

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

April 30, 2003

8:36 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Cheryll Heinze
Representative Dan Ogg
Representative Ralph Samuels
Representative Ethan Berkowitz
Representative David Guttenberg

MEMBERS ABSENT

Representative Peggy Wilson, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 281

"An Act relating to a moratorium on entry of vessels into the Southeast Alaska sport fish charter fishery; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 281

SHORT TITLE:MORATORIUM ON CHARTER VESSEL LICENSES

SPONSOR(S): REPRESENTATIVE(S)WEYHRAUCH

Jrn-Date	Jrn-Page		Action
04/23/03	1071	(H)	READ THE FIRST TIME - REFERRALS
04/23/03	1071	(H)	FSH, RES
04/23/03	1071	(H)	REFERRED TO FISHERIES
04/30/03		(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 281.

BLAINE HOLLIS, Assistant Attorney General
Natural Resources Section
Civil Division (Juneau)
Department of Law (DOL)
POSITION STATEMENT: Provided legal information and concerns
pertinent to HB 281.

MARY McDOWELL, Commissioner
Commercial Fisheries Entry Commission (CFEC)
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska
POSITION STATEMENT: Provided recommendations and suggestions
pertaining to HB 281.

ROB BENTZ, Deputy Director
Division of Sport Fish
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska
POSITION STATEMENT: Testified on HB 281 that the department
supports the recommendations made by DOL and CFEC.

DON JOHNSON
Soldotna, Alaska
POSITION STATEMENT: Spoke on his own behalf in opposition to HB
281, testifying that it would exasperate the situation.

CAROL DOOLEY, Owner
Ketchikan Sport Fishing
Ketchikan, Alaska
POSITION STATEMENT: Testified in strong opposition to HB 281.

ACTION NARRATIVE

TAPE 03-27, SIDE A
Number 0001

CHAIR PAUL SEATON called the House Special Committee on
Fisheries meeting to order at 8:36 a.m. Representatives Seaton,
Samuels, and Guttenberg were present at the call to order.
Representatives Heinze, Ogg, and Berkowitz arrived as the
meeting was in progress.

HB 281-MORATORIUM ON CHARTER VESSEL LICENSES

CHAIR SEATON announced that the only order of business would be
HOUSE BILL NO. 281, "An Act relating to a moratorium on entry of

vessels into the Southeast Alaska sport fish charter fishery; and providing for an effective date."

Number 0092

REPRESENTATIVE BRUCE WEYHRAUCH, Alaska State Legislature, sponsor of HB 281, said this bill would establish a moratorium on vessels entering the Southeast Alaska sport fish charter fishery. He told the committee that earlier permutations of the bill had been introduced by legislators from other parts of the state and would have been applied statewide, whereas HB 281 reflects a moratorium on charter vessels in Southeast Alaska. He pointed out that this is not a limited entry program and that the purpose of the moratorium is to "stop the music on new entrance into the Southeast charter fishery" and to determine the number of vessels, the impact on the overall harvest of fish by different user groups, to determine whether a limited entry program is desirable, and to make other policy issues regarding the value attached to a charter permit.

REPRESENTATIVE WEYHRAUCH said that presently the commercial salmon fisheries and in fact most fisheries in Southeast are limited entry, and that those permits are fully transferable and can be sold. He mentioned that the moratorium could be lifted after the bill's sunset date in 2007. Establishing the moratorium would allow the Commercial Fisheries Entry Commission (CFEC) to determine policy implications for the program.

CHAIR SEATON informed the committee that the intention was not to move HB 281 out of committee at this time.

CHAIR SEATON inquired about the current status of licensing vessels and asked, "How do we know which vessels are participating?"

REPRESENTATIVE WEYHRAUCH responded that after paying a \$50 annual fee and applying to the CFEC, one receives a triangular-shaped plaque and a charter number that needs to be placed on the side of the boat; this indicates that the boat is registered as a charter vessel.

CHAIR SEATON asked which vessels would be included under the moratorium.

Number 0550

REPRESENTATIVE WEYHRAUCH replied that it includes everything from a skiff to a 100-foot yacht.

CHAIR SEATON asked, "Is this a participation year ... or is it that you've just had a license in the past?"

REPRESENTATIVE WEYHRAUCH replied that it would reflect recent participation, rather than just having been licensed.

CHAIR SEATON referred to the commercial fisheries' fish ticket information which demonstrates participation and asked if state documentation exists to assist in determining participation.

REPRESENTATIVE WEYHRAUCH replied that there are ways to determine who has a license but said that he didn't know what data was kept by the state regarding who participates as a charter boat operator.

Number 0680

REPRESENTATIVE OGG asked if, by receiving a commercial tag, charter vessels were considered [part of] the commercial fishery.

REPRESENTATIVE WEYHRAUCH responded that [the fishery] was not treated as a commercial fishery, however he mentioned that an allocation on the salmon harvest exists. He noted that there was a legal case on the type of gear and operations used by charter fishermen; it's handled different ways by different administrative bodies, he said.

REPRESENTATIVE OGG asked if the tag was a commercial tag.

REPRESENTATIVE WEYHRAUCH replied that it was a charter tag issued by the CFEC.

REPRESENTATIVE OGG asked if a plastic card was involved.

REPRESENTATIVE WEYHRAUCH said, "No, not when they harvest."

REPRESENTATIVE OGG commented that there was a dramatic increase in the fishery during 1992-1996, but recently participation has been leveling off. He asked if the logbook data was based on a voluntary system.

REPRESENTATIVE WEYHRAUCH replied that he wasn't sure whether this was voluntary.

Number 0824

REPRESENTATIVE OGG explained that the data shows that perhaps 55 to 60 percent of the total amount of people who have these licenses, and who are registered, are actually filling out the logbooks. He asked if the market is currently saturated.

REPRESENTATIVE WEYHRAUCH replied that he didn't know.

CHAIR SEATON wondered whether a person who was chartering for rockfish would also be eligible to charter for other species in the sport fish charter vessel fishery.

REPRESENTATIVE WEYHRAUCH replied, "I think the intent is broader."

Number 0914

BLAINE HOLLIS, Assistant Attorney General, Natural Resources Section, Civil Division (Juneau), Department of Law (DOL) testified that he wanted to discuss the legal implications and issues involved with HB 281. He said he would primarily confine his comments to constitutional issues, while Mary McDowell [CFEC] would be suggesting amendments and making technical clarifications.

Number 1046

MR. HOLLIS said that whether or not this is a limited entry system or a moratorium, it has the effect of limiting access to these fisheries. Therefore, it raises constitutional implications under "the common use equal access no exclusive right of fisheries clauses" in the constitution, which generally provide broad access to Alaska's fisheries. The question of whether this is constitutional under the limited entry amendment is the crux of the constitutional issue. Mr. Hollis asked, "Does it fall within the ambit of the limited entry amendment? If it does, it's probably constitutional. If it doesn't, it probably isn't."

MR. HOLLIS said the first question would be whether the limited entry amendment applies to these types of fisheries. Historically, the limited entry amendment has only been applied in the context of commercial fisheries. Enacted in 1972, it was primarily intended to apply to the salmon fishery and since that time has been applied to other commercial fisheries. He said he

is not aware that it has been applied to a sport fishery or a guided charter fishery. He said that although it's far from clear, the limited entry amendment is probably broad enough in scope to cover this because it doesn't contain language that limits it to any particular type of fishery.

MR. HOLLIS said the question then becomes whether the bill comports with the requirements of the amendment itself because the amendment specifies certain purposes that must be achieved. Those purposes are: resource conservation, avoiding economic distress [among fishermen] and those dependent upon fishermen for a livelihood, and efficient promotion of aquaculture in the state. He told the committee that those are the purposes for which the legislature is permitted to limit entry into a fishery.

Number 1196

MR. HOLLIS continued that the Alaska Supreme Court has stated in a number of cases, that under the limited entry amendment, any limited entry system must impinge as little as possible on free access. This principle of least possible impingement stands for the proposition that access can only be limited if it's necessary to serve those purposes, previously enumerated, and only to the extent that it is necessary to serve those purposes. He said that it's important, whenever entry is limited into a fishery, to build a factual record that supports those conclusions because if it's challenged, it will be necessary to demonstrate to a court that there's a factual basis for the action that was taken. The factual basis needs to support the conclusion that it was necessary to limit entry into that particular fishery and that it was necessary to limit it at "the level that you did" so that "you're not being more restrictive than you need to be, either in terms of the number of fisheries you're limiting or the extent, [or] the number of participants you're allowing. You need to ensure that, that impingement is as small as possible to achieve the purpose," he said.

Number 1288

MR. HOLLIS told the committee that historically, the decision of whether to limit entry into a fishery and the job of building a factual record to support that decision has been left to the CFEC. Under the Limited Entry Act, the legislature created a framework for making those decisions and it includes a record-building and regulatory process. This legislation would essentially bypass CFEC and impose a system, and if the

legislature is going to do that, it's important that records exist so that the DOL can defend this decision to limit entry into these fisheries. He said, "We're talking about all sport charter fisheries, both fin fish and shell fish throughout all of Southeast Alaska," which is a broad area and a broad group of fisheries.

MR. HOLLIS said it would also be helpful to include legislative findings with the bill, such as projections of the fisheries becoming a certain size, or noting what the anticipated effects would be on conservation, fish stocks, or economics of the people involved, if the fishery were allowed to expand.

Number 1465

CHAIR SEATON asked about the number of charter vessels registered in Southeast from 1982 to 2002. He said there are several different sets of data, but the set from 1998 through 2002 shows a consistent number of vessels. He wondered, with the same number of vessels participating over the past five years, what justification would be necessary in order to limit participation in the charter industry.

MR. HOLLIS replied that the data showing stability or even a decline in numbers creates a problem and raises the issue of whether this is, in fact, necessary. He said that facts revealing that anticipated growth of the fishery might have negative consequences either for the stocks or the economics of the fisheries could provide a basis.

CHAIR SEATON questioned how the moratorium might effectively be constructed if the number of vessels participating during the past five years had been inconsistent.

MR. HOLLIS responded that it could be structured a number of ways, but the overall goal would be to limit participation, either by the number of vessels or the number of guides. He said that the permits could be transferable, or given to the guides rather than the vessels, and that some of these methods don't raise constitutional issues. Once the threshold has been met that the limited entry system is necessary for "these purposes" then there is some flexibility in "how you want to structure it," he said.

CHAIR SEATON re-phrased his question and asked, "if we have a stable number of vessels that were participating, and even if they weren't the same vessels in the last five years, the

program that would be structured would have to, if we determine that it's necessary to limit the participation basically to that level ... have some structure in here that wouldn't allow those permits that participated three years ago to come back in under this moratorium and participate, which would allow the number to grow."

MR. HOLLIS replied that this notion was implicit in the idea of creating some sort of qualification system.

Number 1790

REPRESENTATIVE GUTTENBERG questioned, "Who owns the constitutional right?" He continued, "If this passes, I can still fish, I can still take my family out fishing. I can still take my friends out fishing." He noted that a commercial charter does not actually harvest fish.

MR. HOLLIS said complaints might come from fledgling charter operators who want to get into the business; the question is whether those people would raise the constitutional issue. He said, "In our view, they would." The court has previously held that hunting guides have standing under the equal access clauses of the constitution to challenge limitations on access to guided hunting and "we don't see any real significant differences between that and this."

Number 1874

REPRESENTATIVE BERKOWITZ mentioned that with hunting, the distinction was that the protection of a resource was at stake. He asked if sport fishing was putting an undue pressure on the resource, separate from other fisheries.

MR. HOLLIS deferred to ADF&G biologists to answer that question.

REPRESENTATIVE BERKOWITZ emphasized this as an important distinction because the bill proposes to circumscribe economic opportunity for individuals. The compelling state interest allowing for this would be protection of the resource, which was the basis for limited entry in the commercial fisheries.

CHAIR SEATON requested that Mr. Hollis repeat the three compelling principles that he alluded to in earlier testimony.

Number 1984

MR. HOLLIS said that to qualify under the limited entry amendment, any system that limits entry must be narrowly tailored to serve certain purposes, and those purposes are: conserving stocks, [preventing] economic distress among fishermen and those dependent upon them for a livelihood, and promoting efficient development of aquaculture in the state.

Number 2045

REPRESENTATIVE BERKOWITZ inquired about evidence of there being current economic distress, given the seemingly five-year stable period whereby the number of vessels has been maintained, within about 5 percent.

MR. HOLLIS said this was a crucial question, but deferred to other witnesses.

CHAIR SEATON questioned the correlation between prevention of economic distress among fishermen and those economically dependent upon fishermen, in light of the moratorium possibly being applied to owners of vessels "who may not ever go on the water ... Princess Cruise Lines or something."

MR. HOLLIS said he didn't know "if there were any hard and fast rules there."

CHAIR SEATON asked about moratorium rights, or some kind of limited entry rights to vessel owners who may not be participating as fishermen.

MR. HOLLIS said this area wasn't altogether clear, but that if the notion was to give an "economic windfall" to certain people, he wasn't sure that this was the type of idea embodied in the limited entry amendment. The most often cited idea for limited entry was that the fisheries had become so large, nobody could make a living, that is to say, "There's only so many fish to be caught. If you've got too many people trying to catch them, nobody can make a living."

Number 2202

REPRESENTATIVE WEYHRAUCH asked if a moratorium program, similar to the one established in this bill, had ever been challenged in Alaska.

MR. HOLLIS said that there had been a moratorium for the charter fleet on the Kenai which recently came under challenge and was

withdrawn. He said he was not aware of one that had actually gone to court.

REPRESENTATIVE WEYHRAUCH asked if one has been challenged that had reached a decision.

MR. HOLLIS replied, "Not that I know of."

REPRESENTATIVE WEYHRAUCH asked, regarding any cases discussing limited entry, if any of those cases deal with a moratorium that was imposed prior to the limited entry program in that fishery.

MR. HOLLIS replied, "Not that I know of."

REPRESENTATIVE WEYHRAUCH said, "So there is no case, as I understand, that says the legislature needs to establish a record before establishing a moratorium program."

MR. HOLLIS said he wasn't aware of a case that said that, specifically.

REPRESENTATIVE WEYHRAUCH asked, "A limited entry program is different from a moratorium program, isn't that correct?"

Number 2271

MR. HOLLIS responded, "Not in my view, no." He said that in his view, any system that limits access to a fishery, whether it's called a limited entry system or a moratorium is by its nature, a limited entry system because it limits who can participate to a certain specified group.

REPRESENTATIVE WEYHRAUCH asked if there were any state or federal cases that support Mr. Hollis's view.

MR. HOLLIS responded, "Not that I know of."

MR. WEYHRAUCH asked if the phrase "limited entry" appeared in the bill.

[Mr. Hollis's reply was indiscernible.]

MR. WEYHRAUCH said, "It does not appear."

MR. HOLLIS replied, "Not that I've seen."

Number 2303

MR. WEYHRAUCH said, "It's not a limited entry bill; this is a moratorium bill, isn't that right?"

MR. HOLLIS replied, "That is the way it is denominated."

MR. WEYHRAUCH said he wanted that clear on the record.

Number 2319

REPRESENTATIVE OGG said he wanted to explore the constitutional issue regarding economic distress to fishermen or those dependent on fishermen. He said, "We're dealing with people who can say that they're not fishermen because they don't actually fish. The sport charter guy provides a platform." He asked if a moratorium or limited entry had ever been applied to people who don't actually fish.

MR. HOLLIS replied that this is the only instance he's aware of, other than the instance in the Kenai, where there was an attempt to limit entry into the charter sport fishery. He referred to the instance made to limit hunting guides, whereby constitutional issues came into play.

REPRESENTATIVE OGG commented that the Limited Entry Commission has established a system that deals with these sorts of issues and takes care of gathering records and factual information. He mentioned that if the legislature were to do this, it might take a long time.

MR. HOLLIS noted that records could be put together after the fact, but it would be best if it was done as part of the process. He reiterated that it would also be best if legislative findings could be included in the bill because that would make HB 281 much more defensible.

Number 2449

REPRESENTATIVE OGG said he didn't really want to go down that road, and asked if a simpler avenue might be for the legislature to make a definitional statement that "sport charter vessels are a commercial fishery." He wondered if that route were taken, whether everything else could be decided through the Board of Fisheries and the Limited Entry Commission, because then, those issues would be taken up by the experts.

MR. HOLLIS replied that moving this issue to CFEC was an alternative approach. A definitional change might work but he said he would need to review the statutes.

REPRESENTATIVE OGG suggested that further analysis be done on making a definitional change or on authorizing CFEC.

CHAIR SEATON clarified that previous legislation allowed, for the first time, for limited entry permits to be assigned to vessels; these two cases involved the Weathervane Scallops and Korean Hair Crab fisheries.

Number 2594

REPRESENTATIVE SAMUELS asked if, during the moratorium, ADF&G would evaluate whether there was a shortage of the resource.

REPRESENTATIVE WEYHRAUCH replied that research would have to be conducted, and that even though there was an automatic effective date, the prelude to this was, "again, to stop the music, see where this is, see what the impacts of this charter fishery is on the resource and on those fishing," and this would involve collection of that data.

REPRESENTATIVE SAMUELS asked if there were examples of moratoriums, other than the Kenai River.

MR. HOLLIS said he wasn't aware of any, but perhaps Representative Weyhrauch was aware of others.

REPRESENTATIVE BERKOWITZ asked if there was a corresponding federal fisheries issue that involved stellar sea lions.

REPRESENTATIVE WEYHRAUCH answered that there had been a moratorium on fisheries in the Bering Sea that was overtaken by other programs. The state imposed a moratorium on vessels in the Bering Sea crab fishery, in particular, the Korean Hair Crab and the Weathervane Scallops fisheries. He told the committee that bills had previously been introduced to establish moratoriums on charter vessels, statewide, perhaps by [former] Representative [Alan] Austerman. There was also a discussion of a moratorium or limited entry on vessels in the Kenai area, involving a dispute over fresh water with DNR.

CHAIR SEATON pointed out that distinctions needed to be drawn between federal fisheries management that doesn't have the constraint of Alaska's constitution, and state management and

state waters which are constrained by equal access and limited entry.

Number 2736

MARY McDOWELL, Commissioner, Commercial Fisheries Entry Commission (CFEC), Alaska Department of Fish & Game (ADF&G), testified that the concern which generated interest in this bill and the desire for tools to control charter growth in some areas in Alaska, if and when it's needed, was understandable. She mentioned that CFEC had not been consulted in the drafting of HB 281 and neither were ADF&G or DOL, to her knowledge. She said that over the past 10 years, attempts at developing effective tools have been made and have included mandatory reporting of charter activity, legislation to establish a charter occupational licensing system, and proposed constitutional amendments.

MS. McDOWELL reported that although none of those pieces of legislation have made it very far, there is merit in these approaches being taken as a first step because of providing data upon which to formulate a program in the future. She said while HB 281 is well intentioned, "if we try to leap-frog over those initial steps, ... any efforts at doing a moratorium or a limitation will be risky and subject to challenge and could unintentionally actually do harm to the charter fishery and the development of fisheries statewide."

Number 2837

MS. McDOWELL continued that while this is called a moratorium, for all practical purposes it creates a limited entry system, with transferable permits for value. Although it has a sunset provision, once these privileges are granted and start to transfer among people, this creates a constituency to extend or repeal that sunset date or to create some kind of permanent limitation to ensure continued use privileges for those who get in under the moratorium. She explained that this goes beyond the scope of any moratorium in commercial fisheries. She said that language in the bill indicates that the tabs are not transferable for value, but other language in the bill indicates that a vessel with a use privilege attached to it has an increased value, which seems to value the tab in a transfer. She said, as indicated by DOL, the practical application would be similar to a limited entry program and would need to be administered along those lines.

Number 2896

MS. McDOWELL continued that one general concern was that the bill itself could generate a rush into the charter industry. Up until the effective date of the bill, any participation would count towards being grandfathered into these permits. She said that even if the bill never passes, any indication of its movement is a little bit risky in terms of encouraging an influx of new vessels, which could harm the very industry which is seeking protection.

MS. McDOWELL said that even if the bill passes, it allows tabs to be transferred to different vessels during the moratorium without any size restrictions. She explained that one could be grandfathered in with a 16-foot skiff and transfer this to a 50-foot vessel. She pointed out that in Southeast, there is a six-line limit on charter fisheries; one can't have more than six lines in the water at a time. That provides some constraint, but of course, the bigger the vessel, the better the capability to take all six passengers and to fish in rough weather as well. The fact that there are no vessel capacity restrictions for these transfers indicates that you couldn't fully contain the size and fishing power of the fleet through these measures.

Number 2958

MS. McDOWELL said that DOL did a good job of explaining the legal and constitutional issues. From a practical standpoint, HB 281 would involve an enormous amount of monitoring and implementation by CFEC.

TAPE 03-27, SIDE B

Number 2963

MS. McDOWELL continued that the goal [of a moratorium] would be to "get a lid on" and to maintain the current numbers, but with the current open access system, ADF&G figures that participation levels have been stable or have slightly declined in Southeast. She said that within those numbers there is a high turnover rate; people are "coming and going." Given that situation, the effect of implementing a moratorium or a limitation would be like a freeze, and would thereby be "stopping the music in a game of musical chairs," she said.

MS. McDOWELL pointed out that if the legislature decides that restricting access is necessary and is justified for the Southeast charter fishery, the "least impingement" issue would

still need to be addressed, as it is not only a constitutional issue but is also a socioeconomic issue because HB 281 would freeze areas in all of Southeast, not just in significant areas of growth where public concern has been identified.

MS. McDOWELL told the committee that CFEC has experience with legal pitfalls and logistical issues, since it has limited 66 commercial fisheries over the last 30 years. Ms. McDowell referred to the overview of the limited entry program that she presented to the House Special Committee on Fisheries [meeting of January 29, 2003]. She said that a legal framework, the Limited Entry Act, was established, and the Limited Entry Commission is the administrative agency that reviews certain fisheries and areas and decides if limited entry is justified and legally defensible, and if so, proposes a limited entry system for that particular fishery in that particular area. This is followed by the public hearing process.

Number 2798

MS. McDOWELL said that HB 281 proposes a different approach to this generic framework. She referred to fundamental principles that were built into the limited entry system by the legislature, for commercial fisheries. One is that the permits are issued to the skippers, not to the vessels' owners; permits go to individuals, not to entities or corporations. She said that there is one exception, which is the bill that passed last year for the Bering Sea fisheries, which are very small. The moratoriums in those fisheries amount to twelve boats in one fishery and twenty-five boats in the other. A permit limitation has been proposed but hasn't yet been done.

MS. McDOWELL continued by saying that HB 281 is a dramatic departure from the principle that's been applied to the 66 fisheries that have been limited, to date. The privileges would go to the owners of the vessels, whether or not they run those vessels and whether or not those owners are companies or people. She said that in commercial fisheries, a person could grandfather into no more than one permit in a given fishery, whereas under this bill, a given entity could grandfather into many permits which would then be transferable. She continued that under commercial limited entry, even after the initial limitation, a person could only hold one permit in a given fishery. The legislature made an exception so that salmon fishermen could hold a second permit for the purpose, not of use, but of consolidation. This difference of approach allows for an entity being grandfathered in, buying other permits, and

potentially controlling the charter fishery in an area if that was desired and affordable.

MS. McDOWELL said that even as a moratorium, this establishes a pattern of granting use privileges that would be tough to reconstruct after four years. She said it allows for new participants, both humans and vessels, to get into the fishery over the course of the moratorium, and it would be tough to go back and create another structure; flexibility to use other structures at a later date could be lost.

Number 2650

MS. McDOWELL continued that from the agency's standpoint, there was concern over the large amount of CFEC time and resources that would be necessary for implementation. Over 650 vessels were participating last year in the first of the two qualifying years, so this limitation action would be one of the largest that CFEC has undertaken in 25 years - to look at one fishery and deal with that number of applicants. A new computer system would need to be set up to track vessel ownership, transfers, and so forth, because a framework has not already been established to run the program.

Number 2585

MS. McDOWELL said that in commercial fishery limitations, about 10 to 50 percent of all applicants raise claims that require an appeals process. In commercial fisheries, fish tickets are filled out, and a disinterested third party reviews state records to determine who had actual participation. In these fisheries, the operators fill out logbooks; having never dealt with this form of data, it's not known whether there will be inconsistencies or problems with that data, or at what point this will require an appeals process. Spelling out an appeals process is something that needs to be added to the bill. She said that if state records don't show adequate participation, people have the right to be granted an appeals process. She commented that CFEC doesn't know what the burden of appeals would be.

MS. McDOWELL said that since the 1980s, 25 percent of CFEC's staff has been lost due to budget cuts. A small fiscal note was submitted but it doesn't really address the impacts on CFEC because most of the impact will be on the agency's experienced staff such as those involved with licensing or adjudication.

Number 2478

MS. McDOWELL concluded by saying that while CFEC has concerns regarding administering the program, and believes that there are other more effective and legally defensible approaches to dealing with the growth in the charter fishery. The commission takes direction from the legislature and will do its best to implement whatever is decided upon. If HB 281 is pursued as an approach, some aspects need to be clarified. She referred to the committee packet containing notes on specific amendment areas in the bill. She also mentioned setting up an adjudicatory process and addressing the question of having the authority to charge fees for annual renewals.

Number 2388

CHAIR SEATON asked if the mandatory logbooks applied to all charter fisheries in Southeast or just to the salmon fishery.

MS. McDOWELL indicated that this was applicable to saltwater fisheries.

CHAIR SEATON asked if this also applied to shellfish.

MS. McDOWELL replied that the logbooks don't have a category for shellfish, but deferred to the Division of Sport Fish to better answer the question.

CHAIR SEATON asked if CFEC could generate the turnover rates from the last five years.

MS. McDOWELL replied that the Division of Sport Fish could provide that information. She clarified that the commercial vessel licenses issued by CFEC are done on behalf of ADF&G. The ADF&G requires a commercial vessel license if one is involved in the charter fishery, similar to CFEC's requirement for commercial fisheries. Since CFEC is already set up for this, the commission administers the program for ADF&G. People apply for a charter vessel license and are issued the same kind of license that a commercial vessel gets. At that point, to operate in the charter fisheries, the applicant must go through ADF&G to register as a charter operator. Part of the problem of administering this requires that tabs be issued to the owners of vessels, yet "we don't actually record who owns the vessel." Data on ownership is not solid because often the user of that vessel is the one who does the licensing.

CHAIR SEATON asked if ADF&G would have "a better handle on this."

MS. McDOWELL confirmed that ADF&G could address comments related to the logbooks.

Number 2271

REPRESENTATIVE SAMUELS asked if a moratorium had been done regarding a dive fishery.

MS. McDOWELL answered yes, that the legislature enacted a moratorium in the commercial dive fishery in Southeast in 1996. It was a four-year moratorium and the CFEC subsequently did a limited entry program in each of the dive fisheries.

REPRESENTATIVE SAMUELS asked if evidence of pressure on the resource had led to the moratorium.

MS. McDOWELL replied, "yes, and I believe the legislature built a record." She said the numbers in those fisheries were skyrocketing.

Number 2230

REPRESENTATIVE OGG questioned what prohibits CFEC from receiving an inquiry from people currently in the industry, asking the commission to go through the analysis and adopt a limited entry fishery program.

MS. McDOWELL said that the first few sections of the Limited Entry Act refer to the purposes of the commission. It would be the prerogative of the legislature to create a similar structure, either by amending CFEC's statutes so that CFEC would do this in commercial and charter fisheries, or to create a separate limited entry for charter fisheries. Currently, CFEC's statute is specific.

CHAIR SEATON wondered if there was a problem involved with the idea of charter operators not being the actual fishermen and asked how this "fell within the regulations."

MS. McDOWELL replied that this was a legal issue that might be raised in a challenge. Regarding the constitutional amendment referring to economic distress among fishermen, under the constitution, the people doing the charter operation are fishermen. The DOL's analysis has recently been that as long as

the limitation met all of the requirements, you "might be able to make that fit." In the past, the legislature's own counsel has been that "it would get struck down" if the limited entry constitutional amendment was applied to charter fisheries.

CHAIR SEATON said his concern was that the number of vessels would be limited although there would be no limit on the number of people being taken out on the boats: Therefore, "We're not really limiting the number of fishermen on the grounds," he said.

MS. McDOWELL replied that there would be a six-line limit imposed by the Board of Fisheries.

Number 2066

ROB BENTZ, Deputy Director, Division of Sport Fish, Alaska Department of Fish & Game (ADF&G), testified that he was speaking for the department as well as the division, as HB 281 had been discussed with the commissioner. He said, "We agree with and support the concerns and recommendations voiced previously by DOL and CFEC;" this bill was not a response to providing for "the protection of the resource." He said [HB 281] was seen as a result of competition for the resource, noting that there have been allocation conflicts between the charter groups and commercial groups, and more recently there have been conflicts between the charter groups and non-charter anglers. The level of conflict varies between ports, he said.

MR. BENTZ continued that there are only two species of marine fish at this time in Southeast with allocations assigned: king salmon and lingcod. The Board of Fisheries has adopted a region-wide king salmon management plan and in most cases the various user groups stay within that allocation. Lingcod have been allocated between the sport and commercial user groups, with a management system devised by the department. He said the department views this issue as an allocation rather than a conservation issue.

NUMBER 1868

MR. BENTZ said that regarding the issue of economic distress and turnover, "I can't answer whether there's economic distress or not; I don't know the criteria." But, he said he did know that there is a large amount of turnover which varies by port, with the larger ports having higher turnover rates. He said that regarding the charter vessel logbook, a mandatory statewide

program went into effect in 1998, and the charter business owner is required to register. Operators of the vessels, if different from the owners, are required to register on an annual basis. Logbooks are required for each charter vessel in saltwater, not in fresh water, and not for vessels-for-hire without an operator, he explained.

REPRESENTATIVE WEYHRAUCH asked if charter boat data was collected from the owner and the operator of the vessel.

MR. BENTZ replied that the owner or agent of the owner "comes in and gets the logbooks," not the operators.

REPRESENTATIVE WEYHRAUCH asked if the owner and the operator were treated differently.

MR. BENTZ confirmed this to be the case.

REPRESENTATIVE WEYHRAUCH said that CFEC had expressed concern that it's "the skipper that mattered," and he asked if this was correct.

Number 1696

MR. BENTZ replied that there is no standard pattern. He explained that in some cases, the owner will pick up 10 logbooks for a lodge and issue those to 10 operators. The operators fill out the logbook because the information needs to be filled out before the fish are offloaded. In some cases, the operators sign the bottom of the logbook form on a weekly basis. In other cases, the owner signs all 10.

REPRESENTATIVE WEYHRAUCH surmised, "It's different in this fishery ... where you're dealing with owners and operators, not just a skipper of the vessel".

MR. BENTZ indicated agreement with Representative Weyhrauch's assessment.

REPRESENTATIVE WEYHRAUCH continued, "So we have already established ... that there is a difference, and you do know the operators and owners sometimes are different than in the regular limited entry programs for commercial fisheries. Is that right?"

MR. BENTZ concluded by saying that a myriad of different situations occur. For example, some operators who have more

clients than expected may lease boats, or may lease a boat and lease a skipper with it.

CHAIR SEATON interjected and announced that testimony would be taken from people who would not be able to testify at the next House Special Committee on Fisheries meeting.

Number 1519

DON JOHNSON, representing himself, testified that pre-existing law affects this bill. He referred to the Alaska Supreme Court case, Rutter v. Alaska Board of Fisheries, August 7, 1998. Mr. Johnson cited Sec. 16.05.940(29) which reads in part:

"sport fishing" means the taking or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to the pole or rod, which is held in the hand or closely attended, or by other means defined by the Board of Fisheries.

MR. JOHNSON continued, saying although charter vessel operators may be engaged in commercial activity, that of guiding sport fishing, the fish are taken for personal use and not for sale or barter. As the law now stands in Alaska, charter vessel operators acting as guides for sport fishers are involved in a sport, not a commercial taking of fish. Therefore, the provisions of Sec. 16.43.140 and the Limited Entry Act are not implicated.

Number 1377

MR. JOHNSON summarized that what's being said is, "These guys are not commercial fishermen; therefore, the Limited Entry Act doesn't come into play." He said he agrees with DOL that a moratorium and limited entry are the same, whether it lasts for 10 minutes or 10 years. He said the designation of [sport fishermen] as commercial fishermen and grafting them into the Limited Entry Act would be similar to when the state attempted to define hunting guides as limited entry participants; this was found to be unconstitutional. He said what was called for was a vote of the public. He agreed that addressing HB 281 would encourage people to "jump into this industry," thereby exasperating the problem.

Number 1254

CAROL DOOLEY, Owner, Ketchikan Sport Fishing, testified that her business serves the cruise line industry by providing four-hour charters. She said in 2003 the fleet will consist of 23 boats, which predominately fish the Terminal Hatchery area at Mountain Point, south of Ketchikan. She said her company brings in over \$1 million annually to the local economy and provides over 25 full-time jobs. Clients spend thousands of dollars on custom processing services as well. She said that even with these sizable contributions, the charter fishing business has always been a "break-even business for her family and charter boat owners." She said the cruise line industry is planning for continued growth in Alaska, and she has been planning to grow along with them. She reported that a 30-slip marina was being built for her company's use and that in the next five years the plan is to expand to a 30-boat fleet. She pointed out that with a moratorium, those plans for expansion to which the business has already committed will not be able to happen.

Number 1163

MS. DOOLEY said that HB 281 would likely devastate her company, a company built by her parents years ago; this was the first company to offer charter fishing to the cruise line companies, and is not a new operation "just setting up shop." She said that other companies, similar to hers, would be unfairly affected by this bill. She said that she knows of two companies in Ketchikan, one in Sitka, one in Skagway, and one in Juneau that provide charters to the cruise line industries and that will most certainly lose millions of dollars that would otherwise go to support the local Southeast economy.

MS. DOOLEY asked, "Can we really afford, at times of economic losses in the timber and commercial fishing industries, to stagnate ourselves in the only growth sector we have, the tourism charter fishing industry?" She continued, "Our money fish is humpies and there is certainly no shortage of humpies around here! We catch a handful of kings each year ... companies like mine who are harvesting predominately humpies, bring in millions ... to local Southeast economies and we are not impacting areas with a high abundance of treaty fish ... this bill encompasses innocent Alaskan businesses and charter boat operators who are not adversely impacting the fishery resource."

CHAIR SEATON indicated HB 281 would be held over.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at approximately 10:00 a.m.