

ALASKA STATE LEGISLATURE
SENATE RESOURCES COMMITTEE

April 8, 2002
4:48 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Robin Taylor
Senator Georgianna Lincoln

COMMITTEE CALENDAR

HOUSE BILL NO. 131

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

MOVED HB 131 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 286(RES) am

"An Act allowing a person to hold two commercial fishing entry
permits for a salmon fishery for the purpose of consolidating the
fishing fleet for a salmon fishery; relating to salmon fishery
associations and to salmon fishery assessments; and providing for
an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 288(FIN) am

"An Act relating to commercial fishing limited entry permit buy-
back programs, to a permit buy-back assessment, and to voluntary
relinquishment of commercial fishing permits; and defining
'optimum number.'"

MOVED CSHB 288(FIN)am OUT OF COMMITTEE

WITNESS REGISTER

Mr. Bob Zachel
No Address Provided
Fairbanks AK

POSITION STATEMENT: Supported HB 131.

Representative Scalzi

Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 286 and HB 288.

Ms. Mary McDowell, Commissioner
Commercial Fisheries Entry Commission
8800 Glacier Hwy, Ste 109
Juneau AK 99801-8079

POSITION STATEMENT: Commented on HB 286 and HB 288.

Mr. David Bedford
Southeast Alaska Seiners Association
526 Main Street, Ste 200
Juneau AK 99801

POSITION STATEMENT: Commented on HB 286.

Mr. Don Johnson
Soldotna AK

POSITION STATEMENT: Commented on HB 288.

ACTION NARRATIVE

TAPE 02-16, SIDE A

Number 001

CHAIRMAN JOHN TORGERSON called the Senate Resources Committee meeting to order at 4:48 p.m. Senators Wilken, Halford, Stevens, Elton and Chairman Torgerson were present. Chairman Torgerson announced HB 131 to be up for consideration.

#HB131

HB 131-FOREST RESOURCES & PRACTICES STANDARDS

MR. BOB ZACHEL, Fairbanks, stated support for HB 131 as written.

CHAIRMAN TORGERSON asked Mr. Zachel if he had previously raised questions about HB 131.

MR. ZACHEL said he did, but he talked to representatives from the Alaska Department of Fish & Game (ADF&G) and his concerns were addressed.

SENATOR WILKEN moved to pass HB 131 from committee with individual recommendations with the attached fiscal notes. There were no objections and it was so ordered.

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#HB286

CSHB 286(RES) am-FISHING PERMITS/ASSOCIATIONS/ASSESSMENTS

CHAIRMAN TORGERSON announced CSHB 286(RES) am to be up for consideration.

REPRESENTATIVE DREW SCALZI, sponsor of HB 286, said this measure is a consolidation bill that allows fishermen to take advantage of an effort to help themselves and the fishery at a time when an exorbitant number of permits aren't being fished. It allows a person to hold two permits in the same area. It will also allow fishermen to establish non-profit associations for the purpose of consolidating the salmon fleets and allow fishermen, with a two-thirds vote of the permit holders in their fishery, to tax themselves to help pay for the consolidation.

He noted that some of these ideas came from fishing industry members. The initial plan was to draft a "stacking bill" that allowed a person to hold two permits. Two permits would provide some type of fishing advantage, such as an extra day of fishing or use of extra gear. However, because of a decision by the Board of Fisheries in the Chignik issue, industry members became concerned about moving too fast or too far in one swoop. Therefore, the bill was limited to ownership of two permits for the purpose of consolidation. Currently, the optimum number involved in a fishery is subject to a challenge by the courts if a certain fishery is considered to be too restrictive. HB 286 doesn't pertain to that issue, because these permits are still available for sale. The permits are not retired, as they would be in a buy back program. He noted this bill passed the House with 36 yeas and four absent.

CHAIRMAN TORGERSON asked if a person could fish only one permit at a time.

REPRESENTATIVE SCALZI answered that is correct; a person would gain no fishing privileges by holding two permits.

CHAIRMAN TORGERSON asked if CSHB 286(RES) am would just eliminate the competition.

REPRESENTATIVE SCALZI said it would.

CHAIRMAN TORGERSON asked, under uses of the money on page 8, if part of it could be used to consolidate the salmon fishing industry even if HB 288 doesn't pass.

REPRESENTATIVE SCALZI replied that is correct.

CHAIRMAN TORGERSON asked how that would work.

REPRESENTATIVE SCALZI replied:

First of all, you have formed an association with 66% of the permit holders agreeing to it. The collection, as I would anticipate - and this is something - I don't think any of these plans are in concrete, this is a tool for them to utilize - you would be able to collect up to 5% and, perhaps, if you held two permits, the association could pay you for not fishing that or for not selling that permit, but holding it in some type of category where it's not being fished. As an incentive, you could encourage other people to buy another permit through the funds that accumulate over the course of time. It's a flexible tool that would allow for others to achieve money to pay for consolidation. There are some folks here who are very interested in that that could speak to it better.

CHAIRMAN TORGERSON said he thought it offered financial assistance to permit holders and assumed it was some type of a loan program. He questioned what that is for, since they aren't allowing associations to buy permits.

REPRESENTATIVE SCALZI said the permits can only be owned by individuals.

CHAIRMAN TORGERSON asked if it allows the association to spend its money to lobby the Board of Fish for the legislature.

REPRESENTATIVE SCALZI said he didn't think that is the intent, but a non-profit association has certain guidelines that may allow for that. He wasn't sure.

CHAIRMAN TORGERSON asked if marketing fish could be included in the by-laws.

REPRESENTATIVE SCALZI said that marketing could be included at the discretion of the members and certainly marketing is done by a lot of associations and could be by these.

CHAIRMAN TORGERSON said that basically they are letting associations do whatever they have a 66% vote for up to 5% of the value of the fishery.

REPRESENTATIVE SCALZI said that is correct.

CHAIRMAN TORGERSON asked if there would be any limitation on the size of the fishery that could undertake this.

REPRESENTATIVE SCALZI replied there is not.

4:00 p.m.

SENATOR ELTON gave an example of how a salmon fishery is defined using the Southeast power troll fishery and the Southeast hand troll fishery.

REPRESENTATIVE SCALZI replied that the bill applies to all of the exclusive fisheries with limited entry. If the limit of the permits were power trolling, that would be the limit of the association, and likewise for hand trolling.

SENATOR ELTON asked if it could apply to trolling, which would include power and hand trolling.

REPRESENTATIVE SALZI replied:

If you were going to have both associations, which would be both power troll and hand troll, agree to something like that, I would think there would be the latitude to allow that to happen, but you would have to have consensus on both limited entry fisheries.

SENATOR ELTON said he understood, then, that a person could end up owning two power troll permits and two hand troll permits, amounting to four Southeast troll permits.

REPRESENTATIVE SCALZI said that is correct; now they can have two permits - one power troll and one hand troll.

CHAIRMAN TORGERSON added that they could still only fish the two they originally had.

SENATOR ELTON said in effect they would only be fishing one, because the seasons for hand troll and power troll run congruously.

SENATOR HALFORD said it takes a two-thirds majority of the total permit holders to create the assessment and a two-thirds majority of the total permit holders to get rid of the assessment.

REPRESENTATIVE SCALZI replied it takes 25% to get a petition going and it could be dissolved with a two-thirds vote.

SENATOR HALFORD said:

It seems if you got a major campaign to create something, sometimes that succeeds and then you can

never get rid of it, because you can't ever quite get the people together to know what to do about it. I would be a lot more comfortable if they could get rid of it - if either it had a sunset that was automatic. The object of this thing is to maintain a super majority level of consensus that it's working and you can do that by having a lower percentage for getting rid of it or by having some requirement that on four-year basis or whatever, they have to reaffirm their support for doing it.

REPRESENTATIVE SCALZI said he assumed if the association came up with guidelines for the two-thirds majority, they could probably rewrite that and put their own sunset in as a provision for acceptance of the association. He thought the more latitude they had in forming the association, the better. He didn't think that with 26 different regional fisheries they would all fit under the same set of guidelines.

SENATOR HALFORD asked if he considered putting the Board of Fisheries in the cycle somewhere in the creations, because non-permit holders would feel that the general public was represented in these decisions rather than just the stakeholders through the limited entry system.

REPRESENTATIVE SCALZI said he originally had the Board of Fisheries determine, through the public process, if individuals with two permits could fish more gear or get more time fishing but, the United Fishermen of Alaska (UFA) felt that the Board of Fisheries, after the Chignik proposal went through, showed a lack of consideration of the downstream effect and lacked knowledge of the commercial fisheries. He thought that the permit holders who have the vested interests in the fisheries would not necessarily support having the public involved in the general voting mechanism.

SENATOR HALFORD said he wasn't suggesting that the public be involved in the voting mechanism, but that the general interests of the common property resource be represented in some way and the Board of Fisheries would be a logical place to do that.

REPRESENTATIVE SCALZI said ADF&G still manages the resource and the Board of Fisheries still allocates. He added:

So, whether a person holds one permit or two permits, whether there's consolidation on that end of it, the allocation remains the same. So, I don't know why the Fish Board would have to get into it at this particular stage unless they had a problem with or concerns of the industry itself being too limited.

SENATOR HALFORD said one of his concerns is that in one major fishery, probably the largest in the state, non-residents hold the majority of the permits and only one-third of the permits are held within the region of that fishery. He remarked:

If there were a significant difference in the support levels for a given proposal based on that residency, I think it substantially hurts the credibility of the entire process. Frankly, if there were some constitutional way to do it, I wouldn't allow the outside permit holders to vote at all and obviously, I don't know that that can be done. At least I'm concerned that there be some kind of check and balance there that in that case particularly the resource is managed first for the people closest.

REPRESENTATIVE SCALZI said he didn't disagree and had many discussions about how they could create more incentives for the local residents to obtain the permits. HB 286, in particular, tries to legally encourage Alaskan residents to own the permits but, because of the interstate commerce clause, there are only a certain number of things they can do.

SENATOR STEVENS asked if the assessment is imposed by the original election, whether the pool of money is then used by the members to buy back more permits through a loan process or to contract with permit holders to keep permits in their possession. He commented if you initially need two-thirds, and that pool continues to shrink to 250, and then it takes two-thirds to either assess it or get rid of it, it would be harder to get the two-thirds to get rid of the tax.

REPRESENTATIVE SCALZI said he assumed each individual would have two votes if they held two permits.

SENATOR STEVENS asked if it would be the permit holder of each permit or the permit holder of record.

REPRESENTATIVE SCALZI replied it would be the permit holder on record. He asserted, "If you own two permits, you've got two votes."

CHAIRMAN TORGERSON noted that someone in the audience was shaking her head no.

SENATOR STEVENS said either way, it would still be harder to get rid of the assessment.

REPRESENTATIVE SCALZI said that could be true.

MS. MARY MCDOWELL, Commissioner, Commercial Fisheries Entry Commission (CFEC), explained that if a person held more than one permit, he or she would still only get one vote. She stated:

My only comment about as the pot shrinks - if the assessment were used to permanently buy out some permits, so there would be fewer, or if it was used to contract with people who hold two to not fish or whatever, over time, if this is successful, the fishermen who remain in the fishery would be less inclined to want to continue to have an assessment. You will have achieved what you were trying to do and they would just as soon keep that money because it's going to come right off the top of their earnings.

SENATOR STEVENS asked her to explain how the actual extinguishment takes place under this bill if it's voluntary.

MS. MCDOWELL replied that her understanding is that the associations would have a lot of flexibility about how they would use the money collected through the assessment. They could contract with fishermen to relinquish their permits permanently, they could contract with them to not use their permits, they could contract to create some kind of incentive to buy two and stack them up. They have a lot of flexibility to either permanently or temporarily retire permits. She guessed that in a fishery that was way overcapitalized they would probably spend some of the initial money to permanently retire some permits and get the whole pool down somewhat. Then after that, she thought they would take temporary measures in hope that over time the fishery would rebound and they could get the permits out in the fishery again.

CHAIRMAN TORGERSON asked how they would permanently retire one.

MS. MCDOWELL replied that under the Limited Entry Act, if a fisherman doesn't pay annual renewal fees to the state for two consecutive years, the permit is forfeited. HB 288 contains a provision that says fishermen may voluntarily relinquish their permits rather than wait out the two-year non-renewal period.

SENATOR STEVENS said he knew a fisherman who cited a case in which an individual paid the back fees 10 years later and re-activated the permit.

MS. MCDOWELL replied if a permit was forfeited for lack of fees, CFEC has the discretion to re-activate the permit. In this type of a situation, the individual would actually contract to not reactivate it. She repeated that if HB 288 passes, there's a

provision that specifically states a fisherman may voluntarily relinquish his permit.

SENATOR STEVENS said they are making an assumption that there would be some sort of release they would sign from CFEC.

MS. MCDOWELL indicated that was right.

CHAIRMAN TORGERSON asked for clarification of the association's role.

MR. DAVID BEDFORD, Southeast Alaska Seiners Association, replied:

The idea we have within an association is that it creates a group that represents the fishermen within the fishery and it would lay out its article of incorporation and bylaws and it would tell the people in the fishery this is our plan, this is what we intend to do. So, if you've got a fishery with 100 permits in it, we're going to buy and contract to extinguish 25; we're going to pay people to hold onto 10 of them; we're going to reduce the effort level down to about two-thirds of what it currently is. This is our plan, this is the assessment that we want you to pay. The money would then come into the association; the association would, as an actor in the free market, say all ye, all ye come in free. What kind of a deal would you make to extinguish your permit or what kind of deal would you make to hold on to your permit? They would use the money of the fishermen's assessment in the most efficient kind of way to accomplish the purposes they promised those folks that they're going to try to achieve.

CHAIRMAN TORGERSON asked if this will be like farming without planting crops.

MR. BEDFORD replied:

Not at all - the idea here is that what we want to do, Mr. Chairman, is reduce the number of fishermen who are out there so that they can work hard like they are now, but gain some kind of reasonable rate of return on their time and capital investment.

CHAIRMAN TORGERSON said, "But we would be paying fishermen not to fish."

SENATOR STEVENS commented, "They would be paying themselves,

potentially."

MR. BEDFORD said you could have specific instances in which a fisherman receives some kind of money for holding on to a permit. If he were running the association, he would seek out fishermen who held a second permit who remained active fishermen, because the bargain he would be making gives the people two benefits - the benefit of whatever the association gives to them to hold on to a permit and the additional benefit that when they go out to the grounds, there's one less person out there fishing because of the permit they left in their filing cabinet at home. He continued:

I think the bargain I made with that guy cost me less than it would cost me if someone in New York city bought a permit and was speculating and thinking he was going to cut a deal with me on this and make some kind of money. If I was running an association, that's what I would be looking for and I think the market will lead us to just that result.

CHAIRMAN TORGERSON asked if the owner of the second permit could sell it at any time.

MR. BEDFORD replied:

Under the law he can certainly do that. So if we were making an arrangement with somebody who is holding a second permit, then perhaps it would read something like, 'If you have held that permit, you have not sold it, you have not fished it, then on December 31 of the year, we would give you whatever consideration it was you agreed to.' If, however, we made an arrangement with you and for some reason you decided you were going to sell it or fish it, then there wouldn't be any consideration forthcoming.

CHAIRMAN TORGERSON said this might work during a poor fishing season, but when the fish start coming back, the fishermen would come back.

MR. BEDFORD replied that is a very serious concern:

We have some fisheries in which we have 50% of the permits inactive at this point. Clearly, one of the problems that we have here is we don't want to wind up creating a situation where fishermen have invested to try to make circumstances better, then any time that they improve, have permits come flooding back in. That

is why I suggested, again, if it was me who was going to set one up, what I'd do is say, 'Well, there's some level of permits that we wish to permanently remove from the fishery. So, the example that I gave is you've got 100 - let's extinguish 25 of them so that they can't possibly come back. Let's hold out another 10 or 15, so that if things get dramatically better...We could say maybe things have gotten a little too exclusive and let some of those go back out,' but not to the point where it would depress things back to the point of where we're at now.

CHAIRMAN TORGERSON asked if it would take a two-thirds vote to do that, but then surmised that it wouldn't, because the individual permit holder would be able to sell the permit at any time he wanted.

MR. BEDFORD added:

By the same token, the association could, at some point say, well, we're not willing to pay the price that you're asking and so, we're not going to pay you.

CHAIRMAN TORGERSON said they couldn't lease these permits.

MR. BEDFORD indicated that is correct.

SENATOR ELTON said he assumed that before an election, the association would indicate how many permits should be fishing in the fishery and the amount of the assessment. The association would then hold an election of the permit holders in that fishery. He asked whether changing the amount of the assessment would then only take a vote of a simple majority.

MR. BEDFORD replied, "Yes. The one thing that requires a two-thirds concurrence of the fishermen would be either instituting a levy to start with or modifying it or extinguishing it in the future." Some fishermen he spoke to about this were skeptical and during the process of developing the bylaws and articles of incorporation they would decide what kind of vote it would take.

SENATOR ELTON said in the fisheries with only 50% of the permits being fished, he could see an association being supported wildly by those who have a permit but aren't fishing it, because they see a potential economic benefit that they are not now getting.

MR. BEDFORD said he is correct and fishermen in Kodiak, where that is the case, raised this issue with UFA. That is why the threshold is two-thirds, which will require a lot of leg work.

SENATOR ELTON emphasized the threshold is two-thirds of permit holders.

MR. BEDFORD said that is correct.

CHAIRMAN TORGERSON asked if a two-thirds vote is required to incorporate.

MR. BEDFORD said that wouldn't take a vote, but the key is before they can levy any kind of assessment to carry out the goals as laid out in the legislation, a two-thirds vote of all the permit holders within a fishery would be required. He noted, "The association doesn't have much practical affect absent that ability to collect some money to satisfy the purpose."

CHAIRMAN TORGERSON said he assumed that board membership could change each year and one could be conservative and one could be liberal and they couldn't raise the assessment, but could change the spending pattern.

SENATOR STEVENS asked if Section 1 goes into place and allows for the consolidation of permits in, for instance, the 100-permit fishery and there are 50 permits on record, but they can't get the 50 to generate any money, all they would need to do is get two-thirds of that 50. He surmised:

So, the original 100 that were participating in the fishery goes down to 43 that are going to participate in the assessment. So, 33 can then determine if they're going to buy permits from each other, because they would be the only ones left? That could happen. The point I'm more concerned about being either a reauthorization of the tax or the ability to get rid of it once you've gotten what you wanted to achieve.

MR. BEDFORD responded that theoretically it is possible everyone in the fishery could buy a second permit, thereby cutting the number in half, and then everyone could hold on to them prior to making an assessment. However, he didn't think that would happen because there wouldn't be that many people rushing out to grab a second permit until they saw that it was actually going to lead to the sort of result they had in mind. He said when he looks at the legislation, he views the practical difficulties in getting a two-thirds majority on anything as being the real limitation and, the larger the fishery is, the more that limitation is magnified. It would work the opposite way in a smaller fishery.

SENATOR STEVENS explained that he was saying that at some point group members could decide they didn't need it any more. He wanted to know how they could get rid of it.

MR. BEDFORD replied, "Get a two-thirds majority and get rid of it." He added that if he was one of the remaining 33 members and they were electing a board of directors, he would elect people who would not make any leases.

SENATOR STEVENS said as you achieve what you want to achieve, it looks like it's hard to just say that and get rid of it.

CHAIRMAN TORGERSON said he agrees that they have to come up with some way of making it go away. He added:

What David is relying on is really the inability of the fishermen to get along very well and the thought that 66% can come together on any issue, it's just a hurdle that's beyond belief and we have to look at the legislative part of that and not buy into that...Do you expect this group, these associations, to be able to accept grants?

MR. BEDFORD replied that he didn't know if state law places a limit on non-profit associations from accepting grants.

CHAIRMAN TORGERSON said he thought it was just a wash through the state.

SENATOR ELTON said another way to dissolve the associations or to change the rules under which they operate is to amend the statute. He noted, "That might be the safety valve."

SENATOR STEVENS asked if these assessments would be exempt from federal taxation.

MR. BEDFORD said this would create trade associations that could not get non-profit status and would not be exempt from paying federal taxes. He thought they could be set up with C-5 status under federal tax law.

CHAIRMAN TORGERSON said he didn't think they would ever get rid of these associations once they got started just because of the assets of the non-profit.

SENATOR HALFORD asked, as a general rule, how much of the value of the permit would be lost if the permit became non-transferable.

TAPE 02-16, SIDE B

MS. MCDOWELL replied that a non-transferable permit has no value. It expires when the person dies or retires.

SENATOR HALFORD said he thought it would have some value.

MS. MCDOWELL responded that to the person who has use of it, it doesn't have monetary value, because the permit can't be sold.

SENATOR HALFORD said he was concerned that the value of the permit would be affected.

CHAIRMAN TORGERSON asked who sets the value for the permits when they are bought back.

MS. MCDOWELL replied that the state has never had a buy back program, but it would be whatever the market could bare.

CHAIRMAN TORGERSON said he would hold the bill today and deal with some of the questions. One question is if someone else sets the value and the federal government is paying for it, that value would be artificially raised to some height as long as the money is not an individual's money.

MR. BEDFORD said that Representative Scalzi introduced this legislation at the request of UFA and it is UFA's number one priority. There are a lot of places where people would be asking for federal help on this. He thought the 51% opt out provision was a very important point and that it would work fine along with the two-thirds vote to start up an assessment.

CHAIRMAN TORGERSON agreed and said he thought the specific goals could be outlined more clearly in the bill and that the assessment could be tied to them better.

SENATOR ELTON said he was concerned about what other duties could be assigned to the association, such as marketing or lobbying.

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#HB288

CSHB 288(FIN) am-LIMITED ENTRY BUY-BACK PROGRAM/ASSESSMENT

CHAIRMAN TORGERSON announced HB 288 to be up for consideration.

REPRESENTATIVE DREW SCALZI, sponsor of HB 288, told members that he looked at tools to revitalize the fishing industry. Since limited entry was instituted, a lot of efficiencies had been developed but some inefficiencies were developed as well. Those inefficiencies need to be evaluated. He stated:

Buying back permits is certainly authorized under statute currently. To authorize a buy back, we have to do an optimum number study to determine what that number is. When CFEC asks the courts what the number is, the courts say go ahead and have a buy back and

we'll tell you when you hit it. They will not tell you ahead of time what that optimum number is. But, currently under statute, if you do have an optimum number study, it automatically triggers a buy back. You can't turn back. CFEC, according to statute has to go through with a buy back. In a buy back proposal now you have to buy back the permit, the boat, the gear, skiffs, nets - everything involved in the fishery. That can be cumbersome and very expensive and it could be certainly a number that would be hard to hit, because every fisherman has different values to their gear to their vessels. So, it wouldn't be a simple task.

What HB 288 does is it first of all lets an optimum number study come forward and not automatically trigger a buy back. But, what it would allow is the CFEC to develop a plan and take that to the public and see if it's worth implementing a buy back.

It also does not require that the gear and the boat and the ex-wife and everybody that goes along with it has to be bought back. Only the permits may be bought back. It also makes it voluntary rather than mandatory. Currently, if you have an optimum number study, as I said, and you implement a buy back, it is a mandatory buy back.

Being voluntary, this wouldn't keep someone from selling their permit and boat as a package, if they wanted to do.

CHAIRMAN TORGERSON asked who set the assessments.

REPRESENTATIVE SCALZI replied that the assessment is up to 7% and that is developed in the plan.

CHAIRMAN TORGERSON noted that it says CFEC may establish the assessment by regulation and asked if that's what CFEC intends to do.

REPRESENTATIVE SCALZI said he understood that CFEC already has the authority to set it but, under this provision, CFEC would have to develop a plan that went through public review first. It would have to be related to the numbers in each fishery and CFEC would be the best agency to know that.

SENATOR STEVENS asked if optimum studies had been done on any salmon fisheries.

MS. MCDOWELL, CFEC, replied that CFEC did one full-fledged

optimum salmon study on the Sitka sac roe fishery and on Chatham Straits black cod. CFEC has just undertaken another optimum study on the Bristol Bay drift gill net fishery. Staff is just completing a survey to send to permit holders. She added that there is a buy back statute in current law that also functions, theoretically, with the assessment. The problem with the current statute is that the funding mechanism is unconstitutional because it creates a dedicated fund. She explained:

So, the main feature of this bill is that it restructures the path the money would take to make it constitutional. Under the current statute it just says the commission will decide there needs to be a buy back. The commission does an assessment and creates a buy back program, which is a dedicated fund. The Department of Law has given us an opinion on that...

She explained that the funding path would be similar to the aquaculture assessment or the ASMI 1% tax where CFEC would create a buy back program and a plan for it and adopt regulations establishing an assessment. The Department of Revenue would collect the assessment through fish tickets, just like the salmon enhancement tax. That money would go into the state treasury and the legislature could appropriate it back to CFEC to implement this fisheries program for which it was collected. It creates a constitutional funding mechanism for what they originally anticipate by the legislature. She noted regarding a question about the Entry Commission not having taxing authority, the Department of Revenue does so this bill fixes those problems.

SENATOR WILKEN asked what an optimal study is.

MS. MCDOWELL replied that by statute, when CFEC originally limits a fishery, it creates a maximum number of permits to target. After that, once the permits have been issued, CFEC can be petitioned if there's a belief that the fishery has either become too exclusive, is too small and lucrative or, it's over capitalized. CFEC can be petitioned to undertake an optimum number study where they do an economic analysis to determine the target number that would be the best number to meet the constitutional provisions of limited entry: not more exclusive than necessary to provide for conservation of the resource and the economic health of the fishery.

SENATOR WILKEN asked if that method is used worldwide or whether it is an Alaskan invention.

MS. MCDOWELL said she didn't know, but it is one of the provisions that keeps limited entry constitutional under our state constitution. She added that another important feature of

this bill is that it defines optimum number as a range of numbers, which makes the process much more meaningful. Current statute just says optimum number. She added:

If we have to choose one number - this is the perfect number of permits for this given fishery over all time - you can see how any variable could change and make that a pretty meaningless number - the price of fish, the strength of the run, the economics of the fishery. By giving us the authority to define optimum number as a range, we've got a target range so any of those variables can fluctuate a little bit and you're still in your target range and that's a valuable piece of this legislation.

CHAIRMAN TORGERSON asked Representative Scalzi if he intended this to piggy-back on top of the previous legislation, HB 286.

REPRESENTATIVE SCALZI said no, they're independent of each other.

CHAIRMAN TORGERSON asked if they could both be in place at the same time.

REPRESENTATIVE SCALZI they could and he noted that the industry is taxed pretty heavily.

4:55 p.m.

CHAIRMAN TORGERSON said it looked like they were starting to be.

REPRESENTATIVE SCALZI said the industry and members of UFA came up with the association idea and they were going to have to figure out whether they wanted to be taxed.

SENATOR ELTON thought this bill is a little different in that there is an assessment to buy back permits, but the value of the permits that are held would probably go up at the same time, so he thought it would work out to be a wash.

CHAIRMAN TORGERSON asked if under this program the permit would come back to the person who retired it.

REPRESENTATIVE SCALZI indicated that was right.

MR. DON JOHNSON, Soldotna, said he wanted to speak to the optimum number definition. He thought using a range is a good idea, but he believes the most important issue is that under AS 16.43.290, three points are used to qualify the optimum number, that being a single number or a range of numbers. The points are basically laid out by the commercial fishing industry. The first point is

the economic health of the commercial industry; the second is the amount of harvestable fish to be taken efficiently; and the third is to avoid economic hardship in the commercial industry. He agreed that the optimum numbers keep limited entry constitutional but since the range was laid out by the commercial industry, the public, including subsistence users and the sport industry, need to be involved too. He thought the federal government would agree with him.

MS. MCDOWELL responded that when they look at the optimum number, they look at the number of people in a given fishery harvesting a resource as it's been allocated by the Board of Fisheries, which decides what goes to sport and commercial, etc. In looking at an optimum number, they look at what has been allocated to that fishery and the number of participants in that fishery that can make a reasonable living.

CHAIRMAN TORGERSON asked where in the legislation the public comments were covered and what process they would use if they were to implement the 7% assessment.

MS. MCDOWELL replied:

This bill directs us to, once we get an optimum number, at that point, assuming that you pass HB 286 as well as this bill, most likely what would happen is if we did an optimum number study that showed there were too many participants than the optimum number in the fishery, probably the first thing we would do is go to the industry and see if they plan to do something under HB 286. Are they going to among themselves work out a way to get the number of permits down? If not, that would leave us with this tool where we could then propose a plan...and then propose an assessment. The only mechanism that we, as an agency, have for doing things like that is by regulation. So, that presupposes we would propose regulations that would create that and then we would go through the entire public process.

CHAIRMAN TORGERSON asked if CFEC does it through regulation only.

MS. MCDOWELL answered that is correct.

CHAIRMAN TORGERSON asked if CFEC promulgates regulations fishery by fishery.

MS. MCDOWELL said it does.

CHAIRMAN TORGERSON asked if they intend to wait until they have the money collected before buying the permits or whether they

would enter into lease/loan agreements that they would pay based upon receiving the 7% income.

MS. MCDOWELL said that question is one of the shortfalls of the buy back program. She explained:

The best way for a buy back program to work would be if you had upfront money, whether it was funding from the state or the federal government, where you could do it all at once and then use an assessment to pay that back. I think that would be the ideal situation. We don't have lending authority. We would need statutory language for that. Otherwise the mechanism proposed here is an assessment and as you accrue the money, you do a buy back. But it would be much more effective to have upfront money that we could use.

CHAIRMAN TORGERSON asked her to make sure that CFEC has the authority to receive federal funds to do this.

SENATOR WILKEN moved to pass CSHB 288(FIN) am from committee with individual recommendations and attached fiscal notes. There were no objections and it was so ordered.

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CHAIRMAN TORGERSON said that concluded the hearing and adjourned the meeting at 5:05 p.m.