

Treadwell Cites Court Precedent in Turning Down Initiative

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Shaylon Cochran/KDLL

A proposed initiative to ban commercial setnetting was rejected earlier this week by Lt. Governor Mead Treadwell. He was in Kodiak Wednesday, campaigning for his Senate run and talked about that decision, and the previous court cases that were used to make it. KDLL's Shaylon Cochran has more. Read more after the jump.

KMXT's Jay Barrett contributed to this story.

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A 12-page opinion from the Department of Law was the basis for Treadwell's decision. It cited one main court case from 1996, but the basic precedent goes back much farther.

"I go back to the Bern-Homestead Initiative in 1978, where Alaskans voted to have a new homesteading program, and the Supreme Court later on said, "Wait a second, you're appropriate a state asset of land, and the constitution says you can't do that by initiative."

That same principle was at the heart of this decision. The group that introduced the initiative, the Alaska Fisheries Conservation Alliance, was calling for a ban on commercial setnetting in all urban areas of the state. But in reality,

the only urban area of the state that has a commercial setnet fishery is Cook Inlet, where more than 700 permits are issued. Treadwell says on first read, it didn't appear to be an allocative issue. Those decisions are left to the Board of Fish.

"We looked at and initially, the legal analysis was, well this is a gear type decision and not an allocation decision. It might be able to go forward. And that was their argument."

The case the Department of Law used a case called Pullen vs. Ulmer as the basis for its opinion. That case was also about a ballot measure. It wanted voters to give preference for a portion of the salmon harvest to subsistence, personal use and sport fisheries, then allocate the rest to other users. The problem is that, according to the law, salmon are considered a state asset.

"The Pullen decision makes it very clear if there's a, in essence, a self-serving allocation, or an allocative effect all told, it's not an appropriate use of the initiative, and so based on that opinion, it was turned down."

In a news release after the Lt. Governor announced his decision, AFCA Board Chair Bill MacKay said the initiative "seeks no authority to regulate or allocate fisheries management in our state." And that the group should be out gathering signatures instead of looking into a possible lawsuit. The group's executive director, Clark Penney, thanked Treadwell and the law department for their due diligence, but said he was puzzled by the decision and struggled to see the logic or the legality of it. The AFCA pointed to one of the state's first ballot initiatives, a ban on fish traps in the 50's, as precedent for their ballot measure. In addition to that, the group noted similar bans in Texas, Alabama, Florida, Louisiana, New York and California.

Treadwell says he isn't surprised or worried about a potential lawsuit.

"You know as soon as I raised my right hand to be lieutenant governor I was being sued by Joe Miller, so I'm used to that. But as a result of these lawsuits, we may get clearer law. But, we did turn down this initiative, and I know that made the commercial groups happy and some of the sportsfishing groups unhappy"

He had some advice for the group moving forward; go through the normal process of managing fisheries.

"Go back to the fish board, let's try to make sure that setnets are not doing what they're not supposed to be doing, and let's do some other things we can do for conservation in the river as well"

King salmon management is sure to be the hot-button issue when the Board of Fish meets later this month in Anchorage.