

ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE

April 2, 2001

1:10 p.m.

MEMBERS PRESENT

Representative Drew Scalzi, Co-Chair
Representative Hugh Fate, Vice Chair
Representative Joe Green
Representative Mike Chenault
Representative Lesil McGuire
Representative Gary Stevens
Representative Mary Kapsner
Representative Beth Kerttula

MEMBERS ABSENT

Representative Beverly Masek, Co-Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 165

"An Act relating to the Kenai River Special Management Area; and providing for an effective date."

- MOVED CSHB 165(RES) OUT OF COMMITTEE

HOUSE BILL NO. 93

"An Act establishing the permit fee for the personal use dip net fisheries for the Kenai River and the Kasilof River; and providing for an effective date."

- MOVED CSHB 93(RES) OUT OF COMMITTEE

HOUSE BILL NO. 216

"An Act relating to the emergency order authority of the commissioner of fish and game and to meetings of the Board of Fisheries."

- HEARD AND HELD

HOUSE CONCURRENT RESOLUTION NO. 13

Relating to the nonresident fee differential for commercial fishing permits and licenses.

- MOVED HCR 13 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 165

SHORT TITLE:KENAI RIVER SPECIAL MANAGEMENT AREA

SPONSOR(S): REPRESENTATIVE(S)LANCASTER

Jrn-Date	Jrn-Page		Action
03/09/01	0516	(H)	READ THE FIRST TIME - REFERRALS
03/09/01	0516	(H)	RES
03/09/01	0516	(H)	REFERRED TO RESOURCES
03/26/01		(H)	RES AT 1:00 PM CAPITOL 124
03/26/01		(H)	Heard & Held MINUTE(RES)
04/02/01		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 93

SHORT TITLE:KENAI DIP NET FISHERY PERMIT FEE

SPONSOR(S): REPRESENTATIVE(S)LANCASTER

Jrn-Date	Jrn-Page		Action
01/26/01	0171	(H)	READ THE FIRST TIME - REFERRALS
01/26/01	0171	(H)	FSH, RES, FIN
03/12/01		(H)	FSH AT 5:00 PM CAPITOL 124
03/12/01		(H)	Moved CSHB 93(FSH) Out of Committee MINUTE(FSH)
03/16/01	0624	(H)	FSH RPT CS(FSH) NT 5DP 1DNP 1NR
03/16/01	0624	(H)	DP: SCALZI, KAPSNER, KERTTULA, WILSON,
03/16/01	0624	(H)	STEVENS; DNP: COGHILL; NR: DYSON
03/16/01	0624	(H)	FN1: (DFG)
03/16/01	0624	(H)	FN2: (DFG)
03/16/01	0624	(H)	REFERRED TO RESOURCES
03/26/01		(H)	RES AT 1:00 PM CAPITOL 124
03/26/01		(H)	Heard & Held MINUTE(RES)
04/02/01		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 216

SHORT TITLE:BD OF FISHERIES MEETINGS/EMERGENCY ORDERS

SPONSOR(S): RESOURCES

Jrn-Date	Jrn-Page		Action
03/26/01	0730	(H)	READ THE FIRST TIME - REFERRALS
03/26/01	0730	(H)	FSH, RES
03/27/01	0746	(H)	FSH REFERRAL WAIVED
03/27/01	0746	(H)	REFERRED TO RESOURCES
04/02/01		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HCR 13

SHORT TITLE:NONRES. COMMERCIAL FISHING FEES
SPONSOR(S): RESOURCES

Jrn-Date	Jrn-Page		Action
04/02/01	0808	(H)	READ THE FIRST TIME - REFERRALS
04/02/01	0808	(H)	RES, FIN
04/02/01		(H)	RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

REPRESENTATIVE KEN LANCASTER

Alaska State Legislature
Capitol Building, Room 421
Juneau, Alaska 99801

POSITION STATEMENT: Testified as the sponsor of HB 165 and HB 93.

JIM STRATTON, Director

Division of Parks & Outdoor Recreation
Department of Natural Resources
550 West 7th Avenue, Suite 1380
Anchorage, Alaska 99501-3561

POSITION STATEMENT: Reviewed the history of Mayor Bagley's concerns regarding HB 165.

KEVIN BROOKS, Director

Division of Administrative Services
Alaska Department of Fish and Game (ADF&G)
PO Box 25526
Juneau, Alaska 99811-5526

POSITION STATEMENT: Answered questions on HB 93 regarding the handling of revenue.

ROD ARNO, Representative

Alaska Outdoor Council (AOC)
PO Box 73902

Fairbanks, Alaska 99707-3902

POSITION STATEMENT: Spoke in opposition to HB 93.

EDWARD D. MARTIN, JR.

PO Box 521

Cooper Landing, Alaska 99572

POSITION STATEMENT: Testified in opposition to HB 93; discussed concerns with HB 165.

CHRIS GARCIA

Cook Inlet Fisherman's Fund (CIFF)

PO Box 203

Kenai, Alaska 99611

POSITION STATEMENT: Testified in support of HB 93; testified on HB 165 and HB 216.

DREW SPARLIN

37020 Cannery Road

Kenai, Alaska 99611

POSITION STATEMENT: Testified in support of HB 93 and HB 216.

RED SMITH

PO Box 770

Cooper Landing, Alaska 99572

POSITION STATEMENT: Discussed concerns with HB 165.

DALE BONDURANT

31864 Moonshine Drive

Soldotna, Alaska 99669

POSITION STATEMENT: Testified in full support of the addition to KRSMA and the added protection for habitat [as proposed in HB 165]; discussed issues regarding HB 216.

FRANK RUE, Commissioner

Alaska Department of Fish & Game (ADF&G)

PO Box 25526

Juneau, Alaska 99802-5526

POSITION STATEMENT: Testified on HB 216.

DOUG MECUM, Director

Division of Commercial Fisheries

Department of Fish & Game (ADF&G)

PO Box 25526

Juneau, Alaska 99802-5526

POSITION STATEMENT: Testified on HB 216.

GERRY MERRIGAN

Petersburg Vessel Owner's Association (PVOA)
PO Box 232
Petersburg, Alaska 99833
POSITION STATEMENT: Spoke in support of HB 216.

NOEL WOODS
PO Box 827
Palmer, Alaska 99645
POSITION STATEMENT: Spoke in opposition to HB 216.

GEORGE COVEL
PO Box 984
Cordova, Alaska 99574-0984
POSITION STATEMENT: Testified that HB 216 would clarify and strengthen existing statutes.

BOB MERCHANT, President
United Cook Inlet Drift Association (UCIDA)
PO Box 398
Kenai, Alaska 99611
POSITION STATEMENT: Spoke in support of HB 216.

ACTION NARRATIVE

TAPE 01-28, SIDE A
Number 0001

CO-CHAIR DREW SCALZI called the House Resources Standing Committee meeting to order at 1:10 p.m. Representatives Fate, McGuire, Green, Chenault, Stevens, Kerttula, and Scalzi were present at the call to order. Representative Kapsner arrived as the meeting was in progress.

HB 165-KENAI RIVER SPECIAL MANAGEMENT AREA

CO-CHAIR SCALZI announced that the first order of business would be HOUSE BILL NO. 165, "An Act relating to the Kenai River Special Management Area; and providing for an effective date."

[There was a motion to adopt HB 165 for discussion purposes, but it was already before the committee; in committee packets, however, not yet adopted, was a new proposed committee substitute (CS), Version C.]

Number 0200

REPRESENTATIVE KEN LANCASTER, Alaska State Legislature, sponsor of HB 165, informed the committee that technical corrections to the bill were made by the department; he indicated those corrections are encompassed [in CSHB 165, Version C].

CO-CHAIR SCALZI reminded committee members that at the prior hearing on HB 165 [those amendments were discussed].

REPRESENTATIVE GREEN referred to an e-mail from Dale Bagley, Mayor, Kenai Peninsula Borough, which notes the mayor's opposition to HB 165 because he believes there is enough protected land. Representative Green requested the sponsor's comments on Mr. Bagley's e-mail.

Number 0377

REPRESENTATIVE LANCASTER characterized the e-mail as "a general negative e-mail in regard to the addition of the KRSMA [Kenai River Special Management Area] land." Representative Lancaster informed the committee that Mr. Bagley did initiate a lawsuit against the state and that issue was resolved. He noted that perhaps [Jim Stratton, Director, Division of Parks & Outdoor Recreation, Department of Natural Resources] could speak to that issue.

CO-CHAIR SCALZI remarked that there is quite a bit of history with the issue [brought forth by Mayor Bagley]. He agreed with Representative Lancaster that the issue had been resolved.

REPRESENTATIVE KERTTULA relayed concern she has heard because it has been some time since the public hearing process on this land. She asked when the last public hearings were held.

REPRESENTATIVE LANCASTER deferred to Mr. Stratton.

Number 0516

JIM STRATTON, Director, Division of Parks & Outdoor Recreation, Department of Natural Resources (DNR), testified via teleconference. He informed the committee that there were extensive public hearings on the KRSMA update in 1997 and 1998. [The KRSMA update] made the recommendation for the acreage included in HB 165. In the Fall of 1999, the Kenai Area Plan public comment period also included these same recommendations. Although Mr. Stratton didn't have the exact number of hearings, he said perhaps Chris Degernes, Superintendent, Kenai Peninsula

Area, Division of Parks & Outdoor Recreation (DNR), may have that information.

REPRESENTATIVE LANCASTER pointed out that most of the resolutions have been updated within the last week, since the committee last heard the bill. Representative Lancaster informed the committee that he had individual testimony and letters of support as well as a few letters of opposition to this bill. He offered to provide those to the committee.

Number 0785

CO-CHAIR SCALZI, after determining that some teleconference sites had "fallen off," announced that HB 165 would be taken up again later in the hearing.

HB 93-KENAI DIP NET FISHERY PERMIT FEE

CO-CHAIR SCALZI announced that the next order of business would be HOUSE BILL NO. 93, "An Act establishing the permit fee for the personal use dip net fisheries for the Kenai River and the Kasilof River; and providing for an effective date."

Number 0880

REPRESENTATIVE KEN LANCASTER, Alaska State Legislature, sponsor of HB 93, mentioned a question raised [by Representative Fate] at the previous hearing regarding the disposition of the [dip net] fee. He pointed out a letter in the committee packet from Kevin Brooks [which explains that the dip net] fees would go [into the fish and game fund and would remain available pending subsequent appropriation by the legislature.]

[There was motion to adopt HB 93(FSH), Version 22-LS0431\J, as a work draft; however, it was later clarified by Co-Chair Scalzi that the version the committee wanted before it was HB 93, Version 22-LS0431\C, Utermohle, 2/17/01, which had already been adopted and amended on March 26, 2001.]

Number 0961

KEVIN BROOKS, Director, Division of Administrative Services, Alaska Department of Fish and Game (ADF&G), came before the committee to answer the question regarding the handling of revenue. He explained that under AS 16.05.110[(a)(1)], the revenue would be deposited into the fish and game fund. Since fish and game funds are already excluded [from unrestricted

general fund] program receipts [under AS 37.05.146(b)(4)(F)], the second section of the bill is not necessary, because it would already be part of the fish and game fund exclusion.

Number 1010

REPRESENTATIVE FATE stated that he appreciated Mr. Brooks' response. He asked Mr. Brooks to confirm that the request from Kenai for the use of the restricted funds would follow along with the fish and game restricted fund guidelines. He added a "thank you" to Representative Lancaster.

MR. BROOKS answered affirmatively.

Number 1075

ROD ARNO, Representative, Alaska Outdoor Council (AOC), mentioned a letter [included in the committee packet]. He thanked Representative Lancaster for introducing the bill, because human waste, trash, and trespassing are a problem; however, he stated that AOC is concerned about setting a precedent of adding a fee for a personal use fishery, instead of going through ADF&G's capital budget request for facilities, or for access issues. Mr. Arno said right now, one of the Division of Sport Fish's missions is to manage activities associated with personal use fisheries. He added, "Here's an opportunity ... to use the Dingle/Johnson federal money, as well as the fish and game money that comes in, for these projects." He explained that it would be "put together through a process on a budget request to the department."

MR. ARNO stated that 275,000 nonresident sport fishermen brought in \$9 million to the fish and game fund in 2000, whereas approximately 115,00 resident sport fishermen brought in only \$2.4 million. He made the point that there is money available through nonresident sport fishermen, Dingle/Johnson money, and the fish and game fund to support projects that would mitigate "these problems," as opposed to having an additional \$10 fee, which [AOC] considers just as "food tax." Mr. Arno said as an example, Alaskan residents are not charged an additional price for Tier II caribou permits, even though the management of those herds is "a different ... piece of the component."

MR. ARNO said there are two different ways in which money is available. He mentioned the CARA [Conservation and Reinvestment Act] program, which uses fish and game funds as part of the matching fund to that. He said \$300,000 of CARA money has been

allocated to the [Division of Sport Fish] for education, but there is no reason some of that money could not be used to provide facilities, as it is in other areas of the state. Mr. Arno added that the state is using only \$1.5 million of the \$2.4 million CARA money available.

MR. ARNO also suggested the Habitat and Restoration Division as a source of money, stating that its goal is to protect fish and wildlife habitat and to protect the public use of fishing resources. Currently, the Habitat and Restoration Division is investing money into several projects, including the Kenai River salmon habitat restoration project. He spoke of the recent approval of HB 61, which allows the habitat and restoration grant to be made directly to the department.

MR. ARNO stated that the AOC feels there is genuine concern with the litter; there are other ways to take care of that, as opposed to adding a food tax [by charging] a special fee to these dipnetters.

Number 1390

EDWARD MARTIN testified via teleconference in opposition to HB 93. He referred to Article VIII, Section 3, of the Alaska Constitution, which reads:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

MR. MARTIN said he recognizes the problem with the management of [the Kenai dip net fishery]. He mentioned the troopers or "brown shirts," saying, "It's getting to the point where most of these agencies get a big sum of money and they aren't accountable for what ... their mission statement is, or at least maybe they feel they're doing the best they can." Mr. Martin suggested that plenty of people in enforcement are not doing much during the winter months and could reroute some hours to cover the two- or three-month personal use fishery period.

MR. MARTIN said he looks at this as a constitutional issue and as a management issue "under a mission statement of ... who's responsible to do the management enforcement." Regarding detriment to the [river] banks, he said many people are aware of what's going on right now. He said:

If we can't get some control of that, we can't have some volunteers in this system, because, to be honest with you - some of that being ... a constitutional right for subsistence - I believe there's ... good, honest people, good Alaskans that'll go out there and could work within a controlled atmosphere to see that we aren't abusing ... it, whether nonresident or residents.

Number 1555

CHRIS GARCIA testified via teleconference in support of HB 93, telling the members that they were not charging enough. He said he has witnessed some of the atrocious problems [in the Kenai dip net area]. He stated that the mayor of Kenai [Peninsula Borough] had requested funding from the state for this problem and was told there was no money available. He said a lot of nonresidents who are using the fishery shouldn't be. He stated his belief that imposing this fee will help control, patrol, and improve the fishery for the state.

Number 1618

DREW SPARLIN, testifying via teleconference, said he supports HB 93 for many reasons, most of which had been mentioned previously. A resident within one-quarter mile of the Kenai dip net area, Mr. Sparlin stated that he has witnessed "a very large amount of abuse and disrespect." He added that he did not think anyone would argue [against] there being a sanitation problem in the area.

MR. SPARLIN questioned the necessity of using "brown shirts" to monitor the fishery, as was suggested in previous testimony; however, he said monitoring by temporary, seasonal hires - for the purpose of checking licenses and documenting harvest - would be of some value. He agreed with earlier testimony that there is abuse by nonresidents. Mr. Sparlin acknowledged that Representative Lancaster "hung his neck out" on this issue, but said he is right to address it. People who are going to utilize the resources don't want to tap the permanent fund or [pay for the fishery with] taxes, and a way to pay for [the management of the Kenai dip net fishery] must be found.

Number 1737

REPRESENTATIVE FATE asked Mr. Brooks if, contrary to previous testimony, other funding sources could adequately be used to

take care of the same things for which the proposed fee is intended.

MR. BROOKS replied that there are funding sources within [ADF&G] that could legally be used, but it is a matter of the allocation of scarce resources. He said the department has projects within the Division of Sport Fish budget, and it would have to make the call that this is of greater importance than the other management work being done. He suggested that the question might better be addressed to Mr. Hepler. Mr. Brooks said there is no legality issue; general funds could be used, for instance, or fish and game funds currently in the budget. He said, "I think the attempt here was to try [to] identify an additional source of revenue for this specific purpose, and not negatively impact an existing project that might be going on."

REPRESENTATIVE FATE asked if fees are ordinarily set by statute, or are ever set by the board.

MR. BROOKS answered that every sport fishing or hunting license fee is set in statute. The permit fees are more recent; for example, the Chitina dip net fee is set in statute.

Number 1855

REPRESENTATIVE CHENAULT asked how and why the king salmon stamp, required to fish for king salmon in the Kenai River, was instituted. He asked where that money goes.

MR. BROOKS responded that the stamp has existed since the early to mid-1990s. He said it predates his work at the department, but his understanding is that chinook salmon are recognized as trophy fish, and certain management requirements go along with that. Mr. Brooks told the committee that the license revenue goes into the fish and game fund, and is used to fund the Division of Sport Fish's budget; however, there is more funding allocated to king salmon management than is generated by the stamp alone.

[A one-minute at-ease was called.]

Number 1951

CO-CHAIR SCALZI clarified that before the committee was HB 93, version 22-LS0431\C, Utermohle, 2/27/01 [as amended].

REPRESENTATIVE CHENAULT moved to report HB 93, version 22-LS0431\C, Utermohle, 2/27/01 [as amended], out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 93(RES) was moved out of the House Resources Standing Committee.

HB 165-KENAI RIVER SPECIAL MANAGEMENT AREA

Number 2040

CO-CHAIR SCALZI announced that the committee would return attention to HOUSE BILL NO. 165, "An Act relating to the Kenai River Special Management Area; and providing for an effective date."

REPRESENTATIVE FATE made a motion to adopt the proposed CS for HB 165, Version C, 22-LS0389\C, Luckhaupt, 3/29/01, as a work draft.

Number 2065

RED SMITH testified via teleconference. He referred to 1970 and the Seward National Recreation Area Act. He said "they" asked for 1.4 million acres and "we" defeated the federal proposal in Congress three different times. Finally, "we" thought we'd settled it "under AS 9 of the 'D2' settlement." Mr. Smith referred to a letter from U.S. Senator Stevens, which said it had finally been accomplished; however, today this just refers to about 8,000 acres. It is down to a much smaller acreage, he remarked, but the philosophy remains the same: if "we" lock up and lock out, something will be protected. "We" are not protecting the Alaska Statehood Act, the state constitution, or the idea that development will occur in that area, he added.

MR. SMITH said he has concerns about parks. He remarked that the settlement agreement was reached in June 2000, and he doesn't believe there is any evidence that these agreements have been fulfilled. The selection right is still ignored and abused; "we" are going too fast with the "set-asides" when proper funding isn't available to manage them. The programs for utilization and Article VIII [of the state constitution] have been totally ignored, with fisheries as the exception.

MR. SMITH stated that he was part of a group that requested "public interest intervenor" status on July 10, 2000; he said he would send a copy [of the request] to the committee for consideration prior to taking action. He related his belief

that Alaska has gone entirely too far "underground" in these "set-asides," and now management in the Cooper Landing area is critical.

MR. SMITH commented that putting a stop sign solved the problem of a bad intersection in front of the Cooper Landing School, but it gets run over because of poor design; he said these are the kinds of solutions [put in place] by the Division of Parks & Outdoor Recreation in his community.

MR. SMITH commented that [the state] has given the division a lot of authority that it doesn't know how to properly exercise, and land that it can't manage. He said [Alaska] has many federal, state, and local parks, and more attention could be paid to the word "settlement." [A portion of the tape was inaudible.] In 42 years, 3.82 acres of land was made available for community (indisc.).

MR. SMITH remarked that he would like to see this bill reviewed in its entirety.

Number 2384

EDWARD D. MARTIN, JR., testified via teleconference. He said he has been very vocal on the addition of the Kenai River Special Management Area (KRSMA) and the Kenai Area Plan when it comes into conflict with the borough's selection of lands. The borough signed an agreement that says certain things will be done; however, he is not certain that the legislature would be privy to those. Therefore, he suggested that the legislature review the decision made by the Kenai Peninsula Borough with regard to its selection and the deal made to ensure that the Kenai Area Plan could become a reality.

MR. MARTIN clarified that it wasn't really whether or not the borough was getting a selection of land, but rather that the borough was going to get a denial and a relinquishment of borough-selected lands. He directed the committee to the last line in Section 7, which he said makes it very clear. He objected to this; he said after 40 years of statehood, with numerous undermanaged and underfunded parks, people of the state [still] have little land available for settlement. The communities and the state can't be sustained for revenues if money continues [to be allocated] for state parks, rather than placing it on the tax rolls.

MR. MARTIN remarked that this situation is affecting whether his children can stay in Alaska and find land or will be taxed out of existence because there isn't enough land in the tax base to support schools. Alaska has a dead national forest and no revenue is coming from it, he said. This is another negative effect on our constitution, Article VIII, Section 1, which reads as follows: "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

MR. MARTIN said he wished [the legislature] would realize that the constitution already has a policy and thus doesn't give [authority] to the departments to create a new ad hoc policy. He urged the legislature to look into this more deeply. He said [former commissioner] John Shively has created a de facto law, and the departments are currently managing [KRSMA] as such.

Number 2553

DALE BONDURANT testified via teleconference. He remarked that he is in full support of the addition to KRSMA and the added protection for habitat. He maintained that there is a constitutional mandate that Alaska's fish, wildlife, and water public trust resources be protected for current and future generations. As time goes on, [Alaska] is going to need added protection for public trust resources. Now is the time to move this addition forward, because later will be too late.

Number 2615

CHRIS GARCIA testified via teleconference. He stated that he is not in favor of locking up land just for the sake of locking it up; however, when KRSMA was first formed, he attended most of the meetings, and [KRSMA] has done a "pretty fair job." He couldn't say whether he was in favor or opposed to the legislation, he told the committee, because he hasn't done enough research to know what it encompasses.

Number 2665

REPRESENTATIVE SCALZI noted that former Representative and Speaker of the House Gail Phillips was present at the meeting.

Number 2695

REPRESENTATIVE FATE moved to report CSHB 165, version 22-LS0389\C, Luckhaupt, 3/29/01, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 165(RES) was moved out of the House Resources Standing Committee.

HB 216-BD OF FISHERIES MEETINGS/EMERGENCY ORDERS

Number 2735

CO-CHAIR SCALZI announced that the next order of business would be HOUSE BILL NO. 216, "An Act relating to the emergency order authority of the commissioner of fish and game and to meetings of the Board of Fisheries." [HB 216 was sponsored by the House Resources Standing Committee.]

[There was a motion to adopt HB 216 for discussion purposes, but it was already before the committee.]

Number 2766

CO-CHAIR SCALZI explained that HB 216, which he had drafted, addresses prevalent problems experienced by ADF&G and the Board of Fisheries regarding openings, closures, and agenda changes in recent years. He cited Section 3, subsection (c)(1) through (3), specifying that the added language, on [page 2] lines 15-16, is "[if] the commissioner concurs"; the intent is to take the pressure off the Board of Fisheries to address every issue that comes along.

CO-CHAIR SCALZI noted that what has been lacking is a consensus by the experts of ADF&G in determining whether there is a fishery conservation issue at all. He said: "The public certainly wants to have the ear of the Board [of Fisheries], but what happens, inadvertently, is you get the issue up before the Board [of Fisheries] and you cause things to be taken out of cycle."

CO-CHAIR SCALZI cited a recent example of the pressure put on the board to address every issue that involves the Copper River. The City of Cordova, processors, fishermen, and sportsmen went to Anchorage to address a conservation issue to which the Board of Fisheries had said it would listen; however, ADF&G declared it was not a conservation issue and, therefore, the board did not hear the issue. Co-Chair Scalzi said with the new language, "what we're really saying is, if it really is a conservation issue, let's ask the experts ... who know about this."

CO-CHAIR SCALZI pointed out Section 2 [subsection (d), lines 8-10, page 2], which read:

The commissioner, as necessary to manage fishery resources for sustained yield, may exercise authority under this section to supersede a regulation or fishery management plan adopted by the Board of Fisheries.

He said emergency orders are not new or "exemplary." Under federal management, fisheries were opened and closed on specific dates, and the results were unsuccessful. He added:

Our rivers were depleted, there was great abuse going on, and there was no management to speak of. When the State of Alaska took over, they regulated ... the management for ... sustained yield on our fisheries, with in-season management. In essence, emergency orders were created [and] management plans were developed.

CO-CHAIR SCALZI indicated several times when [ADF&G] has not felt comfortable in superseding, which is discretionary. For example, where a management plan is written and there is a closure date, but numerous fish show up, ADF&G is reluctant to open that fishery because it may conflict with the closure date in the management plan.

TAPE 01-28, SIDE B
Number 2995

CO-CHAIR SCALZI made it clear that his intent was not to move the bill out of the committee that day, because he said the bill could be perceived as controversial. Furthermore, he wanted to hear public opinion and the concerns of the department.

Number 2958

REPRESENTATIVE GREEN asked Co-Chair Scalzi why the [House Special Committee on Fisheries] had waived its referral.

CO-CHAIR SCALZI replied that he had made that request because the end of session was near and the House Special Committee on Fisheries only meets once a week; because of "the five-day" rule [for scheduling hearings], the House Resources Standing

Committee would not have seen the bill for two weeks. He also mentioned that many members are on both committees.

Number 2913

REPRESENTATIVE KERTTULA asked Co-Chair Scalzi if the intent behind the closure was distinctly for conservation purposes. She said the language was a little broader than "just conservation" in Section 2.

CO-CHAIR SCALZI answered that the language was taken from [ADF&G's] regulations. He said:

This is how they feel comfortable in bringing up another issue. If somebody wants to take something out of cycle, they have [these] criteria in front of them. And also, in the regulations they did not put in statute, was the fact that they cannot take it up for "allocative" reasons. That is not ... in this part of it, but it is in their regulations.

REPRESENTATIVE KERTTULA rephrased her question to inquire whether Co-Chair Scalzi's intent behind the bill was for purposes of conservation, rather than for purposes of allocation.

CO-CHAIR SCALZI answered in the affirmative. He explained:

What can happen now, and what's happened in the past, is a conservational issue will be brought up. The Board [of Fisheries] will take it up, and in doing so, when they go through their process, they can actually reallocate at that meeting. And if a conservation issue ... really existed, then that would be fine, because the purview of the Board of Fisheries is to do allocations. It's not the department and it's not the legislature. But to bring it up for allocation, it should go through its regular cycle. And ... what this language does is just verify that there really is a conservation issue.

REPRESENTATIVE KERTTULA suggested that when the representative from the Department of Law came before the committee, he could be asked to clarify the issue. She stated her concern that the present language might "open it up" for the commissioner to make decisions regarding allocation. She asked whether Co-Chair Scalzi had said he wanted to raise the conservation issue so

that the Board [of Fisheries] could make the proper allocative decisions.

CO-CHAIR SCALZI answered no. He outlined the process whereby the Board of Fisheries gets a petition or proposal alerting it of a conservation problem necessitating that it address an issue out of cycle. Rather than have the "lay board" verify that it really is a conservation issue, Co-Chair Scalzi said the decision would be deferred to the biologists in ADF&G, who are better qualified to make that determination.

REPRESENTATIVE KERTTULA said she understood what Co-Chair Scalzi was trying to effect, but suggested that the language needed to be changed to reflect that.

Number 2764

FRANK RUE, Commissioner, Alaska Department of Fish & Game (ADF&G), gave an overview of the department's issues with HB 216. He stressed that Alaska's successful system is based on an important separation of powers: the Board of Fisheries makes allocation decisions, and the department gives the board information on how many fish are available, tells it what management strategies are possible, and performs in-season management to make sure any surplus resource can be harvested. He added that having the emergency-order authority in the department, particularly for fisheries, is critical to taking advantage of a larger run that comes in, or constraining fisheries if the run comes in smaller.

COMMISSIONER RUE pointed out that other states have the director of the department making allocation decisions, but he stressed that that he would not want the job of allocating that the Board of Fisheries presently has. Furthermore, he said, he thinks Alaska's system is a model for success; the Board of Fisheries gives guidance to ADF&G, and ADF&G has the flexibility to be able to take advantage of the run or to "fall back."

COMMISSIONER RUE referred to Section 2 of HB 216, saying the language was too broad and gave too much latitude for the department to override an existing regulation. He mentioned the Peninsula Marketing Association v. Rosier case over a previous commissioner's attempt to close down an Area M fishery that the Board of Fisheries had already decided. He said the court ruled that the commissioner could not override a board regulation, however, without new information that the board hadn't considered.

COMMISSIONER RUE said many management plans around the state are flexible enough to allow for considerable latitude, so there are few instances of an "opportunity being unavailable" because of a Board [of Fisheries] management plan. As an example, he cited an occurrence last summer [2000] when the board constrained the opportunity for pink salmon fishing in Cook Inlet until it could produce a management plan.

COMMISSIONER RUE said the public has the choice to petition for a change if they don't like the manner in which a fishery is currently structured. He noted an instance when that was done in Cook Inlet, but said because the petition took so long to put together and was submitted late, the board decided not to change its management plan. Commissioner Rue recapped the two ways that the public can have an opportunity to request change: through the authority of the commissioner of ADF&G, and by petitioning the Board [of Fisheries] in-season. He mentioned Section 2 of the bill and stated his preference that the current balance be maintained.

COMMISSIONER RUE turned attention to Section 3 of the bill, which addresses how the board changes its agenda. He stated his preference that the board have its own rules to change its own agenda and "not have the department have to [assert] itself." Furthermore, he would like the board to listen to ADF&G when the department does not think an issue in question is a conservation one. He noted that the board did amend its agenda criteria to be able to change its agenda when it needs to coordinate with the federal fishery management plan. For example, if the North Pacific Fishery Management Council (NPFMC) makes a change to a cod fishery, the Board [of Fisheries] wants to be able to change its agenda to respond to the actions of the NPFMC.

COMMISSIONER RUE reported that in [the board's] amended regulations is a fourth criterion; he recommended that if the House Resources Standing Committee decides to put this in statute, the department should deliver the latest regulations to the committee.

[Co-Chair Scalzi passed around a "stack of emergency orders" to show the committee how the language is written.]

Number 2320

REPRESENTATIVE GREEN asked Commissioner Rue whether the emergency orders were from his department, and requested clarification as to whether they did not deal with allocation, but instead were a "determination that there are, or are not, enough fish to catch."

COMMISSIONER RUE said yes to both, indicating an emergency order is usually to open or close a fishery, "contingent with a management plan." In response to another question from Representative Green, he replied that the bill was not trying to supersede that, but because the bill's language is so broad, he is concerned that it would allow a commissioner, through the emergency orders, to change a management plan through allocation.

Number 2270

REPRESENTATIVE CHENAULT asked Commissioner Rue if the department has "EO" [emergency order] authority in Cook Inlet.

COMMISSIONER RUE replied:

Yes, we do. It's constrained by the management plan the Board [of Fisheries] set up. For instance, they have a couple of mandatory closures, ... but within those mandatory parts of the ... management plan we have discretion to open and close fisheries.

REPRESENTATIVE CHENAULT alluded to previous remarks about not being able to fish for pink salmon because of lack of a management plan. He also mentioned a management plan the board had mandated the department to implement; however, the department did not do so, possibly because of an issue of funds, he surmised.

Number 2192

DOUG MECUM, Director, Division of Commercial Fisheries, Department of Fish & Game (ADF&G), in response to questions from Representative Chenault, restated Commissioner Rue's earlier statement regarding the petition to the Board of Fisheries regarding pink salmon in Cook Inlet. He said:

The board, in this case, [acted in a way that] was a little bit unusual, in that [it] went ... a step further and said, "Not until such time as we have better information that we can use to build a

management plan that ensures the conservation of these various stocks will we allow ... the department to open a directed fishery on pink salmon."

MR. MECUM explained that the board justified [that decision] on the basis of what it calls a "precautionary approach," due to a lack of information on coho salmon, and because of the depressed status of the chum salmon stocks. He continued:

So, in response to this action that the Board [of Fisheries] took, we set about going to the legislature to seek funding, and this year we put in a million-dollar-increment request from CFEC [Commercial Fisheries Entry Commission] receipt services and non-GF [general fund] program receipts. A quarter million dollars of that, if it goes through - and so far, it has gone through - would be for a Cook Inlet-wide, abundance-based tagging program, which would be the first key step in us getting a better handle in-season of how many fish we're dealing with - how many chums and pinks are there, what's the status of cohos - so we could better refine our management approach.

MR. MECUM concluded that this process was a way for the department to report back to the board and the public.

Number 2035

REPRESENTATIVE FATE read the following from Section 3, subsection (c)1), lines 15-16: "address a fishery conservation issue if the commissioner concurs". He asked, if the commissioner did not concur, whether the board would not be able to take that matter up.

COMMISSIONER RUE concurred.

REPRESENTATIVE FATE asked if that [language in the bill] would counter the previously-mentioned balance between the responsibilities of the board.

COMMISSIONER RUE answered a qualified yes. He said the language inserts the commissioner into the board's own agenda-setting abilities. He added that the board has tried to set a three-year schedule, so that the public knows when things are coming up and so every issue is not brought up every year.

Number 1961

CO-CHAIR SCALZI asked for confirmation that, under the "coho plan," the closing date for pinks, chums, or reds was August 5, and asked what the total number of pinks was that showed up in Cook Inlet. He said he had heard an estimate of 20 million from the department.

[Commissioner Rue conferred with Mr. Mecum, and between them, the answer given was a closing date of August 7.]

COMMISSIONER RUE said the department didn't have an "absolute number" regarding the pink salmon. He added:

Again, that's ... one of the reasons why the Board [of Fisheries] did what they did. [Its members] said, "Look, ... there [are] lots of pinks, but what is a lot, and what do we need for escapement, and how many cohos are there?" They wanted more specificity; they wanted more quantitative estimates of what that was.

CO-CHAIR SCALZI said he'd heard that the number of pink salmon was estimated at 20 million. He added that the number came from the local area biologists within the department.

MR. MECUM said that number was a "wild guess."

CO-CHAIR SCALZI inquired whether, when the surplus of pink salmon had shown up, the department had said its hands were tied and that it was unable to manage an EO [emergency order] because of the management plan.

COMMISSIONER RUE said that was "basically correct," adding that there were "plenty of pinks around" to have a directed pink salmon fishery.

CO-CHAIR SCALZI mentioned the failed petition discussed earlier in the meeting.

Number 1819

MR. MECUM responded:

There is a petition process in the Board [of Fisheries] regulations that says under certain situations they will hear an issue out of cycle. And the criteria for that has to do with a situation that threatens a fish or game resource - a conservation

emergency, or if there is going to be some substantial harm ... to somebody who's not able to access some resource. And, clearly, this situation did come under those criteria. And so the board was willing to consider it under those criteria, but the petition [by the fishermen] ... was submitted very late in the pink salmon run - probably two to three weeks late.

Number 1777

CO-CHAIR asked if there were any suggestions the department had to "remedy the problem" and to speed up the petition process.

COMMISSIONER RUE mentioned a question he had received previously from Representative Fate, regarding Section 3 of the bill and whether the department would be stepping in to change the balance between itself and the board. He revisited an earlier comment by Mr. Mecum that [under the new provisions of the bill], the board could still accept its own agenda changes. Commissioner Rue added that as he understands it, [the proposed language of the bill] would change how the Board [of Fisheries] deals with public requests to change its agenda. Commissioner Rue said, "So, while I might be able to limit which public requests for agenda changes go to [the] Board [of Fisheries], ... they could still accept their own agenda change requests, from their own members, without my saying anything." He emphasized that there would be a limited change in the balance of powers.

Number 1693

REPRESENTATIVE FATE qualified that not only would it be limited, but it would also be restricted solely to the issue of conservation.

COMMISSIONER RUE concurred.

Number 1618

GERRY MERRIGAN, Petersburg Vessel Owner's Association (PVOA), testified via teleconference in support of HB 216. He said although the board can move fast, sometimes it cannot convene quickly enough to react to an in-season issue, whereas the commissioner could do so [under the bill]. He specified that Section 3 is a limited modification of the balance of powers and a "very needed portion" of the bill. He added that presently the board relies heavily on the committee process to encourage

stakeholder participation. He said the "committee process" has lengthened to 10-11 days, and he thought the Board of Fisheries process was "under its own democratic considerations." Mr. Merrigan added, "The more we can filter out appropriate agenda proposals, the better off we would be." He continued:

In the case of the "Copper River exercise," that was a considerable expenditure of energy by all parties. That ... seemed to bear out [that] the final action was unnecessary. ... We just went through a similar exercise at the Board of Fisheries on separation of powers, on the biology and allocation of escapement goal policy. And I think this [Copper River case] kind of falls in the same ... vein, where the department is responsible for the biology. [For instance], a conservation concern should be ... concurred with them. I don't think that's asking a whole lot, that the department at least [agrees] that it's a conservation concern, [in order] to take it up out of sequence.

I think Commissioner Rue was absolutely right: It does drive people crazy to have to come every year to a meeting to address the same issue as an item, when it's supposed to come up every three years.

MR. MERRIGAN concluded by thanking the House Resources Standing Committee for its consideration of HB 216 and saying that he hoped the committee could move the bill ahead, and "at least get some language in Section 2."

Number 1435

NOEL WOODS, testifying via teleconference, asked if the language of the bill would make the commissioner more responsible for lack of action on a particular fishery, specifically, when such action was directed by the board. He said, "We in the Cook Inlet/Susitna area have been extremely disappointed with the lack of action directed by the commissioner regarding escapement goals for spawning salmon in our area." He continued:

The sponsor statement is not reassuring about this concern. Further, it seems that by the second changed statement that this bill places the Board of Fisheries in a "second position" as regards items of concern. If this is true, then this bill is certainly not acceptable. The governor directing the commissioner

is not a replacement for the Board of Fisheries answering to the people of the state. At this time, I oppose this bill as it's written.

Number 1331

GEORGE COVEL testified via teleconference. He stated that he had been involved with the "Alaska boards process" for over 18 years, as a member of his local advisory committee, which he chaired for the last 10 years. He said:

In 1997 - and it was a matter of months following completion of the regularly scheduled meeting for this area - an e-mail to the commissioner, which concerned the Copper River, was somehow manufactured into an ACR [and] brought before the Board [of Fisheries]. Following that episode, the Board [of Fisheries] promised and delivered a standardized format for ACR's, but, in spite of this clarification of the process, the Board [of Fisheries] continues to accept ACR's, sometimes arbitrarily, with increasing frequency.

In his introduction [Co-Chair Scalzi] briefly outlined what happened with another ACR concerning the Copper River this past winter. I might add that that also occurred [within] a matter of months after completion of the regularly scheduled meeting for our area.

Both of these matters were eventually resolved, but at considerable cost to the public, the department, and the Board [of Fisheries]. I think that [HB] 216 would clarify and strengthen existing statutes, yet it recognizes a fundamental fact: professional fishery managers are much better qualified to make scientific determinations as to fishery conservation than lay members of an appointed board.

Furthermore, the public is accustomed to and deserves a predictable board process. This bill, if enacted, would help bring current Board [of Fisheries] practices in line with legislative intent and public expectations.

Number 1178

BOB MERCHANT, President of the United Cook Inlet Drift Association (UCIDA), testified via teleconference. On behalf of UCIDA, Mr. Merchant expressed support of HB 216. He said UCIDA believes the commissioner has always had the authority to supersede a regulation or management plan, "should certain, unforeseen circumstances, not previously considered," become known to him. Mr. Merchant added that there seems to be some confusion regarding this authority, which HB 216 would serve to clarify. He said it was felt by UCIDA that the Board [of Fisheries] has, in the recent past, used the ACR authority to deliberate issues out of cycle by using the conservation criteria, when, in fact, the issues turned out to be "allocative."

MR. MERCHANT described "allocative" issues as being "strictly confined to regular three-year-cycle meetings," at which time the public may participate. He concluded:

By requiring substantial proof and concurrence from the commissioner and department that conservation concern does exist, the public and the state will save substantial dollars and time, and allocation issues will be debated in the proper forum, during regular-cycle meetings.

Number 1055

CHRIS GARCIA, representing the Cook Inlet Fishermen's Fund (CIFF), testified via teleconference in support of HB 216. He said, "I [respectfully] disagree with the commissioner about Section 3 of this bill changing the balance of power," adding that [Section 3] would most likely keep the balance of power by preventing the board from being allowed to "run amok." He mentioned a comment by a testifier regarding the board's being accountable to the people. To the contrary, he stated that because the board is appointed by the governor, it is not answerable to the people. Mr. Garcia commented that the biologists are more answerable to the people.

MR. GARCIA indicated he would like to see EO authority go to the local area management biologists as well as the commissioner. He said there is no way that ADF&G could function without this authority. Mr. Garcia said when the authority is taken away like the [Board of Fisheries] has done in the past, "basically we're paying people to do something they're not allowed to do." He added, "If you don't have the power to manage something,

there's really not a lot of sense in having you hired as a manager."

Number 0918

DALE BONDURANT, testifying via teleconference, stated that he believes in immediate response for emergency openings and closures and responsible management for sustained yield protection, such as escapement goals. He said he hoped that political pressure would not override biological need, noting that that had been the "record in the past." Mr. Bondurant cited an example, saying: "Carl Rosier, former commissioner, lost his position when he stopped continuous commercial openings for three days to allow additional escapement in Glacier (ph) River." He stated his opinion as an observer that, in the past, the department has been "influenced by local political pressure in this area." Mr. Bondurant said at first glance he is hesitant to support the bill and intends to watch the results of HB 216, should it pass.

Number 0833

DREW SPARLIN, United Cook Inlet Drift Association, testified via teleconference in support of HB 216. He stated that he has been actively involved in the Board [of Fisheries] process during the over 30 years he has been a commercial fisherman in the Cook Inlet. Mr. Sparlin said he sees a definite need to define the goals and obligations of both the Board [of Fisheries] and the department.

MR. SPARLIN talked about his involvement at the Soldotna office, starting on "the fourth day of August," asking for some provision to help harvest the surplus of pink salmon available in the Cook Inlet. He indicated he had in front of him a written response from that office, stating that they did not have the authority, according to the Department of Law. He mentioned having to petition at that point. He said:

We did develop a viable fishery. In [that] respect, we developed a market. I had a promise of "20-cent pinks" which would have salvaged our fishery to some degree, at least for the season, possibly avoiding the need to call the governor's people down here to talk about requiring a pretty severe situation like we went through. ... Here in the Cook Inlet, we were party to meetings that [were] conducted under the ACR, when the

department said that there was not a conservation concern.

I'm speaking of the avalanche (ph) meeting that occurred in Anchorage, and ... that meeting ... resulted in making [an] allocation. They took away gear from fishermen in [the] northern portion of the Cook Inlet; they took away time from the commercial fishermen in the central district; and they reduced the bag limit in the river; but that had absolutely no assurance of dropping any amount of harvest, and there was no monitoring. This works, folks, whenever you have a board that will deal with the issues based on the biological information presented to them. It does not [work] whenever you have a board that is driven with an agenda.

Number 0575

CO-CHAIR SCALZI reminded the committee that HB 216 would be held over. He mentioned that he had a letter to the chairman of the Board [of Fisheries] and wanted to get the board's concerns regarding HB 216. He referred to the concerns of the commissioner and the department, and encouraged committee members to direct any comments to him during the next week. [HB 216 was held over.]

HCR 13-NONRES. COMMERCIAL FISHING FEES

[Contains discussion of HB 194]

Number 0465

CO-CHAIR SCALZI announced that the next order of business would be HOUSE CONCURRENT RESOLUTION NO. 13, Relating to the nonresident fee differential for commercial fishing permits and licenses.

[There was a motion to adopt HCR 13 for discussion purposes, but it was already before the committee.]

REPRESENTATIVE STEVENS reminded members that the committee had recently passed HB 194, a response to the Carlson case and the supreme court ruling that Alaska could not charge nonresident fishermen three times more than resident fishermen were charged. He recapped that HB 194 was a practical response to the problems Alaska faced in that case. Representative Stevens reminded

those present that the intent of HB 194 was to say that Alaska would charge [nonresident fishermen] the most the court would allow it to charge. He mentioned that although HB 194 was passed out of the House Resources Standing Committee, some of its members were concerned that the language of the bill did not make as strong a statement as should be made; therefore HCR 13 was conceived.

REPRESENTATIVE STEVENS stated that HCR 13 clarifies the House Resources Standing Committee's concerns regarding HB 194, and highlights the reasons why the committee thinks nonresident fishermen should be charged more than resident fishermen, including the cost to the legislature and the court system. He mentioned page 2, line 28, of the resolution, describing that line and ensuing lines as "a kitchen-sink approach that tosses everything into the works." Representative Stevens stated that he would like to see [HCR 13] move right along with [HB 194].

Number 0220

CO-CHAIR SCALZI summarized that HCR 13 "goes along with our provision of changing the way the Commercial Fisheries Entry Commission charges for in-state and out-of-state licenses." He added that he was satisfied with the resolution.

Number 0180

REPRESENTATIVE STEVENS moved to report HCR 13 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HCR 13 was moved out of the House Resources Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Resource Standing Committee meeting was adjourned at 2:52 p.m.