

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

May 16, 2003
7:48 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Peggy Wilson, Vice Chair
Representative Dan Ogg
Representative Ralph Samuels

MEMBERS ABSENT

Representative Cheryll Heinze
Representative Ethan Berkowitz
Representative David Guttenberg

COMMITTEE CALENDAR

HOUSE BILL NO. 22

"An Act relating to commercial fishing permit brokers; and providing for an effective date."

- MOVED CSHB 22(FSH) OUT OF COMMITTEE

HOUSE BILL NO. 309

"An Act prohibiting the release of nonindigenous predatory fish into public water."

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 25, Supporting Alaska's independent commercial fishermen and Alaska's fish processing industry and opposing the establishment of processor quota shares.

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 22

SHORT TITLE: COMMERCIAL FISHING PERMIT BROKERS

SPONSOR(S): REPRESENTATIVE(S) WEYHRAUCH

Jrn-Date	Jrn-Page		Action
01/21/03	0037	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0037	(H)	READ THE FIRST TIME -

			REFERRALS
01/21/03	0037	(H)	FSH, RES, FIN
02/21/03		(H)	FSH AT 8:30 AM CAPITOL 124
02/21/03		(H)	Heard & Held
			MINUTE(FSH)
03/07/03		(H)	FSH AT 8:30 AM CAPITOL 124
03/07/03		(H)	-- Meeting Canceled --
03/10/03		(H)	MINUTE(RES)
03/19/03		(H)	FSH AT 8:30 AM CAPITOL 124
03/19/03		(H)	Heard & Held
03/19/03		(H)	MINUTE(FSH)
03/28/03		(H)	FSH AT 8:30 AM CAPITOL 124
03/28/03		(H)	Scheduled But Not Heard
05/16/03		(H)	FSH AT 7:30 AM CAPITOL 124

BILL: HB 309

SHORT TITLE:PROHIBIT RELEASE OF PREDATORY FISH

SPONSOR(S): REPRESENTATIVE(S)WOLF

Jrn-Date	Jrn-Page		Action
05/08/03	1457	(H)	READ THE FIRST TIME - REFERRALS
05/08/03	1457	(H)	FSH, RES
05/08/03	1457	(H)	REFERRED TO FISHERIES
05/16/03		(H)	FSH AT 7:30 AM CAPITOL 124

BILL: HJR 25

SHORT TITLE:COMMERCIAL FISHING & PROCESSOR SHARES

SPONSOR(S): REPRESENTATIVE(S)SEATON

Jrn-Date	Jrn-Page		Action
04/16/03	1008	(H)	READ THE FIRST TIME - REFERRALS
04/16/03	1008	(H)	FSH, STA, RES
04/16/03	1008	(H)	REFERRED TO FISHERIES
04/22/03	1058	(H)	COSPONSOR REMOVED: HEINZE
04/23/03		(H)	FSH AT 8:30 AM CAPITOL 124
04/23/03		(H)	Heard & Held
			MINUTE(FSH)
04/25/03		(H)	FSH AT 8:30 AM CAPITOL 124
04/25/03		(H)	Heard & Held
			MINUTE(FSH)
05/16/03		(H)	FSH AT 7:30 AM CAPITOL 124

WITNESS REGISTER

LINDA SYLVESTER, Staff

to Representative Bruce Weyhrauch
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of Representative Weyhrauch, sponsor of HB 22, and addressed proposed changes to HB 22.

JOHN MITCHELL

Alaska Permits Services
Bellingham, Washington

POSITION STATEMENT: Testified in support of HB 22.

REPRESENTATIVE KELLY WOLF

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HB 309.

LANCE NELSON, Assistant Attorney General

Natural Resources Section
Civil Division (Anchorage)

Department of Law

Anchorage, Alaska

POSITION STATEMENT: Answered questions pertaining to HB 309.

KELLY HEPLER, Director

Division of Sport Fish

Alaska Department of Fish & Game (ADF&G)

Juneau, Alaska

POSITION STATEMENT: Offered information pertinent to HB 309.

CHRIS KNIGHT, Staff

to Representative Paul Seaton

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Spoke to the proposed changes to HJR 25.

ACTION NARRATIVE

TAPE 03-29, SIDE A

Number 0001

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at 7:48 a.m. Representatives Seaton, Ogg, and Samuels were present at the call to order. Representative Wilson arrived as the meeting was in progress.

HB 22-COMMERCIAL FISHING PERMIT BROKERS

CHAIR SEATON announced that the first order of business would be HOUSE BILL NO. 22, "An Act relating to commercial fishing permit brokers; and providing for an effective date. [Before the committee was Version Q, 23-LS0133\Q, Utermohle, 3/18/03. In the committee packet was a new proposed committee substitute (CS), Version V.]

CHAIR SEATON noted that while the committee was awaiting a quorum, discussion of HB 22 would begin.

Number 0086

LINDA SYLVESTER, Staff to Representative Bruce Weyhrauch, Alaska State Legislature, testified on behalf of Representative Weyhrauch, sponsor of HB 22, and introduced the proposed changes to the bill, saying that Version V incorporated a substantive change found [under Sec. 16.10.570] on page 3, line 23, paragraph (b). She said that for the protection of consumers, use of an escrow account was sought for situations in which funds were being handled by the broker. She noted that previous testimony had indicated that the cost of the escrow account would be onerous in some situations, as it would cost between \$85 and \$225.

Number 0200

MS. SYLVESTER continued that there had been discussion of setting a floor or ceiling so that the small transactions would not be required to use an escrow account but that approach seemed overly complex in the final analysis. A result of discussions with several brokers, including John Mitchell and Stuart Ricky (ph) was that there ought to be a way for people to not use an escrow account. She said there are situations in which a cashier's check is being held, the check is in the name of the seller and the broker holds that check in a file; the feeling is that this is a secure way of transacting.

Number 0309

MS. SYLVESTER explained the changes incorporated in paragraph (b), saying that if a broker is going to negotiate the money - to hold it and put it into a separate account - he/she must use an escrow account. However, if the broker is only going to hold a cashier's check, then he/she is allowed to do that, and that is "thought to be an adequate protection for that". She said that occupational licensing provides a modest protection. The fiscal note on occupational licensing was amended by the

director and went from a high to a low number for a biennial license, with the cost being borne by the brokers themselves. This would provide some protection for consumers in the state because brokers would be subject to losing control. The sponsor's hope is that the changes could be incorporated before the end of this session so that next year, HB 22 could be taken up by the House Resources Standing Committee.

Number 0457

CHAIR SEATON referred to page 3, line 17, and mentioned that "handle or facilitate" had been changed to "broker", which had been conceptually defined as being an agent for others in negotiating contract purchases or sales in return for a fee or commission, for example. He questioned whether the intention was to remove the verb "broker".

Number 0565

MS. SYLVESTER said her focus had been on the substantive change made in paragraph (b) [page 3, line 23], and deferred to the committee aide and to the materials to which Chair Seaton was referring.

CHAIR SEATON noted that a motion could be made at the appropriate time to change "handle or facilitate" to "broker" throughout the bill.

Number 0635

REPRESENTATIVE OGG reminded the committee that this had previously been suggested by Representative Berkowitz.

CHAIR SEATON said that when a quorum was present, Version V needed to be adopted, and after that [Conceptual Amendment 1] and a definition of broker could be addressed.

Number 0684

JOHN MITCHELL, Alaska Permit Services, Bellingham, Washington, said he had been in the brokerage business for over 20 years and was also been a fisherman in Bristol Bay. He provided the following testimony:

Trust, confidence, a reliance or resting of the mind on the integrity, justice, or other sound principal of another person. I believe the public is deserving of

trust. The time has come to provide the public the assurance of trust when dealing with the brokerage industry. To ensure that each party will receive what they bargained for. The issue of trust has once again become a matter of attention due to the neglect of one within the brokerage industry that caused the public harm and broke the law.

It may seem difficult to create a cure-all solution. However, to take the initiative to create some simple forms of safeguards surely is warranted today - occupational licensing for this industry which is currently un-regulated. Independent escrow account for the deposit and disbursement of all funds, unless the parties mutually agree for the substitution of a cashier's check as the form of payment, made payable to the seller and to be held and handled by the broker, under written instructions of the parties: I strongly endorse these two proposed recommendations and requirements contained in this bill.

CHAIR SEATON announced that public testimony was closed and stated that HB 22 would be put aside until a quorum was present.

HB 309-PROHIBIT RELEASE OF PREDATORY FISH

CHAIR SEATON announced that the next order of business would be HOUSE BILL NO. 309, "An Act prohibiting the release of nonindigenous predatory fish into public water."

CHAIR SEATON said discussion would be begin on HB 309 until a quorum was present.

Number 0903

REPRESENTATIVE KELLY WOLF, Alaska State Legislature, sponsor of HB 309, testified that the bill would make it illegal to transport predatory game fish and would increase that offense to a felony. He said that Alaska currently considers this as a misdemeanor unless a permit is issued by the Alaska Department of Fish & Game (ADF&G). He told the committee that in Southcentral Alaska, through the means of "bucket biology," the transportation of northern pike, a nonindigenous, predatory fish has been expanding through the fresh water systems. This expansion jeopardizes different indigenous species of anadromous fish such as trout, coho salmon, and king salmon. He said that the only way to eliminate northern pike is to use a chemical

poison, and the poison also kills everything in the water system. He cited the example of Davis Lake in northern California, where it cost the state a lot of money to poison the lake in order to kill off northern pike.

Number 1178

REPRESENTATIVE WOLF continued that some individuals wish to have this predatory sport fish expand into the Kenai Peninsula and up into [Matanuska-Susitna] valley. While in some parts of Alaska the fish is an indigenous species, this isn't the case in the Kenai Peninsula, considering the watershed and make-up of the ecosystem. Another issue is that within the last two years, yellow perch, which he doesn't think are indigenous, were transported and stocked in a lake by means of bucket biology. The issue is that individuals should not be changing the state's ecosystem and endangering the economy or ecology of the region, he stated.

CHAIR SEATON clarified that the discussion pertained to the proposed CS [Version I, 23-LS1097\I, Utermohle, 5/9/03].

Number 1379

CHAIR SEATON announced that there was now a quorum present in committee, and that there was a motion from Representative Wilson to put the proposed CS for HB 309, Version I, before the committee. [No objection was stated, and Version I was treated as adopted.]

CHAIR SEATON asked if the term "game fish" was being used.

REPRESENTATIVE WOLF responded that he did not object to that usage, noting that the expanded definition would not be inclusive of tropical fish.

Number 1473

REPRESENTATIVE OGG surmised that on page 1, lines 1, 4, 6, and 7, "game" would be inserted.

CHAIR SEATON acknowledged the foregoing as [Conceptual Amendment 1]. He asked if there was any objection. There being no objection, Conceptual Amendment 1 was adopted.

Number 1543

REPRESENTATIVE WOLF acknowledged that from a court of law's perspective, there was concern regarding the ambiguous aspect of "nonindigenous." He suggested that perhaps "nonindigenous" be struck from the title.

Number 1678

LANCE NELSON, Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law, testified that an element of the crime is that a person would have to knowingly release live, nonindigenous, predatory fish into a body of fresh water. It could be argued by defense counsel that the state has the burden of proof to show that no fish of that species has ever been present in that body of water; he said this might be a difficult task and burden to overcome.

Number 1775

CHAIR SEATON mentioned that perhaps the House Judiciary Standing Committee could address a number of these legal issues.

Number 1798

REPRESENTATIVE SAMUELS said, "Generally speaking, if you just said 'pike' you'd take care of 99 percent of the problem."

Number 1816

KELLY HEPLER, Director, Division of Sport Fish, Alaska Department of Fish & Game (ADF&G), said that just mentioning "pike" wouldn't be sufficient because other fish such as yellow perch have also been introduced; the bill needs to be broad enough to include other fish as well.

CHAIR SEATON voiced his concern regarding the removal of "nonindigenous". He pointed out that Representative Wolf was referring to non-native fish and said, "We're not talking about salmon eggs that are [moved] from one pond to the next."

REPRESENTATIVE WOLF replied that "nonindigenous" could be defined within the bill. He said he would like to move the bill to the House Resources Standing Committee and told the committee that during the interim he would commit to work with the Department of Law (DOL) on HB 309.

CHAIR SEATON asked the committee if "amend" should be placed on the bill [report] as well as the inclusion of a definition of "nonindigenous".

REPRESENTATIVE OGG questioned making this offense a class C felony. He gave the example of a fish farm in Washington State containing Atlantic salmon or other forms of salmon in which fish leave the pens and swim into Alaskan waters. He said that it was foreseeable that fish could swim up the streams, and that under this statute, a state of Washington citizen could be prosecuted.

CHAIR SEATON clarified that this would need to be a "knowing" release into a body of fresh public water.

REPRESENTATIVE OGG agreed that a person might know that the fish would eventually arrive [at that destination].

CHAIR SEATON said that fish traveling through the salt water and the ocean differed from fish being released knowingly into a body of fresh water.

Number 2121

REPRESENTATIVE OGG asked, if fish were released into one body of water with the knowledge that those fish might eventually end up in another body of water, "What's the difference?"

REPRESENTATIVE WOLF said the bill was written such that a person may not "knowingly release, or knowingly transport for release", which is similar to carrying that fish to Alaska and releasing it into fresh public water. He stated that if fish escape from a pen, swim through salt water, and eventually spawn in an Alaskan river, that's different altogether.

REPRESENTATIVE OGG cautioned that there should be not be any ambiguity, given that a class C felony might be placed on an individual.

Number 2206

REPRESENTATIVE WOLF said that one reason a class C felony was chosen was because the poisoning of Davis Lake had cost the [U.S. Fish & Wildlife Service] and the California Department of Fish and Game about \$1.7 million. He said that because of the actions of one individual or one small group, the state's resources could end up being spent.

Number 2263

REPRESENTATIVE WILSON asked what the penalty was for a class C felony.

REPRESENTATIVE SAMUELS responded that the penalty involved 364 days for a misdemeanor and 365 days for a felony.

REPRESENTATIVE OGG commented that he wasn't necessarily suggesting that the felony be lowered to a misdemeanor but rather, if this was going to be a class C felony crime, then the language needed to be very tight.

CHAIR SEATON asked if using the language "directly into a body of fresh water" would satisfy Representative Ogg's concern regarding ocean migration.

REPRESENTATIVE OGG replied that he would prefer that the language be reviewed by the attorney general's office and the ADF&G to make sure that it's tight.

REPRESENTATIVE WOLF said that he had already made the commitment to work with the ADF&G and DOL during the interim.

Number 2366

REPRESENTATIVE WILSON told the committee that since the bill isn't currently going anywhere, she would prefer that HB 309 be heard by the House Special Committee on Fisheries this January [2004].

REPRESENTATIVE WOLF said he would like to see the bill move to the House Resources Standing Committee.

REPRESENTATIVE WILSON repeated her suggestion that the House Special Committee on Fisheries review the bill at the beginning of next session.

REPRESENTATIVE OGG said he agreed with Representative Wilson. He stated that this was clearly a fisheries issue and that he would prefer sending on a bill that had been worked through.

REPRESENTATIVE SAMUELS stated that he agreed with Representative Ogg.

The committee took an at-ease from 8:25 to 8:28 a.m.

Number 2460

CHAIR SEATON said that CSHB 309 would be held over and that during the interim the [departments] and the sponsor would continue to work on the bill. A definition of nonindigenous was needed and a tightening of the language in order to avoid unintended consequences. He said that HB 309 would be one of the first orders of business next year. [HB 309 was held over.]

HB 22-COMMERCIAL FISHING PERMIT BROKERS

Number 2499

CHAIR SEATON returned attention to HOUSE BILL NO. 22, "An Act relating to commercial fishing permit brokers; and providing for an effective date." [A quorum was now present.]

Number 2522

REPRESENTATIVE OGG moved to adopt Version V [23-LS0133\V, Utermohle, 5/15/03] as a work draft. There being no objection, Version V was before the committee.

CHAIR SEATON said [Conceptual Amendment 1, discussed earlier in the meeting] would change "handle or facilitate" to "broker" throughout the bill.

REPRESENTATIVE OGG said, "Yes, the verb, broker."

CHAIR SEATON said, "Thank you, and then of course a definition of broker will also be added and clarified."

REPRESENTATIVE OGG asked if this would be a definition of the verb, "to broker."

CHAIR SEATON confirmed this to be so. [No formal motion was made, but Conceptual Amendment 1 was treated as adopted.]

MS. SYLVESTER explained the changes [previously discussed in committee, addressing the changes being made from Version Q to Version V] to Representative Wilson. She said the substantive change was addressed in paragraph (b) on page 3, beginning on line 23. She said that at the last hearing there was concern that requiring an escrow account for each and every situation might be onerous and not appropriate. She said if the broker is going to hold and negotiate the money, it must be put into an

escrow account where it will be safe. However, if the purchaser provides the broker with a cashier's check in the name of the seller, he/she may hold that in a file, for example, and that would be considered to be safe and secure. Ms. Sylvester stated that there are two options and that a floor/ceiling was not being contemplated.

CHAIR SEATON added that occupational licensing is involved at the lowest level so the fiscal note is only \$3,000.

MS. SYLVESTER added that the amount would be \$240 for a two-year license.

Number 2615

REPRESENTATIVE OGG moved to report CSHB 22, Version 23-LS0133\V, Utermohle, 5/15/03, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 22(FSH) was reported from the House Special Committee on Fisheries.

HJR 25-COMMERCIAL FISHING & PROCESSOR SHARES

Number 2644

CHAIR SEATON announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 25, Supporting Alaska's independent commercial fishermen and Alaska's fish processing industry and opposing the establishment of processor quota shares.

Number 2672

REPRESENTATIVE OGG moved to adopt the proposed committee substitute (CS), Version 23-LS0996\H, Utermohle, 5/15/03, for discussion purposes. [No objection was stated, and Version H was treated as adopted.]

REPRESENTATIVE OGG offered [Conceptual Amendment 1] on page 2, line 8, after the word "shares" to add in the language, "for the Bering Sea and Aleutian Islands crab fishery". There being no objection, it was so ordered.

CHAIR SEATON noted that the changes made to HJR 25 recognize the decisions and work of the [North Pacific Fishery Management Council (NPFMC)] to rationalize the crab fishery in the Bering Sea. He noted that the change in the title occurs throughout the resolution.

Number 2791

CHRIS KNIGHT, Staff to Representative Paul Seaton, said that most of the first page, other than the title was the same. He continued that on page 2, line 7, "unfathomable" was included. He said that any "opposition or opposing" language had been removed and that the committee's support of the [NPFMC's] interest in rationalizing the fishery had also been included.

CHAIR SEATON said that the rationalization of the fishery wasn't the problem; it's the inclusion of this section of "processor-quota shares", which would distort the balance between commercial fishermen and processors and introduce a new element that would be non-competitive in the future. This would prevent any future processors from becoming involved. The resolution addresses that element of the plan - that the processor-quota share fixes things so that only certain processors can forever buy crab and that the fishermen would have to deliver to certain people - that would have ramifications throughout the industry and could have tremendous ramifications for coastal Alaskan communities.

MR. KNIGHT added that the attempt was to tone down the oppositional language to say, "We support what you're doing, but consider this one aspect."

REPRESENTATIVE WILSON said, "Because there is controversy and because we are saying that the whole state feels this way and it is wrong, I have a problem [with it]." [Tape ends.]

TAPE 03-29, SIDE B

MR. KNIGHT said the language, which was fairly general, was inclusive of both groups, and didn't indicate that one group was better than another.

Number 2928

REPRESENTATIVE SAMUELS said that although he appreciates the change in tone and the work that has gone into HJR 25, he has the same concerns as Representative Wilson's. He said if the [federal government] is being asked to look at processor quota shares, the request should be to look at the whole IFQ [individual fishery quota] system. He said that a public resource has been walled-up so it's difficult to get into the fishery to begin with. He mentioned that fishermen have the

difficulty of being stuck selling to the one area and that the argument for fishermen "still cuts both ways." He said, "The fishermen don't want to be locked in, but [they] have locked us out. It's a philosophical argument." Representative Samuels said he didn't have an ax to grind one way or another and wouldn't object to [the resolution] going out of committee.

Number 2845

REPRESENTATIVE OGG said that HJR 25 was now more effective due to the focus being on the particular instead of the global, the positive aspect of the new language, and the emphasis on reconsideration.

Number 2808

REPRESENTATIVE OGG moved to report CSHJR 25, Version 23-LS0996\H, Utermohle, 5/15/03, as amended, out of committee with individual recommendations and the [accompanying zero fiscal note].

Number 2780

REPRESENTATIVE WILSON objected. She said although the tone was better, she thought it would be better to wait until next year.

The committee took an at-ease from 8:45 a.m. to 8:46 a.m.

REPRESENTATIVE OGG withdrew his motion.

CHAIR SEATON announced that HJR 25 would be held over.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 8:47 a.m.