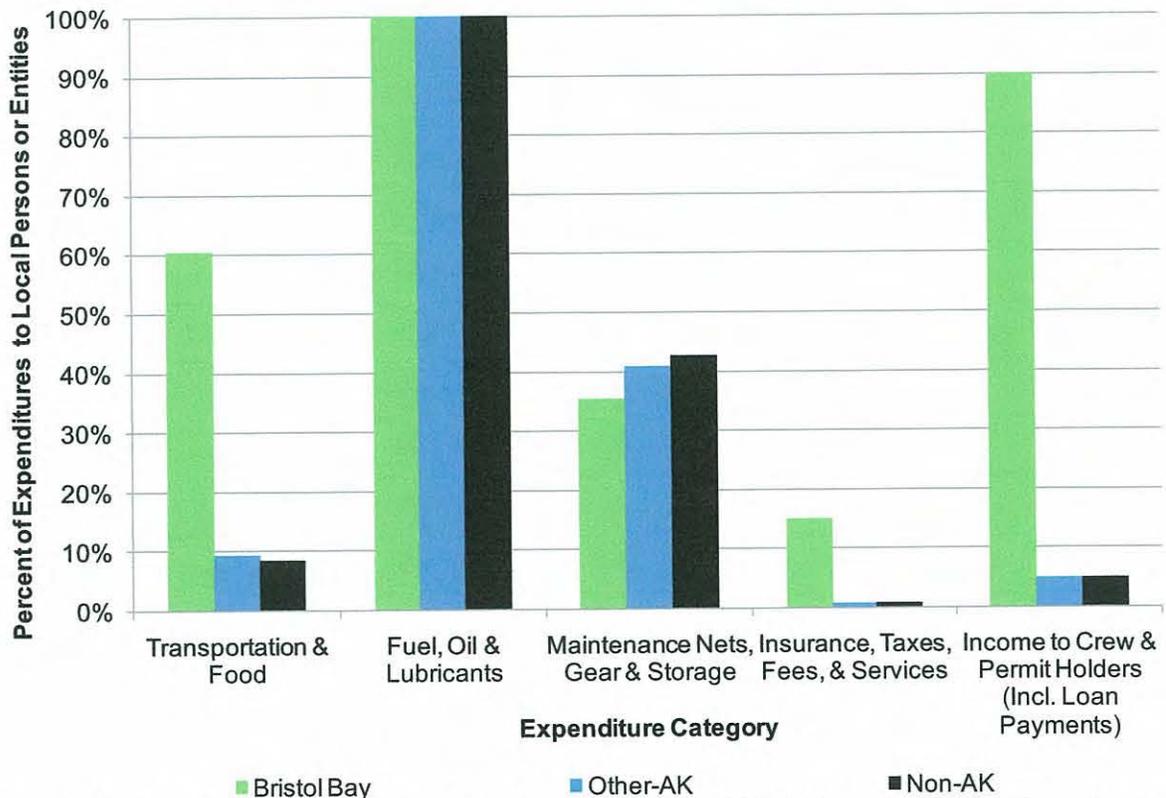
Multiplier Effects

In this section we estimate the economic contribution (multiplier effects) from salmon harvests in Bristol Bay. It should be noted that salmon processing in the region also creates significant levels of economic activity, but that the economic contributions of the processing sector are not included in this study. We have, however, included the economic contributions of fish taxes.

Economic contributions are measured using an input-output model called IMPLAN. The model starts with the total ex-vessel revenue for harvesters and assumes that all revenues are spent on operating costs, or crew payments and income to the permit holders. Local expenditures resulting from purchases of input used in the fishing operations, through household expenditures of local crew and permit holders and through expenditure of tax revenues by local government ripple through the local economy and create additional economic activity or multiplier effects. In the Bristol Bay Region, the multiplier effects are relatively small because very few of the goods or services are produced locally.

The figure below shows our assumptions regarding local expenditures as a percent of total expenditures by category for permit holders in both set and drift gillnet fisheries by region. For example, we assume that 60 percent of transportation and food costs of permit holders residing in the Bristol Bay region are purchased locally, but less than 10 percent of transportation and food costs of permit holders from other regions are made locally. We also assume that while 100 percent of fuel purchases are made within the region, the economic impact is quite small consisting only of the mark-up over the costs of goods sold. Finally, we assume that after deducting 10 percent for federal income taxes, the remainders of payments to local crew and revenues to local permit holders are spent by households within the region.

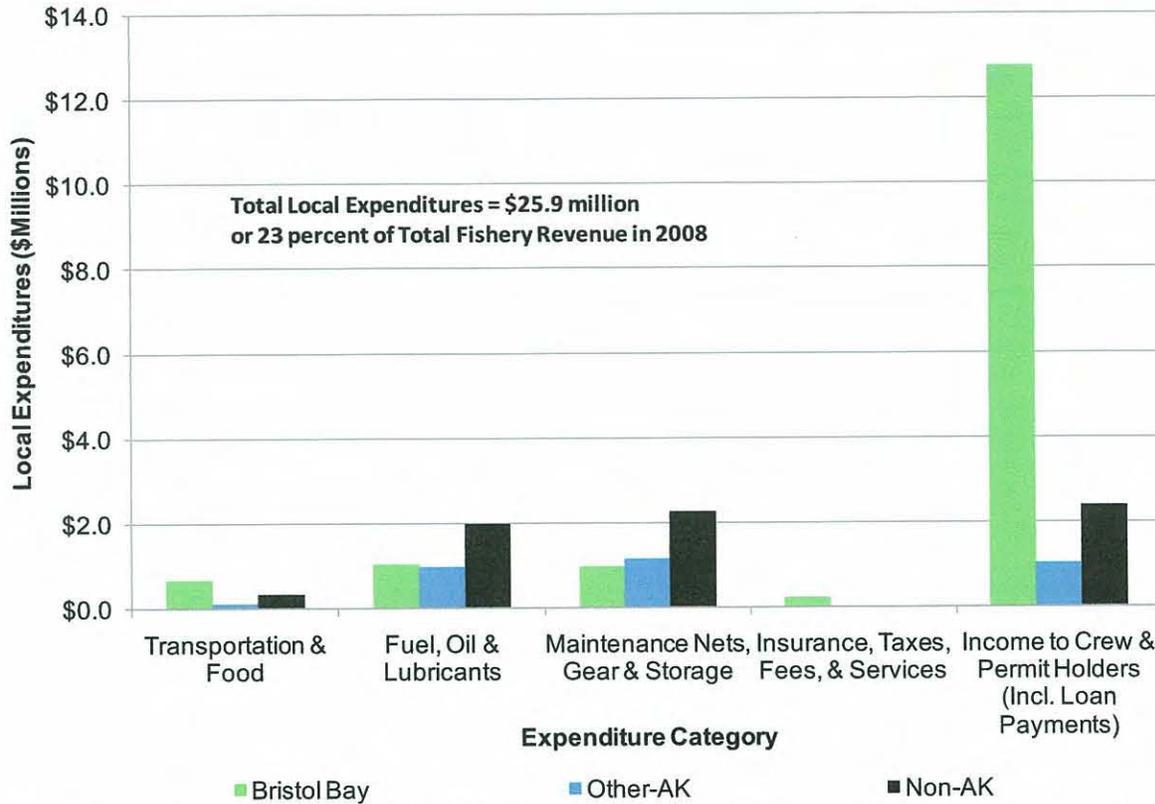
Figure ES-38. Local Expenditure Percentage in each Cost Category by Permit Holder Region in 2008



Source: Figure developed by Northern Economics from discussions with industry and professional experience.

This figure shows the total amount of local spending generated by the harvest of Bristol Bay salmon in the drift and set gillnet fisheries. The largest single contribution is clearly the income generated by local permit holders, which accounts for 49 percent of the \$25.9 million spent in local economy by fish harvesters. Of the \$110.6 million total revenue generated in 2008 Bristol Bay salmon fisheries, only 23 percent is estimated to be spent locally. It should be reiterated that the local expenditure coefficients were developed by Northern Economics based primarily on our knowledge of the fisheries and the local economy.

Figure ES-39. Total Local Expenditures from Harvesting Bristol Bay Salmon, by Permit Holder Region in 2008

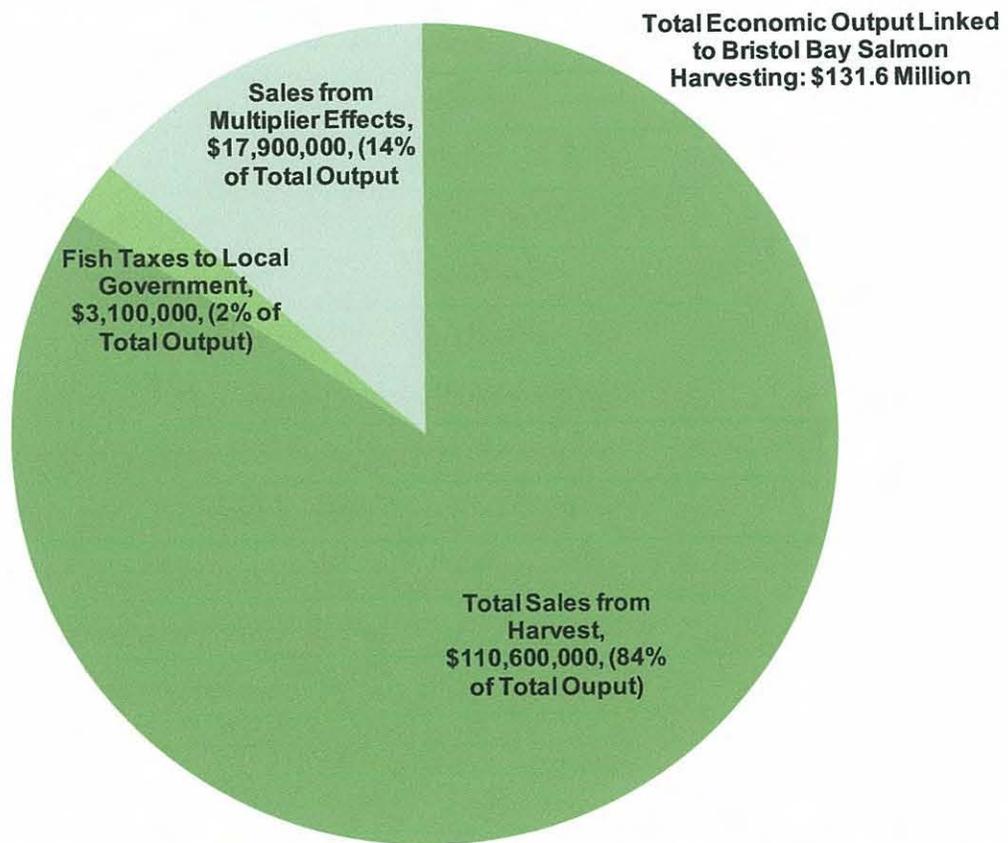


Source: Figure developed by Northern Economics based on discussions with industry, professional experience and on data originally from earlier work by Northern Economics in (Northern Economic, Inc, 2003) as well as information from AEA (AEA, 1988 - 2009), US Bureau of Labor Statistics (US BLS, 1980 - 2008) and CFEC (CFEC, 2002) and (CFEC, 1980 - 2008).

The total economic output that can be directly linked to the harvesting of Bristol Bay Salmon is the sum of all of the sales of harvested salmon (total ex-vessel revenue), as well as all of the sales to harvesters that were made by suppliers operating in the region and all of fish taxes generated for local governments or passed through from the state, plus all of the multiplier effects on regional sales resulting from: 1) the local expenditures for harvesting inputs; 2) expenditures by local governments of fish taxes; and 3) household income generated by local crews and permit holders.

We estimated that local governments received \$3.1 million from fish taxes based on the most recent information available from ADCCED. We then ran the sum of local expenditures (as estimated earlier) and fish taxes through IMPLAN to generate the multiplier effect. We estimate that \$17.9 million is generated in the local economy through the multiplier effect. This brings the total economic contribution from the harvesting of Bristol Bay salmon to \$131.6 million. It should be reiterated that the value estimated here does not include the economic contributions from the salmon processing industry.

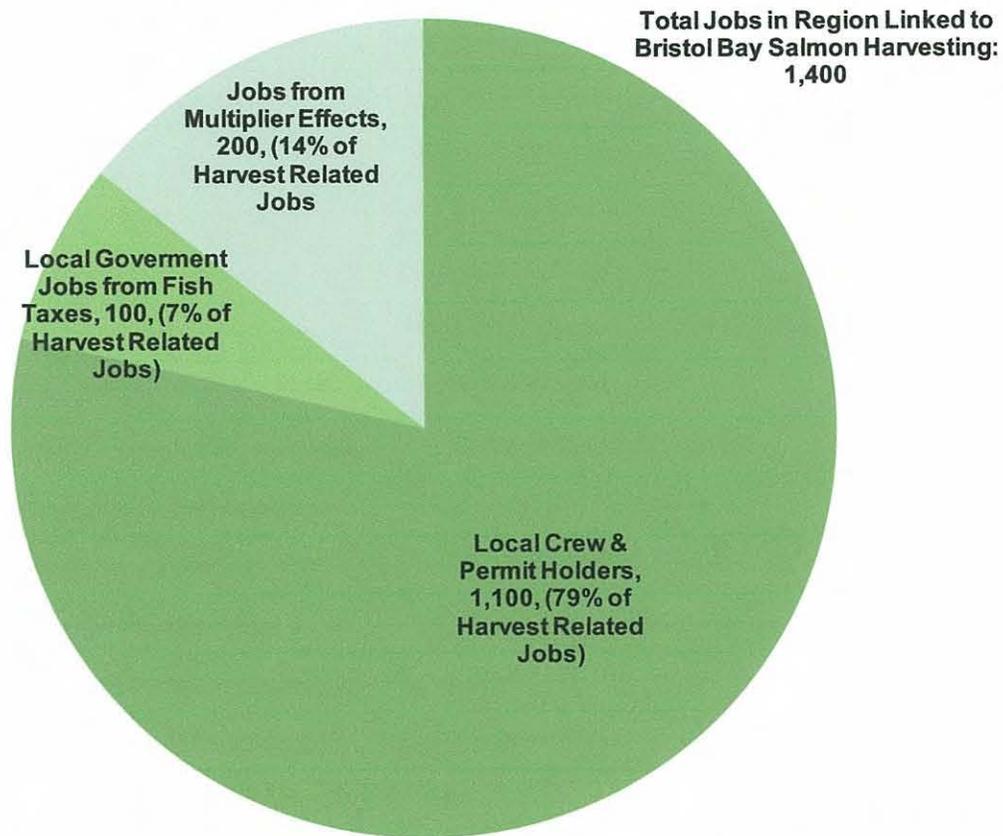
Figure ES-40. Estimated Total Regional Economic Contribution from Bristol Bay Salmon Harvesting, 2008



Source: Figure developed by Northern Economics based on discussions with industry, professional experience and on data originally from earlier work by Northern Economics in (Northern Economic, Inc, 2003) as well as data and information from (IMPLAN, 2008), AEA (AEA, 1988 - 2009), US Bureau of Labor Statistics (US BLS, 1980 - 2008) and CFEC (CFEC, 2002) and (CFEC, 1980 - 2008).

The salmon fishery not only produces direct harvesting jobs (we estimate 1,100 local crew members and permit holders are employed), but the fishery also produces additional jobs in local government through fish taxes and in the region through the multiplier effect. Using IMPLAN we estimated the harvesting of salmon creates approximately 100 jobs in local governments and an additional 200 jobs in the region. Again, it should be noted that we have not included fish processing jobs or other indirect jobs created from the processing of salmon. We should also note that we have not included an estimate for direct crew members jobs created in the set net fishery—set net crew members do not need a crew license, and most often set net crew members are assumed to be members of the permit holder’s family.

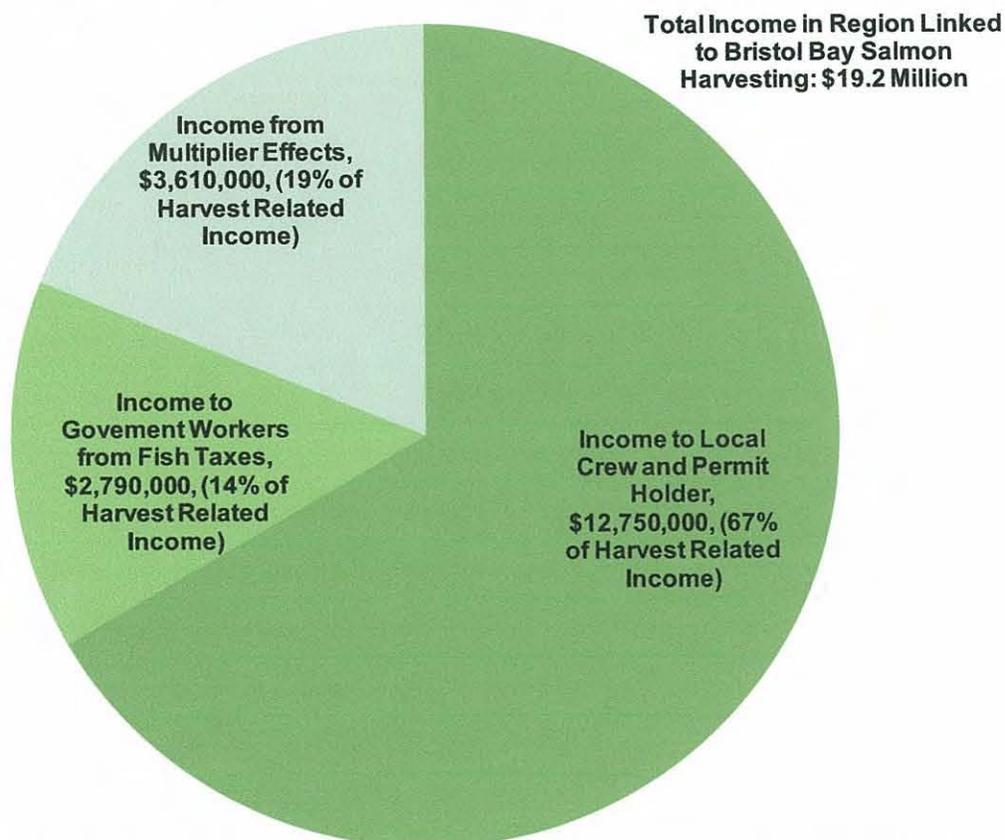
Figure ES-41. Estimated Total Regional Employment from Bristol Bay Salmon Harvesting, 2008



Source: Figure developed by Northern Economics based on discussions with industry, professional experience and on data originally from earlier work by Northern Economics in (Northern Economic, Inc, 2003) as well as data and information from (IMPLAN, 2008), AEA (AEA, 1988 - 2009), US Bureau of Labor Statistics (US BLS, 1980 - 2008) and CFEC (CFEC, 2002) and (CFEC, 1980 - 2008).

We estimated that local permit holders and crew members in the Bristol Bay drift and set gillnet fisheries earned \$12.75 million in income. We assume that households spend this income on day-to-day expenses as well as making loan payments on boats permits and equipment. A significant portion of fish taxes goes directly to incomes for government workers (\$2.8 million) In addition, the household spending of local permit holders and crew members and local government workers combines with local expenditures on fishery operations to create \$3.6 million in additional income for persons working in local businesses. Overall we estimate that \$19.2 million in income is generated in the region from salmon harvesting.

Figure ES-42. Estimated Total Regional Income from Bristol Bay Salmon Harvesting, 2008



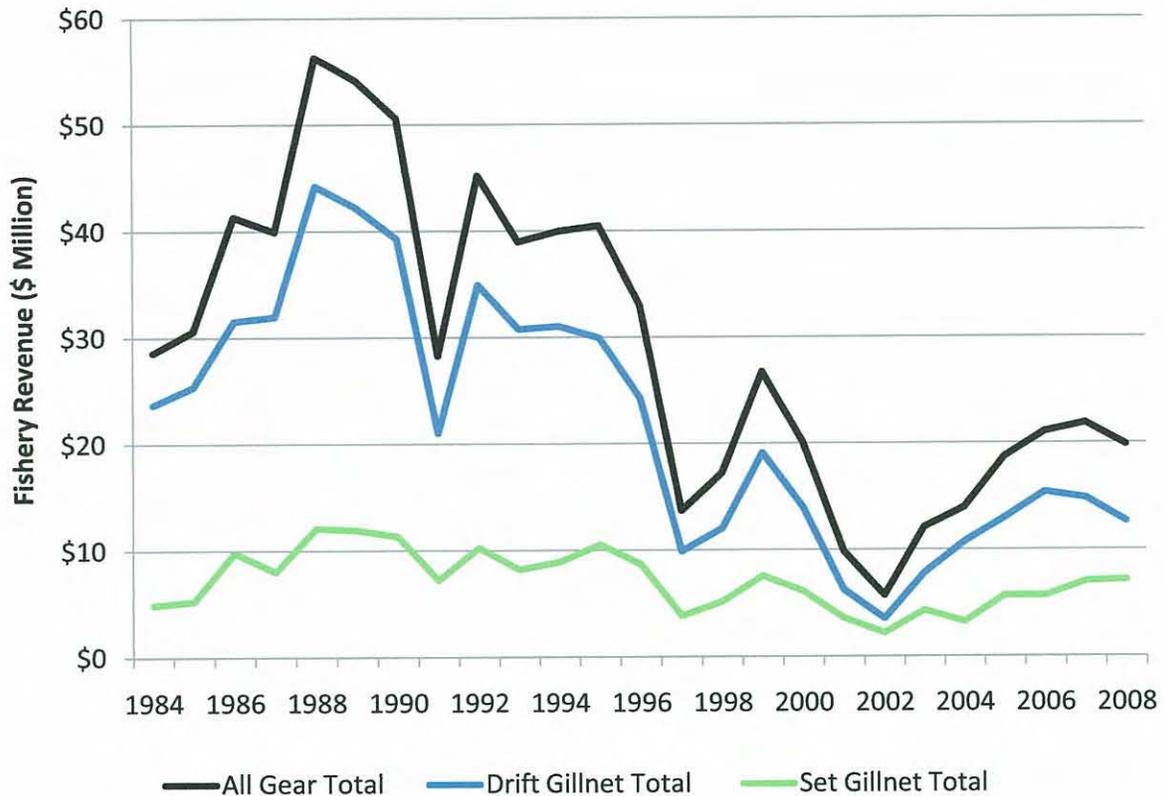
Source: Figure developed by Northern Economics based on discussions with industry, professional experience and on data originally from earlier work by Northern Economics in (Northern Economic, Inc, 2003) as well as data and information from (IMPLAN, 2008), AEA (AEA, 1988 - 2009), US Bureau of Labor Statistics (US BLS, 1980 - 2008) and CFEC (CFEC, 2002) and (CFEC, 1980 - 2008).

Per Capita Revenue

Our bottom line is developed by combining gross fishery revenues from both the drift and set gillnet fisheries and after adjusting for inflation developing an estimate of the per capita revenue derived from local harvests in the Bristol Bay salmon fishery.

This figure combines gross revenues of watershed residents for both the drift and set gillnet fisheries. The drift fishery has been much more volatile than the set net fishery. Overall there has been a markedly downward trend in total revenue from the 1980's and early 1990's.

Figure ES-43. Total Revenue from Harvesting of Permit Holders from the Region, 1984 – 2008

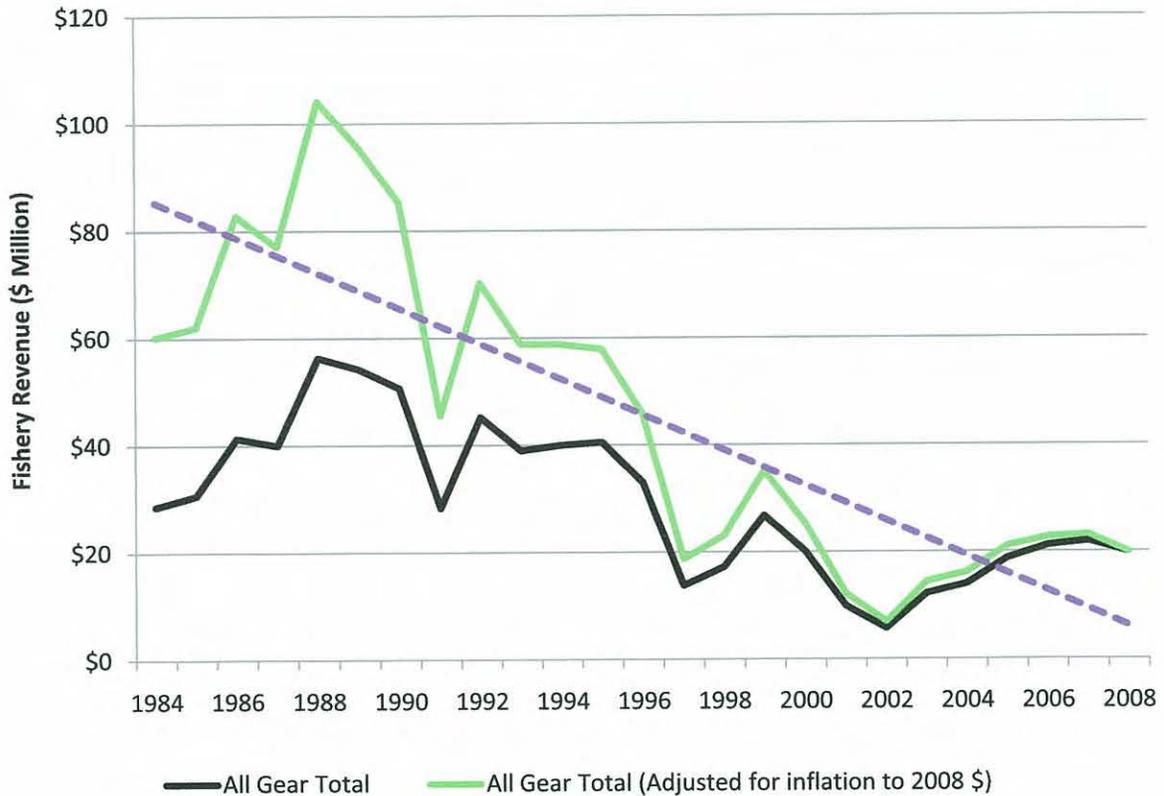


Sources: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008).

Here we adjust the combined set and drift revenues of all watershed residents for inflation. The inflation adjustment shifts revenues from previous years upward because a dollar in earlier years would buy more goods than it does now. After adjusting for inflation the downward trend in revenues from the watershed (as shown in the dashed blue line) is very apparent.

Sensitivity testing on some of the factors contributing to this decline indicates that approximately 30 percent of the decline is due to the out-migration of permits, and another 60 percent is due to the fact that ex-vessel prices have not kept up with inflation. The remaining 10 percent of the decline is not explained by the variables that we examined.

Figure ES-44. Inflation Adjusted Total Revenue from Harvesting of Watershed Permit Holders, 1984 – 2008



Sources: Figure developed by Northern Economics based on data from Commercial Fishery Entry Commission (CFEC, 1980 - 2008) and the US Bureau of Labor Statistics (US BLS, 1980 - 2008).

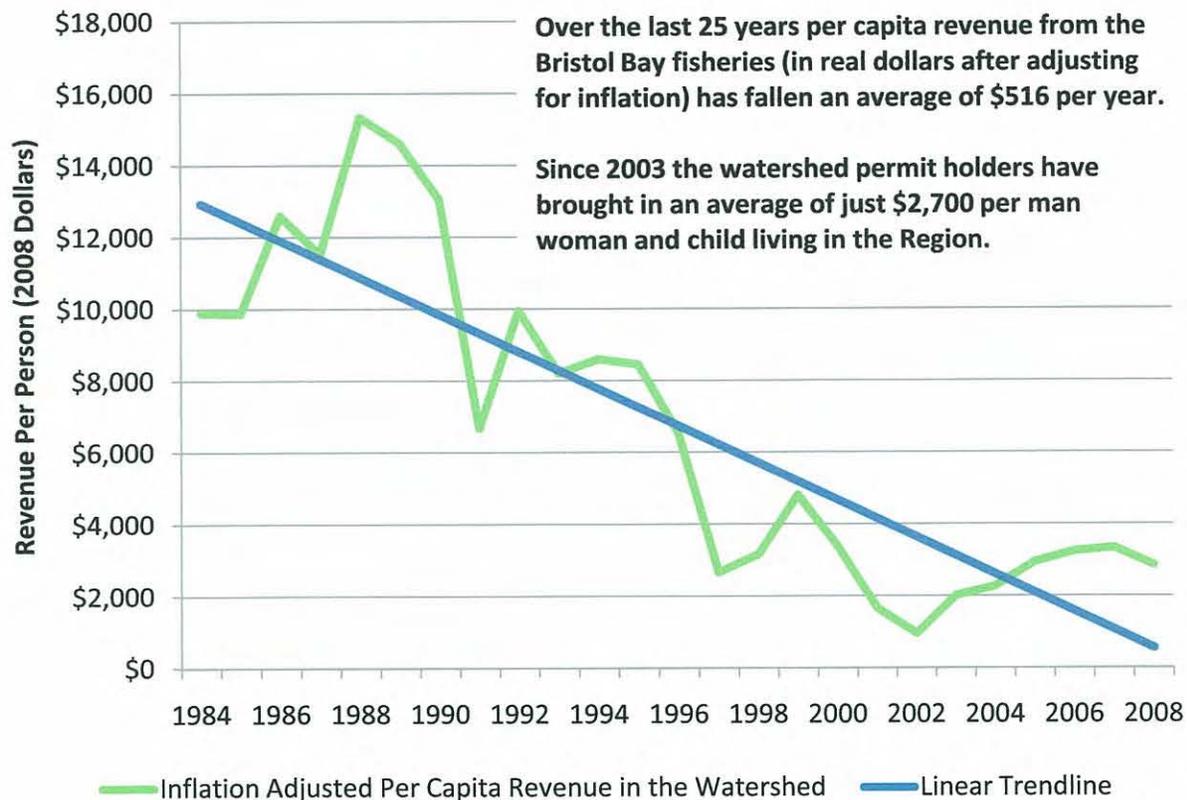
We conclude with the following statements and a final figure.

- The decline in value derived from the fishery by watershed residents has had a significant impact on the region's economy.
- The decline however does necessarily diminish the fishery's overall importance to residents.

The final figure shows the inflation adjusted per capita revenue from the Bristol Bay drift and set gillnet fisheries of permit holders residing in the Watershed. Since 1984, per capita revenues in the fishery have varied significantly with fishery-wide changes in run sizes and prices. But over the last 25 years per capita revenue from the Bristol Bay fisheries (in real dollars after adjusting for inflation) has fallen an average of \$516 per year.

In the 1980's per capita revenue was over \$10,000. However, since 2003 watershed permit holders have brought in an average of just \$2,700 per man, woman, and child living in the Region.

Figure ES-45. Resident Bristol Bay Fishery Revenue per Capita, 1984 – 2008 (Adjusted for Inflation)



Source: Figure developed by Northern Economics based on data from AK Dept of Labor and Workforce Development (ADOLWD, 1990 - 2008), Commercial Fisheries Entry Commission (CFEC, 1980 - 2008), and the US Bureau of Labor Statistics (US BLS, 1980 - 2008).

SUMMARY OF ACTIVITIES

In accordance with 19 AAC 10.490(a)(4), the City Council of Dillingham passed a resolution on April 24, 1986 authorizing the filing of a petition for annexation of 918.25 square miles of territory under the provisions of AS 29.06.040(b). On May 1, 1986, the Department of Community and Regional Affairs received the authorized petition. Under 19 AAC 10.530, the City published notice of the filing of its petition on June 27 and July 4, 1986, in the Bristol Bay Times.

On April 23, 1986, the City of Clark's Point's submitted a petition for annexation of area included within the territory proposed for annexation by the City of Dillingham. It was accepted by the Department in terms of form and content and was subsequently transmitted to the Local Boundary Commission (LBC) with the Department's report and recommendation. This presented a novel problem for the LBC in that it was now having to consider competing annexation requests.

On May 25, the Department received a letter from Clark's Point Native Corporation formed under ANCSA (Saguyak Incorporated) "protesting" the Dillingham annexation and supporting the Clark's Point annexation. On June 12, 1986 the Department received a letter from the Dillingham Native Corporation formed under ANCSA (Choggiung Limited) objecting to "certain portions, if not all, of this annexation". On July 24, the Department received a letter from the Secretary for the City Council of Manokotak opposing the petition from the City of Dillingham.

On October 4, 1986, a public hearing was conducted by the LBC in Dillingham and one in Clark's Point. At that time the City of Dillingham presented a revised boundary request to the LBC. It reduced the territory proposed for annexation by approximately one-half. However, the City testified that the original boundaries of the proposed annexation were justified, though the City redrew the boundaries to accommodate landowners in the area.

At this point it became apparent that the submission of competing annexation requests was motivated by the desire of each City to obtain the revenue generated by raw fish taxes. This revenue would be available to them only through annexation of at least a portion of Nushagak Bay. The LBC directed the two Cities to examine the conflict and on November 10, 1986, present it with any proposed compromise in terms of boundaries or agreements for the sharing of revenues and municipal services. Work sessions were held between the Councils of the respective Cities, and staff from the Department of Community and Regional Affairs participated in a meeting held on October 24. Ultimately the two Cities were unable to come to an agreeable solution to the conflict. On November 6, 1986, the City Council of Dillingham passed Resolution #86-66. This resolution requested the LBC judge the competing annexation petitions on their own merits.

On November 3, 1986 the Bristol Bay Native Corporation submitted a letter to the Department regarding the proposed annexation from Dillingham. Although the letter states that the corporation takes no position on the City of Dillingham's annexation petition, it raises several issues of concern, many of which were reflected in the Department's report and recommendation to the LBC.

STATEMENT OF DECISION
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PAGE TWO

On November 4, 1986, Marie Luckhurst submitted to the Department a letter and an accompanying "protest petition" signed by approximately 70 landowners in the area proposed for annexation. This petition argued that the respective landowners believed the area failed to warrant annexation. In response to this, Mr. John Pearson, Councilmember of the City of Dillingham, submitted a letter rebutting the arguments presented by the protest petitioners. This was received by the Department on November 21, 1986. On that same day another letter suggesting the City of Dillingham drop the annexation proposal was received by the Department. The letter was submitted by William P. Johnson and it questioned the revised western boundaries of the annexation area. It noted that "the City Council pulled back the boundaries sufficiently to exclude all City Council and immediate family members who staked land within the State open to entry area".

The Alaska Attorney General's Office was requested to provide advice on how the LBC should handle two proposals for annexation where the proposals overlap in the area to be annexed. On November 13, 1986, the Attorney General advised the Department of Community and Regional Affairs that the common law doctrine of "prior jurisdiction" should be applied in this instance. This requires the LBC to consider and act upon the petition submitted first, in this case, that from the City of Clark's Point. A decisional session of the LBC was conducted on November 22, at which time the LBC considered and acted upon the proposed annexation request from the City of Clark's Point and subsequently considered and acted upon the proposed annexation request from the City of Dillingham.

PROFILE OF PROPOSED ANNEXATION

The area originally proposed for annexation is located generally to the northwest, west and south of the existing municipal boundaries of the City of Dillingham. It includes waterways of Nushagak Bay and lands south and west of the City of Aleknagik and east of the City of Manokotak. In the course of the boundary's southeastern traverse it borders the existing corporate limits of the City of Clark's Point. The western territory includes Nunavaugaluk Lake, headwaters of the Snake River.

The area is rural in nature. Onshore areas are inhabited on a seasonal basis by local and non-local residents for purposes of subsistence and commercial fisheries activities. There are an unspecified number of fish camps and set-net sites in the territory. The permanent population of the area is estimated at 75.

The petitioner has asserted that the area proposed for annexation is in need of municipal services which the City can provide more efficiently than another municipality. This contention is based upon the belief that seasonal and permanent residents of the area require and already utilize City services to the extent that annexation of the waterways and land areas are warranted. The petitioner also believes that current and anticipated development in the area requires control and regulation which the City will provide. Additionally, the petitioner feels that the health, welfare or well-being of City residents is endangered by conditions existing in the area proposed for annexation, and that annexation will enable the City to remove or relieve these conditions. The City of Dillingham further desires to enhance its revenues by receipt of the raw fish taxes available from floating processors within the territory proposed for annexation. It is felt by the City that these additional revenues will offset the anticipated decline in state and federal assistance.

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At its November 22 decisional meeting, the LBC approved an approximate 40 square mile area for annexation to the City of Dillingham. It is referred to as "the identified 40 square mile area northwest of the City of Dillingham" in the remainder of this statement.

FINDINGS OF FACT

In arriving at its findings, the LBC has considered documents and evidence including, but not limited to: the petition for annexation, accompanying brief, revised boundary request and City Resolution #86-66 all from the City of Dillingham; the report and recommendation of the Department of Community and Regional Affairs; the letters of non-support from Saguyak Corporation, Choggiung Limited, Bristol Bay Native Corporation, City Secretary of Manokotak, Marie Luckhurst, and William Johnson; the letter of support from John Pearson; and oral testimony provided at the October 4, 1986, public hearing. As listed below, findings of fact are not necessarily limited to the standards provided in state regulations.

1. THE CONTIGUOUS TERRITORY IS NOT TOTALLY SURROUNDED BY THE CITY'S BOUNDARIES [19 AAC 10.070(1)].
2. THE LAND IN THE TERRITORY IS NOT WHOLLY OWNED BY THE CITY [19 AAC 10.070(2)].
3. WITH THE EXCEPTION OF THE IDENTIFIED 40 SQUARE MILE AREA NORTHWEST OF THE CITY OF DILLINGHAM, THE TERRITORY IS NOT URBAN IN CHARACTER [19 AAC 10.070(3)].

The area proposed for annexation is largely uninhabited. There is a significant, though relatively small section currently developed. This development is residential and consists of approximately 75 people adjacent to the Aleknagik Lake Road. They reside in single and multiple family dwellings. The majority of these residents are located in four subdivisions, portions of which are within the City limits and portions of which are outside the City limits but within the territory proposed for annexation. These are known as Ahklun View Estates, Ahklun View Estates North, Ahklun Subdivision III and Lars D. Nelson Subdivision.

The ratios of permanent residents to each square mile within the original and revised areas proposed for annexation do not approximate that of the annexing City. The settlement patterns of the City suggest that only the residents located north of the City along the Aleknagik Lake Road, particularly those in the above noted subdivisions, are indeed located there as a result of natural growth of the City beyond its legal boundaries. With the exception of this inhabited area, the territory proposed for annexation is not generally close to the population center of the City. Again, with the exception of the area adjacent to the Aleknagik Lake Road, the territory proposed for annexation is not accessible to a major land transportation route. With the exception of the property in this same area, the territory is not served nor can it be served in the immediate future by public services and utilities (e.g. water, sewer, electricity and telephone). Thus, the factors which collectively identify urban territory apply to only that portion of the identified 40 square mile area northwest of the City of Dillingham.

4. WITH THE EXCEPTION OF THE IDENTIFIED 40 SQUARE MILE AREA NORTHWEST OF THE CITY OF DILLINGHAM, THE TERRITORY IS NOT IN NEED OF MUNICIPAL SERVICES TO THE EXTENT THAT ANNEXATION OF THE TERRITORY IS WARRANTED [19 AAC 10.070(4)].

STATEMENT OF DECISION
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PAGE FOUR

The City of Dillingham has made a number of City services available to the seasonal and permanent residents of the area proposed for annexation. These services include operation and maintenance of the sanitary landfill, provision of police and fire protection, emergency medical and education services. The permanent residents of the identified 40 square mile area northwest of the current City boundaries avail themselves of these services on a year-round basis. The seasonal processors and their crews may, on occasion, receive some of these services three months of the year. The critical issue is the relative degree to which these services are required. With the exception of the identified 40 square mile area northwest of the current boundaries of the City, it has not been demonstrated that these services are required to the extent that annexation is warranted.

5. WITH THE EXCEPTION OF THE IDENTIFIED 40 SQUARE MILE AREA NORTHWEST OF THE CITY OF DILLINGHAM, THE DEGREE OF LIKELIHOOD THAT FUTURE GROWTH AND DEVELOPMENT WILL OCCUR WITHIN THE TERRITORY IS INSUFFICIENT TO WARRANT ANNEXATION [19 AAC 10.070(5)].

Given the settlement patterns occurring from usual urban growth, it appears likely that the identified 40 square mile territory northwest of the current boundaries of the City will experience additional settlement. Additionally, the State "Open to Entry" land disposal within the area to the northwest of the current City boundaries has been subdivided. This is an area generally accessible by road and these facts collectively demonstrate there is adequate potential for development in this area to warrant annexation.

For areas within the territory proposed for annexation other than those noted above, the "development" referenced by the petitioner consists of the floating processors who anchor within the waters of Nushagak Bay. While recognizing that floating processors represent "development", they do not constitute the type of development applied in this standard. The development suggested here is of one impacting a community on a permanent, constant and year-round basis.

6. THE HEALTH, WELFARE OR SAFETY OF CITY RESIDENTS ARE NOT ENDANGERED BY CONDITIONS EXISTING OR DEVELOPING IN THE TERRITORY [19 AAC 10.070(6)].

The petitioner has presented no evidence to confirm that there are conditions in the area proposed for annexation which endanger the City residents. It has been suggested that residents along the north end of the Aleknagik Lake Road who dispose of their solid waste at an unauthorized gravel pit present a danger to the health, welfare or safety of City residents, the nearest of whom is ten miles away. This has not been demonstrated. Nor has it been demonstrated that the health, welfare or safety of City residents is endangered by the floating processors who may discharge refuse in the waters of Nushagak Bay. It is observed that, for the most part, these same processors burn their garbage onboard or dispose of it at the Clark's Point sanitary landfill. No conditions have been presented to demonstrate that annexation of the territory is warranted based on this standard.

7. THE EXTENSION INTO THE TERRITORY OF CITY SERVICES OR FACILITIES IS NOT NECESSARY TO ENABLE THE CITY TO PROVIDE ADEQUATE SERVICE TO CITY RESIDENTS NOR IS IT IMPOSSIBLE OR IMPRACTICAL FOR THE CITY TO EXTEND THE FACILITIES OR SERVICES UNLESS THE TERRITORY IS WITHIN THE CITY'S BOUNDARIES [19 AAC 10.070(7)].

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PAGE FIVE

The petitioner has presented no evidence which satisfies the application of this standard:

8. WITH THE EXCEPTION THE IDENTIFIED 40 SQUARE MILE AREA NORTHWEST OF THE CITY OF DILLINGHAM, RESIDENTS OR PROPERTY OWNERS WITHIN THE TERRITORY DO NOT RECEIVE OR ARE NOT REASONABLY EXPECTED TO RECEIVE, DIRECTLY OR INDIRECTLY, THE BENEFIT OF CITY GOVERNMENT WITHOUT COMMENSURATE PROPERTY TAX CONTRIBUTIONS, TO THE EXTENT THAT ANNEXATION OF THE TERRITORY IS WARRANTED [19 AAC 10.070(8)].

The seasonal residents of the area do occasionally receive the type of City services referenced in this standard, (services provided by the City's general fund, e.g. fire, solid waste disposal, emergency medical services). It should be noted that although property taxes assist in funding some of these services, in many cases additional revenues could be obtained through user fees. This notwithstanding, when the services are rendered, they are not been rendered to the degree or frequency that justifies annexation of the entire territory under this standard. However, the permanent residents of the identified 40 square mile area northwest of the City of Dillingham do receive these City services to the degree and frequency to warrant annexation of that area.

9. THE ANNEXATION IS NOT OTHERWISE NECESSARY TO ACCOMPLISH A VALID PUBLIC PURPOSE.

No evidence was presented to identify accomplishment of a valid public purpose through the annexation.

10. THE ANNEXING CITY HAS DEMONSTRATED THAT IT IS CAPABLE OF AND WILLING TO EXTEND FULL MUNICIPAL SERVICES TO THE IDENTIFIED 40 SQUARE MILE AREA NORTHWEST OF THE CITY OF DILLINGHAM IMMEDIATELY UPON ANNEXATION.

The City of Dillingham has demonstrated that it is capable of and willing to extend full municipal services to the area approved for annexation immediately upon annexation.

11. ANNEXATION OF THE WATER AREAS SOUGHT BY THE CITIES OF CLARK'S POINT AND DILLINGHAM WOULD ULTIMATELY REDUCE THE INCENTIVES FOR THE FORMATION OF A BOROUGH IN THE AREA.

If either City annexes any of the waterways as proposed, that City can expect to receive increased raw fish taxes. This would not only allow the City to obtain additional revenues without the encouragement to pursue borough formation, but it would constrain the area in terms of a potential revenue base for any future borough. The ultimate result would be a disincentive for borough formation.

12. IN THE PRESENT SITUATION, THE PROBLEMS EXPRESSED BY THE CITIES OF CLARK'S POINT AND DILLINGHAM ARE DEFINITELY REGIONAL IN NATURE.

Clearly, the problems of service delivery, revenue enhancement, public health and welfare threats, and management of "development" are shared by these two Cities located fifteen miles apart. The Cities claim these problems are largely generated by an industry upon which they both share an economic dependence. With these concerns in mind, the door must remain open for these regional problems to be addressed by a regional form of government. Approval of this annexation would discourage this from occurring.

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13. THE STATUTES AND REGULATIONS ESTABLISHING STANDARDS FOR INCORPORATION OF CITIES AND BOROUGHES SHOULD BE CONSIDERED IN THIS ANNEXATION PROPOSAL. WHEN DOING SO, THEY DO NOT SUPPORT THIS PETITION.

The statutes speak to "a community" when addressing city incorporation and "an area" when addressing borough incorporation. The definition of the word "community" as provided in Black's Law Dictionary is a "neighborhood" compared to the definition of the word "area" as "a territory, a region". The instant situation speaks to local boundary actions motivated by problems affecting a territory of people, not a community of people. Clearly a city is not the appropriate vehicle to adequately address problems that are of regional concern.

14. USE OF A METHOD OTHER THAN LEGISLATIVE REVIEW FOR ANNEXATION OF THE IDENTIFIED 40 SQUARE MILE AREA NORTHWEST OF THE CITY OF DILLINGHAM WOULD HAVE BEEN INAPPROPRIATE.

In accordance with 19 AAC 10.600, the LBC has considered alternative methods of annexation. For the reasons stated below, the legislative review method is the most appropriate.

The four alternative processes are not viable for the following reasons.

Local Action/Election - The process of local election by the voters residing within the territory proposed for annexation is impractical because the voters within the area proposed for annexation have not initiated the action and there are no indications they want to do so, or will do so.

Additionally, this process is inappropriate because it fails to adequately protect the interests of all property owners of the area. The size of the territory proposed for annexation is 918.25 square miles and the number of permanent residents is estimated at 75. However, the number of registered voters within the area is estimated to be only 35 based upon the percentage of resident registered voters statewide. The ratio of resident voters to the size of the area is disproportionately large. With such a disparity between the size of the area proposed for annexation and the number of voters residing within the area, the interests of non-resident property owners appear to be inadequately represented. This local action/election method was not designed for use in situations where there is such disparity in size of the territory and number of voters deciding the question.

Local Action/Municipally owned property - The process of annexation through local ordinance of the adjoining City if the territory proposed for annexation is solely and entirely owned by the adjoining City is unavailable because the City of Dillingham does not own the territory proposed for annexation.

Local Action/100% of Voters and Property Owners - The process of annexation through local ordinance of the adjoining City if all property owners and registered voters within the area petition the City Council for annexation is impractical because these individuals have not petitioned the City for annexation of territory and there is no indication they want or are willing to do so.

Step Annexation - The process of local election and legislative review with graduated extension of services is inappropriate because the disparity in size of the territory and number of

STATEMENT OF DECISION
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residents makes local election an unfair and inappropriate method of annexation.

CONCLUSIONS OF LAW

The proposed annexation of approximately 918.25 square miles of territory to the City of Dillingham does not, in its entirety, satisfy the applicable requirements of state statute and regulation regarding annexation of contiguous territory to a City. There is an approximate 40 square mile area northwest of the City which has been found to satisfy the requirements for annexation of contiguous territory.

Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW stated herein, IT IS ORDERED THAT the following described territory shall be annexed to the City of Dillingham upon tacit approval of the First Session of the Fifteenth Legislature, in accordance with the provisions of Article X Section 12 of the State Constitution:

Beginning at the northwest corner of Section 7, Township 12 South, Range 56 West, Seward Meridian (S.M.); thence south to the southwest corner of Section 18, Township 12 South, Range 56 West, S.M.; thence east to the southeast corner of Section 18, Township 12 South, Range 56 West, S.M.; thence south to the southwest corner of the northwest one-quarter of Section 29, Township 12 South, Range 56 West, S.M.; thence east to the southeast corner of the northeast one-quarter of Section 28, Township 12 South, Range 56 West, S.M.; thence south to the southwest corner of Section 34, Township 12 South, Range 56 West, S.M.; thence east to the northwest corner of Section 3, Township 13 South, Range 56 West, S.M.; thence south to the southwest corner of Section 34, Township 13 South, Range 56 West, S.M.; thence east to a point at 158 degrees 35 minutes West Longitude; thence due south to a point at 59 degrees 00 minutes North Latitude; thence east to a point on the line of mean low water of Nushagak Bay; thence northerly and easterly along the mean low water line of Nushagak Bay and the Nushagak River to the mean low water line on the right bank of the Wood River; thence northerly along the mean low water line on the right bank of the Wood River to a point on the northern section line of Section 9, Township 12 South, Range 55 West, S.M.; thence west to the northwest corner of Section 9, Township 12 South, Range 55 West, S.M.; thence south to the southwest corner of Section 16, Township 12 South, Range 55 West, S.M.; thence west to the northwest corner of Section 24, Township 12 South, Range 56 West, S.M.; thence north to the northeast corner of Section 14 Township 12 South, Range 56 West, S.M.; thence west to the northwest corner of Section 15, Township 12 South, Range 56 West, S.M.; thence north to the northeast corner of Section 9, Township 12 South, Range 56 West, S.M.; thence west to the northwest corner of Section 7, Township 12 South, Range 56 West, S.M.; the point of beginning, excluding the territory presently within the boundaries of the City of Dillingham.

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PAGE EIGHT

ORDERED THIS 10th DAY OF December, 1986.

ALASKA LOCAL BOUNDARY COMMISSION

BY:

Robert O Eder
Robert Eder, Chairman

ATTEST:

Gene King
Staff

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS
OFFICE OF THE COMMISSIONER
JUNEAU, ALASKA

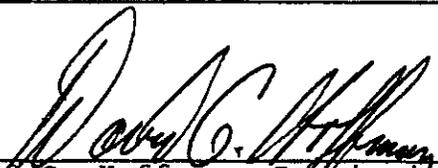
CERTIFICATE

BOUNDARIES OF THE CITY OF DILLINGHAM, ALASKA

I, David G. Hoffman, Commissioner of the Alaska Department of Community & Regional Affairs, hereby certify that the following is a true and accurate description of the jurisdictional boundaries of the City of Dillingham, Alaska. The boundaries described below include territory tacitly approved for annexation by the Second Session of the Fifteenth Alaska State Legislature effective February 29, 1988, consisting of approximately 12.25 square miles of territory plus that water area beginning 1,000 feet east of the northern boundary of the City of Dillingham and paralleling the mean low water line on the right banks of the Wood and Nushagak Rivers to a point at 59 degrees 00 minutes North Latitude.

Beginning at the northwest corner of protracted Section 31, T12S, R55W, Seward Meridian (S.M.); thence east to a point 1,000 feet east of the mean low water line on the right bank of the Wood River; thence meandering in southeasterly, southerly and southwesterly directions along a line 1,000 feet east of and paralleling the mean low water line on the right banks of the Wood and Nushagak Rivers to a point at 59 degrees 00 minutes North Latitude; thence west to the intersection with the line common to Sections 3 and 4, T14S, R56W, S.M.; thence north to the northwest corner of Section 3, T13S, R56W, S.M.; thence west to the southwest corner of Section 31, T12S, R55W, S.M.; thence north to the northwest corner of Section 31, T12S, R55W, S.M., the point of beginning, containing 36.5 square miles, more or less, all in the Third Judicial District, State of Alaska.

Signed this 2nd day of MARCH, 1988.



David G. Hoffman, Commissioner
Alaska Department of Community
and Regional Affairs

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ACKNOWLEDGMENT

STATE OF ALASKA)
) SS.
)

This is to certify that on the 2 day of March, 1988, before me, the undersigned, a Notary Public, duly commissioned and sworn as such, personally came David G. Hoffman, to me known to be the Commissioner of the Alaska Department of Community & Regional Affairs, who signed this foregoing Certificate of Boundaries of the City of Dillingham, Alaska.

William Rolger
Notary Public



My commission expires: 3/12/91

Record in Bristol Bay Recording District and return to:
Dan Bockhorst
Municipal and Regional Assistance Division
949 E. 36th Ave., Suite 404
Anchorage, AK 99508

(No Charge, State Business)

88-140

RECORDED - FILED	NC
BRISTOL BAY REC. DIST.	
DATE	<u>3-25</u> 19 <u>88</u>
TIME	<u>1:00</u> P.M.
Requested by	<u>Municipal</u>
Address	<u>Regional Assistance Division</u>

STEVE COWPER , GOVERNOR

Dept. of Community & Regional Affairs

OFFICE OF THE COMMISSIONER

REPORT AND RECOMMENDATION TO THE ALASKA LOCAL
BOUNDARY COMMISSION ON THE PETITION OF THE
CITY OF DILLINGHAM FOR THE ANNEXATION OF
APPROXIMATELY 421.25 SQUARE MILES OF TERRITORY.

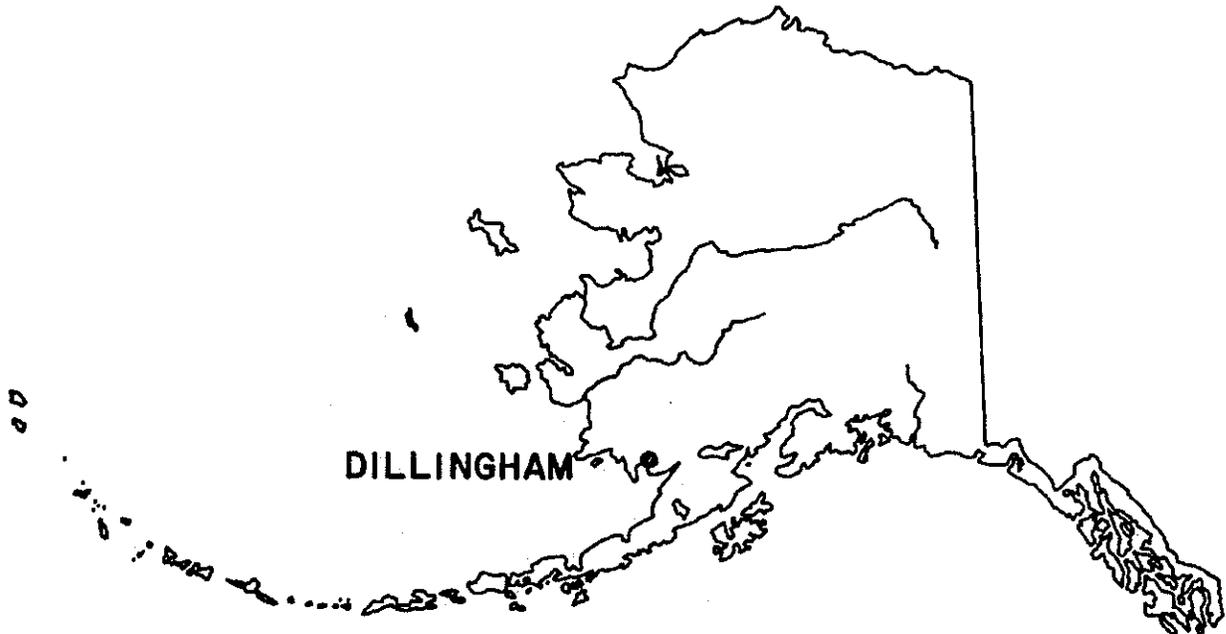


Exhibit 5
Page 1 of 3

SEPTEMBER 1987

5

INTRODUCTION

Prior to examination of the degree to which the department finds that the present annexation petition meets required standards, it is important to briefly portray the findings of the LBC with regard to a 1986 proposal from the City of Dillingham and a 1986 proposal from the City of Clark's Point to annex all or portions of Nushagak Bay. This section of the report looks at these findings as well as more recent activity regarding an examination of the feasibility of borough government in the area.

E. 1. PRIOR PETITIONS FOR ANNEXATION OF NUSHAGAK BAY

In December, 1986, the LBC acted upon separate proposals from the Cities of Dillingham and Clark's Point for annexation of all or significant portions of Nushagak Bay. Following its examination of these proposals, the commission concluded that:

1. The size, configuration, level of development and other characteristics of Nushagak Bay are clear evidence that it is a "region" rather than "part of a community". State laws governing municipalities provide that, to the extent territories are incorporated, regional territory shall be served by boroughs or unified municipalities, while community territory shall be served by cities. (Except, of course, that cities and unincorporated communities within boroughs are also part of boroughs and are served by them.) Thus, the LBC concluded, annexation of all or substantial portions of Nushagak Bay by any city is inappropriate.
2. The need for municipal jurisdiction over Nushagak Bay is of a regional nature. Issues of service delivery, revenue enhancement and impacts to public health and safety are shared by the cities of Clark's Point and Dillingham, as well as other areas bordering and or relying upon the resources of Nushagak Bay. Thus, regional municipal government was judged to be the most appropriate mechanism to address these needs.
3. Annexation of all or substantial portions of Nushagak Bay by a city would diminish the incentive for, and indeed the feasibility of, borough formation. Thus, annexation of the area by any city was determined not to be in the best interests of the state or the region.

Circumstances have not changed since the commission made these findings. Given the clarity of its position with respect to annexation of significant portions of Nushagak Bay

by any city, the department concludes that there is no purpose in examining the annexation of this waterway as presently proposed by the City of Dillingham. Rather, it is presumed that the commission will reject this aspect of the current proposal as it did four months prior to the submission of the current petition.

E. 2. SOUTHWEST REGION BOROUGH STUDY

Recently, a number of local governments and school districts encompassed by the Southwest Region REAA boundaries expressed interest in identifying a means to improve services or to maintain existing services in the face of declining revenues. The interest was principally generated in response to reductions in levels of State financial aid to local entities.

In response, Fred Zharoff, State Senator for Senate District N, requested the department conduct a study of the feasibility of establishing a borough in the region. The department has agreed to undertake the study, which is scheduled to be completed in January, 1988.

In an effort to ensure local involvement in the study, the department has made provisions to establish a regional advisory committee. The committee will be comprised of seventeen members as outlined below.

One representative from each of the following cities:

Aleknagik	Ekwok
Clark's Point	Manokotak
Dillingham	New Stuyahok
Togiak	

One representative from each of the following unincorporated communities:

Ekuk
Koliganek
Levelock
Portage Creek
Twin Hills

One representative from each of the following organizations:

Southwest Region REAA
Dillingham School District
Bristol Bay Native Corporation
Bristol Bay Coastal Resource Service Area

One representative to collectively represent the village corporations in the region.

Of course, the study itself will not result in the creation of a borough. Under existing law, a borough may be created only with the approval of the voters in the area proposed for incorporation.

> Table of Contents for this Report

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Permit Holder and Crew Member Counts by Census Area & City of Residence

Click here for a detailed explanation of this report.

YEAR	CENSUS AREA	CITY	NUMBER OF PERMIT HOLDERS	NUMBER OF CREW MEMBERS
2009	070 DILLINGHAM CA	ALEKNAGIK	24	34
		CLARKS POINT	11	17
		DILLINGHAM	227	259
		EKUK	0	0
		EKWOK	3	1
		IGUSHIK	0	0
		KASHIAGAMTUT	0	0
		KOLIGANEK	18	25
		MANOKOTAK	84	93
		NEW STUYAHOK	25	39
		NUNACHUAK	0	0
		NUSHAGAK	0	0
		PORTAGE CREEK	0	0
		TOGIAK	224	117
		TWIN HILLS	7	2
		UNGALIKTHLUK	0	0
		CENSUS AREA TOTAL	623	587

Footnotes:

- Permit Holders
 - Residency of permit holders is based on the residency claimed on their permit application or renewal. Any permit holders claiming nonresidency, regardless of the address provided, are grouped under the category Nonresident. Any permit holders with a non-Alaskan address who claim residence are grouped under the category Alaska Resident, Unknown City.
 - Only current holders of permits were included in this report.
 - Holders of vessel permits and special use permits such as experimental, test fishing, educational, reservation, and hatchery are excluded from this report.
- Crewmembers
 - Crewmember license data for this report are static and were provided by the Alaska Dept. of Fish and Game, Administrative Services Division. Any corrections, updates or changes made to the crewmember license file after CFEC received the data will not appear in this report.
 - Crewmembers who are permit holders in other fisheries are not required to purchase a crew license. Therefore, they may not appear in the crewmember license data.
 - Individuals who may have held both a permit and a crew license are not counted as crewmembers in this report to avoid double counting.
 - Crewmembers who did not provide a social security number when purchasing a crew license are not included in this report.
 - Residency of crewmembers is based on the address they provided on their crewmember license application. Crew records where the state is recorded as other than Alaska are grouped under the category Nonresident. Crew records where the state is recorded as Alaska but the city does not match federal census city data are grouped under Alaska Resident, Unknown City.

Alaska Department of Fish and Game
Division of Commercial Fisheries

Bristol Bay District where Vessels with Harvest in Naknek-Kvichak District Made their First Harvest, 2009

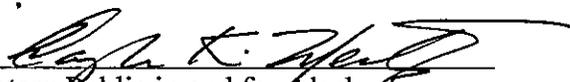
Title: Bristol Bay District where Vessels with Harvest in Naknek-Kvichak District Made their First Harvest, 2009
 For: Jim Baldwin, (907) 586-9988, redalderlaw@ak.net
 Contact: Cathy Tide, PO Box 115526, Juneau, AK 99811-5526, P. 907.465.6133, cathy.tide@alaska.gov
 Data Source: ADF&G Zephyr fish ticket database; Run 09/27/2010

Year	First District	Vessel Count	Percentage
2009	Ugashik	16	2.2%
2009	Egegik	180	25.2%
2009	Naknek-Kvichak	444	62.1%
2009	Nushagak	75	10.5%
2009	Togiak	0	0.0%
	Total	715	100.0%

Dated at Juneau, Alaska this 29th day of September, 2010.


Gregg K. Erickson

SUBSCRIBED AND SWORN TO before me this 29th day of September,
2010.


Notary Public in and for Alaska
My commission expires: 9/30/13

September 29, 2010

Mr. Jim Baldwin
Attorney at law
227 Harris Street
Juneau, AK 99801-1212

Re: City of Dillingham annexation petition

Dear Mr. Baldwin:

You asked me to evaluate and report on the several economic issues related to the City of Dillingham's 2010 proposal to annex 396 square miles of salmon-rich waters in the Nushagak and Wood River areas adjacent to the city.¹

Effect of the annexation on the viability of a future borough

Prior studies

Most importantly, you asked me to analyze and report on the likely effects of the proposed annexation on the economic and financial viability of a future borough regional government to serve the Dillingham-Nushagak-Togiak region. These economic effects are important because the Alaska Constitution², state law³, and the Alaska Administrative Code⁴ establish a presumption in favor of providing a regional government through organized boroughs, and against annexations that would preempt or discourage creation of a regional government.⁵ In 1986 the Local Boundary Commission, rejecting competing proposals by Dillingham and the City of Clark's Point to annex the Nushagak waters, explained the reasoning behind this policy.

If either city annexes any of the waterways as proposed then the City can expect to receive increased [state] raw fish taxes. This would not only allow the City to obtain additional revenues without the encouragement to pursue borough formation, but it would constrain the area in terms of a potential revenue base for any future borough. The ultimate result would be a disincentive for borough formation.⁶

¹ *Annexation Petition by the City of Dillingham by Local Action for Approximately 396 Square Miles of Submerged Land and 3 Square Miles of Land* (hereafter, "Dillingham Petition").

² The Alaska Constitution, Article X, Section 1, states, "The purpose of this article is to provide for maximum local self government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions." Article X, Section 3, states, "The entire state shall be divided into boroughs, organized or unorganized"

³ AS 29.05.031, AS 29.05.100 (providing standards for the incorporation of boroughs).

⁴ "Territory may not be annexed to a city if essential municipal services can be provided more efficiently and more effectively by another existing city or by an organized borough" 3 AAC 110.090 (b).

⁵ This presumption is a legal matter about which I do not offer any expert economic opinion.

⁶ Local Boundary Commission, *Statement of Decision in the matter of the petition for annexation of territory to the*

Since this landmark decision several studies have addressed the economic and financial effects of various Dillingham-area annexation or borough formation proposals. All have concluded that the tax base of the Nushagak waters would be crucial to the establishment of any regional government in the area.⁷

In 1988 the Dept. of Community and Regional Affairs (DCRA), responding to the Local Boundary Commission's 1986 rejection of the attempts by nearby cities to annex the Nushagak waters, analyzed the economic and financial feasibility of a hypothetical borough encompassing the City of Dillingham, and the surrounding Southwest Region Regional Education Attendance Area (REAA), including the contested Nushagak waters.⁸

The study concluded that an organized borough in the region was financially viable.

At the request of officials of certain communities in the Southwest Region REAA, in 1989, DCRA examined the prospect of forming a borough in what was termed the "Northwest Bristol Bay Region." The area in question included much of the Southwest Region REAA, but excluded Dillingham. DCRA concluded that such a proposal would be financially viable, but considered the exclusion of Dillingham to be problematic in terms of satisfying the standards for borough formation.⁹

The issue of the economic and financial viability of a Dillingham-area borough was next revisited in 1993.¹⁰

Since 1988, a number of events have taken place so that borough organization is again under review. Those events include:

- o Decline in state revenues for such basic local needs as education, capital improvements and fisheries protection and enhancement;
- o Changing international market forces causing major concern about the future of the local economy;
- o The cost of education in the region and need to find alternative funding sources to provide for the system in the future; and
- o The need for a stronger voice in regional and state issues.¹¹

The 1993 study provided a detailed examination of the costs and potential revenues that could be generated by a hypothetical borough that included Dillingham.

A cornerstone of the borough finances should be a raw fish tax. Residents are adamantly opposed to a property tax. A raw fish tax is generally easy to administer and is viewed as fair and equitable. Other municipalities in the southwest part of the state have had similar taxes in place for over 20 years. This study looks at a one and two percent raw fish tax. It estimates revenues based on long-term harvest levels at three

City of Dillingham, Alaska, December 10, 1986 (finding of fact 11), [as quoted at p. 49, *Dillingham Petition*].

⁷ The area is encompassed specifically by the Nushagak Bay Commercial Salmon District.

⁸ *Borough Feasibility Study Southwest Region School District and the City of Dillingham*, Dept. of Community & Regional Development, 1988.

⁹ *Chronicle of Borough Developments in the Bristol Bay Region and Update of Revenue Projections Concerning the Proposed Annexation to the Lake and Peninsula Borough*, Dept. of Community and Economic Development, March 2000. The Dept. of Community and Economic Development (DCED) was created in 2000 by the merger of DCRA and the Dept. of Commerce and Economic Development.

¹⁰ *Supplemental Borough Feasibility Study Southwest Region School District and the City of Dillingham*, Bristol Bay Coastal Resource Service Area, August 1993.

¹¹ *Ibid.*, p. 1-1.

price scenarios. Given the likelihood of low to moderate prices in the future, the area needs to consider at least a two percent raw fish tax. One percent is simply inadequate. There are too many unknown and unpredictable factors surrounding other revenue sources to rely on only a one percent tax.¹²

The raw fish tax base, though rich, was highly variable, with production and prices subject to wide and unpredictable variations. A strength of the 1993 study was its recognition that this variability required analysis of multiple revenue scenarios, and consideration of the likely volatility of what the authors expected to be the new borough's principal source of revenue.

Even the lowest revenue scenario without considering annual surpluses would be adequate to fund a prospective borough but only until FY1997. However, this minimal tax level is not a positive nor constructive public policy approach to meet the expected and unexpected long term revenue needs for the study area. Again, the study area needs to consider a higher tax level, at least two percent on both raw fish and the recreational industry to adequately fund borough services.¹³

Between 1988 and 1993 the average price of Bristol Bay sockeye salmon had plunged from an all-time high \$2.11 to a near all-time low \$0.67 per pound. The "low-price" scenario incorporated in the 1993 study was \$0.65 per pound. The fear that the downward trend in salmon prices would continue caused local officials to ask DCRA to develop new financial projections based on prices ranging from a high of \$0.65 to a low of \$0.35 per pound.

DCRA responded and published its resulting study in April 1994, concluding that the 2 percent raw fish and recreational industry (lodge) tax contemplated in the 1993 study would *not* be sufficient to support a financially viable borough under even the "high," \$0.65 price scenario. Viability could be achieved only by bumping the tax rates to 4 percent and/or imposing a general sales tax (see Table 1, on the following page).¹⁴

These findings contradicted the 1993 study's conclusion that revenues under a 2 percent tax and \$0.65 per pound scenario would be sufficient to support a borough. Based on a more detailed and current model of state's complex education aid formula, authors of the 1994 study found that the required borough contribution for participation in the state's education aid program would be \$265,000 more than estimated in 1993. Correction of the misestimate for education wiped out the \$240,000 surplus projected in 1993.¹⁵

¹² *Ibid.*, p. 1-3.

¹³ *Ibid.*

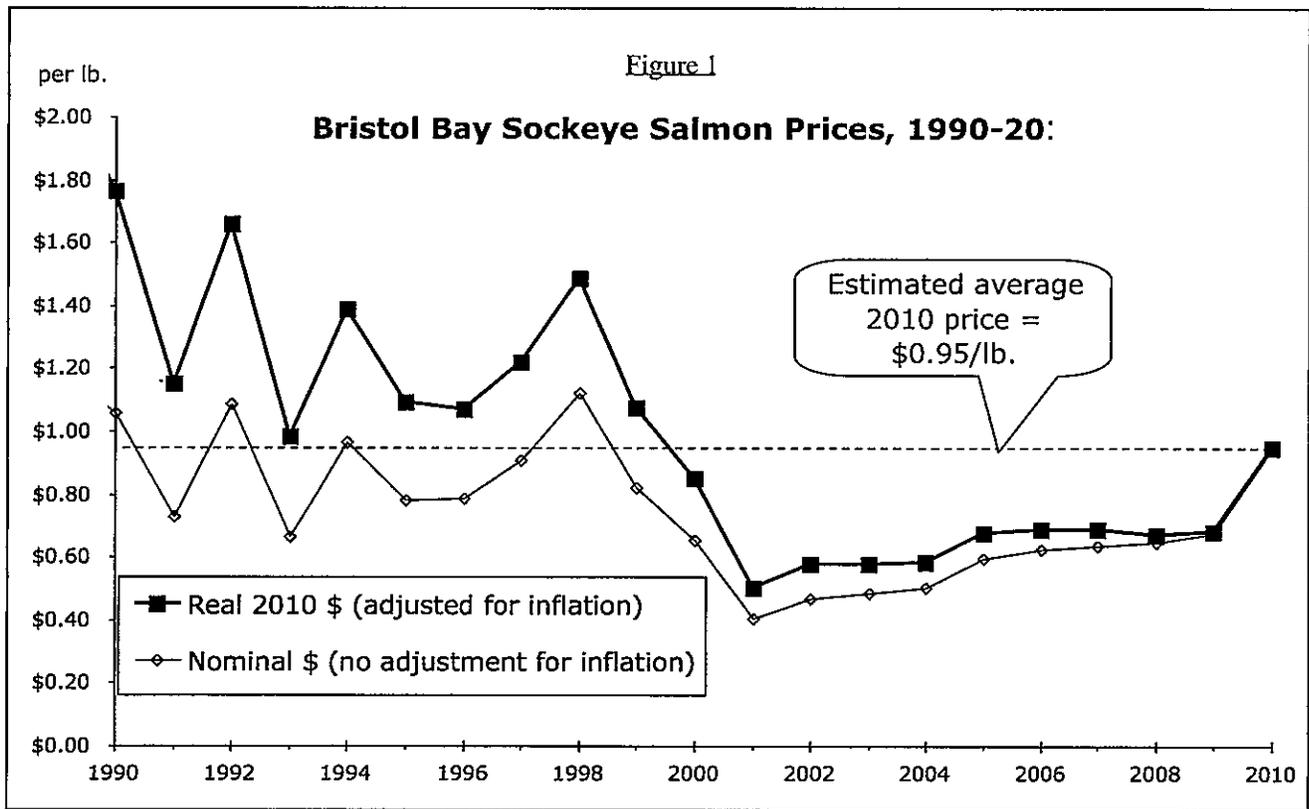
¹⁴ *Budget Projections for a Prospective Dillingham Census Area Borough*, Local Boundary Commission staff report, Dept. of Community & Regional Affairs, April 1994.

¹⁵ The 1994 analysis also projected \$153,000 less revenue for the proposed borough, an outcome that would have exacerbated the expected shortfall in the new borough's finances.

entities levy various raw fish taxes, but offers no financial or economic analysis to support the conclusion that Dillingham’s proposed tax would not affect the viability of a Dillingham-area borough, or that the situations in the other areas they cite are comparable to the situation that would be faced by a Dillingham-area borough.

Setting these claims aside, it is nevertheless reasonable to ask if “conditions on the grounds,” as the city terms them,¹⁹ are materially different from what they were in 1993 and 1994. I see little evidence to suggest that is the case. The expected value per pound has not materially changed — when adjusted for inflation the \$0.65 price per pound scenario used in 1994 translates to \$0.94 per pound in 2010 dollars, close to the base Bristol Bay sockeye price set for 2010.²⁰

That price is also close to the \$0.97 per pound average real (inflation-adjusted, 2010 dollars) value over the last 20 years. Figure 1, below, shows average annual nominal and real prices in comparison with the \$0.95 estimated for 2010.²¹ I’ve drawn a dashed horizontal line at the \$0.95 level to help show how the 2010 estimated price compares with history.



¹⁹ *Dillingham Petition*, p. 49.

²⁰ “Huge haul, high prices for Alaska salmon catch,” Laine Welch, *Capital City Weekly*, Sept. 1, 2010.

²¹ The nominal price for 2010 is estimated (see note 20, above); the 2008 price is from *The Importance of the Bristol Bay Salmon Fisheries to the Region and its Residents*, Northern Economics for the Bristol Bay Economic Development Corporation, October 2009; all other nominal price data in Figure 1 is from the Alaska Commercial Fisheries Entry Commission, <http://www.cfec.state.ak.us/bit/MNUSALM.htm>, accessed on Sept. 28, 2010; I benchmarked the real prices to the Anchorage Consumer Price Index, using the first half of 2010 as the base.

Some things *have* changed. A non-profit trade association established in 2005 in the Bristol Bay region was formed and now levies a 1 percent salmon marketing assessment that operates like sales tax on raw fish. State law allows this assessment to reach as high as 2 percent.²²

Other factors that are different now from 1994 are the higher costs associated with providing the services of regional government, and the lower level of financial assistance a borough can expect from the state. For example, the municipal assistance and revenue sharing programs that existed in 1994 are no more, and the program recently adopted in their place provides much less municipal aid. Other state programs to assist municipalities, such as support for the costs of defined benefit retirement obligations, would provide no resources to a new borough.

Based on the prior studies of the economic viability of a proposed Dillingham regional government and my assessment of current economic and financial conditions, I see no reason to assume that the fundamental conclusions of the prior studies have been overturned. To the contrary, based on sockeye prices and production levels, revenues available from other sources, and trends in costs of providing borough services, it is likely that the financial viability of a Dillingham borough is more marginal today.

For this reason, it is my opinion that

(1) Dillingham's claim that there is enough revenue potential to be derived from the sale of raw fish in the region to support two taxing jurisdictions at the rates predicted in the past is questionable and without a firm basis in fact;

(2) Dillingham's intent to impose a 2.5 percent sales tax on raw fish sales in the Nushagak Commercial Salmon District, considered along with other taxes levied on that revenue source, creates a significant disincentive to formation of a borough in the region.

Other economic issues

You asked me evaluate and report on the several other economic issues related to City of Dillingham's annexation proposal.

Who pays the taxes now levied by the City of Dillingham?

At several points in its petition the city asserts that residents of Dillingham, through their payment of sales and property taxes, support services that are used and useful to non-residents.²³ I am prepared to testify and offer evidence that non-residents already bear a high proportion of the burden of Dillingham's current sales tax, property tax, and user fees.

Revenue from the city's proposed to 2.5 percent tax is essential to support services benefiting the region as a whole

According to the city, "This annexation and the accompanying local severance and sales tax on raw fish will provide more revenue to the City of Dillingham to help pay for services and facilities

²² See AS 43.76.350 – 43.76.399.

²³ "Currently, a significant number of non-residents receive the benefit of these services that directly assist them in their fishing business without contributing equitably to operation and maintenance of the city services and facilities." *Dillingham Petition*, p. 6.

that the region's commercial fishermen and fleet use while in town and will help make the community more financially sustainable."²⁴

The annexation will certainly provide the city with more revenue, but the implication that this revenue is either "needed" or "necessary" to support city services is problematic. In its most recent audited financial statement, for the year ending June 30, 2009, Dillingham reports \$6.5 million of liquid reserves, an unrestricted surplus equal to 109 percent of the city's reported expenditures in fiscal year 2009.

While small municipalities such as Dillingham, have a legitimate need to maintain liquid reserves, I am prepared to testify and offer evidence that the reported reserves are more than sufficient to fund the additional services the city proposed to offer if its annexation proposal is approved.

The annexation will promote economic development of the region

The city states that, "A stronger financial picture for the City of Dillingham as a result of annexation will allow it to better assist and support [economic development in the adjacent waters] through improved facilities and service."²⁵ I am prepared to testify and offer evidence that nothing in the city's petition provides any factual basis to conclude that the annexation will have any effect on the trajectory of the region's economic development.

Sincerely,



Gregg Erickson
ERICKSON & ASSOCIATES

²⁴ *Dillingham Petition*, p. 7.

²⁵ *Dillingham Petition*, p. 42.