

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

April 2, 2001
6:13 p.m.

MEMBERS PRESENT

Representative Gary Stevens, Co-Chair
Representative Peggy Wilson, Co-Chair
Representative Drew Scalzi
Representative Fred Dyson
Representative John Coghill
Representative Beth Kerttula

MEMBERS ABSENT

Representative Mary Kapsner

COMMITTEE CALENDAR

HOUSE BILL NO. 206

"An Act relating to a vessel-based commercial fisheries limited entry system, to management of offshore fisheries, and to the definition of 'person' for purposes of the commercial fisheries entry program; and providing for an effective date."

- MOVED HB 206 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 206

SHORT TITLE:VESSEL LIMITED ENTRY FOR COMM. FISHERIES

SPONSOR(S): RESOURCES

Jrn-Date	Jrn-Page		Action
03/22/01	0691	(H)	READ THE FIRST TIME - REFERRALS
03/22/01	0691	(H)	FSH, RES
04/02/01		(H)	FSH AT 5:00 PM CAPITOL 124

WITNESS REGISTER

MARY McDOWELL, Commissioner
Commercial Fisheries Entry Commission
Alaska Department of Fish & Game
8800 Glacier Highway, Suite 109
Juneau, Alaska 99801-8079

POSITION STATEMENT: Testified on behalf of Commercial Fisheries Entry Commission in support of HB 206.

JOHN WINTHER

(No address provided.)

Alaska

POSITION STATEMENT: Testified in support of HB 206.

ALAN PARKS

PO Box 3334

Homer, Alaska 99603

POSITION STATEMENT: Testified on HB 206; he noted that the bill might have good intentions, but he does not support it as-is.

PAUL K. SEATON

58395 Bruce Street

Homer, Alaska 99603

POSITION STATEMENT: Testified against HB 206.

MAKO HAGGERTY

PO Box 2001

Homer, Alaska 99603

POSITION STATEMENT: Testified against HB 206.

ACTION NARRATIVE

TAPE 01-16, SIDE A

Number 0001

CO-CHAIR GARY STEVENS reconvened the House Special Committee on Fisheries meeting to order at 6:13 p.m. Representatives Scalzi, Dyson, Coghill, Kerttula, Stevens, and Wilson were present. [For minutes of the Presentation on the AK Seafood International (ASI) by Bob Poe, Executive Director, AIDEA and Jeff Bush, Deputy Commissioner, Department of Community & Economic Development, see the 5:07 p.m. minutes for the same date.]

HB 206-VESSEL LIMITED ENTRY FOR COMM. FISHERIES

CO-CHAIR STEVENS announced the next order of business would be HOUSE BILL NO. 206, "An Act relating to a vessel-based commercial fisheries limited entry system, to management of offshore fisheries, and to the definition of 'person' for purposes of the commercial fisheries entry program; and providing for an effective date."

Number 0048

REPRESENTATIVE SCALZI, speaking as co-chair of the House Resources Standing Committee, sponsor of HB 206, explained that there are two types of limited entry systems in Alaska, the [current] limited entry system and the Individual Fishery Quota [IFQ], a federally managed fishery. This bill addresses a new fishery that exists for which the current limited entry system does not work. The current limited entry system requires a permit to be issued to the vessel operator.

REPRESENTATIVE SCALZI noted that HB 206 is by request of the Commercial Fisheries Entry Commission [CFEC], and has been brought to the legislature to see if CFEC can receive support in obtaining this new "tool" regarding management of fisheries. He stated that Mary McDOWELL, Commercial Fisheries Entry Commission, is here to speak on the "fine necessities of the situations" that have risen in the hair crab and scallop fisheries and why the existing limited entry system does not work.

Number 0226

MARY McDOWELL, Commissioner, Commercial Fisheries Entry Commission (CFEC), Alaska Department of Fish & Game, explained that the origin of this bill stems from the legislature. In 1996, the legislature placed a moratorium on the entry of new vessels into the Korean hair crab fishery, and did the same to the weather vane scallop fishery in 1997. In passing the bill that implemented the moratorium on the hair crab fishery, the legislature directed the CFEC and Department of Law to draft and bring forward legislation to create a vessel-based limited entry program. This alternative program could serve where there are problematic programs such as in the hair crab and scallop fisheries.

MS. McDOWELL stated that the legislature gave specific instructions to develop a vessel based limited entry program that could be used in fisheries in which limitations of Alaska's current program hindered the achievement of the purposes of Limited Entry Act. She said these purposes were "conservation [of] a resource and protecting the economic viability of the fishery and those who depend on it." In doing this, the legislature recognized that these fisheries are not well suited to limitation in the current program. So, a new tool was needed for specific use in these fisheries.

Number 0374

MS. McDOWELL specified that the current limited entry program was enacted in 1973, with very few changes since then. Over 60 fisheries have been limited under the current program. She said it has served Alaska and its fisheries very well. She explained that the current limited entry program was based on the owner-operator model, that has characterized the salmon fishery, which happens to be the first fishery that was limited. The owner-operator model still characterizes the vast majority of the state-managed fisheries. Relatively small boats and single owners characterize these fisheries. These owners invest in the boats and equipment and serve as the skippers of the operations by operating the vessel, hiring crew, and so on. She reiterated that fishing privileges go to the vessel operator under the current limited entry program. These privileges can only go to a human being, not to companies, partnerships, or any other kind of entity. So, operators of these fishing operations are "grandfathered" into a fishery under CFEC's program.

MS. McDOWELL said in recent years, CFEC has been faced with the need to get a handle on several fisheries that differ in the way they have evolved. This has resulted in a modified version of the limited entry program. These fisheries tend to be characterized by larger and more expensive vessels, fishing farther offshore, and ownership through companies, partnerships, or corporations, even if those involved one or two individuals. In these fisheries, owners use hired skippers more often than not. These skippers are not invested in the fishery, and might be working on a rotating basis throughout the year.

MS. McDOWELL indicated that if these fisheries were limited such that the permits had to be issued to the actual fishermen, the number of participants in a fishery could increase rather than decrease. For example, if one boat has four skippers, and four permits are issued, the operation could be "cloned" into four [fisheries].

Number 0601

MS. McDOWELL remarked that there is also a fairness issue as to whether, under the current program, ongoing fishing privileges were being issued to employees rather than to those who have invested in developing that fishery. So, the legislature recognized that these fisheries had different traits when the moratoriums were implemented. She mentioned that the moratoriums for hair crab and scallop fisheries were supposed to

expire in 2000-2001, but since the legislature did not have a way of permanently dealing with these fisheries, the legislature extended them to 2003-2004. House Bill 206 provides the tool needed to deal with the hair crab and scallop fisheries. However, as the legislature directed, this is a generic bill that could serve as a useful tool in other fisheries.

MS. McDOWELL remarked that this bill establishes a framework for a vessel-based program that is very similar to the current program under current statute. This bill was carefully drafted to preserve the use of CFEC's current person-based program in any fisheries where it can be workable. It was also designed to adhere to as many of the goals and purposes of the current program as possible and still create a new one.

Number 0723

MS. McDOWELL referred to page 2, lines 16-31, of HB 206 and said it contains criteria regarding when the CFEC may use this program as opposed to the traditional limited entry program. She summarized this part of the bill as saying that "we essentially always default to traditional person-based limited entry." It is a well-designed program that keeps the fishing privileges in the hands of the actual participants. She went on to say that [traditional limited entry program] avoids absentee ownership of Alaska's fisheries and consolidation of ownership and so on, and it works well to protect the place of Alaskans in their fisheries both at initial issuance and over time as permits change hands, while still passing constitutional muster, which it needs to do because it is regulating a commerce activity.

MS. McDOWELL remarked that the bill ensures that this new program would only be used in state-managed fisheries if the fishery met several criteria. She indicated that the fishery would have to meet limitations that would not work under the existing limited entry system. The new program could also be used for fisheries that are in the [United States] exclusive economic zone if it helped the state gain or retain state management of those fisheries.

MS. McDOWELL pointed out the "second generation" provision that begins on page 6, line 8, of HB 206. She said that under this program, permits are initially issued when a fishery comes "under limitation to the owners of the vessels that qualify." These owners can be individuals, partnerships, companies, or another sort of entity. However, when permits are transferred,

sold, or given away, they can only be transferred to an individual human being, which is the case in CFEC's current [traditional limited entry] program.

MS. McDOWELL said this bill mandates that the person receiving the permit must hold an ownership interest in the vessel and be onboard whenever that vessel is fishing. These provisions are also in the current [limited entry] program. Permit holders can still have partnerships in owning a boat and so on, but fishing privileges can only be under one person. She said the only exception for this is found on page 6, line 24, subsection (c) which says an entity that received an initial issuance permit in that fishery could have another permit transferred to it if it was for use on the same boat. For example, this could happen if different criteria such as species to be caught or areas to be fished were attached to the permits in a given fishery. So, if one's initial permit was for a particular species or a specific area, another permit could be issued to the same boat to broaden the species or area that could be fished. This is the only exception. Otherwise, at the second generation and from there on, permits would have to change hands only into the hands of a human being.

MS. McDOWELL summarized that [CFEC] believes this bill is responsive to the directives from the legislature and that it departs from CFEC's current program as little as possible. The Commercial Fisheries Entry Commission encourages quick passage of the bill since it is faced with the upcoming expiration of the moratorium on the hair crab and scallop fisheries, where this program is needed. She said this bill is only "enabling" legislation. After its passage, limitations will still need to be proposed in those fisheries. The Commercial Fisheries Entry Commission plans on working closely with the people in these fisheries to ensure that a workable program is developed.

Number 1064

CO-CHAIR WILSON asked for clarification on what occurs if a transfer must be made to a person.

MS. McDOWELL replied that under the current [limited entry] program, only a human being can hold a permit. When fisheries are initially limited, the "grandfather rights" are handed out to participants. In this case, the permit would go to only vessel owners, which may be a "non-human being" such as a company. If the entity [vessel owner] goes to sell the permit or give it away, the permit can only be transferred to a human

being, not another corporate entity. Similar to CFEC's traditional limited entry program, "it's the idea of having participants have the ownership in the fishery." She said there was some fear in initial discussions, that the fishery would move toward "absentee corporate ownership, that our fisheries would be owned by California banks or something, [and] fishermen would all be hired hands." The current limited entry program was designed for this not to happen. She said this is a confusing part of the bill, but it's meant to depart from the goals of the current program as little as possible.

Number 1196

REPRESENTATIVE STEVENS wondered if she had any concerns with corporate structures owning permits, especially when they change hands.

MS. McDOWELL remarked that this is not going to be an easy thing to administer. The Commercial Fisheries Entry Commission hopes it will not be used that often. Provisions in the bill will be established for when ownership has changed enough that it has triggered the need to be transferred to a human being. For example, she said:

If there's a partnership, [where] you've got two or three partners and they want to add a new partner, that would be seen as a change of ownership. At that point, we would say this partnership has changed and the next owner of that permit needs to be a human being. [In other words,] one of you needs to be onboard and the name of one person needs to be on the ownership of the fishing privileges.

Number 1292

REPRESENTATIVE KERTTULA remarked that if there were problems in the fishery, the same problems would exist when transferring the permit. She asked if this would cause transference of a permit to become very difficult.

MS. McDOWELL commented that this is an area that they will be hearing from fishery participants about. But the participants [CFEC] has spoken to so far have not seen it as a problem. [This bill] will limit the available market, because [a permit holder] will have to find someone who wants to be an active participant. She said in most partnerships, the person whose name it is in, after the transfer, will need to be at least a

partial owner of the vessel and look for a partner who wants to be an active participant. She went on to say that this proposal came from fishery participants, due to the concern of people moving towards absentee ownership. So "we're hopeful it's workable." If not, CFEC will hear from fishery participants.

Number 1349

REPRESENTATIVE SCALZI commented that the reason for this is that if [the permit] were to go to the individual initially, there would be too many. So, the intent is to start with a vessel and then "migrate to putting it to the person, essentially."

MS. McDOWELL said there still may be multiple owners of a vessel, but one owner has to have the permit in his or her name and be an active participant onboard.

REPRESENTATIVE KERTTULA asked what the case would be if there were four people who wanted to be the owner [of the permit].

MS. McDOWELL replied that initially, the permit would be issued to the company or partnership. Most of the vessels in these big-boat fisheries are incorporated as a business. When vessel ownership changes, the "market" would be towards those willing to put the [permit] in their names.

REPRESENTATIVE KERTTULA asked if partnerships can individually sell their shares.

MS. McDOWELL said they could sell the ownership of the boat that way. But the fishing privileges have to be put in the name of one person.

REPRESENTATIVE KERTTULA asked if the transfer could be to "one person and to one partnership, or to two persons."

MS. McDOWELL stated that upon transfer, it has to be in the name of one person because one person holds the [fishing] privileges.

Number 1494

REPRESENTATIVE COGHILL said chances are high that ownership would change within a fishery. He asked if she knew what this scope might look like.

MS. McDOWELL replied that she did not know, but perhaps fishery participants who testified could answer that.

Number 1525

REPRESENTATIVE DYSON asked what the required minimum time was that a person could have the permit in his or her name before being able to transfer it.

MS. McDOWELL said there was no minimum amount of time.

REPRESENTATIVE DYSON inquired if the permit had to be in the hands of a person "every other time."

MS. McDOWELL replied that a permit could only go to an entity at the initial issuance. After that, the permit must go to one person.

REPRESENTATIVE DYSON asked how this would work for a vessel that worked year-round with a succession of crews and skippers.

MS. McDOWELL said this is an inconvenience because it means the person who owns the permit must be onboard if the boat is fishing. As in current [limited entry] program, "we" have to find someone who is willing to be on the boat whenever it fishes. This is how the bill is currently crafted; however, it's a policy call [for the legislature].

Number 1625

REPRESENTATIVE SCALZI commented that this is similar to the IFQ fishery. In first-generation IFQ transfers, the North Pacific Fishery Management Council realized that there were many people who had multiple boats or who hired skippers. In second-generation IFQ transfers, the owner must be onboard the vessel when it is fishing. He said the intent of this was to keep it a "small-boat fishery" and not have absentee owners. He noted that Joe Kyle, who served on the North Pacific Fishery Management Council during this time, would be available for questions.

Number 1625

REPRESENTATIVE WILSON remarked that what this bill does is "fix something that's currently a problem" but she wondered if someone, for example, owned a corporation and sold it after ten years, if "we" would go back to the same problem.

MS. McDOWELL said no, because the bill proposes to "push the direction of the evolution of the fishery over time," by going towards participant ownership rather than absentee corporate ownership. These are expensive vessels, and there will still be companies and partnerships investing in them. However, the fishing privileges will be held by actual participants with an ownership interest in the fishery.

Number 1744

JOHN WINTHER testified via teleconference. [Much of Mr. Winther's testimony was difficult to transcribe due to bad sound quality.] He stated that he was born and raised in Alaska, and has been involved in the fishing business since 1964. He bought his first vessel from an uncle who started fishing in Juneau in 1915. He has fished crab in the Bering Sea since 1973 as well as hair crab. He has also built his own vessel. He has served six years on the North Pacific Fishery Management Council, ten years on the Governor's Panel of U.S.-Canada Salmon Commission, and is currently on the RJ (ph) Committee for (indisc.), which involves designing management options for the Bering Sea.

MR. WINTHER remarked that he fully supports Commissioner McDOWELL's testimony.

MR. WINTHER described hair crab fisheries. [This part of the testimony was indiscernible.] He then went on to say that this bill would replace the moratorium that Commissioner McDOWELL discussed.

MR. WINTHER commented on problems with the current limited entry system and how this new system is modeled after the federal IFQ system. [Details of this section were indiscernible.]

Number 2094

ALAN PARKS testified via teleconference that he has been involved with commercial fishing since 1975. He spent ten years fishing crab in the Bering Sea, and has also fished crab around Kodiak, in the South Peninsula, in Cook Inlet, and on the outer coast between Homer and Seward. He said he also has 25 years' experience longlining from Washington up to Southeast [Alaska] to Adak for primarily halibut, black cod, and [Pacific] cod. He has also participated in salmon fisheries in False Pass, Bristol Bay, Kodiak, and Cook Inlet. In addition, he has spent numerous

seasons fishing herring in Prince William Sound, Cook Inlet, Kodiak, and Togiak. He went on to say:

I wanted to just comment a little bit about the history of the fisheries just to give you a little bit of what my perspective is when we became a state. The very first Act of the state legislature was to do away with the fish traps around our salmon rivers. And that was done for a very specific reason because the corporation had a hold of our communities and the legislature felt that they needed to give control of the resource ... to the people living in the state.

And to reflect back to the 1973 implementation of limit entry for salmon, ... it was issued to the individual and the owner. And ... it was issued to the people who made the fish landings, based on a point system. So I have some real problems with this bill on ... the way it's going. I particularly want to say that I've been the operator, I've been an owner-operator, [I've] mostly been a crew member, I should say, but I have owned and operated-owned limited entry permits, owned boats, [and] fished in a variety of different fisheries under a variety of different capacities.

But in the introduction letter from Representative Scalzi and commentary by the CFEC staff person, it states that it would award fishing privileges to many who have worked essentially as hired crew in the fishery and ... not those who have invested in the fishery. And under that pretense, ... I think that I have invested in the fisheries over the past 25 years. I have spent time. And you can look at those hair crab vessels out there, and they wouldn't be out there if it wasn't for a crew. So there's actually a value to the crew. [There is a] value to the boat, owners, and operators to have professional crewmembers onboard.

And I know that the IFQ system has been mentioned here a couple of times, and I should say that there is a National Academy of Science publication called "Sharing the Fish" that addresses the value socially and economically for giving a broad spectrum of issuance to fishing rights. So, ... I think ... we need to go back and think about other ways that we can

address the hair crab and the scallop fishery while not producing something that's [going to] have a whole bunch of sideboard issues that we don't foresee right now. So, I think that there's other ways to limit those guys and reduce the number of issuances, based on a point system perhaps. But there's other ways that could possibly help those guys out.

Number 2370

Now, I know that you have mentioned the IFQ situation, and I can tell you right now that I worked on a boat out of Seattle that was an initial allocation, and it was basically a first generation. So they were able to hire a skipper to run that boat, and now that boat and vessel have [been sold] to an investor, and he only has to own.... There are several loopholes involved in the IFQ situation, so I won't go into that. But basically what's happened is that this boat that was once producing income for five families has been sold along with its fishing rights, and basically the investor wrote a new letter to the crew stating that the wages calculations has been changed and your wages have been cut 60 percent....

To sum it up, I think the intent of this [bill] might have merit, but the devil is in the details, and I think we need to look at other ways we can address the problem in the hair crab and scallop fishery rather than giving it to corporation. I think that we have to go back to our roots and exactly how we (indisc.) fisheries in the past. And IFQ fisheries, a federally managed program, so then the state didn't do that. So I guess I would say, "Use caution, look at the details, and listen to the fishermen in the communities." And I think that you'll gain a lot of knowledge.... Thank you very much for letting me testify.

Number 2479

MAKO HAGGERTY, commercial fisherman, testified via teleconference:

I have a lot of problems with this bill. I don't really know where to start. What I have heard is that the concern is that one boat that has four skippers is

going to translate to four permits, which will clone the fishery into four boats.

Well, first of all that doesn't make a lot of sense to me because that one boat had four skippers for a reason. It had four skippers because that one boat had to be fishing all the time. So it just seems like we're trying to fabricate a problem that doesn't really exist. I think it's a bad idea to be giving the fishing rights to the vessel owners. ... I've heard a lot of talk about that one boat and several skippers. But what I haven't heard talked about is one owner and several boats. And it basically winds up into the same thing, ... concentration of wealth and one person controlling a fishery. And that takes us back to what Alan [Parks] was talking about, which is the way the fish wheels worked and the fact that all the fish was owned by one entity, and we all were lucky to be able to have an opportunity to just get a little bit of that money. ...

So I guess what I'm really concerned about is that this particular bill kind of violates what that initial sharing of the resource was all about, and it re-concentrates a resource back into the hands of [a] few. And this bill does exactly that. You might think that this just addresses hair crab and ... scallop fishery. It can be translated into the state cod fisheries and a number of other fisheries [as well]. And I think that it would have [a] very detrimental effect to the coastal economy. And I would really urge you to make the necessary changes or even just throw this bill out. Alan [Parks] had some good points about eligibility by a point system, but giving the fishery to the vessel owner is really a (indisc.) to regulate managed fishers.

Number 2631

PAUL SEATON testified via teleconference and referred to Ms. McDOWELL's comments regarding owner-operated salmon fisheries in 1973. He said anyone who has been involved with the salmon industry, including him, knows that these were not owner-operated fisheries. They were predominantly vessels owned by canneries, and operators were from the "outside" or anywhere in Alaska, and they fished "whether it [was] in Bristol Bay or Cook Inlet." He noted that trolling in the Southeast might have been

different. But this is how the gillnet fisheries were. He said the state "saw in its wisdom" to grant permits to fishermen. He went on to say:

If you went back and looked at the ownership of vessels in Cook Inlet and the ownership of vessels in Bristol Bay at the time this happened, you'd find exactly the same situation that you'd find now, [one in which] somebody else [such as] a corporation owned a vessel, and not the majority of fishermen. And I think when the state decided to empower fishermen, that's why they did this. And I don't think the boat would have come out the same way if the ... system was designed to give the ownership to vessel owners instead of the fishermen.

Basically, this is a difference between the state system that empowers fishermen and the federal system that gives everything to vessel owners. And there's been huge amounts of problems within the communities that [have] been created by the federal system, and in fact that's why we have a state water sablefish fishery. That's why the state Board of Fisheries went through and formed the state water's [Pacific] cod fishery and other devices trying to alleviate the economic ... hardships that have been created by this federal vessel owner system. Between the time this first came up and now, the federal government and the council has created the (indisc.) implementation (or LLP program) to solve these problems in these federal fisheries, these both scallop and hair crab can go and get a species endorsement without having to go through and change the whole basic philosophy of fisheries management in the state of Alaska.

These fisheries, to solve those problems, could get endorsements on LLP's for those two fisheries and go back to the people that it operated in those fisheries. And the state could still maintain management. So, I am firmly against this.

We can take a look at the state water [Pacific] cod (ph.) fishery, which has been a lifesaver to fishermen from Sand Point and Chignik, and Kodiak and here and Prince William Sound, to all over. We've got five different management areas and they have this open access fishery that's regulated in a number of

(indisc.) to a slow fishery. And that's specifically to provide a long-term economic input. The usefulness of a limited entry system here has not occurred. And if people haven't applied for limited entry like at Sand Point, which they would immediately apply under a vessel license program, because the vessel owners aren't the guides that are out there fishing.

It's the same way here in Cook Inlet. I own ... two vessels at [Pacific] cod (ph.) fish[ery]. Most of the larger vessels here are not owner-operator and I'm sure there would be a move to apply for limited entry right away if the owners of the vessels were given the permit. Right now, that's not going to happen because the vessel owners aren't operating the vessels. And so they are not out pushing for an entry permit system that would give those permits to the operators.

Number 2845

MR. SEATON said there were a lot of problems with this bill. He referred to page 5, line 3 of HB 206, and remarked that he could not believe that "only if lost" would "make it into the final writing."

MR. SEATON alluded to transfers of vessel entry permits found on page 6 of HB 206. He referred to earlier testimony and said if "You have corporation A and that's bought by a holding corporation, corporation A still owns the permit but you now have new owners of that permit and vessel." He said corporations have many ways around this.

MR. SEATON pointed out another problem on page 7, lines 3-6 of HB 206. He indicated his hope that substitution [of another vessel for the vessel identified on the permit] would be eliminated from the bill, and that two fisheries [hair crab and scallop] would go back to LLP endorsements rather than changing the state's philosophy on fisheries.

Number 2920

REPRESENTATIVE SCALZI requested that Mr. Seaton submit written testimony detailing his concerns.

01-16 SIDE B
Number 2944

REPRESENTATIVE KERTTULA remarked that she would not object to this bill being moved out of committee because she has heard enough testimony to see that the bill needs to be looked at. However, she still has concerns about transferring permits to corporations since she is not clear on what happens with second-generation transfers. She mentioned that she sees how there can be exemptions and "multiple ownership" [with permits]. But, her concerns can be addressed before this bill goes to the House Resources Standing Committee, she said.

REPRESENTATIVE SCALZI made a motion to move HB 206 from committee with individual recommendations and attached fiscal notes. There being no objection, HB 206 moved from the House Special Committee on Fisheries.

ADJOURNMENT

Number 2898

There being no further business before the committee, the House Special Committee on Fisheries Committee meeting was adjourned at 7:03 p.m.