

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

February 4, 2002
3:39 p.m.

MEMBERS PRESENT

Representative Gary Stevens, Co-Chair
Representative Peggy Wilson, Co-Chair
Representative Drew Scalzi
Representative Fred Dyson
Representative Mary Kapsner
Representative Beth Kerttula

MEMBERS ABSENT

Representative John Coghill

COMMITTEE CALENDAR

HOUSE BILL NO. 286

"An Act allowing a person to hold more than one commercial fishing entry permit for a fishery; relating to the power of the Board of Fisheries to establish fishing periods and areas for subgroups of commercial fishing permits and commercial fishing permit holders and to establish limits on the amount of fishing gear that may be used by certain commercial fishing permit holders; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 288

"An Act relating to commercial fisheries limited entry permit buy-back programs."

- MOVED HB 288 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 286

SHORT TITLE: OWNERSHIP OF MORE THAN ONE FISHERY PERMIT

SPONSOR(S): REPRESENTATIVE(S) SCALZI

Jrn-Date	Jrn-Page		Action
01/14/02	1949	(H)	PREFILE RELEASED 1/4/02

01/14/02	1949	(H)	READ THE FIRST TIME - REFERRALS
01/14/02	1949	(H)	FSH, RES
01/30/02	2100	(H)	COSPONSOR(S): FATE
02/04/02		(H)	FSH AT 3:30 PM CAPITOL 124

BILL: HB 288

SHORT TITLE: LIMITED ENTRY BUY-BACK PROGRAM

SPONSOR(S): REPRESENTATIVE(S) SCALZI

Jrn-Date	Jrn-Page		Action
01/14/02	1950	(H)	PREFILE RELEASED 1/4/02
01/14/02	1950	(H)	READ THE FIRST TIME - REFERRALS
01/14/02	1950	(H)	FSH, RES, FIN
01/16/02	1991	(H)	COSPONSOR(S): STEVENS
01/18/02	2015	(H)	COSPONSOR(S): HUDSON
01/30/02	2101	(H)	COSPONSOR(S): FATE
02/01/02	2128	(H)	COSPONSOR(S): DYSON
02/04/02		(H)	FSH AT 3:30 PM CAPITOL 124

WITNESS REGISTER

DON JOHNSON (ph)

P.O. Box 876

Soldotna, Alaska 99669

POSITION STATEMENT: Testified about changes and improvements that could be made to HB 288.

MARY McDOWELL, Commissioner

Commercial Fisheries Entry Commission

Alaska Department of Fish and Game

8800 Glacier Highway, Suite 109

Juneau, Alaska 99801-8079

POSITION STATEMENT: Testified on behalf of the department.

JERRY McCUNE

United Fishermen of Alaska (UFA)

211 Fourth Street, Suite 110

Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the UFA.

BOB THORSTENSON, President

United Fishermen of Alaska

211 Fourth Street, Suite 110

Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the UFA.

ACTION NARRATIVE

TAPE 02-1, SIDE A
Number 0001

CO-CHAIR PEGGY WILSON called the House Special Committee on Fisheries meeting to order at 3:39 p.m. Representatives Wilson, Scalzi, Dyson, Kerttula, and Stevens were present at the call to order. Representative Kapsner arrived as the meeting was in progress.

HB 286-OWNERSHIP OF MORE THAN ONE FISHERY PERMIT

CO-CHAIR WILSON announced that the first matter before the committee would be HOUSE BILL NO. 286, "An Act allowing a person to hold more than one commercial fishing entry permit for a fishery; relating to the power of the Board of Fisheries to establish fishing periods and areas for subgroups of commercial fishing permits and commercial fishing permit holders and to establish limits on the amount of fishing gear that may be used by certain commercial fishing permit holders; and providing for an effective date."

Number 0128

REPRESENTATIVE SCALZI, speaking as the sponsor, told the committee that HB 286 was what was referred to as a "stacking bill" for people who made the presentation at the fish caucus. He said it has gone before the United Fisherman of Alaska (UFA) board and had revisions made that he concurred with. He said over the weekend, he and the board reviewed those revisions; a proposed CS is in progress.

REPRESENTATIVE SCALZI said that despite the changes made to the bill, it still remains a bill with a primary function of "reducing gear in the water." He said this aim is achieved by allowing an individual to own up to two permits per area. He said provisions allowing more gear or extended fishing time for holders of multiple permits had been deleted from the bill so that a majority of permit holders could have a vote on it. [HB 286 was held over.]

HB 288-LIMITED ENTRY BUY-BACK PROGRAM

Number 0325

CO-CHAIR WILSON said that the next matter before the committee was HOUSE BILL NO. 288, "An Act relating to commercial fisheries limited entry permit buy-back programs." She deferred to Representative Scalzi, the sponsor of the bill.

REPRESENTATIVE SCALZI said the "buy-back bill" is a simple one. He said it takes what is currently in statute - allowing for a buy-back program - and simplifies it by having less requirements to impose a buy-back. Under current statute, if a buy-back program is implemented, the industry must buy back the boat, gear, permit, and other miscellaneous equipment. He told the committee that it would be cumbersome to evaluate "everybody's whole operation," and there would be funding appropriation problems as a result of that evaluation.

Number 0463

REPRESENTATIVE SCALZI said there has not been a buy-back since the implementation of commercial limited entry. He said some attempts may have been made, but he was not sure. Allowing fishermen to buy only the permits would streamline the process and make the buy-back, or buy-down, provisions more palatable. He said there is also the removal of language stating that "there would be a collection of fees, up to 7-percent."

REPRESENTATIVE SCALZI said that the 7-percent provision was illegal as written. He said there would still be fees collected in a buy-back program, and those fees would be disseminated by the legislature. He said that the way the fee provision was written, there was an assumption that they were dedicated funds, which are illegal. The legislature would have to collect fees into the general fund and reappropriate them to administer a buy-back program.

Number 0639

DON JOHNSON (ph), Soldotna, Alaska, testified before the committee that he had a question about the 7-percent funding mechanism. He said it sounded as if Representative Scalzi was talking about another bill to establish the 7-percent as coming from the industry. Mr. Johnson asked, "Why not just put it in this bill?"

MR. JOHNSON said he also had a question about the time limit. He said originally there was a ten-year time limit for a buy-back program to be completed. He said he would rather see about

a five-year limit, and asked if the time limit had changed in the new bill. He said HB 288 leaves the perimeters of when a buy-back is established "open-ended to what the commission wants." He said as it stands, if the commission did not want to perform a buy-back, it would not have to. Mr. Johnson said he would like to see the word "shall" replace the word "may" on line 6 of the bill.

MR. JOHNSON then voiced some of his concerns about public protections. He said the original buy-back program was not concerned about the way the limited entry system affected "common users" or subsistence users. He called for wording that would require the commission to address whether or not a limited entry area was affecting the public. Mr. Johnson suggested that there be a clause saying that "the commission shall maintain the number of permits to impinge as little as possible on common use of fisheries." He said that this wording comes from the Alaska Supreme Court's intent on "a couple of major cases" including McDowell v. State and Owsichek v. State.

MR. JOHNSON said that the Alaska Supreme Court's intent behind limited entry was to not impact common users by entering into an "optimum number procedure" that would reduce the number of permits in an area. He said that when a limited entry fishery overwhelms a public fishery, it "brings on the wrath of the public, the federal government, and everybody else." He said the state has not been listening to the public, and that the public has gone beyond the state to the federal government, as in the case of federal management of subsistence. Mr. Johnson briefly mentioned the issue of taxes and dedicated revenues.

Number 1066

REPRESENTATIVE SCALZI reported that the reason the bill says "may" on line 6 was so that the industry would be "onboard" with a buy-back. He said that there is no "dedication of the allocation of the fish to pay that back." If the entry commission mandated a buy-back in every fishery, the state would be forced to promote buy-back programs where it might not be economically feasible. Representative Scalzi said "that flexibility must be in there."

Number 1199

MARY McDOWELL, Commissioner, Commercial Fisheries Entry Commission, Alaska Department of Fish and Game testified before the committee. She said that the statute talks about "an

optimum number" as the provision that keeps the program constitutional. She said that there is a balance between limited entry and the risk of exclusivity. She said that the optimum number provision gives a mechanism with which the commission can make an evaluation of whether there should be more or fewer permits in a fishery to allow the aforementioned balance to be struck.

MS. McDOWELL said if an optimum-number analysis is performed and the determination is that the optimum number is lower than the current number of permits, the commission is obligated to initiate a state-run buy-back program. She said that is problematic because many in the fishing industry are interested in exploring federal and self-funded buy-back programs, as well as state-funded buy-backs. She said they want the commission to perform the optimum-number determination, but would prefer a choice in the source of the funding for a buy-back. She said that was the "problem with the may-shall issue."

MS. McDOWELL said that the Johns [v. Commercial Fisheries Entry Comm'n] case points out that a fishery cannot become too exclusive, and if it does, the state is required to put permits back into it. She said fishermen want to know that if they do go into a buy-back program, there will not be court challenges saying the fishery is too exclusive. Under that scenario, the state is obligated to put permits back into the fishery. She said that people want there to be the opportunity for an optimum-number determination before there is a decision about instituting a buy-back.

Number 1400

MS. McDOWELL said she understood that if there is a state funded buy-back, the commission would work with the industry, and develop a program. It would then be brought to the legislature, allowing the commission to "custom-make a buy-back" for a given fishery. She said at that point, an assessment could be made about whether members of the industry wanted to assess themselves, seek an appropriation from the legislature and assess themselves to pay it back, have a self-funded program, or use some other option. She said any kind of assessment would involve coming back to the legislature with specific provisions. She said it eliminates the dedicated-fund problem. She added, "This leaves the funding mechanism open."

Number 1541

REPRESENTATIVE SCALZI said he believed that there was still the option of buying back both gear and permits with the new bill.

MS. McDOWELL said she believed that the bill would remove the obligation of buying vessel and gear, but would allow the "whole package" buy-back option if needed. She said she was under that impression, but it would be best to ask an attorney for clarification.

REPRESENTATIVE KERTTULA agreed that it would be best to have an attorney take a closer look at it.

Number 1695

JERRY McCUNE, representing the United Fishermen of Alaska (UFA), said that UFA supports the legislation. He said he thought that if the commission could design a buy-back, it could include vessel and gear. He said "we left out the percentage also, because every fishery is different," giving the example of small setnet fisheries that might only require "4 percent". He said the bill offers options and flexibility for the differences in fisheries around the state.

Number 1820

BOB THORSTENSON, President, UFA testified before the committee. He said this was a very important bill for both the state and the commercial fishing industry. He said it changes language that would have caused hesitation because of the "shall" wording, it saves on administrative costs in determining value in the buying back of miscellaneous gear, and it gives fishermen the option of exercising self-determination in their businesses. Mr. Thorstenson made note of the tight fiscal situation in the state, and said that this bill is one way to help Alaska's fishermen help themselves.

CO-CHAIR WILSON said that she appreciates the way that fishermen are trying to help themselves instead of "asking for money" in the current fiscal situation. She asked for a motion to move the bill.

Number 1963

REPRESENTATIVE DYSON moved to report HB 288 out of committee with individual recommendations and zero fiscal notes.

REPRESENTATIVE KERTTULA said she was not objecting, but the wording on buy-backs should be looked at more closely.

There being no objection, HB 288 was moved out of the House Special Committee on Fisheries.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 4:15 p.m.