

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE

April 9, 2002
3:40 p.m.

MEMBERS PRESENT

Senator Gene Therriault, Chair
Senator Randy Phillips, Vice Chair
Senator Rick Halford
Senator Ben Stevens
Senator Bettye Davis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 216(RES)

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

HEARD AND HELD

CS FOR HOUSE CONCURRENT RESOLUTION NO. 26(STA)

Supporting increased use of the house arrest program/electronic monitoring with sobriety monitoring as a means of preventing crime and reducing the high costs of imprisonment in Alaska.

MOVED CSHCR 26(STA) OUT OF COMMITTEE

SENATE CONCURRENT RESOLUTION NO. 30

Relating to Alaska Salmon Day.

MOVED SCR 30 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

HB 216 - No previous action to record.

HCR 26 - No previous action to record.

SCR 30 - No previous action to record.

WITNESS REGISTER

Sara Nielson
Aide to Senator Ben Stevens
Alaska State Capitol, Room, 119

Juneau, AK 99801-1182
POSITION STATEMENT: Introduced SCR 30

Jessica Menendez
Aide to Representative Joe Green
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HCR 26

Judge James Wanamaker
3rd Judicial District Anchorage
825 W. 4th Avenue
Anchorage, AK 99501-2004
POSITION STATEMENT: Testified on HCR 26

Rudolph Newman
No address provided
POSITION STATEMENT: Testified on HCR 26

Greg Pease
Executive Director
Gastineau Human Services
1613 Anka Street
Juneau, AK 99801
POSITION STATEMENT: Testified on HCR 26

Pam Watts
Director
Governor's Advisory Board on Alcoholism & Drug Abuse
Department of Health &
Social Services
PO Box 110608
Juneau, AK 99801-0608
POSITION STATEMENT: Testified on HCR 26

Candace Brower
Program Coordinator
Department of Corrections
341 N. Franklin Suite 400
Juneau, AK 99801
POSITION STATEMENT: Testified on HCR 26

Janet M^cCabe
Partners for Progress
No address provided
POSITION STATEMENT: Testified on HCR 26

Representative Drew Scalzi
Alaska State Capitol, Room 13
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 216

Paul Seaton
58395 Bruce Street
Homer, AK 99603
POSITION STATEMENT: Testified on HB 216

Sue Asplund
P.O. Box 939
Cordova, AK 99574
POSITION STATEMENT: Testified on HB 216

Bob Merchant
43961 K Beach Road # E
Soldotna, AK 99669
POSITION STATEMENT: Testified on HB 216

Paul Shadura II
P.O. Box 1632
Kenai, AK 99611
POSITION STATEMENT: Testified on HB 216

Lance Nelson
Assistant Attorney General
Natural Resources Section
Department of Law
1031 W. 4th Avenue Suite 200
Anchorage, AK 99501-1994
POSITION STATEMENT: Testified on HB 216

ACTION NARRATIVE

TAPE 02-19, SIDE A

CHAIRMAN GENE THERRIAULT called the Senate State Affairs Committee meeting to order at 3:40 p.m. Present were Senators Davis, Stevens, Halford and Chairman Therriault. Senator Phillips arrived shortly.

#SCR 30

SCR 30-ALASKA SALMON DAY

SARA NIELSEN, staff to Senator Ben Stevens, explained that SCR 30 would proclaim June 30, 2002 as Alaska Salmon Day. The proclamation would recognize the salmon industry as a huge part of all Alaskans' lives and would raise public awareness of one of Alaska's most important industries by promoting the catching and eating of salmon.

Alaska is the largest commercial wild salmon fishery in the world and employs more than 29,000 people. Nearly 95 percent of all commercially caught salmon in the United States are harvested in Alaska. In the last decade state salmon harvests totaled more than \$4.5 billion making it extremely vital to the Alaskan economy.

The sport of salmon fishing is important to visitors and Alaskans alike. In 2001, nearly 500,000 sport fishing licenses were issued in Alaska.

For generations of Alaskans salmon has been a nutritional source and is a large part of the state's heritage. Alaska Salmon Day would recognize this importance and promote the salmon industry.

There was no further testimony on SCR 30

CHAIRMAN THERRIAULT said he had no prepared CS and no amendments were offered. There was one zero fiscal note.

SENATOR HALFORD commented it was his understanding that a resolution that is sent out of state should be a joint resolution. He asked whether the drafters were responsible for the change.

MS. NIELSON replied Legislative Legal advised them to use a concurrent resolution.

SENATOR HALFORD excused himself to get a copy of the Uniform Rules.

CHAIRMAN THERRIAULT asked him whether he wanted him to set the resolution aside.

SENATOR HALFORD replied he did not want the resolution held.

SENATOR DAVIS made a motion to move SCR 30 and attached fiscal note from committee with individual recommendations.

There was no objection.

CHAIRMAN THERRIAULT announced SCR 30 would move from committee and if it was determined that sending a joint resolution was more appropriate than sending a concurrent resolution then the form could be amended in the Resources Committee.

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#HCR 26

HCR 26-HOUSE ARREST/ELECTRONIC MONITORING

JESSICA MENENDEZ, staff to Representative Joe Green, explained the resolution supports increased use of the House Arrest and Wellness Court Programs as a means of preventing crime and reducing the high cost of imprisonment in Alaska.

The purpose of the resolution is to urge the Department of Corrections, the Department of Law and attorneys to work together to expand the use of this program as a condition of bail and complementary to a therapeutic court program. Included in member's packets was background information on the House Arrest Program.

In 1998, the Legislature established the House Arrest Program authorizing the Commissioner of Corrections to designate prisoners who would serve their terms of imprisonment by wearing a bracelet seven days a week, 24 hours a day to provide electronic monitoring. The bracelet allows the prisoner to continue to participate in family, education or work commitments. Additionally, sobriety can be monitored with a piece of equipment that recognizes the offenders voice and takes a breath reading to measure their blood alcohol level. That data is transmitted to a computer and then dispatched to corrections to alert them as to whether or not there has been a violation.

The use of both the electronic bracelet and the sobriety monitoring equipment can be used as an alternative to incarceration. The cost of the program is about \$14.00 per person per day compared to the statewide average cost of incarceration of \$114.00 per person per day.

Wellness Court is a special court that handles cases involving municipal alcohol and drug addictive offenders through an intensive supervision and treatment program. A federal grant from the Department of Justice has helped fund the wellness court in Anchorage and in Juneau. This is another cost alternative to treatment. Individuals in the program commit to a highly monitored 18-month program where they are required to take Naltrexone, an anti-craving medication. Each offender will have a case manager and make frequent visits to the District Court to speak to the judge about their success in attending required meetings and treatments. After the program is successfully completed, they have a reduced or suspended sentence.

The primary goals of wellness court are to reduce recidivism, reduce substance abuse among the participants and to rehabilitate

the participants. The program offers front-end diversion as opposed to long-term sentences that aren't really successful in addressing the underlying problem.

Both programs have been somewhat successful and the resolution points to increased use of and support for the programs.

JUDGE JAMES WANAMAKER, 3rd Judicial District Anchorage Judge, testified via teleconference saying the resolution calls for expanding the use of the house arrest program and electronic monitoring as a condition of parole. The Department of Corrections has been very helpful in getting the program underway. He then gave a brief description of the pioneer case that was very successful.

The program is widely used in Anchorage and they look forward to starting similar programs statewide. He said there is great benefit to building individuals back up to full citizenship and at the same time saving the state money because the participants pay the cost of the program themselves.

CHAIRMAN THERRIAULT announced the committee was probably going to look favorably on the resolution so testifiers should briefly state their points of support or areas of concern.

RUDOLPH NEWMAN, successful program participant, testified via teleconference in support of the program. After numerous arrests and many years in jail, he completed the program and is pleased to report that he is now a responsible member of his community.

SENATOR DAVIS told Mr. Newman she observed him on Gavel to Gavel. She sent him sincere congratulations on his progress and encouraged him to keep up his good work.

GREG PEASE, Executive Director for Gastineau Human Services since 1987, said the resolution points to the new direction justice is taking worldwide and recognizes that the use of technology, pharmacology and coordinated treatment service delivery can prevent criminal behavior and reduce the high cost of incarceration. It recognizes the positive affects the therapeutic court movement has had on the substance-abusing offender and their families and requests that appropriate state agencies work together to educate themselves and the public in the use of current correctional and therapeutic models of behavior modification and treatment. He agreed with Judge Wanamaker regarding the support the Department of Corrections has given.

He pointed out that on page 2, line 5 the language refers to new technology for sobriety monitoring. He clarified that the technology was not new, but there are new pieces of technology.

As a representative of the American Probation and Parole Association for Washington, Oregon, Montana and Alaska he provided committee members with those states' letters of support. However, he wanted to make it clear that neither electronic monitoring nor house arrest is a substitute for intensive case management services. The Department of Corrections and the Department of Health and Social Services are currently facing budget cuts that will be devastating to the population he has worked with for over 25 years because high tech will never replace high touch.

CHAIRMAN THERRIault asked Mr. Pease to clarify that the word "new" on page 2, line 5 was not problematic.

MR. PEASE replied it wasn't, it is just a note of clarification.

SENATOR HALFORD asked whether there was any interaction with victim advocate groups regarding the reduction or elimination of prison terms after the program was successfully completed. He thought a victim might want to be notified when an offender was released or had their term reduced.

MR. PEASE replied they currently operate victim impact groups. It is part of the restorative justice program to include the victim.

JUDGE WANAMAKER agreed and said this is required by the new law. Victims are notified at sentencing.

CHAIRMAN THERRIault asked if part of the notification included the type of incarceration.

JUDGE WANAMAKER said that is discussed in the process.

SENATOR HALFORD asked whether the victim has the right to object.

JUDGE WANAMAKER said they did.

4:00 p.m.

PAM WATTS, Executive Director of the Advisory Board on Alcoholism and Drug Abuse, testified in support of the resolution. The program not only frees prison beds, it allows offenders the opportunity to function productively to address work, education and family obligations. This program is an example of how people can be accountable for their behavior, be responsible for their obligations as citizens, and receive the needed structure of sobriety monitoring.

This also offers opportunities for treatment that are necessary to achieve lasting change in behaviors. The program reduces costs

and increases the likelihood the offenders will not be recidivists.

They too are extremely concerned about the proposed budget cuts to the Division of Alcoholism and Drug Abuse because it would impact the ability of these programs to be effective. Monitoring alone without the treatment to reduce the craving would fall short of the anticipated goals of the program.

CANDACE BROWER, legislative liaison for the Department of Corrections, testified in support of the resolution. She reiterated that when the Department of Corrections puts someone on electronic monitoring, they are required to notify victims and they have the right to object. She then clarified that the \$14.00 per day is for the equipment and the offender is required to pay for that. However, they do have waivers so indigent individuals aren't excluded from participation.

These programs cannot operate without the personnel to oversee and supervise offenders, to be able to intervene when a violation occurs and to respond to the equipment. It's a very good tool for getting offenders back into the community and functioning productively.

JANET M^CCABE with Partners for Progress in Anchorage testified via teleconference in support of the resolution. She said that in the last two years the use of the house arrest program has resulted in a cost avoidance of over \$2.3 million and there is great opportunity to expand the program.

There was no further testimony.

CHAIRMAN THERRIAULT said he had no prepared CS. He noted the zero fiscal note. There were no proposed amendments from committee members.

He asked for the will of the committee.

SENATOR PHILLIPS made a motion to move HCR 26 and attached fiscal note from committee with individual recommendations.

There being no objection, HCR 26 moved from committee.

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#HB 216

HB 216-BD OF FISHERIES MEETINGS/EMERGENCY ORDERS

REPRESENTATIVE DREW SCALZI, bill sponsor, said he would refer to the handouts in the committee packets during his testimony.

This is a bill to help the fisheries in two important ways. First, it clarifies the Department of Fish and Game's emergency order authority in relation to the Board of Fisheries management plans and the balance of power intended by the Legislature. It strengthens the stability of the public process by legitimizing the use of the conservation purpose of Board of Fisheries agendas. Over 1,000 emergency orders (EO) are issued statewide every year for both fish and game. They are issued to achieve management objectives, provide for sustained yield and to provide harvest opportunities for all users. They are an in-season management measure.

There is, however, a gray area in statute that creates a problem with EO authority. Current statute states that there is no limit of power of the commissioner when circumstances arise, which is vague, problematic and subject to wide interpretation and abuse. The purpose of the bill is to clarify what that gray area means in statute based on Board of Fisheries policy statements and the Alaska Supreme Court decision from the Peninsula Marketing Association versus Rosier (2/24/95) that clearly spells out when the commissioner may open or close a fishery already considered and acted upon by the Board of Fisheries.

He then asked members to turn to the court case and read from page 2:

The Commissioner of the Department of Fish and Game (Commissioner) presented a fisheries management proposal to the Board of Fisheries (Board). The proposal was rejected. The Commissioner then indicated that he intended to implement the proposal by utilizing his emergency powers, notwithstanding the Board's decision. The superior court enjoined the Commissioner from using his emergency powers if based on information already presented to the Board but declined to enjoin him from using those powers if based on newly developed information or events occurring after the Board's rejection of his proposal.

He then referred to page 5 and read a portion of the opinion that essentially granted Peninsula Marketing Association the relief it requested.

...the Commissioner is prohibited from taking any action on the [False Pass] fishery based upon the information already presented. That does not prevent the Commissioner from taking emergency order authority on the [False Pass] fishery based on some additional

information not available previously, and using the information he already has. However, if all the information available is only that which was available at the Board meeting the Commissioner is prohibited from taking emergency order action.

Highlighted on page 6 under "MOOTNESS" he read:

The issue presented is technically moot. However, we accepted this petition and cross-petition because they fall under the public interest exception to the mootness doctrine. In applying the public interest exception we consider

(1) whether the disputed issues are capable of repetition, (2) whether the mootness doctrine, if applied, may repeatedly circumvent review of the issues and, (3) whether the issues presented are so important to the public interest as to justify overriding the mootness doctrine.

...The issue of the Commissioner's emergency power over matters previously considered by the Board will likely resurface and avoid review. By the time the court reviews the Commissioner's use of emergency power, the emergency is likely to be over. Conservation and utilization of fish and game resources are important to the public interest in Alaska. For these reasons we decided to hear the merits of this case.

CHAIRMAN THERRIAULT said in that specific case the emergency was probably over by the time it got to court. However, because the issue was likely to be recurring, they chose to take it up and deal with the issue. That is the mootness issue.

REPRESENTATIVE SCALZI agreed then asked members to turn to page 12 of 15 and the read the following:

We conclude that the superior court correctly identified the Commissioner's emergency powers and the limits on those powers. This holding does not impact the Commissioner's authority to exercise his emergency powers in a true biological emergency. However, it does circumscribe his ability to override the Board's decisions where he is relying on evidence already presented to and reviewed by the Board.

III. CONCLUSION

We AFFIRM the superior court's decision and hold that the Commissioner may not use his emergency powers to implement a fisheries management program already considered and rejected by the Board, in the absence of newly developed information or events occurring after the Board's decision.

REPRESENTATIVE SCALZI then referred to 5 AAC 96.625, which is the Board of Fisheries policy. He read:

In accordance with state policy expressed in AS 44.62.270, emergencies will be held to a minimum and are rarely found to exist. In this section, an emergency is an unforeseen, unexpected event that either threatens a fish or game resource, or an unforeseen, unexpected resource situation where a biologically allowable resource harvest would be precluded by delayed regulatory action and such delay would be significantly burdensome to the petitioners because the resource would be unavailable in the future.

He said that is why clearing the gray area is so important. This does not change the balance of power it simply clarifies the emergency order.

On page 3, section 2 he read lines 1 through 5 of the bill and described it as the crux of that section:

He said this is very clear according to what he read in the court case and the policy of the Board of Fisheries. He agrees with the conclusions and the bill itself clarifies and does not unbalance the power.

Section 3 of the bill deals with the Board of Fisheries agenda. Currently they take up issues statewide on a three year rotation cycle. The bill addresses the integrity of the process and the need for stability, which all state resource users need. He then read the following from the Board joint policy under Alaska Municipal Code 95.65.25 (d) and (e):

(d) The public has come to rely on this regularly scheduled participatory process as the basis for changing fish and game regulations. Commercial fishermen, processors, guides, trappers, hunters, sport fishermen, subsistence fishermen, and others plan business and recreational ventures around the outcome of these public meetings.

(e) ...The boards find that petitions can detrimentally circumvent this process and that an adequate and more reasonable opportunity for public participation is provided by regularly scheduled meetings.

REPRESENTATIVE SCALZI then read lines 19 through 23 in Section 3 that listed three criteria under which the board may take up a proposal out of cycle. With the exception of the following addition to criteria (1) that says, "...if the commissioner concurs in the determination of the board that a fishery conservation issue exists and that the issue cannot be resolved under current regulations," those three criteria are in the regulatory scheme for the Board of Fisheries. To ensure an actual conservation emergency exists and cannot be remedied by an existing means, HB 216 requires that the department concur in the determination of the board. This is consistent with the Legislature's charge to the department under AS 16.05.010 that requires that "The commissioner shall be a qualified executive with knowledge of requirements for the protection, management, conservation and restoration of the fish and game resources of the state."

SENATOR HALFORD asked whether the board hires the commissioner.

REPRESENTATIVE SCALZI replied it does not, the Governor appoints the commissioner.

SENATOR HALFORD asked him to explain the board's process in that.

REPRESENTATIVE SCALZI replied that the board process is to allocate resources among user groups. He said there is a definite difference between the board and the commissioner. He has worked with the commissioner and Lance Nelson, the Board of Fisheries attorney, to ensure there is no change in the balance between the board and the commissioner. However, they strongly feel that clarification is needed so that when circumstances arise allocation stays consistent, but the harvest that is available does not go unattended.

He asked members to review the news article in their packets about the abundance of pink salmon in Cook Inlet in August 2000 when least 20 million Pink Salmon showed up after there was a regulatory closure. This is the type of situation the bill is designed to address.

CHAIRMAN THERRIAULT called for teleconferenced testimony.

PAUL SEATON testified from Homer in support of HB 216. He said passage of the bill would probably result in a cost savings to the state in terms of reduced staff time.

SIDE B
4:30 p.m.

SUE ASPLUND, Executive Director of the Cordova District Fishermen United, testified from Cordova in support of HB 216. They fully support the clarification of the commissioner's authority relative to emergency orders because there are many times situations arise in-season and require rapid response to either protect the resource or to take advantage of a harvestable surplus. It's important that the Board of Fisheries, the Commissioner of Fish and Game, managers and the public understand the chain of authority and that those responsible are able to respond in a timely manner.

This legislation acknowledges that science should be the guide in determining out of cycle considerations based upon a conservation purpose and that ADF&G is charged with providing substantive evidence of such a conservation purpose. Out of cycle regulatory determinations are serious and must be held to a high standard. When used for other than correction of an error in a regulation or the unforeseen impacts of a regulation change, the standard must be to address a conservation concern of such magnitude that the department, through the commissioner, determines its legitimacy based upon scientific evidence.

BOB MERCHANT, President of the United Cook Inlet Drift Association, testified from Kenai in support of HB 216. It clarifies legislative intent so new information or unexpected events will be acted upon in a timely manner and draws a clear line between the powers of the commissioner and board. Additionally, by requiring ADF&G concurrence on issues of conservation, decisions will be based upon scientific evidence.

PAUL SHADURA II, representative of the Kenai Peninsula Fisherman's Association, testified from Kenai in support of HB 216. Alaska's success in fisheries management is based on the state's ability to plan for the future and to respond immediately to the fluctuations due to natural phenomena. Out of cycle costs to the state will be dramatically reduced.

They also expressed support for SJR 30.

LANCE NELSON from the Department of Law testified they have been working closely with Representative Scalzi and current language is a result of the joint efforts. There were several points he wanted to make clear and on the record.

Section 2 addresses the commissioner's authority to use EO authority to allow or extend the fishing season. They wanted it clear that the intent is not to change the status quo as far as the commissioner's authority to close seasons for conservation

reasons when new information is presented.

Their interpretation of language in section 3, page 3, lines 17-18 that says, "...in response to a request..." means that the requests would be from members of the public that want the board to change the agenda and is not intended or designed to prevent the board itself from setting its own agenda and changing that agenda on their own when they decide it is appropriate. If this interpretation is not correct then they would object because the board must have the authority to set its own agenda and address issues as they arise. They understand it does limit, in a similar way to what its own regulations do now, the board's ability to respond to requests to change its agenda.

CHAIRMAN THERRIAULT asked him if there was particular wording in sections 2 or 3 that caused him concern. It appears that section 3 is talking about regulations for amending the agenda and doesn't seem to speak to the board originally setting its agenda. It also says there is free will to address things to correct an error in a regulation or an unforeseen consequence, but there must be back up from the commissioner for using the conservation issue.

MR. NELSON agreed then said the Department of Law takes no position on that measure and he doesn't know that the ADF&G has taken a position either. They do interpret "request" as coming from outside the board rather than from the board itself and it would cause problems if that weren't the case.

CHAIRMAN THERRIAULT asked whether he wanted members of the board to be able to suggest amending the agenda based on any conservation concern.

MR. NELSON replied in the affirmative. It's their understanding that Sue Asplund was referring to a request for an agenda change from user groups or members of the public as opposed to a board instigated agenda change."

SENATOR HALFORD read lines 25-30 on page 2 and said that refers to an agenda change not any source of the agenda change. It is simply that any agenda change has to go through the standard of certification by the commissioner. It doesn't appear that the board would have control over its agenda in that area.

CHAIRMAN THERRIAULT added that is in the finding and intent section.

SENATOR HALFORD said it is also in the statutory section but it is clearer in the findings.

CHAIRMAN THERRIAULT asked Mr. Nelson if he had a concern about

that.

MR. NELSON said he did; he can see procedural and organizational difficulties and it would unnecessarily limit the board's ability to set its own agenda.

CHAIRMAN THERRIAULT asked Mr. Nelson to explain how a conservation issue in the Copper River fishery would be brought to the board when it is meeting and dealing with Western Alaska fisheries issues.

MR. NELSON said someone would file an agenda change request and the board would consider that at its first meeting which is usually a work session in October. The board would decide whether it met the requirements under the agenda change regulations. If they accepted the request they would schedule board consideration of that request at one of the meetings in the upcoming meeting cycle then put out a public notice on the change.

CHAIRMAN THERRIAULT asked for verification that someone would have brought the issue to the attention of the board.

MR. NELSON replied that is the case.

CHAIRMAN THERRIAULT said he wanted to know what the procedure would be if the board itself wanted to schedule something out of the normal rotation.

SENATOR HALFORD said he assumes board members are lobbied continually and therefore are well informed about people's concerns. The problem with the balance is that it changes back and forth depending who is ahead on the board and who is ahead with the commissioner.

CHAIRMAN THERRIAULT replied that lobbying is someone bringing an issue to them. It's not self-initiated.

SENATOR HALFORD said that's true but it's hard to separate what is self-initiated and what isn't. What is a formal proposal from an outside source that's made to make an agenda change versus all the lobbying the board members receive?

REPRESENTATIVE SCALZI said he doesn't see the problem in the intent language but the intent is to get stability in the three year rotation. The board can generate a proposal and this wouldn't have any affect on that. Except for the part referring to the concurrence of the Department of Fish and Game for conservation, their language is used.

SENATOR HALFORD replied that the difference reflects who is in charge. "If it's the concurrence of the commissioner the

department is in charge. If it's initiated by the board, through that process, the board is in charge. It is the ultimate tool by which they reach the agenda change by which they can reach what it is. If they're getting a huge amount of complaint out of one of their major allocation issues, which always get justified by conservation concerns, they can either reach it or not reach it based on either the board's decision or the commissioner's decision."

CHAIRMAN THERRIAULT said his feeling was that Representative Scalzi wanted to interject some science into the decision and he agrees those decisions should be based on science rather than politics.

REPRESENTATIVE SCALZI replied that was correct; the intent is to use biological managers to justify the decisions.

CHAIRMAN THERRIAULT stated Mr. Nelson was asking for clarification of intent for section 3, but the findings and intent don't necessarily clarify to his satisfaction.

REPRESENTATIVE SCALZI said he doesn't understand the problem; it speaks to the change in the meeting agenda to correct errors in regulations. The part Senator Halford mentioned regarding the change in agenda to address a fishery conservation issue be subject to the determination by the commissioner. He wondered whether the concern was that the entire agenda was subject to the commissioner.

SENATOR HALFORD replied that wasn't it; it's that it changes.

REPRESENTATIVE SCALZI said the intent is that it changes for conservation purposes.

CHAIRMAN THERRIAULT announced that Senator Halford had to leave the meeting, but he had an amendment to offer. He informed Representative Scalzi the committee would hear the issues and hold the bill.

MR. NELSON said his concern was that the board would be required to make one of the findings [from section 3] if it was going to change its agenda on its own volition. His concern isn't based on conservation determinations; it's broader than that.

CHAIRMAN THERRIAULT asked him to explain his comment about allowing the commissioner to open but not close the season.

MR. NELSON replied that was from section 2, page 3, lines 1 through 4. The other side of the EO authority besides opening a season and allowing fishing opportunities is to close a season and stop fishing. Section 2 doesn't address that aspect; it

expressly clarifies what the commissioner's authority is to allow more fishing, but doesn't address the situation where it needs to be closed for biological emergencies or conservation concerns.

CHAIRMAN THERRIAULT asked if they were trying to preserve the commissioner's right to make those emergency closures.

REPRESENTATIVE SCALZI thanked Mr. Nelson for making himself available to give testimony and told him that the intent is correct. It was never assumed that the commissioner's EO authority for closures would be diminished.

CHAIRMAN THERRIAULT questioned why the language regarding limited circumstances in the findings section on page 1 wasn't repeated in the intent section found on page 2, lines 17 through 21. He thought that to give a higher level of comfort it should be included.

REPRESENTATIVE SCALZI didn't think there needed to be any further clarification. "For in-season management you couldn't have a committee meeting, you have to have an individual who is paid and whose task is to in-season manage, assess the run strength or assess the run weakness and make the immediate openings and closures that are necessary."

CHAIRMAN THERRIAULT said Representative Scalzi went to great lengths in the findings section dealing with the commissioner being able to open the season, but that wasn't repeated on page 2, line 17. He asked whether there was a reason they didn't include, "The commissioner is better able to respond quickly to emergency situations to change..." because that is the intent.

REPRESENTATIVE SCALZI replied it is probably an overstatement and isn't needed in relation to the EO.

CHAIRMAN THERRIAULT replied that it's only in emergencies.

REPRESENTATIVE SCALZI said no. The board doesn't take action on the over 1,000 EOs that are issued every year. Those are guidelines that are set up by the department and are part of the day-to-day management. It could be included if it raised the comfort level, but the statement that the commissioner is better able to respond quickly is a given.

CHAIRMAN THERRIAULT pointed out that although it happens routinely, it's based on new information the board didn't have previously and if he doesn't allow the fishery to open to adjust to those returns the stock would be lost.

REPRESENTATIVE SCALZI replied he was beginning to understand the confusion. He explained that the day-to-day EO authority is there

and is based on the management plan that the Board of Fisheries puts out initially. The EO clarification that the bill addresses only applies to a management plan that does not allow for those EOs to take place on a day-to-day basis.

CHAIRMAN THERRIAULT asked if it was correct that as part of the management plan, they specifically delegated that authority for those day-to-day calls to the commissioner.

REPRESENTATIVE SCALZI replied that is correct.

SENATOR STEVENS added the commissioner rarely issues the order; it's usually deferred to the regional biologist who has the management authority. Therefore, this discussion would cover the extreme case where there wasn't a fisheries management plan in place but there was an emergency order situation and the commissioner had to act immediately.

During the commercial season, emergency orders are a normal tool by which fisheries are both opened and closed. It's only during that time continuum that the board approves the commissioner's authority to issue emergency closures during that period. Most of the time it's during the beginning or the tailing of the fishing season.

CHAIRMAN THERRIAULT asked if the management plans are usually set out as a specified time and the commissioner or the department exercises its latitude during that specified time.

REPRESENTATIVE SCALZI said that is correct. Prior to ADF&G and statehood, the federal government only opened and closed seasons. They had no mechanism for openings and closings by emergency order. The North Pacific Management Council operates the same way with quotas and dates. The ADF&G has been successful in their EO provision by giving the department the latitude to open and close as they see fit. For instance, if a management plan says a fishery must be closed on August 6 and there is a late run of fish there is now no available means to harvest those fish unless there was an EO by the commissioner to re-open that fishery. That's what this legislation is for and there would be specific guidelines on how to do that. "He would have to take into consideration the board's concern, it would not be for purposes of reallocation, it would be for a specified time and would be based on new information that was not previously available to the board." This is just a clarification of that emergency order so there isn't a future problem.

CHAIRMAN THERRIAULT said he has a better understanding of how the department and commissioner operate within the stated fisheries plan. This is for limited circumstances outside the plan where

the commissioner will be acting based on an emergency and yet the intent section doesn't say that it's for limited use in those emergency situations.

REPRESENTATIVE SCALZI replied it could be included if it made him more comfortable.

CHAIRMAN THERRIAULT said he would talk to him further when they discussed Senator Halford's proposed amendment.

The bill was held in committee.

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ADJOURNMENT

There being no further business before the committee, the Senate State Affairs Committee meeting was adjourned at 5:10 p.m.