

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

February 8, 2002

1:10 p.m.

MEMBERS PRESENT

Representative Beverly Masek, Co-Chair
Representative Drew Scalzi, Co-Chair
Representative Hugh Fate, Vice Chair
Representative Mike Chenault
Representative Gary Stevens

MEMBERS ABSENT

Representative Joe Green
Representative Lesil McGuire
Representative Mary Kapsner
Representative Beth Kerttula

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 CSHB 206(2d RES) 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
04/02/01		(H)	Moved Out of Committee
04/02/01		(H)	MINUTE(FSH)
04/03/01	0826	(H)	FSH RPT 2DP 4NR
04/03/01	0827	(H)	DP: SCALZI, WILSON; NR: DYSON,

04/03/01	0827	(H)	COGHILL, KERTTULA, STEVENS
04/03/01	0827	(H)	FN1: ZERO(DFG)
04/04/01		(H)	RES AT 1:00 PM CAPITOL 124
04/04/01		(H)	Heard & Held
04/04/01		(H)	MINUTE(RES)
04/09/01		(H)	RES AT 1:00 PM CAPITOL 124
04/09/01		(H)	Scheduled But Not Heard
04/10/01		(H)	RES AT 5:30 PM CAPITOL 124
04/10/01		(H)	Moved CSHB 206(RES) Out of Committee
04/10/01		(H)	MINUTE(RES)
04/11/01	0952	(H)	RES RPT CS(RES) NT 7DP 1NR
04/11/01	0953	(H)	DP: FATE, MCGUIRE, GREEN, CHENAULT,
04/11/01	0953	(H)	KERTTULA, STEVENS, SCALZI; NR: MASEK
04/11/01	0953	(H)	FN1: ZERO(DFG)
01/23/02	2053	(H)	RETURNED TO RES COMMITTEE
02/08/02		(H)	RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

MARY McDOWELL, Commissioner
Commercial Fisheries Entry Commission
Alaska Department of Fish & Game (ADF&G)
8800 Glacier Highway, Suite 109
Juneau, Alaska 99801-8079
POSITION STATEMENT: Testified on the proposed CS for HB 206,
Version B.

JOHN WINTHER
(No address provided)
POSITION STATEMENT: Testified in favor of the proposed CS for
HB 206, Version B.

EUGENE ISIKSICK, President & CEO
Norton Sound Economic Development Corporation (NSEDG)
420 L Street, Suite 310
Anchorage, Alaska 99501
POSITION STATEMENT: Testified on HB 206.

LENNIE HERTZOG
(No address provided)
Anchorage, Alaska
POSITION STATEMENT: Testified in favor of [the proposed CS] for
HB 206, Version B.

OLIVER HOLM
P.O. BOX 3865
Kodiak, Alaska 99615-3865
POSITION STATEMENT: Testified on HB 206.

JIM CHASE, Owner
F/V Forum Star
P.O. Box 8245
Kodiak, Alaska 99615
POSITION STATEMENT: Testified in support of the proposed CS for
HB 206, Version B.

ACTION NARRATIVE

TAPE 02-6, SIDE A
Number 0001

CO-CHAIR DREW SCALZI called the House Resources Standing Committee meeting to order at 1:10 p.m. Representatives Masek, Scalzi, Fate, Chenault, and Stevens were present at the call to order.

HB 206-VESSEL LIMITED ENTRY FOR COMM. FISHERIES

CO-CHAIR SCALZI announced that the only order of business before the committee 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."

CO-CHAIR SCALZI reminded the committee that [CS HB 206 (RES)] was moved out of the House Resources Standing Committee last year and was in the House Rules Standing Committee. He explained that he had requested that it be returned to the House Resources Standing Committee due to a significant change that was overlooked. [At the end of session] HB 206 was amended to only deal with a vessel-license limitation program exclusive to hair crab and scallop fisheries. With that exclusiveness, the latitude of the Commercial Fisheries Entry Commission was curtailed. He noted that HB 206 was at the request of the legislature in 1997, in order to deal with a moratorium that will terminate this year, and therefore there is a pressing need to develop some sort of limited entry in these two fisheries.

[There was an invalid motion to adopt HB 206 as the working document.]

Number 0229

CO-CHAIR MASEK moved to adopt CSHB 206, Version 22-LS0426\B, Utermohle, 1/30/02, as the working document. There being no objection, Version B was before the committee.

Number 0320

MARY McDOWELL, Commissioner, Commercial Fisheries Entry Commission (CFEC), Alaska Department of Fish & Game (ADF&G), pointed out that Version B is substantially similar to the Committee Substitute (CS) [Version O] adopted by this committee last year in that it provides a framework for a vessel-based limited entry program. Furthermore, Version B maintains the restriction of the [vessel-based limited entry] program for consideration in the [hair crab and scallop] fisheries. She clarified that [Version B] doesn't limit the two fisheries; rather, the option of a vessel-based program is available if the commission decides to do a permanent limitation program in those two fisheries.

MS. McDOWELL highlighted the primary change between Version B and [Version O]: the removal of the so-called "second generation" language and the accompanying requirement that the permit holder be onboard. Those provisions were included in HB 206 because originally it referred to generic authority that could be used in all fisheries. She explained that those provisions were an effort to say that as additional fisheries are limited in the future, there would be an effort to steer the evolution of those fisheries based on the vessel-based program towards the owner-operator model on which the current program is based. However, the hair crab and scallop fisheries are the least suitable to that provision. Although the scope of the bill was narrowed to the [hair crab and scallop fisheries] at the last hearing on [HB 206], the bill wasn't reviewed as to whether the [second generation] provisions make sense. Upon further reflection, those in the industry felt that the bill should be reexamined in regard to whether the provisions make sense.

Number 0569

MS. McDOWELL turned to Version B. The provisions dealing with the second generation required that when the permit transfers

the next holder of the permit would be a living individual, and couldn't be an entity, a partnership, or a company. Removing that restriction [as is the case in Version B] allows the permit to transfer to companies and partnerships and be held in the same manner in which permits are held today for the hair crab and scallop fisheries. Therefore, those fisheries would likely remain static. She noted that the other changes in Version B [attempt] to make the other provisions consistent with the aforementioned change or mirror the characteristics of the existing program. For example, [there is a change] to make it clear that vessel permits are use privileges, not property rights, and thus aren't seizable and "lienable". Therefore, the state maintains control of these permits. On page 6, line 5, it is made clear that the commission will, by regulation, establish the procedures for transferring these permits. Therefore, all the paperwork for a transfer comes through the commission, as is the case with the current program. This ensures that the movement of the permits is monitored so as to prevent concentration of ownership, which is another provision of Version B. In two places in the bill, "shall" is changed to "may," which addresses the concern regarding the ability of permit holders to lease a vessel rather than only have permit used on a vessel that they own wholly or in part. Therefore, Version B allows the leasing of vessels.

Number 0777

MS. McDOWELL, in response to Representative Stevens, pointed out that the changes of "shall" to "may" occur on page 6, lines 20-22, which allows [the use of] a leased vessel. In further response to Representative Stevens, Ms. McDowell noted that page 6, line 17, of Version B says "may", but there may be an amendment to change that to "shall". On page 6 [line 6] the language "commission may require that" was added and thus allows the flexibility for leased vessels.

CO-CHAIR SCALZI remarked that the aforementioned language changes might have a dramatic effect. However, he asked whether the "may" and "shall" language changes will cause portions of the bill to be in conflict.

MS. McDOWELL answered, "I think it all works fine." She explained that there has to be enough flexibility to customize this program to work for two individual fisheries.

Number 1014

JOHN WINTHER testified via teleconference. He concurred with the testimony given by Ms. McDowell. He suggested that the changes are necessary to [improve this legislation] and to [correspond] with the fisheries that are of concern. He expressed disappointment that this legislation was held over by the committee last year. He indicated that Version B is better than the previous version. He explained that he is involved with some federal fisheries that require him to prove ownership of the vessel each year. He said that he did not consider that last year during the legislation of the previous version.

MR. WINTHER remarked that [proving ownership] is a time-consuming, expensive process. He explained that to prove ownership, one must pay an annual fee of \$6,000-\$7,000 per vessel, and it never changes each year. He said that he is glad that provision was removed and that there has been this extra time to identify that issue. He stated that he supports [Version B] and he thinks that the changes will make it [better legislation].

CO-CHAIR SCALZI reiterated that the reason that he and Co-Chair Masek had asked that this legislation be brought back to the House Resources Standing Committee is because they wanted to clarify the changes, rather than leave it to the Senate to reconstruct something that may not come back in the same form.

Number 1160

EUGENE ISIKSICK, President & CEO, Norton Sound Economic Development Corporation (NSEDC), testified via teleconference. He informed the committee that NSEDC is one of the six Community Development Quota (CDQ) groups across Western Alaska. He said NSEDC represents 15 communities and is probably the newest [addition] to this fishery. He explained that NSEDC has purchased three vessels in which it currently has 50 percent ownership; two of the vessels are licensed to fish the Korean hair crab. He stated that he was in support of [Version B]. He commented that the vessels that would be affected by this bill are new and had been acquired by NSEDC in the last six months.

Number 1245

LENNI HERTZOG testified via teleconference. He told the committee that he works on a boat based out of Homer, which he said has a permit for hair crab. He informed the committee that he would like to see [Version B] go forward.

Number 1273

OLIVER HOLM testified via teleconference. He expressed concerns some of the "principles" involved in this fishery. He remarked that he did not directly participate in either of the [hair crab or scallop] fisheries. He suggested that there have been problems with vessel ownership and this type of program in the federal fisheries in halibut. He indicated that it affects shares, consolidation, and the amount of money that stays in the community of Kodiak from harvesting halibut. He said that changing the [language] on the ownership interest from "may" to "shall" means that the boats can be consolidated and can leave the state and fish scallops on the East Coast, for instance, and have one vessel fish the whole fishery. He said that there has already been some consolidation under the [moratorium]. He remarked that it has cost the crews in the total amount of revenue that actually goes to the crews in the scallop fishery. He explained that it is extremely difficult to track ownership [of a vessel]. He said that he has to prove ownership for the halibut [fishery] in the federal system every year, at a cost of less than five dollars.

MR. HOLM said that in the area of corporate ownership [proving ownership] can be very difficult. He said in regard to the state-managed fisheries, he thinks the state should [incorporate] a policy that stays with the owner-operated, small-business approach to these fisheries. He remarked that even though the fisheries are somewhat different, he doesn't think that the state should [get involved] and change fisheries. He suggested that there have already been some problems in the scallop fisheries in regard to consolidation, and this [legislation] would make it possible in the Korean hair crab fishery. He added that the Korean hair crab fishery isn't open because of conservation concerns. He expressed doubt that this [legislation] would [cause it to open]. Mr. Holm said that the United Fisherman of Alaska (UFA) was asked to support the bill as a whole at the last meeting, but [UFA] declined to support the bill and currently has no position.

Number 1431

JIM CHASE, Owner, F/V Forum Star, informed the committee that he owns a scallop boat and is in support of the [proposed CS, Version B] for HB 206. He remarked that he had problems with the previous version, but [Version B] is much better.

CO-CHAIR SCALZI reiterated a conversation he had with Mr. Chase in which Mr. Chase pointed out that regardless of the amendment, it is important that the bill goes through.

MR. CHASE indicated that he did support the previous version of HB 206 despite having some major problems with it. He remarked that his problems were with the so-called "second generation" [language]. He said in regard to this fishery, it is difficult for people to come up with the money it takes to buy this type of operation. He remarked that he has worked in the fishery for 27 years and had hoped to retire from the fishery someday. He said that these are large boats and they are also involved businesses; it is [impossible] to run the boat and run all of the mechanics of a full-blown processing operation while in the boat. The scallop fishery is approved by the Department of Conservation (DEC) and the Food and Drug Administration (FDA). This requires that the [scallop fishermen] pass all of the same tests that restaurants and food resale [businesses] are required to pass in Alaska. He remarked that it is an immense amount of work. He reiterated his point that it is impossible.

Number 1579

CO-CHAIR SCALZI asked Ms. McDowell to address some concerns of that Mr. Holms had about consolidation in regard to [second] generation [provisions].

MS. McDOWELL drew attention to page 3, lines 19-23, which addresses the issue of concentration of ownership. She explained that the issue in regard to concentration of ownership is not necessarily whether the next owner is a person or a company; the question is whether one person or one company can buy up the company. She said that this provision specifically directs the commission to develop regulations to prevent excessive concentration of ownership. She remarked that there would be a necessity to keep monitoring the [ownership] of the vessels. Under the so-called "second generation" language, that would happen at the time of the transfer. She explained that this [provision] would require them to annual monitoring at renewal time to ensure that [ownership] is not being concentrated. She said that during the initial review [CFEC] would identify and be able to track owner any transfer of ownership. She remarked that [ADF&G] is very sensitive to the issue of conservation. One of the basic premises of limited entry is to keep Alaska's fisheries diversified and not bought-up by one particular interest. She remarked that it would be a burden if the [permits] were owned by entities because [CFEC]

would have to identify what entity owns the permit and what entity owns that entity. She said [ADF&G] would develop regulations for handling those [situations].

Number 1675

REPRESENTATIVE STEVENS remarked that the excessive [concentration] of ownership is vague. He commented that [ADF&G] understands the meaning and would have to put forth a great deal of effort [determine] corporate ownership. He asked Ms. McDowell to explain the meaning of concentration of ownership.

Number 1697

MS. McDOWELL explained that the language in that section was not defined further than that because originally this [legislation] would have applied to a broad spectrum of fisheries. She said that one fishery may have a [small number] of permits, whereas another fishery may have a [large number] of permits. So rather than put a number in the [legislation], it was phrased this way. She suggested that the [committee] could go back and define that further, if that made members more comfortable [with the language]. She remarked that this was left to the regulatory process.

REPRESENTATIVE STEVENS asked if the regulations would define excessive concentration.

MS. McDOWELL answered, "Specific, yes."

CO-CHAIR SCALZI remarked that he'd struggled with this [legislation]. He said that the intent of getting the [permit] to an individual is historically what has been done in this state. He explained that he'd contacted friends in the crab fisheries because currently they are under federal moratorium in the Bering Sea; they will also be looking at some type of limited entry. He said that after doing research and talking with some of his friends out there, he found that about 70 percent of [vessels] have owners that are absentee. He remarked that the make-up of the large-vessel fishery is different from the limited entry program [regulating] salmon, which is all owner operated. He indicated that there were big changes in Version B. He stated that he supports those changes. He said he thinks that it is [different] from the original intent of the salmon fishery, but this is definitely a large boat fishery.

Number 1820

CO-CHAIR MASEK drew attention to page 6, line 17. She explained that she wanted to change the language from "may" to "shall" in order to ensure that the commission would provide opportunity for the leasing of vessels.

Number 1885

CO-CHAIR MASEK moved to adopt Amendment 1, which read:

Page 6, line 17,
Delete "may",
Insert "shall"

Number 1891

CO-CHAIR SCALZI asked if there was any objection or discussion regarding [Amendment 1]. He asked Ms. McDowell if [Amendment 1] would be [problematic].

MS. McDOWELL said that there was no problem with [Amendment 1].

Number 1922

CO-CHAIR SCALZI asked if there was any objection. There being no objection, Amendment 1 was adopted.

Number 1928

CO-CHAIR MASEK drew attention to page 3, line 11. She explained that she wanted to change the language from "consultation with" to "approval from". She explained that the reason for this is because once HB 206 takes effect, regulation in fishing capacity will no longer fall under the jurisdiction of the moratorium. She remarked that ADF&G has currently adopted a position on this issue that is very similar to that of the federal regulations.

Number 1989

CO-CHAIR SCALZI reiterated that Amendment 2 would remove the language "consultation with" and insert the language "approval from". He said sounds as though this would provide ADF&G a stronger ability to consult CFEC.

REPRESENTATIVE FATE indicated that Amendment 2 would require approval from ADF&G before the CFEC could move forward.

REPRESENTATIVE STEVENS asked if there was a representative from ADF&G that could comment on [Amendment 2].

CO-CHAIR SCALZI answered that there was not. He asked if Ms. McDowell could address [Amendment 2] and the ramifications.

MS. McDOWELL indicated that she was not aware of [Amendment 2 previously]. She suggested that there may be a misunderstanding about what "capacity restriction" means in this section. She referred to Co-Chair Masek's suggestion that once HB 206 takes effect, regulation in fishing capacity will no longer fall under the jurisdiction of the moratorium was not true. Ms. McDowell said the moratorium will stay in place until it expires in 2003; this would allow CFEC the process of getting regulations in place to propose limitations in advance. She reiterated that the moratorium provision will be in effect until such time that the fishery either goes open-access again or becomes limited under [HB 206]. She explained that the [purpose] of the capacity restrictions under the limited entry law is that when CFEC limits a fishery, it has the ability to set capacity restrictions that go with that permit.

CO-CHAIR asked if "capacity restrictions" pertain to [CFQs].

MS. McDOWELL answered "no," it usually has to do with the size of the vessel. She said that if CFEC put capacity restrictions in a fishery, it would usually indicate that that [particular] permit is good for a vessel of a [specified] size. She remarked that that capacity restriction stays with that permit. For someone who holds a permit that gives the person the ability to fish a 100-foot vessel; when the person transfers [the permit], he/she couldn't transfer it to someone who is now going to use a 300-foot vessel with that permit. She reiterated that it is a capacity restriction that stays with the permit. She said it does not have anything to do with guideline harvest levels of the capacity, the fishing effort that is regulated by [ADF&G], and the Board of Fisheries. She remarked that it is a different fishing effort restriction - the capacity that goes with that permit.

Number 2188

CO-CHAIR SCALZI asked if it is out of the realm of ADF&G's normal regulating sphere.

Number 2205

MS. McDOWELL remarked that it would be helpful for her to understand what the intent of [Amendment 2] is. She said that [ADF&G] does fishing capacity restrictions under its current limited entry program. She explained that ADF&G always consults with the fishery managers because [ADF&G] does not have the expertise on the same fisheries. She said that [CFEC] would consult the department managers and ask for suggestions for a reasonable capacity restriction. For example, does the size of the gear or the size of the vessel matter in fishing? She said that [CFEC] works with them to develop regulations in a proposal for limitations. She explained that that is why the [provision] suggests consulting with ADF&G to [utilize] its expertise and the mechanics of the fishery and what capacity restrictions would make sense in that fishery.

CO-CHAIR SCALZI asked if [CFEC] consults with ADF&G in regulating the [various] fisheries.

MS. McDOWELL answered "always."

CO-CHAIR SCALZI asked if this is a standard of how [CFEC] operates with ADF&G.

MS. McDOWELL answered "yes."

CO-CHAIR SCALZI asked Co-Chair Masek if she still felt the language change was [necessary] now that the definition of "capacity" has been [explained].

CO-CHAIR MASEK said she thought parts of HB 206 would stop some of the moratorium anyway. She said that the issue is [due] to the language consultation. She asked Ms. McDowell if she goes with the recommendations. She indicated that she was asking about the language prior to the proposed [Amendment 2].

MS. McDOWELL remarked that in the case of fishing capacity, it is usually not matter of [ADF&G] saying what needs to be done. She explained that it is usually a matter of consulting with [ADF&G] to find out what size vessels are used, how they are used, and whether it would increase overall fishing effort in the fleet if there were a range of sizes. She reiterated that it was a matter of [utilizing ADF&G's] expertise. She said that her concern with saying "after approval from the department" is that it would create an additional step, giving another department veto power that the entire limitation process stops until or unless ADF&G approves it. She said that she thinks

[CFEC] works closely enough with ADF&G that she doesn't think that it would be a major impediment, but it would be an unusual step.

Number 2359

CO-CHAIR SCALZI remarked that it sounds as though it would be inconsistent with the relationship that [CFEC] has with all of the other fisheries.

MS. McDOWELL said that there is no provision anywhere else in [CFEC's] program whereby ADF&G could stop a limitations process.

CO-CHAIR SCALZI said it sounded as though it made sense, but now he understands what the difference is on the capacity. So it's probably not necessary, but the amendment is there. He told Co-Chair Masek that it was up to her if she wanted to withdraw the amendment or move forward with it.

CO-CHAIR MASEK asked what [CFEC] would allow once the moratorium expires in 2003.

MS. McDOWELL said that the hair crab moratorium is scheduled to expire in 2003 and the scallop fishery [expires] in 2004. She explained that [CFEC] would expect the moratorium to run its course. By the time it ends, [CFEC] would have to have proposed and adopted either limitation under the current program or limitation under this program, or else done nothing and let it go back to open access when the moratorium expires. She said that this would not affect any of the provisions during the moratorium or who's eligible to fish during the moratorium; all of the criteria for both of those moratoriums were established by the legislature. She explained that HB 206 would allow [CFEC] to create a limitation proposal to put out for public comment under this new framework, to determine what would happen to that fishery upon termination of the moratorium.

Number 2450

CO-CHAIR MASEK withdrew [Amendment 2].

CO-CHAIR SCALZI remarked that this would [allow] consistency between the department and all of the other fisheries.

Number 2480

REPRESENTATIVE FATE moved to report CSHB 206 [Version 22 - LS0426\B, Utermohle, 1/30/02, as amended] out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 206(2d RES) was reported from the House Resources Standing Committee.

ADJOURNMENT

Number 2522

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 1:45 p.m.