

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

February 16, 2004
9:00 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Peggy Wilson, Vice Chair
Representative Cheryll Heinze
Representative Dan Ogg
Representative Ralph Samuels
Representative Les Gara
Representative David Guttenberg

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative William K. Williams (via teleconference)

COMMITTEE CALENDAR

HOUSE BILL NO. 409

"An Act relating to the maximum length of salmon seine vessels;
and providing for an effective date."

- MOVED CSHB 409(FSH) OUT OF COMMITTEE

HOUSE BILL NO. 415

"An Act authorizing a commercial fisherman to fish in each
fishery for which the commercial fisherman holds a commercial
fishing entry permit; relating to the power of the Alaska
Commercial Fisheries Entry Commission and the Board of Fisheries
to limit the number of fisheries in which a person may hold an
entry permit and operate gear during a fishing season or a year;
and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 409

SHORT TITLE: SEINE VESSEL LENGTH

SPONSOR(S): REPRESENTATIVE(S) WILLIAMS BY REQUEST OF SALMON
INDUSTRY TASK FORCE

01/28/04 (H) READ THE FIRST TIME - REFERRALS
01/28/04 (H) FSH, RES
02/09/04 (H) FSH AT 9:00 AM CAPITOL 124
02/09/04 (H) Heard & Held
02/09/04 (H) MINUTE(FSH)
02/16/04 (H) FSH AT 9:00 AM CAPITOL 124

BILL: HB 415

SHORT TITLE: FISHING IN MORE THAN ONE FISHERY

SPONSOR(S): REPRESENTATIVE(S) WILLIAMS BY REQUEST

01/29/04 (H) READ THE FIRST TIME - REFERRALS
01/29/04 (H) FSH, RES
02/16/04 (H) FSH AT 9:00 AM CAPITOL 124

WITNESS REGISTER

MAC MEINERS, Purse Seine Vessel Owner and Purse Seiner
Juneau, Alaska

POSITION STATEMENT: Testified on HB 409 in support of the
ability to increase vessel length to enhance safety, onboard
processing, and fish quality; answered questions.

BRUCE SCHACTLER, Board Member
United Fishermen of Alaska (UFA)
Kodiak, Alaska

POSITION STATEMENT: Testified on HB 409 on his own behalf and
as a member of the UFA board; said he wants Board of Fisheries
decisions to be final; discussed the need for a dedicated
onboard processing area and options for marketing fish.

DOUG MECUM, Director
Division of Commercial Fisheries
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: During hearing on HB 409, said ADF&G has no
management or conservation concerns about the 58-foot limit and
is confident concerns can be worked out through the board
process; answered questions.

HARVEY GOODELL, Setnetter
Kodiak, Alaska

POSITION STATEMENT: Expressed concern about allocation issues relating to HB 409 and said it seems early to go this route; answered questions.

GERALD McCUNE, Lobbyist
for United Fishermen of Alaska (UFA)
Cordova, Alaska

POSITION STATEMENT: During hearing on HB 409, said he didn't have an answer yet on UFA's position; responded to questions about a letter from Cordova District Fishermen United (CDFU) in opposition to HB 409, noting that he is president of that organization.

STEPHEN WHITE, Senior Assistant Attorney General
Natural Resources Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: During hearing on HB 409, said the constitutional concerns aren't settled; answered questions about the board process, intent language, and grandfather provisions.

TIM BARRY, Staff
to Representative William K. Williams
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on behalf of Representative Williams, sponsor of HB 409 by request of the Joint Legislative Salmon Industry Task Force; spoke briefly on HB 415 on behalf of Representative Williams, sponsor by request, and deferred to Mr. McCune to address philosophical differences between the two bills.

ACTION NARRATIVE

TAPE 04-6, SIDE A
Number 0001

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at 9:00 a.m. Representatives Seaton, Wilson, Ogg, and Samuels were present at the call to order; Representative Gara arrived soon thereafter. Representatives Heinze and Guttenberg arrived as the meeting was in progress. Also in attendance was Representative Williams (via teleconference).

HB 409-SEINE VESSEL LENGTH

[Contains discussion of HB 415]

Number 0063

CHAIR SEATON announced that the first order of business would be HOUSE BILL NO. 409, "An Act relating to the maximum length of salmon seine vessels; and providing for an effective date." [HB 409 was sponsored by Representative Williams by request of the Joint Legislative Salmon Industry Task Force; Representative Williams, who was on teleconference, deferred to Tim Barry to add anything further.]

CHAIR SEATON informed members of a possible interaction and conflict in philosophy between HB 409 and HB 415; thus the hearing on HB 409 would be interrupted later in order to consider its relationship with HB 415 before moving it from committee. He announced that public testimony [began February 9] would resume.

Number 0256

MAC MEINERS, Purse Seine Vessel Owner and Purse Seiner, began by indicating he fishes off Kodiak Island using a 38-foot vessel and has a permit in Southeast Alaska. He offered his belief that the limit for seine boats should be increased for several reasons: for safety; to be able to process fish on board, especially now that the markets have changed; and to get higher quality. Mr. Meiners surmised that at age 52, he is about the average age for a permit holder and remarked, "I started seining in 1967, and I'd like to see some kind of change soon, before I'm done."

Number 0361

CHAIR SEATON asked why Mr. Meiners wants the limit raised beyond 58 feet if his vessel is 38 feet now.

MR. MEINERS answered that the gear doesn't change. He has a big net, a big skiff, and a big block. If he had to change now, he wouldn't want to have to change again because of the cost. For example, if he wants to get a good RSW [refrigerated sea water] system and start onboard processing, now is the time. In further response, he said he'd like to reinvest in the industry and that perhaps some changes would come along to make it viable again so fishermen can make money. "Unless things change,

you're crazy to put any kind of money into the fishery," he added, stating the need for some kind of incentive.

MR. MEINERS, in response to further questions, said he'd fished 58-footers as a kid and through the herring seasons and so forth; they're a great tool for fishing for sockeye at the south end of Kodiak Island. With the markets changing and the fleet shrinking, however, he said he feels the need to "range around" and go to the Alaska Peninsula and Cook Inlet, for instance, and to the hatcheries; he doesn't catch hatchery fish now because he can't pack enough to town to make it pay. Mr. Meiners explained that he needs a vessel that allows onboard processing in order to make more money; he estimated 68 feet to 72 feet would be right. For deck space, an extra 10 feet or so is needed because the current rules say there must be a covered deck in order to process on board.

Number 0681

CHAIR SEATON pointed out that [HB 409] doesn't eliminate the 58-foot limit, but just moves the authority from the legislature to the Board of Fisheries.

MR. MEINERS said he understood that, but emphasized the need for some tools in order to move forward.

Number 0756

REPRESENTATIVE GARA asked Mr. Meiners to elaborate on why a 72-foot boat, for example, would increase the range.

MR. MEINERS responded that it's not only range, but also safety, because a bigger boat is a safer platform. With the price so low, he said, people are doing things they haven't done before because "they have to make it, especially with the larger boats; they're fishing a lot rougher weather, they're taking a lot more chances, and a lot of times, the fish are there when it's really rough - that's always the best fishing."

REPRESENTATIVE GARA asked whether there is an appreciable difference between a 58-foot boat and a 72-foot boat, then, in the ability to fish "bigger water."

MR. MEINERS said there is a tremendous amount of difference. In addition to the length, he noted that the beam would increase. He emphasized the need to be able to process on board in order to move forward right now.

Number 0894

REPRESENTATIVE OGG asked whether Mr. Meiners favors the 66 percent vote of those who hold the entry permits.

MR. MEINERS replied, "If it's by the same fishermen only, and not the setnetters, meaning the ... seine permit holders should be able to vote on seine permit issues."

REPRESENTATIVE OGG asked whether Mr. Meiners would object to having no vote and just letting the Board of Fisheries decide, as happens for other fishery regulations.

MR. MEINERS responded that he'd just let the board rule, which would be easier.

CHAIR SEATON acknowledged that Representative Heinze had joined the meeting.

Number 1028

REPRESENTATIVE HEINZE indicated she'd heard that the Board of Fisheries wouldn't have money to implement a lot of its authority because of budget cuts. She asked Mr. Meiners whether that is of concern to him.

MR. MEINERS surmised he'd have to deal with it, as happens wherever there are budget cuts. He said he'd participated at Board of Fisheries meetings many times and was awaiting this cycle on Kodiak Island, which should be "a lot of fireworks."

Number 1089

REPRESENTATIVE WILSON expressed strong concern about leaving that provision [for a vote] in, since nowhere else does it say that after the Board of Fisheries makes a decision, the fishermen can decide whether they like it. She asked why it's in the bill.

CHAIR SEATON suggested addressing that during committee discussion.

MR. MEINERS opined that it would never work.

CHAIR SEATON acknowledged that Representative Guttenberg had joined the meeting.

Number 1176

REPRESENTATIVE GARA asked whether there is a threat that larger businesses, which can afford much larger boats, may drive smaller seiners out of business.

MR. MEINERS replied that the smaller seiners are out of business anyway, and a few remain because of "low budget, high yield." He said he's tired of "going on a camping trip" with no shower, for example, and wants "a little better business plan going in, if we could expand the horizons."

REPRESENTATIVE GARA asked whether that could be accomplished with a 58-foot boat.

MR. MEINERS reiterated the need for onboard processing and an extra 10 or 15 feet to do that. He said as markets shrink, there are fewer places to sell fish for any kind of money.

Number 1322

REPRESENTATIVE GARA explained that although he's convinced of the need to increase the limit to 72 feet, for example, he isn't convinced about increasing it to 200 feet, and there isn't any upper limit in the bill.

MR. MEINERS pointed out that there are gear restrictions. Suggesting the size of cable needed on a 200-foot boat would be cost-prohibitive, he stated his belief that there won't be 200-foot boats. Providing details on seine nets, he said it's the net that catches the fish, and he has a huge net on his small boat.

REPRESENTATIVE GARA asked whether a loophole in gear restrictions would let someone with a much bigger boat carry two or three seine nets, for instance, if the technology [changed].

MR. MEINERS said laws are such that there can only be one piece of fixed gear on a boat.

REPRESENTATIVE SAMUELS remarked that the gear type dictates, more than the size of the boat.

Number 1486

BRUCE SCHACTLER, Board Member, United Fishermen of Alaska (UFA), testified on his own behalf and as an elected, at-large delegate on the UFA board, though not on behalf of the board itself. He offered his belief that Mr. Meiners had covered it quite well.

CHAIR SEATON, in response to a remark from Mr. Schactler, clarified that the proposed vote is following [the Board of Fisheries' decision], and regulations don't go into effect until the [permit] holders approve the regulations.

MR. SCHACTLER said he believes this is unworkable and that he'd like to have the Board of Fisheries make a ruling that is "the end of the show." He agreed with Mr. Meiners about processing, saying it can't be done effectively on a 58-footer, though a few are trying. Mr. Schactler said there just isn't enough room, including enough bunks for the people involved or enough deck space; at minimum, another 15 feet or so is needed to sort and bleed the fish, for example, and a dedicated processing area is required. He also suggested it isn't realistic that someone will come into this program with a huge vessel, or that many people will do this at all.

Number 1707

MR. SCHACTLER mentioned going forward with processing and marketing one's own fish, and emphasized the need for options. He said there have been no changes in the limited entry system of 1972 or the "58-foot limit of 1959," and yet the world and the markets have changed. He asked the committee to view it from that perspective and said there is no scam or hidden agenda here. He asserted that people won't catch more fish with 70-foot boats and remarked, "It's what you do with the fish after you catch them; that's what this bill is all about." He said he'd certainly support this, and stated his intention of testifying on the next bill [HB 415]. In response to questions from Chair Seaton, Mr. Schactler said his 52-foot vessel has been for sale for two or three years and he'll move to a larger vessel as soon as he sells this one.

Number 1916

REPRESENTATIVE OGG conveyed his understanding that Mr. Schactler has participated in allocation issues and the change in regulations in the Kodiak management area. He asked whether he believes this [58-foot limit] would be an easy regulation to change.

MR. SCHACTLER replied that it should be, although he wouldn't bet on what a group of fishermen might want to do. He related his belief that someone with a 75- or 80-foot [seine boat] who is also processing those fish will catch fewer fish. It takes a long time and a lot of people to process these fish; after a set is made, those fish need to be taken care of before more fishing takes place. Expressing the desire to catch 100,000 pounds but sell it for \$4 [a pound], rather than 1.5 million pounds at 6 cents or 7 cents, he suggested people will support the bill if they realize it isn't a scam or an allocation issue and that there's no loophole.

REPRESENTATIVE OGG asked whether Mr. Schactler supports just the Board [of Fisheries] having the authority, with no vote by the fishermen.

MR. SCHACTLER replied, "Yes, I do. Just leave it with the board and call it good."

Number 2094

DOUG MECUM, Director, Division of Commercial Fisheries, Alaska Department of Fish & Game (ADF&G), said he'd reiterate his comments made at the previous hearing. Explaining that the department has no management or conservation concerns regarding the 58-foot limit, he expressed confidence that if any such concerns arise, they can be worked out through the Board of Fisheries process, as this bill envisions. He also agreed with previous testifiers that the fisheries are limited by the gear in terms of "catching power."

MR. MECUM referred to concerns voiced at the previous hearing about the referendum process; he offered his understanding that legislative counsel had questioned the constitutionality of that provision. Mr. Mecum explained that under the current process, a proposal is submitted by the public or the department; the Board of Fisheries receives comment from the public and the department; the board considers the proposal; if it is adopted, the department writes the regulation; the Department of Law reviews and then certifies the regulation; that is submitted to the lieutenant governor for signature; and if it's signed, it becomes law in 30 days. He surmised that this referendum [proposed in HB 409] would get inserted between the Department of Law's certification and the submittal to the lieutenant governor, a four- or five-month process "on the outside."

Number 2219

REPRESENTATIVE GARA remarked that the bill seems fine, but he wants to ensure it's written properly. He said generally the legislature cannot just tell an agency to write regulations without providing standards; otherwise, it's delegating away its legislative authority, which the court will say isn't allowed. Representative Gara asked what standards the seine permit holders or the board would have to consider when deciding whether to extend the length of a seine boat. He expressed concern that standards might need to be included in the bill if they aren't in statute already.

MR. MECUM acknowledged he isn't a lawyer, but related his understanding that the bill's intent is to make it possible for the board to consider allowing vessels in the purse seine fishery that are longer than 58 feet. He said the 58-foot limit has been around a long time and the board would use the same kinds of standards it would use for adopting regulations in general, that is, "consideration of management and conservation purposes and issues associated with this, going through the Administrative [Procedure] Act, just as per usual."

Number 2334

REPRESENTATIVE GARA, noting that he'd missed the previous hearing, asked whether the state does this already for different classes of vessels.

MR. MECUM replied that several fisheries around the state have vessel limits; he cited some Pacific cod fisheries developed in recent years in the Chignik, Sand Point, and Kodiak areas, as well as an area by Adak where a new fishery was established some years ago and "kind of built around this 58-foot limit, I think, really, partly as a matter of convenience, that is, trying to establish more local, slower-paced fisheries to benefit the local communities, utilizing ... the existing 58-foot seine limits, since most of these boats, at the maximum, ... are limit seiners."

MR. MECUM reported that other regulations deal with vessel limits, the most notable being in Bristol Bay, where a 32-foot limit has existed for a long time under a Board of Fisheries regulation. Furthermore, the board has been approached and proposals submitted many times in the past, most recently at the Bristol Bay meeting a few months ago, when he indicated people wanted to provide more deck space to do value-added [processing], for example. He said the board didn't repeal that

[restriction], however, because of a lot of negative testimony. Mr. Mecum offered his belief that [HB 409] is constructed such that it allows the Board of Fisheries to work through those kinds of issues with the public.

Number 2436

REPRESENTATIVE SAMUELS conveyed his belief that this [58-foot] restriction is the only one in statute.

Number 2453

REPRESENTATIVE HEINZE asked whether Mr. Mecum knows of any reason this provision allowing more deck space shouldn't be available.

MR. MECUM reiterated that the department has no management or conservation issues or concerns associated with this, and would have the opportunity under the legislation to work through any that arise. He said it's a policy call of the legislature, since there are some socioeconomic issues.

Number 2496

CHAIR SEATON asked Mr. Mecum whether he sees any problems with removing the seine fleet's 58-foot limit as it might interact with the 58-foot limit in Western Alaska, which exists to slow down the groundfish fisheries and for conservation there.

MR. MECUM said he doesn't. He elaborated:

If someone submitted a proposal to the Board of Fisheries to allow larger vessels in those fisheries, which is what they would have to do to get that lifted, the board would consider that and the department would provide comment. I think allowing larger vessels in that fishery would certainly be ... something the board had the authority to do.

But ... allowing those larger vessels would certainly be at odds with the objectives and the guiding principles that the Board of Fisheries has established for those, that is, local-based, small, slow-paced, benefiting the communities, and ... spreading the season length out to improve markets, et cetera, et cetera. In my mind - it's just my ... personal opinion - it's unlikely that they would repeal that.

Number 2580

CHAIR SEATON mentioned testimony about 70- to 80-foot vessels. He asked, if those vessels were becoming catcher-processors, whether existing vessels would qualify under the U.S. Coast Guard classification or whether reclassification would fairly much mean that all vessels, to participate in that way, would have to be new, constructed to ABS [American Bureau of Shipping] standards, and so forth. He asked whether Mr. Mecum was familiar with "any of that that's gone on."

MR. MECUM said he wasn't familiar enough to respond.

Number 2619

REPRESENTATIVE GUTTENBERG, with regard to the vote [of permit holders] proposed in the bill, asked whether the department had considered how that process would take place, including notice requirements, ensuring eligibility to vote, and so forth.

MR. MECUM said it was discussed and he understood what he believed the sponsor was trying to accomplish. He emphasized that it's a choice for the legislature, but offered his view that the referendum or election would make it fairly difficult to change this [58-foot] requirement. He said his intent in developing regulations would be to work off a current list of permit holders, depending on when the election would be held; there would be one vote only.

REPRESENTATIVE GUTTENBERG asked whether Mr. Mecum foresees changes in gear types down the road, following a change to larger vessels.

MR. MECUM replied that he's sure there will be such proposals, but believes it's unlikely they'll be adopted, although it's not outside the realm of possibility. He said seines used in Southeast Alaska are fairly large, for example, and he feels "fairly confident that we'll be able to work through those issues ... associated with changes in vessel size through the Board of Fisheries process."

Number 2790

HARVEY GOODELL, Setnetter, noting that he fishes on Kodiak Island, expressed concern about allocation issues. For example, [seiners] may say they want larger vessels in order to be

catcher-processors, but may just end up harvesting, with the ability to fish in tougher weather than now; this would be hard on Mr. Goodell's fishery. A lot of 58-foot boats around Kodiak no longer seine, and he indicated people are trying out processing on some of the smaller boats. He closed by saying it seems a little early to go this route.

MR. GOODELL replied to questions from Chair Seaton. On the proposed vote, he said it seems all gear types in an area should have some say. As far as transferring authority to the Board of Fisheries, he said the board has a pretty full platter and he has a concern about going that route; he acknowledged that some of that may stem from fear down the road of having larger gear types [for seiners]. In response to Representative Gara, he said around Kodiak maybe one-third of [seine] permit holders actually fish these days; polling all of them might impact his setnet fishery.

REPRESENTATIVE GARA asked whether the allocation concern is that there'll be more fish for seiners and fewer for setnetters.

MR. GOODELL said it seems the potential is there.

CHAIR SEATON asked Mr. McCune, who'd testified at the previous hearing, whether UFA [United Fishermen of Alaska] had taken a position on the bill.

Number 3001

GERALD McCUNE, Lobbyist for United Fishermen of Alaska identified himself. [Tape 04-6 ends; nothing was recorded on Side B.]

TAPE 04-7, SIDE A

Number 0001

MR. McCUNE said he was in the process of getting it cleared up as to whether people [in UFA] want the vote.

Number 0177

REPRESENTATIVE GARA read the last sentence of a letter from Cordova District Fishermen United (CDFU) [dated February 11, 2004, in opposition to HB 409] as follows: "We feel this bill will not help in the revitalization of the salmon industry but could actually be a detriment to the Prince William Sound seine fishery by encouraging fishermen to overcapitalize." He asked

whether that's a concern Mr. McCune could comment on and whether any UFA members had discussed it with him.

MR. McCUNE surmised that a business decision would be made based on the person's plan and the size limit set by the Board of Fisheries, for example. Noting that he's president of CDFU, he said in Prince William Sound "they never wanted bigger vessels there," and seining there with an 80- or 90-footer isn't practical for because it's primarily rocky. He added that all permit holders have the ability to go to the Board of Fisheries if somebody brings forward a proposal and the board accepts it. "That means setnetters and everybody in the area gets to go have their say, not just the seiners," he remarked. "So everybody in the whole area gets to go to that Board of [Fisheries] meeting and have their say on this ... 58-foot limit, because it becomes a public ... arena then."

Number 0377

REPRESENTATIVE HEINZE noted that the aforementioned letter talks about needing a consistent, stable market. She asked why the author would oppose allowing better processing space for other fishermen.

MR. McCUNE said that's a good question and added, "They're split on several issues." He said about 90 seiners there fished last year, out of 260, and explained:

You have to have a market to be able to fish in Prince William Sound, obviously, and that's tied to whatever ... arrangements you made with your processor. ... It's a combination of a couple of things. People are scared of ... other people coming in and trying to take their market, ... or they still know the safeguards are in there, but they're not comfortable with that, I guess. ... That's what I got out of the meeting that we had there in Cordova.

Number 0508

STEPHEN WHITE, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Juneau), Department of Law, began by saying he has been advising and representing the Board of Fisheries for about a dozen years. He noted that Mr. Utermohle [drafting attorney with Legislative Legal and Research Services, who'd written a memorandum dated December 3, 2003, to Representative Williams] had raised the issue of

whether this opportunity for the fishermen to vote after the board has adopted the regulation violates the constitutional "delegation of powers" doctrine. Mr. White said this is a legitimate question; he himself is looking into it. He reported that there are no Alaska decisions either for or against it, in terms of constitutionality, though there are cases in other states that he's looking at. Right now, it's an unsettled question.

MR. WHITE turned attention to concerns raised by Representative Gara about allocation issues that might arise if the board considers increasing a vessel's limit. Mr. White said:

It's important to note that in the statute that governs the board's authority, if any allocation issue gets presented to the board by a proposal, the board is required to go through criteria and determine the allocation impacts on competing fishery ... gear groups. And they have to look at things like historic participation or historic catch between the two groups, the economic impacts, the benefit to the communities, and so forth. So the law requires them to go through specific criteria in order to resolve an allocation issue if that's raised in a proposal.

MR. WHITE, in response to a question from Representative Wilson, said [the board members] must address those criteria the best they can; otherwise, the decision affecting allocation can be challenged successfully in court.

Number 0679

REPRESENTATIVE GARA asked whether [the board] must weigh those impacts and make a finding that there won't be undesirable impacts on allocation, or just has to consider them.

MR. WHITE answered that he thinks the consideration has to be meaningful. Giving an example of an allocation involving two competing gear groups, he said if there's information before the board which deals with that issue, then the [board] members should talk about it, but can use their own professional experience to make a determination. He continued:

The courts require them ... to take a hard look at issues. They don't require them to necessarily objectify things and determine ... 60-40 or anything like that. As long as they've considered the evidence

before them and made a decision that has some reasonable basis, that's all the courts require.

Number 0796

MR. WHITE, in response to Chair Seaton, clarified that allocation issues are spread across the proposals at board meetings and may involve 40 to 60 percent of them. Noting that ADF&G doesn't weigh in on the allocation issues, he explained:

They strictly are there to help the conservation side. But once allocation issues come up, then the board relies upon the testimony of ... the affected fishermen and ... processors and so forth. And they look at it all, and they apply the criteria I've mentioned, and they come up with a decision. And in recent years their decisions have been fairly successful in terms of being able to be defended by my department.

Number 0900

REPRESENTATIVE GARA asked Mr. White whether a statement of intent should be included in the bill that says, "By extending the boat size limit, our intention is not, then, to ... encourage future changes in gear requirements." He noted that an issue had been raised by Representative Guttenberg about increasing the size limit and then having the owners of 90-foot boats request gear-change rules, to the detriment of others.

CHAIR SEATON emphasized that the bill doesn't change the vessel size limit, but transfers authority to make those decisions to the Board of Fisheries. He requested that the discussion focus on the bill, not the framework of "as if we were eliminating the statewide 58-foot limit here."

REPRESENTATIVE GARA pointed out that this says there will be a process by which to increase the vessel size limit. He surmised that someday under this process the 58-foot limit would be increased; otherwise, the committee wouldn't be considering passage of the bill.

[Chair Seaton requested that Representative Gara restate his question to Mr. White, which he did.]

Number 1102

MR. WHITE replied that he thinks letters of intent, rather than express statutory language, are problematic because they state intent and yet don't provide a specific restriction. If the foregoing is the intent, Mr. White suggested that a proposed committee substitute (CS) be drafted that says, "If the board extends vessel length, they should not therefore consider subsequent gear changes in the fishery." He clarified that he wasn't recommending it [one way or another], but that legally it would be clearer to put it in statute.

MR. WHITE, with regard to the Board of Fisheries, said he has seen a lot of gear change [proposals] come before the board; the board looks at those very carefully and considers allocation issues, economic issues, and so forth. He remarked, "So far, they've not had a difficult time of disassociating something like extending a vessel length with adding additional gear. So - my experience - it would not ... create a problem."

REPRESENTATIVE SAMUELS suggested if this gets into [specifying] gear types, the Board of Fisheries might as well be disbanded, which he surmised committee members don't want to do.

Number 1220

REPRESENTATIVE GUTTENBERG noted that the first part of the bill gives the board the ability to change the vessel size by regulation, but the last part says that if things change, those vessels can't be [forced to leave] the fleet. He asked what happens to the board's management ability in that case.

MR. WHITE replied that he thinks it's something the board will consider when deciding in the first place whether to expand [the size limit].

Number 1288

CHAIR SEATON asked whether it's normal, when the Board of Fisheries has options, that "grandfather clauses" remain in effect even if a regulation is changed back.

MR. WHITE responded that grandfather clauses have "legal legitimacy" and have been upheld. They're often used in order to prevent distress to people who've already invested, if it would create great economic hardship for them to get rid of their vessels, for example. He said it's not uncommon to see those things "throughout regulatory action."

CHAIR SEATON mentioned cod plans that went into effect and a 58-foot limit in Area M in Western Alaska. He noted that [the board] didn't say anyone who'd been fishing with a 120-footer could continue to fish, but had generated a regulation saying a boat must be [58 feet or less] in order to participate. He asked whether doing this in statute sets a precedent for the Board of Fisheries, since the regulation could be changed back but then wouldn't be in effect for those vessel owners.

MR. WHITE replied that this statutory authority - the grandfather clause - would be limited to this circumstance and wouldn't create any precedent either way in other circumstances.

Number 1460

CHAIR SEATON asked whether anyone else wished to testify. He then closed public testimony.

REPRESENTATIVE SAMUELS emphasized that this doesn't change anything [except the authority], and said nothing gets steamrolled through a Board of Fisheries meeting.

Number 1481

REPRESENTATIVE SAMUELS began discussion of what became Amendment 1. Noting that he has a problem with the vote of the permit holders, both in the legal sense raised by Mr. Utermohle and philosophically, he asked, "Would we let the oil industry vote on the [regulations] that we apply to them, and if they don't like them, they get to veto them? I don't think that's the way that we want to go."

REPRESENTATIVE SAMUELS specified that [Amendment 1] would be on page 1, lines 9-14, deleting the sentence that reads:

A regulation adopted by the board to authorize the use of a vessel longer than 58 feet overall length in a salmon seine fishery or to amend or repeal an authorization to use a vessel longer than 58 feet overall length in a salmon seine fishery may not take affect [sic] unless at least 66 percent of the entry permit holders for that fishery favor the adoption of the regulation at a referendum conducted by the department.

Number 1570

CHAIR SEATON turned attention to what became Amendment 2. He asked Representative Samuels about statutorily fixing the "58-foot grandfather clause" in here, when it's not done in any other Board of Fisheries regulations. That sentence of the bill [page 1, line 14, through page 2, line 4, later deleted by Amendment 2], reads as follows:

If a salmon seine vessel longer than 58 feet overall length is used in a fishery under regulations adopted under this subsection, the vessel may continue to be used in the fishery notwithstanding a subsequent reduction in the maximum length of vessels that may be used in the fishery by the board.

REPRESENTATIVE SAMUELS said he reads this as saying that if someone invested in a 70-foot boat but 20 years from now the Board of Fisheries changed the [regulation] back, "you wouldn't want to penalize this guy who now has a debt load of \$2 million on a boat, and now you tell him he can't use his boat." He added that nobody is paying cash for these boats, and thus he reads this as protecting that person's debt.

CHAIR SEATON said he was curious about the philosophy, noting that there isn't a similar protection for Bristol Bay such that if it goes to a 27-foot limit, everybody with a 32-foot boat can forever use it. He said he understands the purpose, but is slightly uncomfortable saying the regulatory authority will be moved to the Board of Fisheries but that something will be left in statute based on that length.

REPRESENTATIVE SAMUELS replied, "I see ... where you're going, but this is the only length that's in statute anyway." He acknowledged that it all could be turned over to the Board of Fisheries or a little bit could be kept [in statute]; he said it's a policy choice. He highlighted the difference between this and the situation in Bristol Bay, and questioned whether more than a couple of people would buy 70-foot [seine] boats if the board were to pass such a proposal. He said he'd hate to penalize people who are willing to invest in the industry.

Number 1748

CHAIR SEATON clarified that he was looking at other board actions relating to the Pacific cod fishery, for example, where 90-foot and 110-foot boats were fishing but the board reconfigured the fishery; those boats no longer were able to participate in that fishery. He said it seems this bill

[creates] a special exemption relating to seine vessels, whereas for all other vessels the board has the ability to restructure the fisheries. "I'm not saying that we should wipe out anybody's investment," he added. "It just seems that if the philosophy is to move this to the Board of Fisheries, ... I have a little unease with leaving portions in."

Number 1811

REPRESENTATIVE WILSON explained that she was considering whether to have the board make the decisions or retain some for the legislature. She then remarked that perhaps the decisions should be given to the Board of Fisheries, which doesn't make these decisions lightly; thus perhaps all that [new language in the final two sentences of Section 1] should be removed.

REPRESENTATIVE HEINZE commented that with the amendment Representative Samuels is proposing, she is comfortable with giving it to the Board of Fisheries.

Number 1859

REPRESENTATIVE OGG alluded to the fact that current AS 16.05.835(a), which Section 1 of the bill amends, states:

(a) A salmon seine vessel may not be longer than 58 feet overall length except vessels that have fished for salmon with seines in waters of the state before January 1, 1962, as 50-foot, official Coast Guard register length vessels.

REPRESENTATIVE OGG offered his belief that the foregoing recognized that some vessels participating in the fishery were over the 58-foot limit. "Just because they were designated as Coast Guard 50-foot vessels, they probably were 50-foot and bigger," he explained, noting that those were protected to continue in the fishery. The bill says unless the board creates a regulation [allowing a longer vessel], the statute [is in effect]. He suggested this creates a hybrid. He said the [sentence that became the subject of Amendment 2] seems to reflect that same policy and perhaps recognizes that the boats used for this specific fishery wouldn't have a purpose in any other fishery. He stated support for moving [the authority] to the Board of Fisheries and for the proposed amendment, when and if it's made, to remove that one sentence.

Number 2007

REPRESENTATIVE GARA returned attention to what would become Amendment 1, saying he was uncomfortable removing the requirement for a vote of 66 percent [of the permit holders] without at least hearing from the sponsor or those who crafted the bill. He referred to the statement [in the letter] from CDFU, saying they'd probably like a voice in their seine fishery as to whether or not larger vessels come in; he suggested that is probably the motivation for the 66 percent vote requirement.

[Chair Seaton called upon Representative Williams, but was informed by the teleconference operator that he'd stepped away for a minute.]

Number 2077

TIM BARRY, Staff to Representative William K. Williams, Alaska State Legislature, said this legislation came from the Joint Legislative Salmon Industry Task Force ("Task Force"), which he believes made this decision as a whole [on the 66 percent vote requirement]. He suggested House Special Committee on Fisheries members who were on the Task Force might be able to speak about discussions that occurred. "I don't think it's a make-or-break thing for Representative Williams," he added, noting that Chair Seaton had discussed this with Representative Williams as well.

Number 2118

CHAIR SEATON pointed out that he wasn't on the "production subcommittee" that dealt with this bill, but said the Task Force had dealt with the bill "and there was a comfort level from the fishermen representatives that were there." Noting that there had been two House Special Committee on Fisheries hearings at which fishermen could come forward and express their concerns, Chair Seaton said he wasn't "hearing from the broad industry the same ... kind of angst that we heard from several people that were ... on the Task Force."

REPRESENTATIVE OGG, speaking as another Task Force member, said Chair Seaton had covered it succinctly.

Number 2170

REPRESENTATIVE GUTTENBERG referred to the 66 percent vote and said it seems to nullify the bill because it would never happen. With respect to giving the board the authority and then taking it away [by retaining the grandfathering language], he expressed

concern about that as well. Although people will have made investments, that language allows [the board] to manage the fisheries and then it [no longer can if there is a need to decrease the size limit]. He said people go in with risks and things happen. He suggested that if the authority is going to be given to the board, it should then have that authority. "Otherwise, don't do it," he concluded.

Number 2222

CHAIR SEATON said he has a similar feeling on the second [sentence of the new language, page 1, line 14, through page 2, line 4]. He agreed that if the Board of Fisheries increases the length and then finds it's a problem, the board is stuck with that forever. He said he has a problem leaving that "grandfather-reversion clause" in, and wants the amendment to include everything from line 9 to the end [of the new language, page 2, line 4]. That way, [authority] is given to the board, which can consider allocation issues, is charged with management of the fisheries, will have to do the best job it can, and will have to manage the fisheries for the best interests of the state.

Number 2308

REPRESENTATIVE SAMUELS moved to adopt Amendment 1, on page 1, lines 9-14, deleting the sentence that begins with "A regulation" and ends with "referendum conducted by the department." There being no objection, it was so ordered.

Number 2328

REPRESENTATIVE WILSON moved to adopt Amendment 2, deleting the sentence beginning on page 1, line 14, through page 2, line 4.

Number 2364

REPRESENTATIVE SAMUELS objected for purposes of discussion. He said he could argue both sides of this, and asked whether Representative Williams was available yet.

[Chair Seaton asked whether Representative Williams was back on teleconference; there was no response.]

MR. BARRY offered his belief that the thinking behind the sentence [to be deleted by Amendment 2] was what Representative Samuels had spoken about earlier: if the bill passes and the

board raises the limit, some fishermen will buy larger boats; this sentence provides some assurance that if the board then lowers the limit, those fishermen won't have to sell their boats.

Number 2494

REPRESENTATIVE WILSON asked Mr. Barry whether he believes the Board of Fisheries should have the ability to change it back if the fishery is at risk because [the board had raised the limit].

MR. BARRY said he didn't know whether there'd been discussion of when the fishery itself is at risk. He added, "If the idea behind this piece of legislation is to encourage fishermen to diversify, to try to do new things, to add value to their product, ... the idea was to give them some assurance that that investment will not be for naught." He further said the idea is that fishermen will be able to operate "in that fashion" for many years to come, although regulations might change.

REPRESENTATIVE WILSON expressed concern. Mentioning Southeast Alaska, she emphasized the need for flexibility [by the board] for the sake of the fishery.

MR. BARRY replied that he thinks he can speak for Representative Williams when saying he would share Representative Wilson's concerns. Mr. Barry reiterated that there was some concern, which he believes was expressed by fishermen, that they wanted assurance that it will be worth it if they invest in larger boats.

CHAIR SEATON suggested that the same desire for a guarantee of control had related to the 66 percent vote requirement.

Number 2561

REPRESENTATIVE WILSON pointed out that everyone wants assurance when investing in a business that there'll be no risk, but said that's part of every endeavor. She added, "That's why they have to weigh carefully what they're going to do and what the ramifications could be. ... We all do that when we invest in anything."

CHAIR SEATON said he'd support the amendment. He explained that he has the same concern about taking away the ability of the board, since the purpose of this [bill] is to give it regulatory flexibility. He agreed that the board doesn't do things

lightly. Unless it became a conservation problem in a fishery or an unintended consequence posed a real problem in managing the fishery, he surmised that there would be "real legal problems" if the board acted without a rational basis.

REPRESENTATIVE GARA added, "We don't have to worry about it also because ... there are a hundred different gear and other requirements in the statutes. Not all of those are followed by another sentence that says, 'If this is changed in the future, all existing things will be grandfathered in.'" He said he was comfortable taking it out [and thus supporting Amendment 2].

Number 2665

REPRESENTATIVE HEINZE said she was comfortable retaining that language. It seems the Joint Legislative Salmon Industry Task Force is trying to do everything it can to help the industry, she said, and while she understands what Representative Wilson is saying about risk, the fishermen should be helped out a little bit. Thus she'd have trouble supporting the amendment.

CHAIR SEATON said he doesn't believe it's so much the person's financial risk, but the risk to the fishery. If there are unintended consequences from lengthening the vessels and the board needs to redo the regulations in order to manage the fishery, that's a question to consider. He said he understands the investment argument, however.

REPRESENTATIVE SAMUELS said he would reluctantly maintain his objection.

REPRESENTATIVE OGG and REPRESENTATIVE HEINZE also objected.

A roll call vote was taken. Representatives Gara, Guttenberg, Wilson, and Seaton voted in favor of Amendment 2. Representatives Heinze, Samuels, and Ogg voted against it. Therefore, Amendment 2 was adopted by a vote of 4-3.

CHAIR SEATON announced that the hearing on HB 409 would be suspended temporarily.

HB 415-FISHING IN MORE THAN ONE FISHERY

[Contains discussion of HB 409]

Number 2800

CHAIR SEATON announced that the next order of business would be HOUSE BILL NO. 415, "An Act authorizing a commercial fisherman to fish in each fishery for which the commercial fisherman holds a commercial fishing entry permit; relating to the power of the Alaska Commercial Fisheries Entry Commission and the Board of Fisheries to limit the number of fisheries in which a person may hold an entry permit and operate gear during a fishing season or a year; and providing for an effective date."

Number 2807

REPRESENTATIVE WILSON moved [to adopt the proposed committee substitute (CS), Version 23-LS1416\H, Utermohle, 2/13/04, as a work draft].

CHAIR SEATON announced that Version H was before the committee.

Number 2817

CHAIR SEATON explained that there is a philosophical issue that he wanted the sponsor or his staff to address. In HB 409, the position is that these authorities should be moved to the Board of Fisheries to do regulations and have control of the fisheries, including allocation issues and so forth. However, HB 415 takes regulations that the Board of Fisheries has in place and overrides them. He pointed out that the Board of Fisheries and the Commercial Fisheries Entry Commission (CFEC) have regulations such that someone can only fish in one salmon administrative area per year. Thus he wanted the committee to address the conflicting philosophies before voting on either bill.

[Representative Williams, sponsor, deferred to Mr. Barry.]

Number 2951

TIM BARRY, Staff to Representative William K. Williams, Alaska State Legislature, explained that Representative Williams had introduced HB 415 at the request of the United Fishermen of Alaska (UFA). Noting that this issue was discussed during the Joint Legislative Salmon Industry Task Force process, Mr. Barry said UFA had asked Representative Williams to sponsor this bill separately. He deferred to Mr. McCune [lobbyist for UFA] to address the issue raised by Chair Seaton. [Tape 04-7 ends; nothing was recorded on Side B.]

TAPE 04-8, SIDE A

Number 0001

CHAIR SEATON, noting that floor session would begin soon, announced that the committee would wait to address the bill further. [HB 415 was held over.]

HB 409-SEINE VESSEL LENGTH

Number 0090

CHAIR SEATON returned attention to HOUSE BILL NO. 409, "An Act relating to the maximum length of salmon seine vessels; and providing for an effective date."

Number 0153

REPRESENTATIVE GUTTENBERG noted that now the bill just says the authority is being given to the board, and he doesn't know the board's position on this. He remarked that it certainly is more palatable the way it is now, and noted that he'll hear it again in the House Resources Standing Committee.

REPRESENTATIVE GARA announced that he was going to support the bill, but wanted to state a concern. He said he is satisfied the bill as written is fine constitutionally, but offered his belief that, as a matter of practice, it is a bad idea to propose legislation that tells an agency to come up with regulations without telling the agency the concerns and without giving any direction as to the motivation.

Number 0294

REPRESENTATIVE WILSON moved to report HB 409, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 409(FSH) 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 10:30 a.m.