

ALASKA STATE LEGISLATURE
SENATE RESOURCES COMMITTEE

May 3, 2002
3:40 p.m.

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Gary Wilken, Vice Chair
Senator Robin Taylor
Senator Ben Stevens
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

Senator Rick Halford

COMMITTEE CALENDAR

Confirmation Hearings

Board of Fisheries
Art Nelson
Gerry Merrigan
Brett Huber
Commercial Fisheries Entry Commissioner
Mary McDowell

SENATE BILL NO. 371

"An Act exempting the use of munitions in certain areas from a waste disposal permit requirement of the Department of Environmental Conservation."

MOVED CSSB 371(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

SB 371 - No previous action to consider.

WITNESS REGISTER

Mr. Joe Balash
Staff to Senator Therriault
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 371 for the sponsor.

Ms. Pam Miller
ACAT
505 W. Northern Lights
Anchorage AK 99501
POSITION STATEMENT: Opposed SB 371.

Mr. Steve Cleary
Alaska Public Information Research Group
POB 101093
Anchorage AK 99501
POSITION STATEMENT: Opposed SB 371.

Ms. Nancy Hillstrand
POB 170
Homer AK 99603
POSITION STATEMENT: Opposed SB 371.

Mr. Tom Chapple, Director
Division of Air and Water Quality
Department of Environmental Conservation
555 Cordova St.
Anchorage AK 99501
POSITION STATEMENT: Commented on SB 371.

ACTION NARRATIVE

TAPE 02-25, SIDE A
Number 001

CHAIRMAN JOHN TORGERSON called the Senate Resources Committee meeting to order at 3:40 p.m. and announced the committee would first take up Mary McDowell's reappointment to the Commercial Fisheries Entry Commission (CFEC).

MS. MARY MCDOWELL told members she has been nominated for a second term. She has experienced the fisheries from the government side as a legislative staffer for 16 years and was a fish buyer in a rural community for 18 years. She learned a lot in her first term in office and hopes to have the opportunity to use that experience during a second term.

SENATOR LINCOLN asked why she wanted to be reappointed.

MS. MCDOWELL replied that this is a career job, but she also believes that she has something to contribute and she cares deeply about the fishing industry in the state. She added, "I think it's one of the most important things we have going as far as a sustainable economy that creates a lot of jobs in this

state. It's at a transition point right now and I would really like to be part of helping everyone work through these next couple of years."

SENATOR ELTON said he hadn't heard any opposition to Mary McDowell's reappointment. He thought Mary would be an asset in getting through the challenges facing the fishing industry, especially in the salmon fisheries.

CHAIRMAN TORGERSON said that Ms. McDowell has helped him over some hurdles and has been a pleasure to work with.

SENATOR LINCOLN moved to forward the nomination of Mary McDowell to the full Senate for consideration. There were no objections and it was so ordered.

#SB371

SB 371-WASTE PERMIT & COASTAL ZONE EXEMPTIONS

CHAIRMAN TORGERSON announced SB 371 to be up for consideration.

MR. JOE BALASH, staff to Senator Therriault, said SB 371 came about after the U.S. Army contacted Senator Therriault in relation to the passage of SB 356. On April 12, 2002, a group of people sued the U.S. Army for allegedly operating an artillery range without obtaining a waste disposal permit. In discussing the matter with the Department of Environmental Conservation (DEC), department staff said they never interpreted the statutes to require a waste disposal permit for operating an artillery range. Rather than chance having a federal judge interpret a state law in a particular way, the Army requested that the legislature make it clear in statute that a waste disposal permit is not required on an active range. He said the House adopted a committee substitute (CS) in a companion bill that clarifies that this language would cover state and private ranges as well.

SENATOR LINCOLN said she has concerns because live ammunition exists on some military ranges, therefore fires cannot be fought on those ranges. She said she has heard repeated concerns in her district that the military is not cleaning up its site. She stated, "I am concerned that we are taking another check off of having a waste disposal permit. I don't know what the problem is with getting a permit for the military." She questioned whether the process is time consuming and why this bill is before the legislature.

MR. BALASH said that regarding the unexploded munitions ordinance, DEC has testified that it fully intends to maintain

its ability to maintain oversight of it. In addition, this bill will not restrict DEC's ability to continue to deal with contaminated areas. He pointed out the lawsuit is asking the judge to consider projectiles as waste. DEC's current definition of solid waste doesn't apply to projectiles.

MS. PAM MILLER said she represented the plaintiffs. The major points they are seeking in this litigation are to define what portions of the Federal Clean Water Act and other federal laws apply to this range and to cleanup the unexploded ordinance under the Superfund law. Her group tried to settle this matter out of court. They know the Army has more than 10,000 unexploded munitions in and around the Eagle River flats and the toxicity of those munitions poses a danger to wildlife and people in the area. The exemption from existing state law is not necessary and would undermine the state's authority to administer pollution control laws and endanger state program certification. The Department of Defense is also seeking exemptions under federal law. She opposed passage of SB 371.

MR. STEVE CLEARY, Alaska Public Information Research Group (AkPIRG), stated opposition to SB 371 and said:

No agency should be above the law, particularly one responsible for six different [indisc.] sites in Alaska, which the military is responsible for and should be held accountable to. We hear our Governor talk a lot about doing development right and I think we need to apply that to the U.S. military as well, particularly when they are creating public health and safety hazards.

MR. CLEARY said he couldn't understand the purpose of this bill other than to avoid responsibility for cleaning up Eagle River flats and to avoid being held accountable in a court of law.

MS. NANCY HILLSTRAND opposed SB 371. She said it is a health and safety issue and, as the other speakers have said, U.S. citizens have the responsibility to keep everything clean and orderly and the U.S. Government should be a shining example of how to do business.

MR. TOM CHAPPLE, Director, Division of Air and Water Quality, DEC, said the bill before them actually covers several functions at DEC, both its Solid Waste Program, its Contaminated Sites Program and wastewater permitting. He said he has three points to make. First, the legislation makes changes to the permitting authority for an activity that in their view does not need a permit. DEC doesn't intend to require permits for the current

activities on an active military firing range or training range. DEC's current reading of existing law is that current practices do not constitute solid waste and do not require a permit. However, once a site is closed, DEC may require a site closure plan.

The second point is, that while no permit is required for this activity, DEC has other responsibilities in primarily two areas. First, if the range activity causes pollution, even if the site is still active, DEC has an obligation to address that problem with the Army. Furthermore, upon closure of the range, DEC will ensure that the site poses no ongoing threat to the health or the environment. It's clear that this legislation is not intended to affect DEC's ability to deal with contamination at an active firing range should contamination pose a risk. DEC has worked in the past with the Army to determine that ingestion of white phosphorus was killing waterfowl and as a result the Army has quit using white phosphorous nationwide where it would impact wetlands. In addition, on the Eagle River flats the problem occurred only when the ground was frozen.

Due to historic hazardous substances releases, in 1994 Fort Richardson was put on the Superfund list and the Army, the State, and EPA eventually signed a three-way agreement that detailed how the facility was going to be investigated and cleaned up.

His third point was that there is a significant national effort under way right now by the Department of Defense to address what, if any, changes to national and state environmental laws are necessary for national security and combat readiness. The Department of Defense addressed a meeting last week in Wisconsin of all states' environmental staff. The Department of Defense promised the states that the limitations it is seeking will be surgical.

He added that SB 371 is not the result of any problem the Army has had working with DEC. While he worked cooperatively with the sponsor and the Army on this legislation to ensure that the language does not jeopardize other important work that DEC is doing, he is concerned that this change might lead to litigation. He urged committee members to consider whether this would be more appropriately done at a national level first.

CHAIRMAN TORGERSON announced an at-ease while teleconference equipment was being fixed. He called the meeting back to order at 4:10 p.m.

MR. CHAPPLE asked the committee to consider that a significant effort is underway at the national level to try to address what exclusions to environmental laws are necessary for combat readiness. He asked the committee to consider whether it is

appropriate to address this issue at the state level or to allow the national level to take the lead.

CHAIRMAN TORGERSON asked if it is correct to say that Mr. Chapple has no position on the bill because it doesn't really affect DEC and that he does not intend to permit military ranges. If issues with hazardous materials or air quality arise, he would respond to that anyway.

MR. CHAPPLE said that is a very good summary of what he said.

SENATOR ELTON asked if DEC's definition of solid waste is in statute or regulation.

MR. CHAPPLE replied that the definition is in AS 46.03.900 and is definition 25.

SENATOR ELTON asked Mr. Chapple how DEC deals with the Department of Transportation and Public Facilities (DOTPF) when it does avalanche work.

MR. CHAPPLE said DEC does not require any permits for avalanche control. He explained that the definition of solid waste hinges upon whether the waste material is being disposed of or abandoned. Until a military site is closed, the waste material is not being disposed of or abandoned.

SENATOR ELTON clarified that his question surrounds the fact that avalanche control work is accomplished by firing explosives into cornices.

MR. CHAPPLE said DEC has never required a permit for a discharge out of an artillery weapon.

SENATOR STEVENS proposed a conceptual amendment (number 1) to:

Insert "conventional military" on line 6, after "of" and to delete "active" and insert "designated lived fire ranges". The reworded sentence would read:

This section does not apply to discharges resulting from the firing or other use of conventional military munitions in training activities conducted on designated live fire ranges operated by the United States Department of Defense or a United States military agency.

SENATOR LINCOLN asked how that would improve the bill.

SENATOR STEVENS responded that he talked to senior military

officials when they were here for the Joint Armed Services Committee. In the Lauterbach legal opinion, there was some concern about the definition of a live fire range and the definitions of what munitions would be exempt under this proposed legislation. He explained:

This essentially confines it to conventional military munitions and leaves it at active designated live fire ranges. Therefore, it doesn't bring up any indication or allow anything to be considered in terms of remedial of sites that have occurred in the past. It only occurs to live sites and conventional military munitions.

SENATOR LINCOLN asked if the word "active" will be deleted.

SENATOR STEVENS said that is correct and that it will be changed to designated.

SENATOR LINCOLN asked if that means that a designated live fire range has to be an active designated live fire range.

SENATOR STEVENS replied that the explanation he heard is that a range is either a designated range or it's not. If it's not designated, it goes into a remedial work status.

SENATOR THERRIAULT said the bill is worded to also cover municipal rifle ranges. His concern is if it's limited to apply only to military ranges that, by omission, might mean that a solid waste permit is now going to be required on municipal rifle ranges or at areas where hunters traditionally site their rifles, for example at abandoned DOTPF gravel pits. He said that might create a problem for DEC at areas where it does not require solid waste permits.

CHAIRMAN TORGERSON responded, "Didn't you have that problem before?"

SENATOR THERRIAULT replied that he thought the wording was broad enough.

CHAIRMAN TORGERSON noted the amendment says firing ranges operated by the Department of Defense. He said the House Resources Committee added the word "including" before "active" so that it reads, "including active ranges operated by the United States..."

MR. BALASH explained that the House Resources language states, "This section does not apply to the firing or other use of munitions in training activities conducted on active ranges,".

MR. BALASH said they could accommodate Senator Stevens' language

following the comma so that it is clear it applies to conventional military ordinance being used on a designated range.

SENATOR ELTON said the problem seems to be the language on line 7, which limits activity.

CHAIRMAN TORGERSON asked Mr. Balash and Mr. Chapple to work on that language while the committee took up the confirmation hearings.

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CONFIRMATION HEARINGS

CHAIRMAN TORGERSON said the committee would take up the confirmation of Brett Huber to the Board of Fisheries. Mr. Huber's seat will expire June 30, 2005.

MR. BRETT HUBER said he lives in Soldotna with his wife and children and is an 18-year Alaska resident. He noted, "A big reason, a big part of what moved me to Alaska is the opportunity to participate in hunting and fishing." He said regarding why he wants to serve on the Board of Fish, he sees it as an extremely important function as Alaska's fisheries are an integral part of the cultural, social economic fabric of Alaska. He hopes to return something in the form of public service to the fisheries that have been good to him. He brings some skills to the position. He believes he has a good understanding of the constitutional, statutory and regulatory framework for fisheries in Alaska and he understands and has participated in the board process. He said that board members should be able to facilitate discussion. He said he is also familiar with the management agencies. He reviewed his professional qualifications and provided the committee with a copy of his resume. He noted he omitted one affiliation that being that he is an ex-officio director of the Alaska Fisheries Development Foundation.

MR. HUBER said he is currently the executive director of the Kenai Sport Fishing Association (KSFA) whose mission is to preserve the Kenai River through protecting fish habitat, providing education and promoting responsible sport fishing. KSFA deals with angler access, conservation and public education issues. He is an annual salaried employee. He said his position is not dependent upon Board decisions. There are potential conflicts, however, as anyone would have with public service and those must be disclosed and ruled on by the Chair.

He has been accused of being against consumptive use, but that would come as a surprise to his family and people who know him, who have participated in fisheries with him in various areas of the state, who harvest, prepare and eat fish with him. When he has all he can eat, he participates in the sport and lets the

fish go. He has also been accused of ignoring science or advocating for positions in conflict with sound biology. He stated, "I in no way believe that public opinion ought to sway sound science..."

He said he has also been accused of advocating for the demise of the commercial fisheries and that can't be further from the truth:

Commercial fisheries are extremely important to Alaska...I think there are some substantial hurdles and challenges ahead for the Alaska salmon industry and think having someone that brings a sport fish perspective is willing to work in that process can be beneficial as we work to address those issues. I don't think it's the Board's job to come up with the solutions. I don't think the Board probably can; I think it's going to take a lot of folks working together and the industry is going to have to bring some ideas forward and it's the Board's responsibility to work through those ideas with them.

TAPE 02-25, SIDE B

MR. HUBER said a Board of Fish member should listen to all user and gear groups, rely on sound science, manage conservatively if information is lacking, seek advice from the managers on what is considered sustainable, etc. and fully consider the implications of the board's decisions. The process should be transparent and understandable, fair and consistent. He remarked:

Mr. Chairman and members of the committee, should I be confirmed to this important position, I look forward to doing my level best to meet those expectations for others. I look forward to working, if I have the chance, with my other appointees and the four dedicated folks that are continuing their service and I'd be happy to try to answer any questions for you.

CHAIRMAN TORGERSON said he would have Mr. Huber wait for the committee to deal with SB 371 and then come right back to him.

#SB371

SB 371-WASTE PERMIT & COASTAL ZONE EXEMPTIONS

CHAIRMAN TORGERSON announced SB 371 to be up again for consideration.

SENATOR STEVENS moved to withdraw Amendment 1. There were no objections and it was so ordered.

CHAIRMAN TORGERSON noted that the language they were considering was House language that was adopted earlier in the meeting.

SENATOR TAYLOR moved to adopt Amendment 2.

SENATOR LINCOLN objected and explained that Amendment 2 is so broad that it doesn't apply to firing or other use of munitions in training activities conducted on active ranges including those by the military. The sponsor stated it wasn't the intent to have municipalities involved in the exemption for firing ranges.

The motion to adopt Amendment 2 carried with SENATORS WILKEN, TAYLOR, STEVENS and CHAIRMAN TORGERSON voting in favor, and SENATORS ELTON and LINCOLN opposed.

SENATOR TAYLOR moved to pass CSSB 371(RES) from committee with individual recommendations.

SENATOR ELTON objected, saying that the committee had taken a bill that addressed a very discrete problem and dramatically increased its scope without taking any testimony at all on the impacts. He said that he couldn't recall any problems Juneau had in establishing a safe and active firing rang. He added:

The most compelling testimony was that we may be in a position of making a change to state law, but will maybe need to return following the national initiative that is going to try to standardize the rules under which the military operates. I think we've broadened it to a great extent and we may be getting ahead of a process that will hopefully provide a standardized method for the military to operate when dealing with these issues.

SENATOR TAYLOR said he made the motion to move the bill for a specific purpose:

My son-in-law serves today as a captain in Special Forces in the United States Army. He's based at Fort Cole where he's doing reviews of special forces unit teams that come through and go through various difficult training exercises and he must review them. Those same young men end up in places like Afghanistan and other places in the world today. Before shipping them into harms way, I want them to have every single opportunity available, the finest training we can provide. Alaska retains its military bases in light of the [indisc.] base closures primarily because we do have the free fire training ranges that we have

available for that personnel in this state. If political correctness is going to get in the way of defending this nation, then I want to be standing right out in front and say I'm not going to be politically correct on this one and I'm very proud of it...

SENATOR WILKEN said he wanted to associate himself with those remarks. His son-in-law is Major Cameron Curry, an A-10 pilot stationed at Eielson Air Force Base. He stated, "In no way, shape or form would I sit at this table while I do anything to diminish his training capabilities unless there is a clear and present danger to the people of Alaska..."

SENATOR ELTON said he didn't know how to begin to respond. He agreed with the comments from the previous speakers. He personally trained on live fire ranges and that training was very beneficial to him when he was in a live fire zone in Vietnam. He would hate to leave the impression that his vote on this bill has anything to do with political correctness or with wanting to interfere with the training mission of the U.S. military. He said:

We have not heard testimony that would even suggest that. So I want to make it very clear to the members of this committee that my negative vote has absolutely nothing to do with the comments that were made previously...We have not heard testimony that that would happen. I, too, believe as they do that we ought to do nothing that would minimize the kind of training our men in uniform have.

SENATOR LINCOLN said she was offended that members suggested that voting against moving this bill from committee means that she's not patriotic or supportive of the military. She added:

To the contrary, I support the military 100% and have done so my 12 years here. My problem with this is that we're exempting a permit requirement and I didn't hear from Tom that that stopped in any way the process from going on, in that if we need to expedite a permit, that's one thing, but just to eliminate a permit requirement is of concern to me, regardless who it is.

SENATOR THERRIAULT responded that he wanted to make it clear to the committee that passage of the CS does nothing more than enshrine a current administrative interpretation of the statutes. It doesn't remove a current permit regulation. It does mean that a federal court is not going to broaden or change our administrative interpretation of our own statutes against our will.

CHAIRMAN TORGERSON asked for a roll call vote on the motion to move the bill out of committee.

The motion carried with SENATORS LINCOLN and ELTON opposed and SENATORS TAYLOR, WILKEN, STEVENS and TORGERSON in favor.

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CONFIRMATION HEARINGS

CHAIRMAN TORGERSON noted that the committee was ready to ask questions of Mr. Brett Huber, nominee to the Board of Fish.

SENATOR LINCOLN said she had a number of questions, but wanted to note that she also had a number of communications from out-of-state.

SENATOR LINCOLN said she gave great kudos to Mr. Huber for his work as an aide to the Senate Resources Committee, but she has a number of questions for him about his new role. First and foremost is his involvement with the Alaska Outdoor Council (AOC), which has clashed with them in the past over management of fish and game. She was surprised to see that he is vice president of AOC's political action committee. Since she had never received a check from the AOC, she assumed that position was very political and party oriented. She remarked:

That's very, very political when you are contributing to candidates that are in the legislature and how would that affect you then sitting on the Board of Fish and the other party makes proposals to you? What affect would that have?

MR. HUBER said the AOC is a political action committee, but it is not single party oriented:

There have been endorsements and contributions made by the PAC to multiple parties over time. Do I sign the checks for the PAC? No I don't. And I have no problem resigning that position and intend to do that and have notified them as such. How that would affect my decisions should I be confirmed as fit as a Board of Fish member? It won't affect those decisions. As I said in my opening statement, anybody that takes that important position needs to be able to listen to all positions, all user groups, all points of view. Certainly we bring some personal experiences or life experiences or perspectives to anything we do, but public service is public service and it shouldn't come in with an agenda or a specific attitude. I would do my

best to listen to all points of view, to consult with the managers to make fair, conscientious decisions.

SENATOR LINCOLN asked if he was part of the PAC group that decides who gets the checks.

MR. HUBER replied yes and that it's a seven-member board. Questionnaires are sent out to members. He participated in discussions over candidates.

SENATOR LINCOLN said she read every single letter about him, both pro and con and that those opposed greatly outweigh those in favor. She said two letters stand out. One was from someone who has known him for a number of years, both socially and in business, and thought Mr. Huber's opinions were very closed and he would not change his mind. He felt that he had made up his mind ahead of time and the doors are shut. She stated, "A number of letters go in that direction - that you're already predisposed to your opinion on fisheries and will not listen."

MR. HUBER responded that he disagrees with that point of view and that other people say differently. He said, "I can certainly tell you that the Board of Fish process doesn't work if you don't listen."

SENATOR LINCOLN said some letters in the "do not confirm" stack said that as the executive director of the KRSA, Mr. Huber found fault with ADF&G scientific findings and hired outside consultants for the express purpose of finding fault more than once.

MR. HUBER said that science is not always absolutely crystal clear. When it's clear the decisions are easy for the Board to make, but there are things that we don't know about our fisheries because information is scant, new or non-existent. Those are the more difficult decisions and, when in doubt, you have to be more conservative, "because sustainability has to be the ultimate goal to take care of any users regardless of their perspective."

Regarding her question about the KSFA hiring outside consultants and biologists to review fisheries data, MR. HUBER said it has and note that is not uncommon, even for ADF&G, itself. When a scientific article is going to be published, it goes through a peer review process. Scientists welcome review by other individuals.

SENATOR LINCOLN said she thought that most of the concerns in the letters are about Mr. Huber's lack of communication skills. She asked how he planned to build communication support among other user groups that are his detractors.

MR. HUBER replied:

I think the only way you convince your detractors that you are somebody that they can work with and that you are not deserving of as much angst as you're receiving is to do your job well. I think the Board process should be as open as possible; it should be as inviting to the public as possible. It is best to meet in the communities that are affected. I think the Board ought to do as good a job as it can of noticing the issues it's going to be dealing with so people are prepared. They know what's on the table...

4:55 p.m.

CHAIRMAN TORGERSON said he had a letter from the Central Peninsula Fish and Game Advisory Board who opposes his nomination for nine reasons. Four of them are very important. He noted:

All of these start out with a sentence before that you have drafted and supported proposals to the Board of Fish that takes biological management away from the fisheries and management biologists.

He asked Mr. Huber to respond.

MR. HUBER responded that is a generalized statement. He believes that fisheries management is not a perfect science. Fisheries change, run predictions are often wrong and the ability for fishery managers to apply adaptive management is important. Also, he thought part of the Board's prerogative is to put plans together that take care of the fish and are responsible to the numerous user groups that participate in the fishery. He stated, "The Board has to work very much hand in glove with [the management biologists]."

CHAIRMAN TORGERSON said the second one takes the emergency order authority away from the management biologists.

MR. HUBER replied the only proposal he helped draft was at the last Cook Inlet meeting. He said he has attended many meetings and commented on board proposals. In the previous cycle, the Board adopted an abundance-based management policy for Cook Inlet. He helped draft a proposal that lengthened the amount of time they could fish to abundance, which is what the managers said, yet provided for some passage of fish, because escapement involves more than numbers; run cycles have to be considered. Components of each run need to escape. The proposal linked it to time, but didn't specify when the closures would be and left that up to the managers. The KSFA supported proposals that removed

mandatory closures and left that to the discretion of ADF&G.

CHAIRMAN TORGERSON said the committee received a lot of letters in opposition to his appointment from folks who are upset because of the Board's decision to go to the trophy fishery, catch and release keeping the larger ones for trophies. This prevents the local angler from harvesting salmon, but allows non-resident hook and release. He asked him to comment on that policy, which everyone has credited to him.

MR. HUBER replied that created a lot of press, but there hadn't been much give and take. The ADF&G had a growing concern for the loss of the size component of the run of the 5 to 7 year old fish. The department decided not to bring a proposal forward, but took these concerns to the Kenai Soldotna Advisory Committee, who drafted a proposal, No. 297, that asked for some protections for those first fish in the first run. Its recommendation was established in a non-retention slot. They wanted to try and reestablish the age component in that run. That proposal came before the Board and they discussed options. A lot of the Board members felt they should try catch and release management on the first run for the life cycle of the fish and see what that does for both numbers. He added:

It's not just big fish; that run is also a fairly small run that has a lot of participation. It's had in-season restrictions for six of the last 12 years and in-season regulatory changes for nine of the last 12 years. So do you try to reduce participation and how would you go about that or do you try to reduce harvest? Because the biologists that I've talked to all say, if you want to get more big fish in a salmon run, the first thing you need is more fish, because big fish are a component of the total run. The Board did take that position and ended up adopting a policy that said a non-retention slot for the beginning of the run through June 10, the last 20 days in June, catch and release. As far as taking away harvest opportunity from the local anglers, harvest opportunity on the Kenai River before that regulation is two fish per year; after that regulatory change, it's two fish per year. Certainly, local anglers probably have a greater opportunity to participate when it's not a catch and release fishery than people that choose to visit during that time period.

CHAIRMAN TORGERSON asked, "What happens if you get a real strong run and you have this policy there?"

MR. HUBER replied that he asked the managers that question and

they do not view this as a rigid rule. They believe their emergency order authority would allow them, if there are just loads of fish coming back in the first run and a big harvestable surplus that would go unutilized, to open the fishery. The Division of Commercial Fisheries Chief Scientist, Doug Eggers, said that "over-escapement" is probably a bad word: "It's really a question of economics and yield."

SENATOR ELTON said that no one comes to the Board with a clean slate and he agrees with many of the things Mr. Huber said. He asked how he plans to break through communication barriers as a board member.

MR. HUBER replied that he served on the Halibut Subsistence Proxy Committee for the North Pacific Fisheries Council as the sport fish representative. He had a great opportunity to discuss issues with 25 other people and it didn't seem to be a great hindrance to explain himself or to understand what others were saying. He said, "You just have to work through it and do the best job that you can."

SENATOR ELTON said his concern is that they are asking the Board of Fish to do near the impossible with allocation decisions without the science that we should have available to the Board.

MR. HUBER responded that the first folks who approached him about serving on the Board are current Board members, Chairman Gersham, Larry Engle, Dan Coffee, John White, Russell Nelson, and Grant Miller. They assumed those filters would not make his service impossible or they would not have urged him to apply.

SENATOR STEVENS asked how many times he had been involved in an agenda change request.

MR. HUBER replied that he has not filed an agenda change request. That process is limited in scope to adopting an agenda change request to correct an error in regulation or for a conservation reason.

SENATOR STEVENS asked if he was saying that an agenda change had never been requested for the Kenai Peninsula region.

MR. HUBER replied that neither he nor the Kenai River Sport Fishing Association had requested one. He added that the agenda change requests are reviewed at the fall work session and, in general, no public testimony is taken. The Board works with ADF&G to determine whether they think there's an issue that warrants a change.

SENATOR STEVENS asked if the agenda change is on a three-year cycle.

MR. HUBER replied it is.

SENATOR STEVENS said that the majority of Mr. Huber's involvement with the Board of Fish is in one region of the state where the Board faces the most divisive allocation issues.

MR. HUBER replied that he also participated in Board of Fish meetings that dealt with Western Alaska and Area M.

SENATOR STEVENS said there is a difference in divisiveness between commercial user groups and multiple user groups. He asked Mr. Huber how, as a Board member, he would view a request for an agenda change that had happened in the past and he couldn't address critical issues to certain regions of the state that have small populations but where the commercial fishery is important.

MR. HUBER said he didn't understand the question.

SENATOR STEVENS said legislation has been initiated to change the agenda change request mechanism. He explained:

If you had a certain area of the state that continually wants their issues solved in front of the Board at the expense of solving issues in other areas of the state, how would you respond to that?

MR. HUBER replied that the regulatory process of the Board that is supposed to be taken up in order should never suffer because of an agenda change request. The request ought to be considered on its biological merits or as an unexpected happening because of a change in regulation. He added:

The more the Board can keep to the set schedule and to provide that notice and that surety to the public, the better. However, I would never suggest that the Board should not be able to take something up out of cycle if there is truly a pressing conservation issue that needs to be taken care of.

SENATOR STEVENS said there is a piece of legislation that changes the procedures under which an emergency order can be ordered under conservation. He asked Mr. Huber's opinion on that.

MR. HUBER replied that both the sponsor and ADF&G have told him that they believe the same authority in the bill is available now, but the bill better delineates how to exercise it in certain circumstances.

SENATOR STEVENS said the majority of Mr. Huber's involvement has

been from a sport fish perspective in regions mainly where there's an allocation issue with commercial fishermen. But, the Board manages commercial fishing in areas where there is a non-existent multiple user group issue. The issues that face those regions are based on sound management and the ability to open and close fisheries and to set commercial harvests. He asked how Mr. Huber would rate his capacity to make decisions like that.

MR. HUBER disagreed that he has only been involved in a single region and from a certain perspective. He said he also worked with the Board and ADF&G to put a framework and implementation plans together that affect all fisheries regardless of the user group through the statewide escapement policy and through meetings in Western Alaska. He stated:

There is a learning curve for any new Board member. Commercial fisheries in areas where there is no sport fishery tend to have gear groups within the commercial fisheries that have differences of opinion. All of those things are relying on the managers to give you their advice, relying on the stakeholders, doing your homework, listening to your fellow board members that perhaps have more expertise in an individual area and doing the best job you can and I believe I have the capacity to do that. If I did not believe that, sir, I would not have applied for the appointment.

CHAIRMAN TORGERSON read from a letter:

Mr. Huber states that he feels commercial fishing is important to the state, but he has neglected to state that by his direction the philosophy that he's incorporated with the help of a paid fishery biologist from Oregon was to sacrifice yield in the Cook Inlet sockeye fishery. Since a sustained high yield of red salmon is the engine for the commercial fishing in many areas of the state, how can this mean Mr. Huber is supportive of commercial fishing communities?

CHAIRMAN TORGERSON asked him how he was going to bring commercial fisheries and allocation issues to some sort of resolution.

MR. HUBER disagreed with the contention that he advocated to forego harvest of sockeye salmon. He explained:

The escapement goal for the Kenai River system is set for 500,000 to 800,000 fish. That's a biological escapement goal that's arrived at by the managers. The escapement goal that came before and after this last

meeting was the same BEG [biological escapement goal]. We didn't propose a change to the BEG. As a matter of fact, a number of my detractors that are involved in some of the questions you're asking today had numerous proposals before the Board to lower the BEG regardless of whether that was based on the best biological information from the managers or not. I certainly didn't take that position.

He noted it's not uncommon for a Cook Inlet sport fish appointment to have the commercial fishing industry from all over the state oppose their nomination. This has not been the case with him. The Bristol Bay fishermen passed a resolution in support of him and other commercial fishermen support him, but they can't come out in support of a sport-fishing candidate. He noted:

But certainly, there is a mix. If we manage our fisheries properly on a sustained yield basis and do the best job that we can, there's not enough fish to satisfy multiple users in Alaska. I can't imagine where there would be, sir.

TAPE 02-26, SIDE A

SENATOR TAYLOR said he is amazed that the Board currently has a policy on the Kenai that says you can catch and eat a king salmon if it's over 55 inches long. He stated:

It would seem to me that if we catch and eat all the kind [of] salmon that are longer than 55 inches long, within a very short period of time, we will have destroyed a genetic strain for which the Kenai is world famous, because we're only turning loose the little fish and we're eating the big fish. I have asked biologists to explain that to me...

MR. HUBER responded that a few years ago there was a discussion about using a catch and release fishery to slow it down in years that they believe escapement goals will be met, but there's not a harvestable surplus. They had a policy of catch and release and retention of fish over 52 inches. In the preceding six years, ADF&G's information was that 60 or 66 fish were harvested in that size category. The new size limit is 55 inches. ADF&G's testimony to the Board indicated there might be one a year or every two years that would be harvested. The predominant 5 to 7 year old fish fall under the 55-inch category. He added:

I thought about it, Senator, and I said the same thing in the House committee the other day. I started

thinking about, oh yeah, but if there's only two of them, do you want to kill those two? I would have to agree and concur that it makes more sense if you're protecting that big strain of fish that the Kenai is unique because of that all of them are released for a life-cycle of fish to see what kind of rebound in that age class we see.

SENATOR TAYLOR wished him good luck and said, "And as long as no one comes after my commercial fishermen, I'm not coming after you. I hope people understand that."

SENATOR LINCOLN commented on four more letters from people who live out-of-state but said the committee indicated it isn't concerned with opinions from people who live out of state. She then asked if he supports the current efforts for long-term planning and the salmon task force for the revitalization of the Alaska Salmon Industry.

MR. HUBER replied:

I think it is absolutely necessary for Alaskans to come together and look for ways to shore up and create a salmon industry that is economically sustainable. Certainly I support those efforts.

SENATOR LINCOLN said a question was asked in the House Resources Committee about whether ADF&G is best suited to make biological decisions, especially when it comes to agenda change requests for the Board of Fish and Mr. Huber had answered yes, they would provide the best biological advice. She noted that is contrary to what he said earlier about seeking outside expertise when it wasn't provided by ADF&G.

MR. HUBER replied that he doesn't think those two statements conflict because ADF&G itself seeks advice from peers outside the state as it looks at setting escapement goals. In Western Alaska, for instance, a peer review team was put together that consisted of renowned salmon biologists from across the states and ADF&G looked at their work. Contracting with biologists outside of Alaska is normally done by a number of advocacy groups in all areas. He maintained:

That's not what the Board of Fish does. The Board of Fish relies on the advice of the Department of Fish and Game. And the reason I said advice to the Board and agenda change requests is sometimes you have local managers that have a lot of expertise in a specific area, but you have fisheries that transit that local area and go to another local area. So, the Board often

times has had the benefit of talking to an area management biologist there as well as an area management biologist here that don't always have exactly the same view of what regulatory change or what science needs between those two regions...

SENATOR LINCOLN asked to see a copy of the resolution in support of his appointment by the Bristol Bay fishermen.

SENATOR STEVENS said his question has to do with the Bering Sea Crab Management Plan. About five years ago they reduced the exploitation rate from 20% to 10% of the estimated biomass and there is a sort of industry consensus from the harvesting sector that that didn't do anything to save the biomass. All it did was leave money on the table or product in the ocean to rot. He asked Mr. Huber to expand on what sort of process the board might go through internally to make a decision to either raise or lower an exploitation rate of a resource that continually stays in the ocean and regenerates.

MR. HUBER replied that he would take a stab at it although shellfish is not his area of expertise. Stakeholders have different opinions on what to do. Where the Department has reliable information, they say they are comfortable with current harvest levels.

SENATOR STEVENS said that this is something people are taking guesses at and he wanted to know how Mr. Huber would go about formulating his guess.

MR. HUBER replied:

You first formulate your guess by listening to stakeholders, looking at what information there is, whether it's scant or not. Then I think one of the reasons that maybe this is a little bit harder to have fun at than you would like it to be for me is the legislative delegation is to conserve and to develop. If the delegation was to just conserve, it would be an easy job. If it was just to develop, it would be an easy job, but that's the balance that's difficult. So, when you have stakeholders wanting to develop and managers saying we need to be conservative or you have a situation where you don't know or are in doubt, information is scant, I think you have to err on the side of that conservation, because you can overdevelop and not have the chance to conserve. That's the tough part of the job of the Board of Fish. To say here's my road map for doing it upon an individual or all issues, I think is very difficult. I think it's going to take

being in that situation, listening to that discussion, looking at the information and you may use a different mechanism or process to get there in one area of your fishery than you do in another.

CHAIRMAN TORGERSON thanked Mr. Huber for sitting one and a half hours on the hot seat. He said they would next take up Gerry Merrigan's nomination.

5:30 p.m.

MR. MERRIGAN noted that copies of his two-page resume are in members' packets. He came to Alaska in 1977 and became a resident in 1979 and has lived here ever since. He worked for the U.S. Forest Service and ADF&G as a fish biologist. He currently holds a Southeast salmon power troll permit and halibut IFQ. He has also worked as a Dungeness crabber, gillnetter, seiner, longliner and has fished for herring. He has fished in Bristol Bay as well as Southeast and has landed king salmon on a sport rod. He has a background as well in Canadian fisheries.

He concluded:

I think I can bring a good breadth of knowledge to the Board process. Then when a member put my name in for the Board I realized how little I actually do know. It's clear to me how dependent the Board of Fish is on public input and must maintain a working process to provide that input...

CHAIRMAN TORGERSON asked how he would handle allocation issues for the sport fish industry since he is a commercial fisherman.

MR. MERRIGAN replied that he has been involved in allocation issues between sport and commercial fisheries and believes one has to work with people and be flexible to get a resolution. He has seen good leadership emerging on the sport fish side. He said he would do things on a factual basis. When it comes to an allocation decision he would look at something consistent with Board policy. He feels that he can talk to sport fishermen. "You don't get away from Petersburg without being somewhat knowledgeable on sport issues."

SENATOR WILKEN said he wouldn't support Mr. Merrigan's nomination but it has nothing to do with him personally. He explained:

My concern is with our Governor not reappointing Mr. Virgil Umphenour to the Fish Board and will hope that when we have a new governor that I'll be able to talk to him or her and make an attempt to have Mr. Umphenour

reappointed to a Board that he has served in Interior Alaska with great distinction...

CHAIRMAN TORGERSON announced that the committee would hear from Mr. Art Nelson next.

MR. ART NELSON said that he moved to Alaska in 1982 from Seattle and has spent time in different areas of Alaska participating in different types of fisheries. He worked with the Bering Sea Fishermen's Association to assess the troubled king and chum salmon returns in Western Alaska; that is a major issue the Board will have to deal with in the future. He is currently employed by the At-Sea Processors Association, which participated in the Bering Sea polluck fishery.

SENATOR LINCOLN asked him to explain how he worked with subsistence.

MR. NELSON said he was a fisheries specialist and advocated on behalf of residents of the small boat commercial fisheries and subsistence fishery needs to the Board of Fisheries and the North Pacific Fisheries Management Council. He also started a program to put escapement-monitoring projects out in various rivers.

SENATOR STEVENS asked what he thought the most crucial issue is in front of the Board of Fisheries right now.

MR. NELSON said there would be a handful of issues that he considers to be important for the Board, but probably the most important over the next 5 to 10 years is the revitalization of the state's salmon fisheries. There would be different solutions for different areas and some areas might not need a solution.

SENATOR STEVENS asked how he saw the Board of Fisheries playing in the procedure.

MR. NELSON replied that the participants in the fisheries have to bring proposed solutions to the Board and then work with ADF&G.

SENATOR STEVENS said the issues facing the Cook Inlet drainage are hot buttons because there are so many people and so many individual users and user groups. He asked Mr. Nelson how his education, training and experience in the industry can contribute to solving that issue.

MR. NELSON responded that he hoped he could contribute to some solutions there. He thought he had a balance in his life experience with different fisheries to give him the ability to see things from both sides of the table.

SENATOR WILKEN asked him if he knew Virgil Umphenour.

MR. NELSON replied yes.

SENATOR WILKEN asked if he felt comfortable replacing him on the Board and representing Yukon Tanana River drainage issues.

MR. NELSON replied that he is not as familiar with Interior issues as Mr. Umphenour was, but he is a friend and could sit down with him and get more familiar with those issues. Even if he isn't a Board member, he will be a member of the public in future meetings.

SENATOR WILKEN asked if Mr. Nelson could "comfort" him by saying he would use Mr. Umphenour as a reference for issues that have to do with Interior river drainages should he have to make a decision on those drainages.

MR. NELSON replied, "Absolutely."

SENATOR LINCOLN said she wanted some assurance that should he be confirmed, he would never refer to her Yukon River as brown water.

CHAIRMAN TORGERSON thanked Mr. Nelson for joining the committee.

SENATOR WILKEN moved that the committee report the names of Art Nelson, Gerry Merrigan and Brett Huber to the full body for consideration as nominees to the Board of Fish. There were no objections and it was so ordered.

CHAIRMAN TORGERSON adjourned the meeting at 5:57 pm.