

ALASKA STATE LEGISLATURE
SENATE RESOURCES COMMITTEE

March 20, 2002
3:35 p.m.

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Gary Wilken, Vice Chair
Senator Ben Stevens
Senator Kim Elton

MEMBERS ABSENT

Senator Rick Halford
Senator Robin Taylor
Senator Georgianna Lincoln

COMMITTEE CALENDAR

SENATE BILL NO. 329

"An Act authorizing community development quota groups to hold commercial fishing permits."

HEARD AND HELD

CS FOR HOUSE BILL NO. 206(RLS)

"An Act relating to a vessel-based commercial fisheries limited entry system for the Bering Sea Korean hair crab fishery and for weathervane scallop fisheries, 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."

HEARD AND HELD

CS FOR HOUSE BILL NO. 298(L&C)

"An Act relating to authorizing the Alaska Railroad Corporation to lease land for a period of up to 55 years."

HEARD AND HELD

HOUSE BILL NO. 131

"An Act relating to standards for forest resources and practices; and providing for an effective date."

HEARD AND HELD

PREVIOUS SENATE COMMITTEE ACTION

SB 329 - See Resources minutes dated 3/6/02.

HB 206 - No previous action to record.

HB 298 - No previous action to record.

HB 131 - No previous action to record.

WITNESS REGISTER

Ms. Kelly Huber
Staff to Senator Halford
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Presented SB 329 for the sponsor.

Mr. Bruce Twomley, Chairman
Commercial Fisheries Entry Commission
8800 Glacier Hwy, Ste 109
Juneau AK 99801
POSITION STATEMENT: Opposed SB 329.

Mr. Steve White, Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 329.

Mr. Jerry McCune
United Fishermen of Alaska
211 4th Street, #110
Juneau AK 99801
POSITION STATEMENT: Opposed SB 329.

Mr. Robert Heyano
Bristol Bay Economic Development Council
PO Box 1409
Dillingham AK 99576
POSITION STATEMENT: Commented on SB 329.

Mr. Oliver Holm
333 Tona Lane
Kodiak AK 99615
POSITION STATEMENT: Opposed SB 329 and HB 206.

Mr. Alan Parks
PO Box 3339
Homer AK 99603
POSITION STATEMENT: Opposed SB 329 and HB 206.

Mr. Malcolm Milne
PO Box 1846

Homer AK 99603

POSITION STATEMENT: Opposed SB 329 and HB 206.

Mr. Mako Haggerty

PO Box 2001

Homer AK 99603

POSITION STATEMENT: Opposed SB 329 and HB 206.

Mr. Yakov Reutov

PO Box 2956

Homer AK 99603

POSITION STATEMENT: Opposed SB 329 and HB 206.

Representative Drew Scalzi

Alaska State Capitol

Juneau AK 99801-1182

POSITION STATEMENT: Sponsor of HB 206.

Ms. Mary McDowell, Commissioner

Commercial Fisheries Entry Commission

8800 Glacier Hwy, Ste 109

Juneau AK 99801

POSITION STATEMENT: Commented on HB 206.

Mr. John Winther

Petersburg AK

POSITION STATEMENT: Supported HB 206.

Mr. Jim Stone

Scallop Vessel Ocean Runner

Kodiak AK

POSITION STATEMENT: Supported HB 206.

Mr. Chris Berns

PO Box 26

Kodiak AK 99615

POSITION STATEMENT: Opposed HB 206.

Mr. Jim Kubitz

Vice President, Real Estate

Alaska Railroad Corporation

PO Box 107500

Anchorage AK 99510

POSITION STATEMENT: Commented on HB 298.

Ms. Carol Carroll, Director

Division of Support Services

Department of Natural Resources

400 Willoughby Ave. 5th Floor

Juneau AK 99801

POSITION STATEMENT: Supported HB 131.

Ms. Marty Freeman, Manager
Forest Resources Program
Division of Forestry
Department of Natural Resources
550 W 7th Ave. Ste 1450
Anchorage AK 99501

POSITION STATEMENT: Supported HB 131.

Mr. Bob Zachel
Interior Timber Industry
PO Box 83244
Fairbanks AK 99708

POSITION STATEMENT: Supported HB 131.

Mr. James Durst
Division of Habitat and Restoration
Department of Fish and Game
333 Raspberry Rd.
Anchorage AK 99518

POSITION STATEMENT: Supported HB 131.

Ms. Beth Caissie
Northern Alaska Environmental Center
830 College Rd.
Fairbanks AK 99709

POSITION STATEMENT: Supported HB 131.

ACTION NARRATIVE

TAPE 02-12, SIDE A

Number 001
#SB329

SB 329-ALLOW CDQ GROUPS TO HOLD ENTRY PERMITS

CHAIRMAN JOHN TORGERSON called the Senate Resources Committee meeting to order at 3:35 p.m. Senators Wilken, Stevens, Elton and Chairman Torgerson were present. Chairman Torgerson said the committee would have a quorum until 4:00 so it wouldn't be able to move any bills today. He announced SB 329 to be up for consideration.

MS. KELLY HUBER, staff to Senator Halford, sponsor of SB 329, explained:

SB 329 provides an additional tool to the community development quota groups by allowing them to hold

limited entry permits. Broadening the limited entry permitting process creates a mechanism that will allow the CDQ groups to protect their own region and get permits into smaller communities within their geographic bounds. It's an effort to bring new jobs and wages that will strengthen the economic well-being in communities of Western Alaska. Should this bill become law, limited entry permits would be held by individuals, CDQ groups, CFAB and other state loan programs. The sponsor recognizes that this is the first step in the process and welcomes public comment that will be before you today and encourages changes that will strengthen the bill and at the same time prevent unintended consequences.

MR. BRUCE TWOMLEY, Chairman, Commercial Fisheries Entry Commission (CFEC), stated support for getting permits into the hands of the local rural residents, but was against the bill in its current form. He stated, "I want to say that there's the means to meet those goals under state law right now."

He explained that under the existing state commercial loan program, a special loan program was created some years ago by Nels Anderson for rural residents. It allows CDQ groups to partner in the process to help get more permits into the hands of local people. CDQ groups can actually promote local people for the loans and partner with the Division of Investments. He noted:

The reason we feel compelled to speak against the bill basically comes down to two points. First, I think there are some serious legal issues raised by the bill. The bill would authorize CDQ organizations to hold limited entry permits. Well, CDQs are entities that are confined to certain limited geographic areas in rural Alaska. They're also composed entirely of Alaska Native villages certified by the Secretary of Interior. This is a very limited category of holders of limited entry permits. It's very restrictive. I think you can contrast it with the category that formerly governed the subsistence preference in Alaska. Under our state constitution, a rural preference for subsistence was struck down. Now, that's a very broad largely open category. The category being put forward in this bill is much more restrictive in terms of area and in terms of the composition of the groups that can hold limited entry permits. The basic question I would want to raise is how would you defend this new category under the state constitution? I'm not sure that can be done.

The second question I want to raise is: why open the holding of limited entry permits to entities at all? The major step this bill takes would be to authorize an entity, a corporation, to hold limited entry permits. Going back to the time limited entry was created, one of the fundamental purposes of the Act was to make sure that limited fishing privileges could be held only by real live individual fishermen. The notion was that there was some history of exploitation of Alaskan fishermen by corporations and other entities. The idea was to help insulate Alaskan fishermen from that by giving them total control of their fishing privileges so that they could conduct their own affairs, conduct their own businesses, have some bargaining power in the process. I would submit that in the future as we face various dislocations for the industry trying to adjust to a changing world market that preserving that individual place for Alaskans in the fishery remains important; even though there may be any number of creative ideas where people could get together with CDQs. CDQs could help open up new markets. I think that the individual fishermen need to remain in control of their fishing rights so that they have some bargaining power in the process so they can preserve a place in the process and not simply become an employee of a corporation. I think that issue remains important today...

CHAIRMAN TORGERSON asked if other loans are available to people.

MR. TWOMLEY reviewed his list. The State Commercial Fishing Loan Program has money available in the Division of Investments, which has a special category to loan money to rural residents for limited entry permits. He stated:

There has been an upper limit on the amount of money that was available for those loans and today, with depressed permit prices, permits for the first time are within reach of this loan program. It's called the Type B Loan Program. Now, that's coupled with an opportunity for CDQ organizations to literally be a partner with the Division of Investments. All CDQ organizations need to do is deposit some money into an account where it can sit and collect interest and have that money available as loan guarantees. From there they can work together with the Division of Investments where Division of Investments does all the administrative work, handles the money, all of the detail work and the

opportunity for the local CDQ organization is to pick good candidates for the loans - people they know can succeed as fishermen. It's a much better prospect than having someone in Juneau pick an applicant for a loan...They can also pick people to stand in line to step in and assume the loan in the event that there's a failure of the original loan. It's an opportunity; it's there right now and it doesn't require changing the law.

CHAIRMAN TORGERSON asked if his technical concerns are small in nature.

MR. TWOMLEY replied a couple of them are small. Language on page 1, line 6 to 10, would authorize CDQ organizations to hold interim use permits and he assumed those were in open fisheries as opposed to limited entry fisheries. That language doesn't make sense since CDQ organizations can participate in open-to-entry fisheries now. They simply have to employ a captain and a captain can buy an interim use permit to participate in those fisheries. He remarked:

The only way this would make sense is if CDQs under the bill would be in a position to compete with individual fishermen for limited entry permits if the fishery goes to limited. That may be the purpose of the bill because at a later point in the bill, page 7, lines 11 -13, the wording suggests that the CDQ itself could qualify for a limited entry permit on initial issuance by the state just as individual fishermen can now. That was an issue that concerned me...

One has to contemplate that limited entry only survives under the state constitution if it satisfies the two specified constitutional purposes, one of them being conservation of the fishery, the other one preventing economic distress among fishermen. If you can't satisfy those two provisions, the limited entry system will be struck down and I can't see from the bill that it meets either of those standards.

3:47 p.m.

SENATOR STEVENS asked why the sponsor statement says that CFAB and state loan programs would become eligible under this bill.

MS. HUBER responded, "The sponsor is just letting you know that the CDQ groups would be among the list that could hold, if the bill passed, limited entry permits."

SENATOR STEVENS said that CFAB cannot hold a limited entry permit right now.

MR. TWOMLEY added that is true, but it has a security interest.

SENATOR STEVENS asked if he was saying that nothing right now prevents a CDQ group from having secured interest on a loan.

MR. TWOMLEY replied they have the opportunity to piggyback on top of the State Division of Investments Program now. They can do it with CFAB, too.

SENATOR STEVENS said, in that case, the CDQ group is the guarantor of the individual.

MR. TWOMLEY said that is correct. That helps make the money go further and, in this case, it's in a program where no down payment is required. Basically, the loan program does all the grunt work.

SENATOR STEVENS asked what the security would be for the CDQ group.

MR. TWOMLEY answered that the permit, itself, will be security. The Division of Investments and CFAB are authorized to actually foreclose on a permit. He stated, "Under the scheme, they wouldn't necessarily have to do that because there could be another local person standing in line ready to assume the loan under this program. They wouldn't necessarily lose the permit from the local area.

SENATOR STEVENS asked how many limited entry permits exist for the salmon fishery now.

MR. TWOMLEY replied that altogether there's about 14,000 permits. Alaskans hold about 78% (11,000) of the permits overall. Rural residents hold more than half of the permits held by Alaskans.

SENATOR STEVENS asked if he had a breakdown by region.

MR. TWOMLEY replied that it varies from fishery to fishery. In the lower Yukon, Norton Sound, and lower Kuskokwim, the percentage of Alaskans holding permits varies between 98 - 99%. Most of them are held by local people. In Bristol Bay, 72% of the setnet permits are held by Alaskans and more than half of those are held by local Alaskans. In the driftnet fishery a little more than 49% are Alaskans, which is roughly the historic percentage of Alaskan/not Alaskan participation in the fishery. More than half of the permits held by Alaskans are held by local Alaskans. It's in excess of 450 drift permits.

He said they tried to encourage people to establish a local permit brokerage to help them get limited entry permits. They have been working with the CDQ and their representative, Robin Samuelson, has told him that they are exploring the kind of program he has suggested could be productive in the Bay.

3:53 p.m.

MR. STEVE WHITE, Assistant Attorney General, agreed with Mr. Twomley's comments, especially regarding the constitutional issues. He explained:

We have a constitutional problem because CDQ groups have to be certified and one of the criteria is that they have to be certified as a Native village under ANCSA. The federal government is permitted under its constitutional scheme to give preference based upon Native issues, but the state constitution does not allow us to do that unless we meet really strict standards under our equal protection and our uniform application clauses. Essentially, our courts would say, 'What is the purpose for this type of scheme and if the purpose is to return permits [indisc.], is there another way to do that without establishing essentially a racial classification or preference?' Mr. Twomley has already said there are other ways to accomplish that. So, I think this would be very vulnerable under our state constitution.

Also, I think it could be challenged under the federal constitution, because it would be giving not only a preference to racial classification, but to Alaska residents versus nonresidents who also commercial fish. Then we get back to the whole privileges and immunities clause problem that we're dealing with in the Carlson case. We are actually vulnerable there, because not only do the CDQ groups have to be Native village certified, they have to be local residents - that is Alaskans. So Alaskans would be given preference in this scheme versus nonresidents. And even though I like that idea, the federal constitution has problems with it.

SENATOR ELTON said his memory of the limited entry debate in the early '70s is that the privilege of limited entry was to be accorded to real people and not to corporations. That was based on the state's previous experience and the concerns many people in the state had about processors accumulating permits.

MR. WHITE said he wasn't sure of the constitutional history of the amendment that allowed limited entry, but he knew a lot of the impetus behind it was to get the fishing industry away from being owned by the processors, particularly the ones in Seattle who had accumulated a lot of power through owning the opportunities to fish and sharecropping them out to the fishermen.

SENATOR ELTON said he asked because this legislation is so narrowly drafted only one kind of an entity would be allowed to accumulate the permits from a very discreet region of the state. He asked if that would be a problem.

MR. WHITE replied that he thought the language was general enough to pass that particular constitutional test. He thought the other constitutional problems were a lot more severe.

MR. JEFF BUSH, Deputy Commissioner, Department of Community and Economic Development (DCED), said he is also a member of the state's CDQ team. He stated:

In contrast to Bruce Twomley's position, our agency at least is supportive of the philosophy behind this particular piece of legislation, but we share some of the same concerns in terms of the legal issues and truly believe that those need to be addressed...

Excluding the legal concerns or assuming they could be dealt with, our department at least is supportive of the concept of assisting CDQ groups, at least in terms of if the overriding philosophy or purpose of this legislation as we understand it is to essentially assist western Alaskan communities in retaining permits in the regions and allowing fishermen in those particular communities to have more opportunity than they would otherwise to utilize those permits, maybe we're only arguing here or disagreeing on how you accomplish that.

MR. BUSH said he recognized the legal concerns and would oppose anything that would open up the limited entry program to larger entities or other entities like fish processors.

SENATOR ELTON said that CDQ groups are processors in a sense.

MR. BUSH responded that CDQ groups are in all cases nonprofit corporations. Their members are the communities that they represent specifically, they have to actually select their board from the communities and as part of their businesses they do processing.

CHAIRMAN TORGERSON questioned how much of a problem this is if 99% of the permits are already owned by local rural residents. He asked if that was his experience in dealing with CDQ groups.

MR. BUSH replied that in some of the regions that is true, but in the Bristol Bay area it's not true; it's more like 50/50. That is where the loss of permits from Alaska is occurring.

SENATOR STEVENS asked if this bill passes, whether each CDQ group could own a permit in each limited entry fishery.

MR. TWOMLEY said he thought that was a correct reading of the bill.

SENATOR STEVENS noted that he thought there were about 26 limited entry fisheries.

MR. TWOMLEY said he thought it was intended that the CDQ group could hold more permits than one.

SENATOR STEVENS asked if the CDQ entity could only hold one permit, would he still oppose the bill.

MR. TWOMLEY said he was concerned about that as well as the broad opportunities for an entity to hold limited entry permits. He explained:

There are some limited exceptions now for cost recovery permits and educational permits in the Act, but there is this basic bias in the Act from the beginning for, I think, sound reasons that fishing privileges ought to be restricted to real live individual fishermen and not go to entities. I'm kind of worried about opening the door and the additional pressures that might create for more entities to move in and hold limited entry permits. Even if it's confined to CDQ holding limited entry permits, even though CDQs are one of the best things that has ever happened to Western Alaska, if CDQs can hold limited entry permits. It does interpose a corporation between a fisherman and the fisherman's rights. That fisherman becomes an employee of the corporation as opposed to somebody who can make his or her own decisions about prosecuting a fishery. I would be concerned about that.

CHAIRMAN TORGERSON asked if there was any cap they could put in this bill to make him feel more comfortable, like saying a CDQ couldn't own more than 10% of the permits available in the area, if the legal issues were resolved.

MR. TWOMLEY replied that he was concerned about the principle.

SENATOR STEVENS theorized that a CDQ group is given special recognition in federal law and has benefits of certain state laws, but it's not recognized in the limited entry commission. He asked Mr. Bush if CDQ groups can only invest in entities that harvest fish.

MR. BUSH said that is correct right now, but that provision is under review by the North Pacific Fisheries Management Council, which might possibly allow a small percentage of in-region general economic development investments instead of just fisheries.

MR. JERRY MCCUNE, United Fishermen of Alaska (UFA), said that UFA doesn't want to see any entity hold a permit, whether it's a CDQ group or anything else. He said other processors in the state would love to own permits. He said when the limited entry law was drafted, it was pretty smart to keep permits in individual's names so those permits would stay in Alaska. The biggest opportunity that Bristol Bay has now is to start buying those permits back, like Mr. Twomley said.

MR. ROBERT HEYANO, Bristol Bay Economic Development Council, supported the concept of SB 329 and shared Commissioner Twomley's concerns, but the Council feels the content of the bill is worth pursuing.

MR. OLIVER HOLM, Kodiak, opposed SB 329. He thought there were other methods to get permits into local ownership in Bristol Bay. He was concerned about the legal issues and keeping permits in the hands of individuals.

MR. ALAN PARKS, Homer fisherman, shared a lot of the concerns expressed about SB 329, including consolidation into entities that would ultimately control communities and independent fishermen. He commented, "The protection of independent fishing families is very important to the social structure and fabric of our communities and our lives as fishermen..."

MR. MALCOLM MILNE, Homer fisherman, opposed SB 329 for all reasons already stated, especially those by Mr. Twomley.

MR. MAKO HAGGERTY, retired fisherman, said he would like to fish again sometime, but bills like this make fishing for him in the future look pretty dim. He surmised, "It seems to me like the first step in turning fishing into an agribusiness and that, of course, eliminates the individual fisherman, which is what I am, was, and will be."

MR. YAKOV REUTOV, Homer fisherman, opposed SB 329 for all the reasons stated.

CHAIRMAN TORGERSON said they would set the bill aside for further work.

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#HB206

CSHB 206(RLS)-LIMITED ENTRY FOR COMM. FISHERIES

CHAIRMAN TORGERSON announced HB 206 to be up for consideration.

REPRESENTATIVE DREW SCALZI, sponsor of HB 206, said in 1996 or 1997 a moratorium was placed on the hair crab and weathervane scallop fisheries and reauthorized a few years later. He explained:

Under the direction of the legislature, the Commercial Fisheries Entry Commission was asked to come up with a limited entry plan for these two fisheries. The CFEC needed a different tool than was in the toolbox to come up with a plan. Currently, our limited entry permits must go to an entity, a person. Under this scenario, it was not acceptable to create a limited entry plan for these two fisheries that would not exacerbate the problem. If the limited entry system that we have currently was used, the permits would have had to go to more than one vessel, because all vessels have up to five different permit holders on them.

These are Bering Sea fisheries and the owner is not usually on board and under that scenario, you would need multiple permits. That would have allowed too many entrants into the fishery. So, the CFEC felt that if we would modify the system with HB 206 and allow a vessel based permit to take place, the vessels that were involved in the fisheries for the last few years would be the potential recipients of the limited entry permits that would be made available. HB 206 changes essentially the manner in which the limited entry system can take place by attaching it to the vessel.

He said the bill had been modified several times, because initially CFEC wanted a tool that could be utilized for other fisheries. Because the bill allows an entity to be an owner of a permit, they thought it best to limit it to these two fisheries.

REPRESENTATIVE SCALZI said that initially, after the permit is issued to the vessel, the next generation of ownership should go

back to an entity. Because of the dynamics of the Bering Sea fisheries, they realized that the owners can't operate the business while being onboard and often are not there.

SENATOR STEVENS asked him to explain the concept of the Limited Liability Partnership (LLP) versus a state permit and the issue of why the state should let LLP participants in.

REPRESENTATIVE SCALZI answered after an incident when one scallop vessel took the quota a few years ago, there was a drastic measure to put a moratorium on new entrants into the scallop fishery. The LLP and the federal fisheries are separate, in that [the LLP] applies to federal fisheries. This is for state managed fisheries.

CHAIRMAN TORGERSON referred to Section 3, which deletes "scallop fisheries" and inserts "fisheries." He asked what else this bill would include besides the scallop fishery.

REPRESENTATIVE SCALZI said this bill just applies to the scallop and hair crab fisheries and that language change was made to be consistent with another part of the bill.

TAPE 02-12, SIDE B

MS. MARY MCDOWELL, Commercial Fisheries Entry Commission, said:

As the sponsor of the bill said, as far as the origins of the bill, this is something the Commission was directed to do by the legislature specifically. There was language in the hair crab moratorium bill asking us to come back to the legislature with language that would be generic. Originally that's what we were requested to do - to come up with a bill that would create this alternative program that would be vessel based, that could be used in fisheries that did not lend themselves to effective limitation under our current program.

She explained that CSHB 206(RLS) is generic legislation that creates this program with specific criteria. The default is to the original program unless the purposes of the Limited Entry Act, conservation and avoiding economic distress among fishermen, could not be met under the current program. In that case, CFEC could consider using this alternative program, vessel based, to limit that fishery. During considerable testimony in the House Resources Committee, concerns were expressed about moving towards the possibility of a limited entry program based on vessel ownership and ownership by entities rather than by human beings. She commented:

The Commission feels very strongly that we should always use the person-based program when we possibly can. That is something that has been very important to the way Alaska manages its fisheries and empowering fishermen and so on and we are very supportive of doing that whenever possible.

She said CFEC recognizes that the state is faced with managing or limiting a few fisheries that just may not lend themselves well to limitation under their current program, two examples being the weathervane scallop and hair crab fisheries. She noted:

These are very much unlike the kinds of fisheries the state has had to limit before. These are Bering Sea fisheries, large boat, currently corporately owned and for the most part the owners are not on board. Most of them are used by corporations and partnerships and use hired skippers and relief skippers. There are a number of different people running the boat over the course of a season.

MS. MCDOWELL said that the House Resources Committee recognized the need to have an alternative program in these two instances, but it was not willing to create a generic tool that could be used in any of the fisheries. Language in CSHB 206(RLS) still largely reflects the original generic bill, but has been restricted to use in those two fisheries only. She stated:

The question that arose a few minutes ago on page 9 about "scallop fisheries" being broadened to "a fishery" was in the original generic bill, but still makes sense to include here. This is just to make it clear in statute that when the state has an opportunity to manage a fishery that the feds are willing to delegate management to the state to run, that we have clear statutory authority to accept that. I think it has always been the state's position that we should manage whatever fisheries we can and in some instances, the North Pacific Council and the federal government are willing to turn over management of a fishery to the state. So, this is to make sure that generic language is in there for the state to accept that.

She said that phrase really doesn't have much to do with CFEC, but rather with state management of a fishery through ADF&G.

SENATOR STEVENS asked how many weathervane scallop permits would be issued with this legislation.

MS. MCDOWELL answered:

I guess it's important to start by recognizing that this bill doesn't limit either of those fisheries. It will only give us the ability if and when we were going to limit those, to use this alternative program if necessary. So we haven't done the research to know how we would limit these two fisheries. I think under the moratorium there are 21 boats for scallops and only one for hair crab.

SENATOR STEVENS asked if this framework meets the moratorium requirement and when it sunsets.

MS. MCDOWELL replied that the hair crab moratorium sunsets in 2003 and the scallop moratorium in 2004.

SENATOR STEVENS asked if they would have to implement the plan by '03 and '04.

MS. MCDOWELL said this would be the enabling legislation and:

Once it is in place, the Commission would have to research both fisheries, determine which program - this doesn't automatically say we shall limit it under this program. At that point, we would have to determine whether there was any possible way to limit it effectively under our current program and then we would have to make a finding that we would have to use this program to limit that fishery, put out a regulatory proposal proposing a limitation and go through all of that, and then adoption of the program and have that eligibility criteria and have it adopted and in place before the moratorium expired - in order to avoid having an open access fishery happen in the meantime.

SENATOR STEVENS asked if both of these biomasses in the GHLs are managed by the Alaska Department of Fish and Game (ADF&G) under a fisheries management plan from the federal government.

MS. MCDOWELL said she thought that was true.

SENATOR STEVENS said the reason he brought it up is because of the recent news that the entire shellfish management plan might be reverting back to the federal government anyway. He asked if she had talked to ADF&G about that potential.

MS. MCDOWELL replied that she understands that there had been some conversation about what to do with the management of the

fisheries that have been delegated to the state under the current budget situation, but CFEC needs to have the tools in place in case they are faced with this management dilemma.

SENATOR STEVENS agreed they need to be prepared.

MS. MCDOWELL said she thought the discussion he referred to had to do with where the state had been delegated authority to manage in federal waters and, in this case, they are talking about state waters. She stated, "The feds are already managing scallops; they've done the LLP. The state is managing the licensing for the scallops."

SENATOR STEVENS said the point he was trying to make is if ADF&G is cut from shellfish management, all of this is for naught.

MS. MCDOWELL responded that she didn't know if this would be part of that or not, since this is in state waters.

CHAIRMAN TORGERSON asked what would happen without this bill. He asked if they could issue limited entry permits to the individuals under current law and not vessels.

MS. MCDOWELL replied that the dilemma they would be faced with would be to decide they couldn't effectively manage and let it go back to open access, which could result in ADF&G's closing the fishery if they felt that was too risky. She said:

The other option would be to explore whether there would be a way to limit it using the existing program to get the numbers down to something that was sensible. A policy call for the legislature is the fairness question of issuing permanent fishing privileges to those who have been hired skippers rather than invest in the boat.

SENATOR STEVENS asked how many permits that would amount to.

MS. MCDOWELL replied that they hadn't done the research and didn't know the exact numbers.

MR. JOHN WINTHER, Petersburg fisherman, said he had been a commercial fisherman since 1964 in Southeast and expanded into the Bering Sea with a crab vessel in 1973. He said the Bering Sea is unique because the majority of vessels are not owner-operated. All of the crab fisheries are under a ration program under the North Pacific Fisheries Management Council (NPFMC) except for the Korean hair crab fishery, which was delegated to state management quite a while ago. That is why they are asking for legislation to create a vessel license through the state with authorization from

the legislature. They see no other way under the current system that uses personal license permits to reduce the number of permits to where it can be a rational fishery. He said, "In fact you would be expanding the effort because of multiple skippers."

MR. WINTHER said another issue is with the large cost of entering the Bering Sea fisheries:

You have a vessel and you have a guy that owns the permit who doesn't have any interest in the vessel. The vessel owner is held hostage to the guy that has the license. If he chooses not to go on your vessel, your vessel sits at the dock. If it's a vessel license, then you can get anybody to run the vessel. So, we have all the investment and all the risk and yet no license to fish under the current entry system.

He said that every boat that goes up there is qualified to fish as a catcher vessel. All the product is taken to Alaskan shore side plants, processed in state. The state derives a fish tax off of it and jobs are created. He maintained:

If the moratorium expires and there's nothing to take its place, this thing will shift to an offshore fishery where you get the catcher processors involved and the state sees little or nothing..

He pointed out that a majority of the Bering Sea fisheries are out-of-state owned, but in this little fishery, about 24% of the boats are owned by Alaskans. Of the larger crab fleet about 5 to 10% of the boats are owned by Alaskans. He stated:

If this does expire and it goes back to federal management, you don't want it there. By the time you get something implemented under the federal system, new entrants come into being and they won't be able to manage the fisheries.

MR. JIM STONE said he is from the scallop vessel Ocean Hunter and has fished off the coast of Alaska for 15 years; 10 of those years in state waters. They were excluded from state waters after the moratorium. They have a federal license to fish outside the three-mile limit where 80% of the scallop beds exist. He supports HB 206, as the LLP vessel license limitation has done a bunch of good things for them. The boats work well together, their crab by-catch has gone way down through voluntary monitoring and they are no longer racing for fish or going out in storms. He noted, "We'd like to see the state mirror what the federal government has done in federal waters."

MR. OLIVER HOLM said he is concerned about the precedent set in HB 206 in licensing vessels, because an entity is getting the right to harvest fish. He thought the concentration of ownership would be very hard to track, especially with a reduced budget. He didn't think it was necessary to have state limited entry at all. The Korean Hair Crab fishery is fairly small and insignificant. He said most of the money would go out of state if the vessels were licensed. If individuals were licensed they would contribute to the economy in Alaska more.

MR. CHRIS BERNS said he opposes HB 206 because of all the reasons previously stated, along with the same concerns people had with SB 329. He believes, "It's a drastic policy shift that the state has taken."

MR. YAKOV REUTOV opposed HB 206 for the reasons already stated.

MR. ALAN PARKS, Homer commercial fisherman, said he is speaking on his own behalf and opposes HB 206 for a lot of reasons. He has participated in the fisheries on a variety of different sized vessels. He disagrees somewhat with what the sponsor statement (dated 3/21/01) says, "Further, it would award ongoing fishing privileges to many who have worked professionally as hired crew and not those who have invested in the fishery."

By giving rights to the resource to vessel owners, he, as a hired crew, is basically a sharecropper and he didn't think that was the intent of limited entry laws.

MR. MALCOLM MILNE, Homer commercial fisherman, opposed HB 206 because, "It's important that fishing rights go to the people who are fishing and not those who are at the dock out-of-state just collecting the money."

MR. MAKO HAGGERTY also opposed HB 206 for the same reasons already stated. He thought the economics of the hair crab fishery determines the level of participation and he wasn't sure that limited entry was a fair way of managing that fishery.

CHAIRMAN TORGERSON reiterated that he had lost a quorum so he was only taking testimony today. He thanked everyone who testified.

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#HB298

CSHB 298(L&C)-LEGISLATIVE APPROVAL OF RAILROAD LEASES

CHAIRMAN TORGERSON announced CSHB 298(L&C) to be up for consideration.

MS. ROBIN PHILLIPS, staff to Representative Lisa Murkowski, sponsor of HB 298, gave the following synopsis of the bill.

The Alaska Railroad Corporation (ARRC) requested this bill, which extends the length of time they can lease lands from the current 35 years to 55 years.

This change in statute will help cultivate economic development in communities along the Railbelt by making commercial and residential development on Alaska Railroad lands more viable. The current 35-year leases are an obstacle in leasing lands to large commercial and residential developers who need to secure long-term financing for their investments. Financial lenders are reluctant to invest in large scale projects requiring substantial equity participation when there's no guarantee the land will be available for 35 years. HB 298 will also make the ARRC's leasing practices more consistent with other state agencies. Both the University of Alaska and the Department of Natural Resources can lease land for up to 55 years.

The proposed extension of the allowable lease term is supported by the following businesses, individuals and organizations: Anchorage Historic Properties, Anchorage Neighborhood Housing Services, Mel Tipton (Ship Creek tenant and commercial developer), Seward Ship's Drydock, Inc., Dowl Engineers, Northrim Bank, AIDEA, Yukon Fuel, Kantishna Holdings, Inc., A&A Construction and Development, Inc., the Anchorage Chamber of Commerce, City of Seward, Anchorage Assembly and Fairbanks Chamber of Commerce.

MR. JIM KUBITZ, Vice President, Real Estate Division, ARRC, said there really hadn't been much controversy about this. It came from a demand from their tenants and leaseholders who really are looking for longer terms to lease lands.

CHAIRMAN TORGERSON said he didn't know of any opposition either.
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#HB131

HB 131-FOREST RESOURCES & PRACTICES STANDARDS

CHAIRMAN TORGERSON announced HB 131 to be up for consideration and said it was introduced by the House Rules Committee at the request of the Governor.

MS. CAROL CARROLL, Director, Support Services, Department of Natural Resources (DNR), said:

What the bill does, it identifies the riparian standards for Region 3. The Board of Forestry requested the science and technical subgroup to get together and identify all of the best science. They got together with an implementation group and with all of the affected parties to make sure what we were looking at in the scientific and technical group really would work on the ground. After that process was completed, we brought the bill back to the Board of Forestry for their review and that bill is what you see before you today.

MS. CARROLL said the committee has a "consensus bill" before it.

CHAIRMAN TORGERSON asked what the difference was between this and Areas 1 and 2.

MS. CARROLL replied that Area 1 is coastal Alaska, Area 3 is Interior Alaska and Area 2 is next.

MS. MARTY FREEMAN, Division of Forestry, DNR, said she was co-chair of the Science and Technical Committee in the group of stakeholders. She said that the difference between this and Region 1 is that they have a different stream classification system in the Interior that is tailored to the different stream types there. In Region 1 there are four different stream types including anadromous streams and tributaries. In the Interior the streams are both anadromous and high value resident fish streams and those are subdivided between non-glacial and glacial waters.

MR. BOB ZACHEL said he was the Interior timber industry representative on the Science and Technical Committee when they worked on this. He said, "I wanted to make it clear that what I thought I was getting from this agreement was that Fish and Game must present clear scientific data to justify any objections to sales beyond the 100 ft. setback."

CHAIRMAN TORGERSON asked if he wanted to see something in statute rather than just have a promise from ADF&G.

MR. ZACHEL said he did.

MR. JAMES DURST, Division of Habitat and Restoration, DNR, supported HB 131. He commented, "I think it's been a pretty impressive, consensus based development and nobody got absolutely everything we wanted, but I think we all got enough of what we needed to get..."

He said it was a good balanced bill and clarified that it wasn't their intention to deal with issues beyond 100 ft. The existing

statute calls for a 100 ft. special management area along high value resident and [indisc.]. The bill maintains that idea and narrows it down to 66 ft. on private land.

CHAIRMAN TORGERSON said he hoped Mr. Durst could get together with Mr. Zachel to work the differences out.

MR. DURST said they had been talking about it.

CHAIRMAN TORGERSON said the industry needed to be on board and if it wasn't, he wasn't either.

MS. BETH CAISSIE, Northern Alaska Environmental Center, supported HB 131. She stated, "We support this bill because not only would it provide a higher level of protection for riparian habitats and the fish that depend on it here in the Interior, but also because we support the process by which this bill is drafted..."

CHAIRMAN TORGERSON said that concluded the committee's agenda for the day and adjourned the meeting at 5:07 p.m.

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