

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES**

April 4, 2003
8:35 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Peggy Wilson, Vice Chair
Representative Dan Ogg
Representative Ralph Samuels
Representative Ethan Berkowitz
Representative David Guttenberg

MEMBERS ABSENT

Representative Cheryll Heinze

COMMITTEE CALENDAR

HOUSE BILL NO. 130

"An Act relating to the award of damages, costs, and attorney fees in an action against a seafood processor under certain state laws that prohibit unfair trade practices, monopolies, and restraints of trade; stating legislative intent regarding the appropriation and use of money obtained by the state from the operation of this Act; amending Rules 54, 58, and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

- MOVED CSHB 130(FSH) OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 10

Relating to restoration of riparian habitat that is vital to the fisheries resources of the state.

- MOVED HCR 10 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 130

SHORT TITLE:UNFAIR TRADE PRACTICES; ANTITRUST

SPONSOR(S): REPRESENTATIVE(S)WEYHRAUCH

Jrn-Date	Jrn-Page		Action
02/26/03	0305	(H)	READ THE FIRST TIME - REFERRALS
02/26/03	0305	(H)	FSH, JUD, FIN

04/04/03 (H) FSH AT 8:30 AM CAPITOL 124

BILL: HCR 10

SHORT TITLE: RESTORATION OF RIPARIAN HABITAT

SPONSOR(S): REPRESENTATIVE(S) WOLF

Jrn-Date	Jrn-Page		Action
02/28/03	0338	(H)	READ THE FIRST TIME - REFERRALS
02/28/03	0338	(H)	FSH, RES
03/17/03	0565	(H)	COSPONSOR(S): FOSTER
03/19/03	0593	(H)	COSPONSOR(S): LYNN, MEYER
03/26/03	0652	(H)	COSPONSOR(S): HEINZE, CHENAULT
04/02/03	0749	(H)	COSPONSOR(S): MORGAN
04/04/03	0798	(H)	COSPONSOR(S): WILSON
04/04/03		(H)	FSH AT 8:30 AM CAPITOL 124

WITNESS REGISTER

REPRESENTATIVE BRUCE WEYHRAUCH

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented the sponsor statement for HB 130.

CATIE BURSCH, Bristol Bay setnetter

Homer, Alaska

POSITION STATEMENT: Testified on behalf of herself that she would support HB 130 if the amount was changed to 5 percent and was specified towards funding the marketing of wild salmon.

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General

Fair Business Practices Section

Civil Division (Anchorage)

Department of Law

Anchorage, Alaska

POSITION STATEMENT: Provided information relating to HB 130.

REPRESENTATIVE KELLY WOLF

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented the sponsor statement for HCR 10.

ACTION NARRATIVE

TAPE 03-23, SIDE A

Number 0001

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at 8:35 a.m. Representatives Seaton, Wilson, Ogg, Samuels, and Guttenberg were present at the call to order. Representative Berkowitz arrived as the meeting was in progress.

HB 130-UNFAIR TRADE PRACTICES; ANTITRUST

[Contains discussion pertaining to HB 131]

CHAIR SEATON announced that the first order of business would be HOUSE BILL NO. 130, "An Act relating to the award of damages, costs, and attorney fees in an action against a seafood processor under certain state laws that prohibit unfair trade practices, monopolies, and restraints of trade; stating legislative intent regarding the appropriation and use of money obtained by the state from the operation of this Act; amending Rules 54, 58, and 82, Alaska Rules of Civil Procedure; and providing for an effective date." [In committee packets was Version I, labeled 23-LS0484\I, Bannister, 4/3/03.]

Number 0189

REPRESENTATIVE BRUCE WEYHRAUCH, Alaska State Legislature, speaking as the sponsor of HB 130, testified that the bill takes into consideration short-term concerns as well as addressing longer-range effective public policy. He said that although HB 130 was intended to be a companion bill to HB 131, the bills need to be looked at and considered separately. He informed the committee that HB 131 would appropriate \$40 million from the general fund to ASMI [Alaska Seafood Marketing Institute] for the purpose of marketing wild salmon, whereas HB 130 is the mechanism that provides financing to ASMI.

Number 0289

REPRESENTATIVE WEYHRAUCH told the committee that the Alaska tort reform statute, used as a model for HB 130, was passed by the legislature in 1997, and requires that 50 percent of an award of punitive damages be paid to the State of Alaska, to be deposited in the general fund.

Number 0346

REPRESENTATIVE WEYHRAUCH said that the mechanism in HB 130 would require 15 percent or \$40 million - whichever is less - to be

paid to the general fund, anytime damages are awarded under the state antitrust statute; the state's antitrust statutes are based on the federal antitrust statutes under the Sherman Act. Under Alaskan antitrust statute, if a party alleges damages for collusion, monopoly, or unfair trade practices and if they prove their complaint, then they would get those damages; under the antitrust statute, damages are automatically treble, he said.

Number 0450

REPRESENTATIVE WEYHRAUCH explained that the punitive damages are built into the antitrust statute in the form of treble damages for any party aggrieved under those unfair trade practice statutes; the statutes also address "prevailing-party litigation" and the fees that are involved. He informed the committee that there is no jury decision on how much punitive damages should be awarded; the damages are already calculated. There's a treble damage award under the antitrust statutes, which are the same statutes referred to in HB 130. He said that this is different from the tort statute or the tort reform statute, which requires a punitive damage claim. That punitive damage claim is determined by a judge as to whether there's clear and convincing evidence of outrageous conduct, and if there is, then there's a trial in which the defendant's wealth is brought in and a jury or the "definer of fact" determines how much punitive damages should be awarded.

Number 0520

REPRESENTATIVE WEYHRAUCH spoke to the proposed committee substitute (CS), saying that the intent language pertains to any funds under Section 1; that is, any funds obtained through the mechanism of HB 130 would go to ASMI. He said that because [the State of] Alaska cannot dedicate funds, this action of intent indicates to the legislature that a political act will have to be taken later - by the legislature - to appropriate any funds received in this manner. The language doesn't bind the legislature; it's just a signal of intent. Representative Weyhrauch stated that the intent is to market wild salmon, stressing that Alaska has a significant problem with marketing wild salmon in light of the \$65-to-\$80 million budget utilized by Chile, New Zealand, Scotland, Norway, and Newfoundland, for example, which raise farmed salmon. Alaska's efforts to market wild salmon are miniscule compared with those worldwide marketing efforts; there are salmon fishermen losing their jobs and businesses, he emphasized.

Number 0605

REPRESENTATIVE WEYHRAUCH said that there must be marketing efforts that match the worldwide competition for salmon products. He explained that the proposed CS differs from the original bill in that, rather than targeting the seafood processing industry, the bill and its provisions apply universally, to all persons and entities.

Number 0702

REPRESENTATIVE WEYHRAUCH said that in retrospect, removing Section 1 would remove the intent language that has monies going to ASMI; if the bill were introduced as such, there would probably be no reason for referral to this committee because it would go to the House Judiciary Standing Committee and then on to a House Finance Committee referral. But, he continued, Section 1 remains, indicating that the [House Special Committee on Fisheries] will make a policy decision as to whether there will be funding to market the state's wild salmon.

Number 0768

REPRESENTATIVE WILSON referenced the award being tripled and asked if the 15 percent was, in fact, only 5 percent of the original award.

REPRESENTATIVE WEYHRAUCH said that if there was a \$50 award that was trebled to \$150, 15 percent of that award or \$40 million would be taken, whichever amount was less.

Number 0830

REPRESENTATIVE OGG asked how many antitrust suits have been filed in Alaska under the state statutes in the last 20 years.

REPRESENTATIVE WEYHRAUCH replied that plenty of antitrust suits have been filed. He said that [Alaska Judicial Council] - the organization associated with the court system that keeps track of settlements and outcomes of cases - has only kept statistics for the past five or six years. He stated that it is up to the parties to report such information to the court system and that he hasn't found a centralized database indicating the number of cases that have been filed alleging antitrust, although he knows that a lot of cases do get filed. He suggested that there are probably a handful of cases that eventually go to trial and that have been reported under these statutes.

REPRESENTATIVE OGG inquired as to the specific amount involved.

REPRESENTATIVE WEYHRAUCH responded that the amount was dependent upon the allegations and the complaint. He said, "I have not seen the statistics, and they haven't been keeping them for twenty years."

REPRESENTATIVE OGG replied that gathering the exact information for five or seven years - or for whatever amount of time - would be helpful to the committee. He then inquired as to how many antitrust suits are currently in process.

REPRESENTATIVE WEYHRAUCH responded that until a case is either dismissed or settled, the number of cases that are in progress is unknown. He mentioned the one case that has received a lot of publicity is the Bristol Bay antitrust [class action] lawsuit, but said that no other case gets reported as heavily as that one. He added that there may be plenty of cases, "but we don't know about them."

REPRESENTATIVE OGG said he thought there would be records in the courts of cases that have been filed under the antitrust statutes.

REPRESENTATIVE WEYHRAUCH said the database in the court system provides the name of the party and the case number. He told the committee that until the case is reported as either settled or dismissed - and then reported to the [Alaska Judicial Council] or to the State of Alaska court system - it is not recorded; it's in a centralized database.

Number 1045

CHAIR SEATON referred to page 2, line 2, AS 45.50.471 - AS 45.50.561, commenting that the analysis in the committee packet refers to AS 45.50.576, which is a different section, and therefore lies outside of those parameters.

REPRESENTATIVE WEYHRAUCH responded that the reference pertained to [Sec. 45.50.539] and also that Section 3 [AS 45.50.576] referenced a new statute that repeated the amount to be deposited.

CHAIR SEATON then asked if page 2, line 2, was similar to [AS 45.50.576].

REPRESENTATIVE WEYHRAUCH confirmed that this was so.

Number 1175

REPRESENTATIVE GUTTENBERG said that a troubling aspect of the bill was that of limiting the antitrust cases to fisheries. He gave the example of people in Fairbanks reviewing gas-pricing cases; if those prevailed or if there were some findings, then those monies would then go to ASMI. In looking at HB 131, with a central deposit of \$40 million, he asked if this was a one-time grant or, as an ongoing program, would be funded on a yearly basis.

REPRESENTATIVE WEYHRAUCH said he saw this as a one-time appropriation. He said that the legislature and political pressure would need to be "brought to bear" to determine whether the legislature would even initially pass HB 131. He repeated that the legislature would have no obligation to appropriate money to ASMI under this bill, the companion bill, or any future bill. It would be up to the lobbying efforts of the commercial fishing industry to say, "The legislature made a deal and it intended to appropriate this money out." If there were oil or gas interests in a district that required a portion of the funds received under this mechanism, then that rationalization would be applied to obtain a portion of the money. The legislature would not be bound by this intent language at all.

REPRESENTATIVE WILSON suggested that since this was being referred to Judiciary, the decision that currently needs to be made is whether the money would go to ASMI, and if so, to then pass the bill and allow the next committee of referral to address the bill in more detail.

REPRESENTATIVE WEYHRAUCH explained that the bill was referred to this committee because seafood processors were originally targeted, although that has since been deleted in the proposed CS. The referral was also due to the intent language; it's the policy decision of the committee to determine whether the intention is for [the money] to go to ASMI or not. He said his feeling is that money isn't found and that industry generates money, or else "we have to tax."

Number 1350

CHAIR SEATON asked if the retroactivity clause on page 3 [line 2] included the Bristol Bay lawsuit.

REPRESENTATIVE WEYHRAUCH confirmed that this would be included, adding that this policy decision also needs to be made.

Number 1415

CATIE BURSCH, Bristol Bay setnetter, said she was representing herself and commended Representative Weyhrauch for taking steps to help the wild salmon industry in Alaska. She said her understanding was that ASMI markets all Alaskan seafood and she doesn't think that ASMI could target its money specifically to just salmon. She said her other concern was that although the intent was to market wild salmon, funds might be used for other things such as fish farming, should it become legal in Alaska, since there was nothing in place to stop something like that from happening.

Number 1609

MS. BURSCH objected to a perception of the Bristol Bay price-fixing suit as "hitting the lottery," resulting in the state's receiving money. She said, if the prices were fixed, then that money had been worked for and should have been paid years ago. Ms. Bursch said she wondered whether the state should be more vigilant regarding price fixing in order to protect industries. She also expressed concern over the large increase of money that ASMI would receive, saying that the organization might not be prepared to handle that amount of money, and inefficiencies may be the result. She concluded by saying that if the amount was 5 percent and could be targeted specifically towards marketing wild salmon, she would be in support of HB 130. She stated that it was important to protect the wild salmon industry in the future and to keep the fish farms out of Alaska.

Number 1757

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law, said he was primarily responsible for enforcing Alaska's consumer protection and antitrust statutes. He referred to treble damages and clarified that those damages are not regularly awarded in antitrust suits. The statute only allows an award of treble damages if one can prove that the conduct by the violator was willful. He explained that the willfulness requirement is fairly onerous and it must be shown that someone acted intentionally or willfully to violate the law before treble damages are awarded. He noted that this feature

in the antitrust statute is very different from the punitive damages tort reform that Representative Weyhrauch spoke about.

Number 1838

MR. SNIFFEN said that another portion of the bill that causes concern to the state is that the state itself would be included within these provisions. He said that Alaska joins with other states as well as pharmaceutical companies, automobile manufacturers, and others who are sued for violations of antitrust statute. Sometimes these result in judgments or settlements and the money is designated for use towards consumer protection, education, and enforcement. He suggested that it would be desirable to carve those types of actions out of this bill so that when the state is actually bringing the action, monies recovered by the state would not be subject to the 15 percent, or \$40 million, disgorgement to ASMI.

Number 1884

MR. SNIFFEN said that he doubted the constitutionality and enforceability of the retroactivity provisions of HB 130 and stated that it would be tricky to use this vehicle for recovery, if there is one, in the Bristol Bay lawsuit. In response to a question from Chair Seaton, he confirmed that the 15 percent or \$40 million would apply for any judgment, whether or not treble damages were awarded.

REPRESENTATIVE OGG repeated the questions he had previously asked of Representative Weyhrauch as to the number of antitrust lawsuits that have been filed over the past 20 years.

MR. SNIFFEN reported that he had been in his position for the past three years and during that time, the state had filed approximately eight antitrust suits, most of which were multi-state litigation claims. He said he didn't know if his office had filed more than approximately one dozen antitrust lawsuits in the past 20 years, but he does know that in the private sector, he suspects that there are a fair number of suits filed that have antitrust allegations contained within them. He said that this bill doesn't have a mechanism that requires reporting of those specific cases, other than the current court system of tracking settlements. He said that perhaps there could be a different way of tracking these cases, in the future.

REPRESENTATIVE OGG asked what the total amount of the awards might be.

Number 2065

MR. SNIFFEN replied that in a fairly recent pharmaceutical price-fixing case that involved the state, about \$300,000 in damages was recovered. In a different case filed against an auto manufacturer several years ago, \$0.5 million was recovered. In three pending antitrust lawsuits, currently in various stages of settlement involving national companies, pharmaceuticals, and patent issues, the expected recovery is in the \$200,000-to-\$400,000 range. He summarized that in the past three years, recovery in antitrust cases has approximated \$700,000.

Number 2120

REPRESENTATIVE BERKOWITZ noted that most of the larger cases are class action [suits]; he referenced the language, "if a person receives an award, the court shall require 15 percent or \$40 million," and asked how a class action relates to that provision. He said if there is a very large class action, the aggregate amount that the state could collect would exceed \$40 million.

MR. SNIFFEN replied that this would depend upon the definition of "person" in the bill. For example, if "person" included the State of Alaska, then whatever damages were recovered would be subject to the 15 percent or the \$40 million payout. He said, "Most of the cases we bring, we bring in a parens patriae action on behalf of consumers in Alaska; ... there are also additional private plaintiffs who have put together classes of people who opt out of the state's representation and choose to be represented by private parties." He said that he suspects that those persons would be subject to this rule, individually. Mr. Sniffen said that "persons" could be defined to mean every individual person, regardless whether he/she was (indisc.) ... received an award of damages.

Number 2205

REPRESENTATIVE SAMUELS asked if the 15 percent applied to any judgment or applied only if the triple damages were awarded.

REPRESENTATIVE WEYHRAUCH responded that it is an award of damages.

CHAIR SEATON said the main question before the committee was the intent language and that at least from the attorney general's

opinion, it sounded like this would not apply to the Bristol Bay lawsuit.

REPRESENTATIVE WEYHRAUCH said he had previously indicated that he wanted to work with Representative Ogg, in House Judiciary Standing Committee, on the retroactive effective date, since that was an expressed concern. He said this was a legal issue, and that although legislators could discuss it, it would remain unclear until receiving the judge's opinion.

Number 2309

REPRESENTATIVE SAMUELS mentioned that he didn't think the bill should be moved out of committee with the intent language specifying that all of the money would be going to ASMI; he said that he had difficulty with the intent language in the proposed CS.

REPRESENTATIVE WEYHRAUCH pointed out that this was the same language that was in the original bill.

REPRESENTATIVE SAMUELS said the original bill was tighter regarding the seafood processors and that in the proposed CS, the gate had "been opened up."

CHAIR SEATON asked if Representative Samuels was having difficulty with the specification that 15 percent of damages from, for example, pharmaceutical- or car-related lawsuits would be going towards ASMI.

REPRESENTATIVE SAMUELS confirmed that he was having difficulty with this.

Number 2377

REPRESENTATIVE WILSON asked for further clarification of Representative Samuels' concern.

Number 2384

REPRESENTATIVE WEYHRAUCH explained his understanding that the intent of the original bill had indicated that if there were to be treble damages against a seafood processor, if harm had been done, then monies would go to the general fund and then, in turn, would be appropriated to ASMI. The proposed CS removes the seafood processor as the specific party in the antitrust case. He said he thought that Representative Samuels wanted to

remove the specific appropriation to ASMI so that money could be applicable to any program.

REPRESENTATIVE SAMUELS confirmed that this was the case. He asked, if a pharmaceutical company or the oil industry was being sued, why that money would necessarily go to ASMI.

REPRESENTATIVE WILSON asked if the language would be less objectionable if it focused on the seafood industry.

REPRESENTATIVE SAMUELS noted that in the original bill there was a connection, but that the proposed CS is basically a tort bill and has nothing to do with the fishing industry.

REPRESENTATIVE WILSON asked if the desire was to tighten up the bill so that it pertained to the seafood industry or if the desire was that it "never go to ASMI."

Number 2468

REPRESENTATIVE SAMUELS [offered Amendment 1]. He said he would like to delete [page 1, lines 9-11].

REPRESENTATIVE SAMUELS explained that he'd also like to discuss in the House Judiciary Standing Committee what to do with the 15 percent going to the state. He commented on the lack of connection regarding punitive damages, brought up the question of what to pick as the recipient of the funds, and asked, "Why pick ASMI?"

Number 2500

REPRESENTATIVE BERKOWITZ commented that these treble damages were properly characterized as punitive damages and that with these kinds of damages, the underlying theory is that there's been an injury to the state or to the people of the state. He said he thought there was a very strong argument, since the state would have been injured, that the state ought to be the beneficiary. He said, "But it seems to me that the theory is that if the state is injured, the state should recover, particularly in the area where it was injured." He offered that the problem seemed to be a "lack of nexus, as some lawyers might say."

CHAIR SEATON questioned whether testimony from the attorney general indicated that this didn't apply only to treble damages, but would apply to any damages.

REPRESENTATIVE BERKOWITZ agreed that in Section 2 there was applicability to all damages; he said this issue was problematic and that he expected it would be addressed in House Judiciary Standing Committee because it's conceivable that damages are acquired that are not the full extent of damages and would then be required to (indisc.).

Number 2560

CHAIR SEATON pointed out that the committee was looking at whether the desire was to focus HB 130 on "having a lawsuit against a seafood processor" or to remove that legislative intent, which would mean that the bill would have nothing to do with fisheries.

REPRESENTATIVE WEYHRAUCH referred to this as being a policy call and highlighted the issue as follows:

Number one, do you want to adopt the original bill, which has as its formula for collecting damages - only against seafood processors - in which case Representative Samuels would leave in Section 1? That's the first issue. If you adopt the proposed CS, which removes seafood processors as a target, then do you also remove Section 1, which is the intent to have the money appropriated to ASMI, and then have the appropriation debate take place in a separate context? This is only a financing, a funding mechanism for the state. The policy question is, do you want to keep seafood processors in the bill, and therefore [the] legislative intent, or do you want to adopt the [proposed CS], in which case, Section 1 would be removed.

REPRESENTATIVE BERKOWITZ offered that the underlying policy issue is how to fund ASMI.

Number 2707

REPRESENTATIVE WEYHRAUCH said that fundamentally HB 130 is an ASMI-funding bill to market wild salmon because wild salmon is not being sufficiently marketed in Alaska; the financing mechanism is the central concern.

CHAIR SEATON voiced appreciation of that concern, adding that there was an attempt being made to balance [the needs of] the seafood industry and the [funding] mechanism.

REPRESENTATIVE BERKOWITZ asked what the current ASMI budget was and what amount of funding was needed.

REPRESENTATIVE WEYHRAUCH said that if ASMI was going to compete on a worldwide basis, matching dollar for dollar, the need would be \$70 million.

REPRESENTATIVE BERKOWITZ asked approximately what the current revenues were.

REPRESENTATIVE WEYHRAUCH said his understanding was that there was not a general fund appropriation to ASMI. He said someone else could address the issue of revenue pertaining to taxes - such as the raw fish tax and federal taxes.

REPRESENTATIVE BERKOWITZ said something successfully done pertaining to power cost equalization was "a fund that was created from which a revenue stream helped to ensure a level of funding." He then added, "The minority doesn't control the Constitutional Budget Reserve (CBR), but it might be a good avenue for creating that kind of fund, at least in the House."

REPRESENTATIVE WILSON reiterated that the salmon industry is in dire trouble and that ASMI doesn't have the funds to offer much assistance; she said she thought it was important to help with the situation.

Number 2835

REPRESENTATIVE SAMUELS offered his belief that the proposed CS was before the committee and said the intention of Amendment 1 was to eliminate Section 1.

CHAIR SEATON clarified that this would eliminate the intent of the bill to direct funds towards ASMI.

Number 2850

REPRESENTATIVE WILSON objected.

REPRESENTATIVE SAMUELS said he was back to the same argument, which is, if the oil industry was sued, why wouldn't that be directed to education, the state troopers, nurses, or other

entities ... "why pick just one"; he said he didn't "get the connection" [to ASMI].

REPRESENTATIVE WILSON suggested fixing the bill in order to make that connection.

The committee took an at-ease from 9:25 a.m. to 9:28 a.m.

Number 2899

REPRESENTATIVE SAMUELS withdrew Amendment 1.

REPRESENTATIVE SAMUELS moved to rescind actions in adopting the proposed CS, which would thereby put HB 130, the original bill, back on the table.

Number 2930

REPRESENTATIVE OGG objected. He said that in speaking with Representative Weyhrauch about the bill and in listening to testimony today from Ed Sniffen, in particular, he believed the retroactivity clause had some constitutional problems and he would rather have the drafter come up with another proposed CS to address those problems. He said another problem was that the way the bill is drafted, it doesn't solely attack the triple damages, which, although they are akin to punitive damages, are not the same thing. He said the state would be taking compensatory damages from people who had actually lost something, and he didn't agree with that aspect. He said the basis of the bill and the companion bill was focused on one particular suit, so the retroactivity date was bothersome and didn't make the state look good.

TAPE 03-23, SIDE B

CHAIR SEATON asked if Representative Ogg wanted to offer these as amendments.

REPRESENTATIVE OGG said he'd be happy to do so, but wanted to give the sponsor the opportunity to make those corrections.

REPRESENTATIVE WEYHRAUCH said he'd worked on the retroactivity date and that it was included to the extent permitted by the state and federal constitutions.

CHAIR SEATON said that Representative Ogg's intent was a policy concern rather than a legal concern, so the question was not

whether the attorney general or [Legislative Legal and Research Services] would prevail in the end.

REPRESENTATIVE WEYHRAUCH asked if this meant the removal of Section 6.

CHAIR SEATON clarified that there was an objection to putting HB 130 back on the table in its original form; the current discussion involved whether, by removing retroactivity and also referencing this to triple damages, the objection would then be satisfied.

REPRESENTATIVE OGG said that conceptually he did not have a problem offering amendments that would strictly apply this to triple damages, and second, that the retroactivity clause would not be applicable, thereby preventing this bill from affecting any present lawsuits that are filed or ongoing.

REPRESENTATIVE WILSON asked if the motion was to just get the bill before the committee.

CHAIR SEATON clarified that there was an objection to putting the [original] bill on the table, and that Representative Ogg was explaining his objections.

REPRESENTATIVE SAMUELS agreed that the state should not be taking "a piece of the pie" unless the damages were tripled.

Number 2758

REPRESENTATIVE WEYHRAUCH stated what he thought were the conceptual amendments. He said that the motion is to have HB 130 before the committee and that Conceptual Amendment [2] deletes Section 6, whereas Conceptual Amendment [3] allows for the damages, the portion paid as damages, to be the treble award of damages, not the compensatory award. [Conceptual Amendment 3 adds the language "of the amount of the award that exceeds actual damages" to Section 3, subsection (c), after the word "less".] He told the committee he was fine with the adoption of these two conceptual amendments.

Number 2730

REPRESENTATIVE OGG stated that with the inclusion of Conceptual Amendments [2 and 3], he was withdrawing his objection.

CHAIR SEATON clarified that HB 130 [rather than the proposed CS] was before the committee, with the sponsor agreeing with two conceptual amendments. He restated that this would be the removal of Section 6, and that the damages would refer to the treble-damage portion relating to the compensatory damages.

Number 2692

REPRESENTATIVE WILSON objected for discussion purposes. She said it was important to include "triple" to make sure fishermen know that the intent isn't to get fishermen's money that is "due them." She said, if it is ensured that the state would take part of it only if it is tripled, fishermen would realize that state isn't trying to "get their money."

REPRESENTATIVE WILSON then withdrew her objection.

Number 2674

REPRESENTATIVE WILSON moved to report HB 130, as amended out of committee with individual recommendations [and the accompanying zero fiscal note]. There being no objection, CSHB 130(FSH) was reported from the House Special Committee on Fisheries.

HCR 10-RESTORATION OF RIPARIAN HABITAT

CHAIR SEATON announced that the next order of business would be HOUSE CONCURRENT RESOLUTION NO. 10, Relating to restoration of riparian habitat that is vital to the fisheries resources of the state.

Number 2558

REPRESENTATIVE KELLY WOLF, Alaska State Legislature, speaking as the sponsor of HCR 10, offered the historical perspective that in the early 1990s habitat wasn't talked about within communities or in departments [as it is today]. He said that understanding the importance of riparian habitat has grown over the past 8 to 10 years. He indicated that HCR 10 asks that state agencies, federal agencies, communities, and organizations understand that the fishery resource is an important part of Alaska's traditional consumptive use and enjoyment, and provides income to the state, saying that HCR 10 asks for recognition of this via "working together."

Number 2466

REPRESENTATIVE WOLF said a key phrase that he liked to use was "it's easier to educate than it is to regulate." He said that HCR 10 promotes stewardship through communities and allows agencies - federal, state, municipalities, and boroughs - to expand their ability to protect riparian habitat for all user groups. He explained that this resolution is about promoting agencies' understanding that there are options for partnerships with community groups that would bring in corporate funding, and promote restoration and the protection of the riparian habitat.

Number 2392

REPRESENTATIVE GUTTENBERG inquired about the correlation between HCR 10 and Executive Order 107 (EO 107), saying that HCR 10 was based on healthy habitat and fisheries, while EO 107 was eliminating that program.

Number 2350

REPRESENTATIVE WOLF replied that EO 107 involved moving the Division of Habitat and Restoration from the Alaska Department of Fish & Game (ADF&G) to the Department of Natural Resources (DNR), while HCR 10 was focused on agencies working together to raise the awareness of the importance of the riparian habitat. He noted that the governor has acknowledged the importance of habitat and resources. He said he would like to keep HCR 10 as far away from EO 107 as "China is from Alaska" or even further.

Number 2300

REPRESENTATIVE GUTTENBERG commented that he didn't know if it were possible [to separate the issues].

Number 2280

REPRESENTATIVE WOLF asked if the committee wanted to view a portion of a videotaped TV program that was developed by a program that he [Representative Wolf] used to run. He said that the videotape demonstrates what can be accomplished from cooperation and working together.

[The committee watched a few minutes of a videotape entitled "Bringing the Nation to Alaska."]

Number 2142

REPRESENTATIVE WOLF said that riparian habitats involve partnerships, and he explained that this particular project was done in 2001 as part of the "DOT Highway Improvement Project" and was done between mile 39 and 45 in Cooper Landing, involving the development of the gravel pit as a source of gravels. He said the project involved some 29 different agencies working together. He said the Youth Restoration Corps was involved due to corporate support and that it involved 137 sponsors, nationwide. There were 84 teenagers from around the nation, involving 10 states including Alaska - all promoting stewardship. He added that there was no state money involved whatsoever.

Number 2090

REPRESENTATIVE OGG moved to report HCR 10 out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, HCR 10 was reported from the House Special Committee on Fisheries.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 9:50 a.m.