

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

February 18, 2004
8:32 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Cheryll Heinze

COMMITTEE CALENDAR

HOUSE BILL NO. 444

"An Act relating to direct marketing fisheries businesses, to the fisheries business tax, and to liability for payment of taxes and assessments on the sale or transfer of fishery resources; and providing for an effective date."

- HEARD AND HELD

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 444

SHORT TITLE: DIRECT MARKETING FISHERIES BUSINESS

SPONSOR(S): REPRESENTATIVE(S) WILSON

02/09/04	(H)	READ THE FIRST TIME - REFERRALS
02/09/04	(H)	FSH, RES, FIN

02/18/04 (H) FSH AT 8:30 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
02/16/04 (H) Heard & Held
02/16/04 (H) MINUTE(FSH)
02/18/04 (H) FSH AT 8:30 AM CAPITOL 124

WITNESS REGISTER

IAN FISK, Staff
to Senator Bert Stedman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained details of HB 444 as staff to Senator Stedman, sponsor of the companion bill.

KATHY HANSEN, Executive Director
Southeast Alaska Fishermen's Alliance (SEAFSA)
Juneau, Alaska

POSITION STATEMENT: Spoke in full support of HB 444.

CARL MEYER, Chief of Appeals
Tax Division
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Answered questions pertaining to HB 444.

SUSAN M. SHIRLEY, Chief of Information Services
Division of Commercial Fisheries
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Related the understanding that HB 444 doesn't affect reporting regulations for ADF&G.

DALE KELLEY, Executive Director
Alaska Trollers Association (ATA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 444.

WESLEY J. HUMBYRD
Homer, Alaska

POSITION STATEMENT: Testified in support of HB 415; told of the difficulties for a single person without family members who wants to fish in multiple areas.

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

POSITION STATEMENT: Testified on HB 415 and answered questions.

MARK MUNRO
Homer, Alaska

POSITION STATEMENT: Testified in opposition to HB 415.

MAC MEINERS
Juneau, Alaska

POSITION STATEMENT: Testified on HB 415, citing positive aspects but saying he wants the determination to be in the board's hands.

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

POSITION STATEMENT: Testified in support of HB 415.

BRUCE C. TWOMLEY, Chairman/Commissioner
Commercial Fisheries Entry Commission
Alaska Department of Fish & Game
Juneau, Alaska

POSITION STATEMENT: Answered questions pertaining to HB 415.

ACTION NARRATIVE

TAPE 04-9, SIDE A

Number 0001

[Due to technical difficulties, the first half minute wasn't tape recorded, but was reconstructed from the committee secretary's log notes.]

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at 8:32 a.m. Representatives Seaton, Ogg, Samuels, and Guttenberg were present at the call to order; Representative Wilson arrived soon thereafter. Representative Gara arrived as the meeting was in progress.

[Tape recording begins here.]

HB 444-DIRECT MARKETING FISHERIES BUSINESS

[Contains discussion of SB 286, the companion bill]

CHAIR SEATON announced that the first order of business would be HOUSE BILL NO. 444, "An Act relating to direct marketing fisheries businesses, to the fisheries business tax, and to liability for payment of taxes and assessments on the sale or transfer of fishery resources; and providing for an effective date."

Number 0116

REPRESENTATIVE WILSON, sponsor, explained that HB 444, recommended by the Joint Legislative Salmon Industry Task Force ("Task Force"), would provide fairness and a more level playing field while encouraging value-added [products]; it relates to the sector of the commercial fishing industry known as direct marketing fisheries businesses.

REPRESENTATIVE WILSON reported that this [tax] originated in 1913 when the Territory of Alaska decided to gain revenue from the fishing industry; the oldest tax in Alaska, it is levied on the processing companies: 3 percent on shore-based processors and 5 percent on floating fisheries businesses, which are primarily large, mobile processing facilities that are assessed at a higher rate to compensate for the fact that they don't operate a shore-based plant. Although these fishing businesses fit the mold in 1913, they don't anymore.

REPRESENTATIVE WILSON noted that this bill is a product of years of negotiating among the industry, the government, and those who are concerned; the desire is to not jeopardize that agreement. Saying the Task Force endorsed the bill unanimously, she asked Ian Fisk [staff to the sponsor of the Senate companion bill, SB 286] to explain further.

Number 0350

IAN FISK, Staff to Senator Bert Stedman, Alaska State Legislature, began by saying this relates primarily to the fisheries business tax, although there are other taxes that direct marketing businesses and other fisheries businesses must pay. Specifying that this changes the tax rate for direct marketers from 5 percent to 3 percent in order to level the playing field, he said it seems appropriate that a direct

marketing business - which is primarily an Alaskan vessel - not be treated the same as a large, mobile, floating processor.

MR. FISK explained that second, and perhaps most important, the bill changes the point of taxation. If fishermen directly market under the current tax structure, the tax is on "a second wholesale or retail price that they sell that fish for." Currently, for king salmon sold at the dock for \$5 a pound, for example, they'd pay 5 percent, a disincentive for "adding value to that resource," when the desire is to encourage further development of that sector of the industry.

MR. FISK noted that third, the bill rectifies the tax due dates for direct marketers. Currently, those fishing for salmon are required to pay the enhancement tax, which is basically to cover the cost of hatcheries; they pay that monthly, and pay their salmon marketing tax monthly as well. This bill sets all the tax due dates to April 1, which is friendlier to small businesses so they don't have to do accounting while fishing.

Number 0554

MR. FISK addressed two important sideboards agreed to by the Task Force. First, this bill relates to vessels 65 feet or less in length, which conforms to the existing Department of Environmental Conservation (DEC) permit for direct marketing vessels. He pointed out that DEC is involved for food-safety reasons, and said [65 feet] is where (DEC) drew the line years ago. Second, it only applies to what is caught by the licensee and sold by that same individual.

MR. FISK turned attention to fiscal impacts, saying the Department of Revenue (DOR) estimates this will end up being revenue-neutral to the state. He mentioned that businesses like catcher/processors have been taxed at the higher rates, and said there is some other confusion in the overall tax picture for direct marketers, but indicated DOR feels that anytime a tax structure is clarified, it results in better compliance.

Number 0661

MR. FISK said this bill closes a tax loophole for a sector of direct marketers called catcher/sellers. Referring to a one-page handout of definitions, he explained that a catcher/seller is a direct marketer who sells unprocessed fish or other fishery resources. Closing this loophole will result in more [tax] income from that sector of the fleet, he predicted.

MR. FISK concluded by saying this bill will result in a "clearer picture for the industry to deal with, which is good in the long run"; will do away with the current disincentive related to value-added products; and will apply primarily to Alaskan small-business fishermen. Agreeing that it had gone through a long process involving compromise and had gone through the Task Force, he added, "The sponsor and cosponsor of the bill are mainly concerned that we don't have any changes that are to such an extent that they jeopardize ... the agreement that we've reached at this point."

Number 0761

CHAIR SEATON referred to page 1 [line 8], where it changes from "frozen" to "processed". He asked about ramifications, specifically, any requirement to reclassify the vessels under the U.S. Coast Guard as processing vessels, instead of fishing vessels.

MR. FISK said he didn't know. Noting that Section 1 clarifies the liability for the tax, he added that the exclusion was set up so one sector of the direct marketing portion of the fishing industry could freeze fish on board - for example, a freezer salmon troller - and then not be liable for the tax because the fish are sold to a licensed processor. Existing law, by contrast, says the person who first processes the resource is liable. He elaborated:

This extends that exclusion so that if a ... small vessel is doing processing on board and then selling it to a licensed fishery business, i.e., a processor, then this clarifies that the processor is liable. And so Section 3 is kind of related to this as well, and ... it's all about clarifying who's supposed to pay the tax. And that's part of the bill that [the Department of] Revenue was ... set on so that they could get better compliance and better clarity in the whole tax structure.

CHAIR SEATON emphasized the need to look at [how the U.S. Coast Guard regulations would apply] and whether reclassification of the vessel would be required.

MR. FISK said he was fairly sure it wouldn't be required, but offered to find out before the next hearing.

Number 0975

REPRESENTATIVE GUTTENBERG referred to the sectional analysis and Section 4, page 3. He asked what the breaking point of 65 feet for vessel length represents.

MR. FISK answered that DEC, whose involvement with direct marketing is a food-safety concern, has a license geared toward the group that is the subject here. He remarked:

They made a cutoff at 65 feet. ... I don't know exactly the origins of that, but I do know that what we intended to do with this bill was not throw another monkey wrench in that and require further change with them. I think the comfort level of some people in the industry is higher with this bill if you limit it to the smaller vessels. If you don't draw the line clearly enough, ... you could get into a situation where there are catcher/processing vessels that are really of a different scale than the vessels that we're talking about here. And so the line kind of had to be drawn somewhere.

Number 1061

MR. FISK, in response to Chair Seaton, explained that the exclusion [in Section 3] doesn't affect tax revenue to the state. It defines the processor, rather than a freezer-troller who sells to an onshore licensed fishery business, for example, as the one who will pay the tax. In Section 3, "frozen" is deleted and "processed" is added so that for other onboard processing, if the product is then sold to a processor, the tax liability is clarified [as being the responsibility of] the processor. He suggested this clarification makes it easier for everyone.

Number 1243

KATHY HANSEN, Executive Director, Southeast Alaska Fishermen's Alliance (SEAFSA), informed the committee that she was on the working group for this legislation and worked on this issue for several years before that; she agreed it's been a long process involving compromise on many sides. Stating full support for the legislation, she acknowledged there might be a few technical wording changes, but cautioned that major changes would cause "large segments of support" to fall away. Although some direct marketers don't qualify under this legislation, she remarked,

"They understand. They know why. I've talked to several of them. It's just that you cannot make every scenario fit every situation. And so what we did is, we tried to cover the greatest number of people in the legislation."

MS. HANSEN addressed adding ["processed"] instead of "frozen" by saying, "It does not bring in the Coast Guard. It's actually not Coast Guard regulations; it's the 'fishing safety initiatives' of 1996." She then said many processors around the state want to buy "headed" product from fishermen, just that one additional step, which brings in less waste to the facilities and so forth. However, under current law each fisherman had to be liable for his/her own taxes; the processor couldn't take on that responsibility. She explained:

What we've actually done is, we've gone a step farther in this legislation, and we've flat made it the processor's responsibility if they buy this product that's processed. That was not the original thought as we were going into it, but it's what ended up occurring, and there's good reasons for it.

Number 1397

CHAIR SEATON referred to Section 3, the processing tax, and the ".017 exclusion" from the fisheries business tax. He said other wording throughout the bill is such that the person who possesses the fish at the time is liable for the salmon enhancement tax, dive fishery tax, and so forth. He requested confirmation that the language in the rest of the bill "means that the processor who buys - the other licensed fishery business that buys - from the direct marketer will be responsible for collecting the salmon enhancement tax, the marketing tax, a dive fishery tax - all those other assessments."

MS. HANSEN answered in the affirmative.

Number 1489

CHAIR SEATON asked: If the product is sold to another licensed fishery business, who is responsible for the reporting?

MS. HANSEN answered that the COAR report [Commercial Operators Annual Report] would be done by the processor, and the direct marketer would still have to fill out a portion of it. Either could be responsible for writing the fish ticket. This statute

only deals with Department of Revenue (DOR) statutes, she noted, and doesn't get into "fish and game deals." She explained, "Currently, right now, for these different various sectors, sometimes the catcher/processor writes the fish ticket; sometimes it's rewritten at the processor when it's resold, and the previous one written by the catcher/processor is voided."

Number 1544

CHAIR SEATON offered his understanding that the Alaska Department of Fish & Game (ADF&G) doesn't see any problems with fish tracking as it relates to this legislation.

MS. HANSEN stated her belief that [ADF&G] is supportive of this legislation. "All their issues have been addressed," she added.

Number 1570

REPRESENTATIVE GUTTENBERG inquired about those who are outside the definitions of the bill.

MS. HANSEN said one who comes to mind is a shrimper who does "frozen-at-sea shrimp" on a 72-foot vessel and will operate under the regulations under which he has operated for the last five or ten years. As to the numbers, she said it's a handful, to her belief. She reiterated that the effort was to try to bring in the greatest number possible, but there were a few for whom it just didn't fit "unless you made the language so broad-open that it was totally open to abuse."

CHAIR SEATON surmised there might be a 75-foot troller, for example, that wouldn't fit the definition, but that expanding it would also expand it for Bering Sea vessels and so forth.

REPRESENTATIVE WILSON requested confirmation that the [Tax] Division doesn't believe it will lose revenue either way.

Number 1669

CARL MEYER, Chief of Appeals, Tax Division, Department of Revenue (DOR), referred to the fiscal note and said it was hard to answer, since there wasn't sufficient information. He added:

Overall, I think the opinion is that, because of the extra compliance that will be achieved and the fact that with ... the salmon enhancement tax and some of the smaller taxes that ... are going uncollected

because the buyer is required to collect that tax -- and when you have buyers that aren't licensed fisheries businesses, they don't really know about that requirement, so they don't, under current law, really collect that tax. With this legislation, that will change and the direct marketer will collect the tax - or the commercial fisherman.

REPRESENTATIVE WILSON asked whether, when she herself has bought fish or shrimp from someone, she was supposed to have kept track of the tax.

MR. MEYER answered, "Technically, yes."

Number 1780

CHAIR SEATON referred to page 3, beginning at line 15, "or by means of custom processing services obtained by the licensee." He asked whether it's tight enough, in that a floating processor who now pays 5 percent could operate under this scenario and pay 3 percent. Noting that it doesn't specify "shoreside custom processor", and saying he doesn't think it should, Chair Seaton said fishermen should have the opportunity to sell their fish, but if it's a question, there might be a need to specify that a floating custom processor pays 5 percent.

MR. MEYER expressed hope that the statute itself is tight enough. He said the direct marketer has to be an individual, and will have that product custom-processed. Whether it is a floating or shore-based operation, he said hopefully it will be self-regulating enough that there won't be abuse in the form of people "crossing over" who otherwise wouldn't qualify for the direct marketing license.

CHAIR SEATON explained that the product could be sold to a floating processor without the community support that comes from having shoreside processors, and yet the tax would be 3 percent. He again asked whether it's tight enough or should be looked at.

MR. MEYER answered that when the product is custom-processed, the direct marketer will have to retain ownership; it will come back to the direct marketer in order to be sold.

Number 1941

CHAIR SEATON observed, however, that nothing in the legislation says "you cannot later sell your direct-market product to a

licensed fishery business who happens to be the same business that you had custom-process fish for you."

MR. MEYER said he'd have to think about it.

CHAIR SEATON clarified that he isn't objecting to the bill, but is trying to see if there are problems, including whether there's a need to tighten the language so a floating custom processor pays at the 5 percent rate, to eliminate any loophole.

MR. MEYER responded:

In your example, if I was a licensed fisheries business and the sale was being made to me, ... presumably I would be, at that point, responsible for collecting the tax, because we have expanded, in ... Section 1, the definitions of what the fisherman can legally do to qualify for the exclusion. So the fisherman in that case, I think, would qualify for the fisherman's exclusion, and then it would transfer the tax liability onto me to collect it.

CHAIR SEATON said the exclusion is there, but also the 3 percent tax rate for a licensed fishery business.

MR. MEYER replied, "In that situation, if the fisherman does not have liability for the tax and I'm a floater and I obtain that product, ... I'm going to pay a tax of 5 percent." In further response, he said, "I'm not going to say there might not be an instance, but I don't think that it should arise."

CHAIR SEATON said he hoped not, expressed appreciation, and indicated the question would be asked of others as well, to make sure all the bases were covered.

Number 2128

SUSAN M. SHIRLEY, Chief of Information Services, Division of Commercial Fisheries, Alaska Department of Fish & Game, related the understanding that this bill in no way affects existing reporting regulations for ADF&G, including fish-ticket reports as well as the COAR reports.

Number 2203

DALE KELLEY, Executive Director, Alaska Trollers Association (ATA), testified as follows:

The Alaska Trollers Association supports HB 444 and views it as an important piece of legislation for fishermen who are currently direct-marketing their products, as well as those who may turn to this option due to poor price, loss of markets, or simply because they want to try their hand at marketing their own line of select products.

HB 444 appears to be a complicated bill, but its essence is simple. This bill establishes a reasonable tax rate and payment timeframe for small business. It clarifies who is liable for that tax and under what circumstances, and it defines the product form that the tax is levied on. Important features of the bill are sideboards which have been put in place to ensure that this action doesn't disadvantage our shoreside processors or compromise food safety.

This bill is nearly a decade in the making and represents a tightly woven compromise ... between fishermen, processors, and the three agencies. Key to its success is passing the bill intact. Picking at any of its threads could cause it to unravel in your hands.

That said, there are a couple of technical amendments that might further clarify the bill now and into the future, such as adding the word "unprocessed" to the section dealing with the product to be taxed. The bill does not accommodate each and every direct marketer's desires, but it does ... address the needs of most of them. In addition, it should streamline the agencies' workload, hopefully at a cost savings to the state over time.

Number 2270

MS. KELLEY noted that she'd submitted additional testimony for the record. Addressing the earlier question of freezing versus processing, she said:

Depending on what method of processing the boat is undertaking, they may have to be a catcher/processor and have additional licensing anyway. For instance, freezer-trollers are processing vessels. And that's where this whole exclusion thing came into play. And

... there are also ones that have to file additional fish tickets, as do some of our freezer-shrimpers. But freezer-trollers are processing vessels by their very nature, and they have additional licensing that some direct ... marketers may not have. ...

So it doesn't get any processing boat out from under DEC requirements for food wholesomeness and safety. But it will allow, as Kathy [Hansen] pointed out, some processors to buy headed product and do with it what they may, and provides the protection to the state that the tax liability is covered.

Number 2338

CHAIR SEATON asked where in the bill Ms. Kelley believes "unprocessed" should be included.

MS. KELLEY indicated Mr. Fisk had just referred her to Section 5. Noting that a fisheries business tax is a processing tax but is paid on the value of raw fish, she said direct marketers have been penalized for adding value by having to pay a higher tax, whereas processors pay tax on the raw-fish form. Highlighting confusion over the years, she said what prompted the effort to establish something for direct marketers is that a [DOR] regulation had been changed, muddying the waters as to the point at which that product is taxed.

MS. KELLEY noted that a gentleman who testified [on SB 286 in the Senate Labor and Commerce Standing Committee] had mentioned perhaps adding ["unprocessed"], which she said could make some sense. Suggesting some clarifying amendments might be good over time, she said although DOR representatives have been working closely on this, for example, who knows what the next [hiring round] will bring.

Number 2449

CHAIR SEATON suggested clarification will probably be needed from the Tax Division; for example, Chuck [Harlamert of the Tax Division] had indicated previously that the tax would be 3 percent, but on the value sold to "the other ... licensed fishery business." Chair Seaton expressed the desire to have it "get it to raw-fish value." He then asked whether the suggestion was to put ["unprocessed"] under Section 5.

MS. KELLEY said it could be gone over if other issues are being analyzed, but expressed concern about messing something else up. She reiterated that the bill has been worked on for years among a number of parties, and that any substantive changes could cause [the agreement] to fall apart, which would be a big loss for direct marketers.

CHAIR SEATON expressed hope that the Tax Division would contact the committee about the current projection and where it would be with the addition of that [language].

MS. KELLEY expressed appreciation for DOR's work over the past couple of years.

Number 2599

MS. HANSEN responded to the suggestion of adding the word "unprocessed" as follows:

If those of us that have been looking at this and talking about it understand it correctly - and I've just kind of checked with Department of Revenue; I have e-mails into Department of Revenue, but [Chuck Harlamert has] been unavailable - what it does is, for the direct marketer that is actually going all the way to market with his product, it makes it very clear that what we're talking about is ... the tax goes down onto a raw product.

For those individuals ... selling to the licensed fishery business, their tax is going to be taken on what they're paid for by that processor; there's no ifs, ands, or buts about it. ... In some cases, a guy that's selling to the shoreside processor his processed product ... might pay a little bit more than somebody who goes to ... the trouble of marketing - ... all the way to the end consumer - their product.

CHAIR SEATON asked that Ms. Hansen confer with the committee to ensure that the correct placement is being considered for "unprocessed" in order to not affect "the end use."

Number 2667

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

CHAIR SEATON drew attention to page 3, lines 13-16. He suggested there is good clarification in allowing direct marketing vessels to expand their options, since currently they must process on their own vessel only what they've caught on their own vessel. This [new wording] allows processing at a shoreside facility or obtaining custom-processing services. He pointed out, however, that while this works well for some localities close to town, many places such as the outer Kenai Peninsula have no shoreside facility nearby.

CHAIR SEATON therefore asked members to consider adding [to the portion at lines 13-16] the language on lines 9-10 that says a vessel doesn't exceed 65 feet in overall length and is owned or leased by the commercial fisherman; thus someone could utilize another vessel or a small barge. He explained that people may be constrained if putting product into boxes, for example, and this would give those without access to a shore-based facility the same ability to utilize this direct-marketing legislation and have "a little more facility."

Number 2808

REPRESENTATIVE WILSON surmised, then, that a fisherman could bring alongside another boat that he or she owns.

CHAIR SEATON clarified, "Owns or leases." Again referring to the wording on lines 9-10, he said it would be the same definition. Shore could be too far away to do processing, for example, and this increases options for direct marketers, just as options are increased for those who fish close to town and to shore-based facilities; this also makes [the bill] applicable to more areas of the state.

REPRESENTATIVE WILSON asked who would pay the tax.

CHAIR SEATON said it would be the [original] direct market vessel. The second boat or facility wouldn't be a licensed fishery business; if it were, it would be a different situation. He suggested, for example, a fisherman might have a 38-foot boat and a barge or second boat anchored up on which to process the product; this would allow the fisherman to do what the bill allows for people close to town who can use a shore-based facility. The [second boat or barge] would have to be [65 feet or less]; the fisherman would still have to be direct marketing, and would still have to maintain the product just as if using a shore-based facility.

Number 2948

REPRESENTATIVE WILSON asked whether there would be extra steps, other than transporting the fish.

CHAIR SEATON said no, it would be no different from the use of a shore-based facility and would have no extra advantage. The difference is that line 15 says it must be a shore-based facility, but that means a fisherman must be tied to and close to such a facility.

[Not on tape, but reconstructed from the committee secretary's log notes, was Representative Ogg's question as to whether that isn't covered already under custom processing.]

TAPE 04-9, SIDE B

Number 2975

CHAIR SEATON said custom processing involves another licensed fishery business that someone contracts with to process fish; a person can maintain ownership of the fish and have [the custom processor] do the processing. By contrast, this [proposed change] allows people to process their own fish, as is done with a shore-based facility. He said that's why it says "shore-based facility or by means of custom processing", and it gives a dual ability so someone doesn't need a separate license.

REPRESENTATIVE OGG highlighted testimony about freezer-trollers and their need for a processing license. He asked about needing a different license for the processing part on a second boat [for other fishermen]. He again suggested it would be covered under custom processing. He noted that it would be two different vessels.

CHAIR SEATON agreed, but said there is a difference between being licensed to process and being a separate business that one is selling to, contracting services with, and so forth. He pointed out that DEC, ADF&G, and [DOR] all have different definitions of processing and different licenses. He specified that this suggestion is to give individual fishermen the easiest option to conduct operations on their own boats, using for the processing a small barge or another boat that is leased or owned outright.

Number 2836

REPRESENTATIVE OGG asked: Why limit it to 65 feet?

CHAIR SEATON answered that the whole idea of the "direct marketing compromise" is to restrict it to boats [65 feet or less in overall length]. Saying there is no intention of expanding that to floating processors, for example, he added, "That would be where you'd have a floating processor that would be covered under ... the custom-process side."

REPRESENTATIVE OGG pointed out that fishermen could avail themselves of a floating custom-processing vessel that came in and was bigger than 65 feet. He again asked why this should limit fishermen to just 65 feet, since [the processing vessel] wouldn't be the boat utilized to catch the fish.

REPRESENTATIVE WILSON surmised that it's part of the compromise worked out. She asked whether those close to shore would use their own barges, for instance; how it would all fit in; and whether it was okay or would make a difference.

Number 2750

CHAIR SEATON said he thinks it gives fishermen options. He offered his belief that it's always easier, if close to port, to use a shoreside facility rather than do things offshore. But shoreside facilities aren't scattered evenly across the state. He asked Ms. Hansen how this works in relation to the compromise on the 65-foot length.

MS. HANSEN replied that she'd first heard of this proposed language this morning and thus hadn't figured out how it would fit in and whether it would affect all the different parties that had worked on this. She continued:

I do know that, in listening to the discussion that's occurred so far, there are two things that immediately occur to me that need to be checked into. One is the Coast Guard question that you'd asked about earlier. And I guess my discussion earlier didn't go all the way into it. Where you have problems with those Coast Guard regulations or the fishing ... safety initiative Act is, when you take a vessel that's a harvester and turn it into a processor, you have to have it reclassified.

So a vessel where you're doing the harvesting on, even if they're doing processing, they don't go into that whole new routine. But if you have a vessel that's

sitting there alongside that is doing only processing, you might very well bump into those. It's something that would need to be checked into.

And then the second one is, I would have a question of Department of Labor [& Workforce Development]. To go back, in about, I believe, ... 1998, Department of Labor started contacting all of the Southeast gillnetters that processed on board their boat. And they were telling us that we needed to pay our crewmembers by processing-employee standard salaries, W-2s, overtime, and the whole [works]. And ... we got it solved within a short time period, but it was ... definitely a lot of work to convince them that ... that crewmember that was processing on that harvesting boat was still a crewmember, was still being paid by crew shares, and that everything was legitimate and they were not a processing employee.

Again, if you step over onto another boat that didn't do the harvesting, do you cross that line? I don't know. But the thought does come to my mind, as a question.

Number 2614

CHAIR SEATON surmised that the same concern with regard to the Department of Labor [& Workforce Development] would arise for crewmembers who use a shore-based facility and are no longer aboard the vessel.

MS. HANSEN replied, "You might. ... Most people that use shore-based facilities pay for the services through a processor that already operates. There are very few individuals that use their own shoreside facilities. Most of them do their boxing and everything on board the boat."

Number 2588

CHAIR SEATON mentioned cod that fishermen have boxed on board in Homer because they couldn't use a boxing facility, and said it's a great thing to be able to use the shoreside facility. Thanking participants, he noted that some questions required investigation before the next hearing. [HB 444 was held over.]

HB 415-FISHING IN MORE THAN ONE FISHERY

Number 2515

CHAIR SEATON announced that the final 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." [It was clarified that the proposed committee substitute (CS), Version H, had been adopted at the previous meeting.]

CHAIR SEATON turned to public testimony.

Number 2470

WESLEY J. HUMBYRD, Homer, informed members that he has been a commercial fisherman since 1966, mostly for salmon, and wants to see this bill pass. As a single person, he said, he feels discriminated against because those with family members can take one member who holds a permit on board in each area. He reported that he'd talked to the Commercial Fisheries Entry Commission (CFEC) four years ago about trying to straighten this out, but had been told to go to the board, which then said it didn't feel it had the right to make such a decision. Thus he said this bill would open it up for people like himself who have no family members.

CHAIR SEATON asked who at the Board of Fisheries had told Mr. Humbyrd that the board didn't have authority to change these regulations.

MR. HUMBYRD said he didn't remember.

Number 2304

DOUG MECUM, Director, Division of Commercial Fisheries, Alaska Department of Fish and Game (ADF&G), referred to the original version of HB 415 and indicated ADF&G had made suggestions to the sponsor's staff relating to nonsalmon fisheries. He noted that the Board of Fisheries has adopted a number of restrictions including those for "superexclusive vessel" and "superexclusive use areas," mainly in the groundfish, herring, and shellfish fisheries around the state. Subsequently, he said, to address those concerns, this bill was limited to salmon net fisheries,

which solves many potential problems. However, some issues remain.

MR. MECUM noted that the bill talks about an entry permit. He said a question was raised in talking with the Department of Law as to whether the bill applies only to fishing in limited-entry fisheries, because it refers only to entry permits and not to interim-use permits. Thus a question is whether a court would interpret "entry permit" to include interim-use permits. Calling this a technical question, he pointed out that many of the potential concerns in this regard are limited because [the bill] currently applies just to salmon fisheries, which are to his knowledge all under limited entry currently.

Number 2231

MR. MECUM highlighted a technical question relating to the term "gear" in the bill: it possibly could include vessels unless otherwise specified. Hence he suggested it might be helpful to clarify that the bill isn't intended to limit the authority of either CFEC or the board to limit vessel use in multiple fisheries, or at least to address that issue.

MR. MECUM turned to another issue. He said the board has for at least one salmon fishery in Alaska, the one under the Chignik cooperative management plan, adopted 5 AAC 15.359, a regulation that says a CFEC permit holder who participates in the annual cooperative fishery in Chignik may not participate in any other commercial salmon net registration area as either a permit holder or crewmember from June 1 through August 31, and also that if someone holds a salmon net gear permit for more than one commercial salmon net registration area, that person must designate the Chignik area as a single area for salmon net fishing for that year. He pointed out that someone fishing in the cooperative in Chignik doesn't necessarily use a vessel, and there were concerns that people might operate vessels in other fisheries. He said the bill obviously raises a question about the board's authority to deal with those types of issues.

Number 2127

MR. MECUM, in response to Representative Ogg, specified that the bill in its current form raises a question of whether the board could adopt a regulation like the one it already adopted for the Chignik fishery, as a sideboard, to limit people from fishing in other fisheries.

REPRESENTATIVE OGG asked whether the board has authority now to adopt language like this in regulation.

MR. MECUM answered affirmatively, saying that's his understanding. A regulation basically stipulates that someone can only fish in one salmon net registration [area] in a year. He agreed that people can own multiple permits, can't fish them themselves, and may transfer a second permit to a relative who then fishes on board a second vessel. Saying the board has authority to make these kinds of limitations, and referring to the previous testifier, he added, "Maybe I should go through the statutes and clarify that, to make sure, but I'm not sure the advice he was given is correct."

Number 1993

REPRESENTATIVE OGG requested a history of proposals put before the Board of Fisheries that deal with this issue.

MR. MECUM relayed his understanding that this issue has come up many times in the past "and they've been reluctant or unwilling to ... change that."

Number 1958

CHAIR SEATON referred to page 2 of Version H, where it says "operate gear". He asked whether that is the language in question that might allow boats to be used in any fishery.

MR. MECUM said that's correct. He affirmed that he had Version H, pointed out that this just raises a question, and noted that comments from the Department of Law had been forwarded to the sponsor's staff. Mr. Mecum indicated legislative counsel had offered the belief that it doesn't create a problem, in which case he said it would be fine.

Number 1900

CHAIR SEATON acknowledged that the next question might need to be addressed by the board's legal counsel, but asked whether it is Mr. Mecum's opinion that the board has authority to "lift these" for specific areas, like it does for exclusive, superexclusive, or nonexclusive areas. He cited the examples of Kodiak, Cook Inlet, and Prince William Sound [fisheries in which a person wants to participate in a year] and asked whether the board could consider and adopt a regulation to say, for the management of the fisheries and allocation reasons, that it

could allow permit holders to fish within those three areas in a year. He pointed out that if it were statutory, it would be done statewide.

MR. MECUM suggested perhaps Bruce Twomley [of CFEC] would be a good person to ask. He said it's his understanding that the board could do that, and that CFEC basically follows the board's lead in terms of its regulations.

CHAIR SEATON noted that Mr. Twomley would testify a bit later.

Number 1780

REPRESENTATIVE OGG asked whether there'd been any particular rationale when the Board of Fisheries rejected this proposal previously.

MR. MECUM replied that when such issues are presented, permit holders in one fishery or another express concern about other people coming into their fisheries and about allocation. He pointed out that things have changed to where perhaps 20 to 50 percent of permits are actually fished sometimes; thus people are asking whether this concept of a superexclusive salmon fishery is appropriate anymore. He surmised that's why some people are pushing this legislation forward.

Number 1690

MARK MUNRO, Homer, noted that he and his wife fish in Bristol Bay. Stating opposition to the bill, he said this is an allocation issue; the result will be taking resources from local areas such as Naknek and Dillingham, where there is much lower overhead and people will fish regardless of the economics. He said he doesn't believe it's right to allow an elite group of fishermen to hit the peaks of every fishery, and he believes it's against the intent of limited entry to diversify the resource and allow local communities to benefit. He disagreed with what he characterized as a trend of giving the resource to an "owner group." He concluded, "You shouldn't even be talking about this, is ... my opinion."

Number 1612

MAC MEINERS, Juneau, spoke on his own behalf, noting that he holds both a Kodiak seine permit and a Southeast gillnet permit. Saying he'd like to see some guidance from the legislature in

making some decision or helping the board through the process, he told members:

I'd like to see it happen. I think it would stimulate permit prices. I think it would help the individual fisherman. Though it'd be hard to make the right choice at all times, to hit the peaks, I still think it would make it a lot easier for us to generate revenue when there is hardly a fishery in the state - salmon fishery - where you can generate enough money for the year.

MR. MEINERS mentioned the need for an opportunity to harvest these fish, but emphasized the importance of markets with regard to whether someone can "roam the coast." Noting that halibut boats go from Bristol Bay all the way to Dixon Entrance, he suggested a little more latitude would be a lot more beneficial.

CHAIR SEATON pointed out that this bill gives no guidance to the board; rather, it takes authority away from the board.

MR. MEINERS clarified, "I'd like to see it in the board's hands to make the decision."

Number 1454

GERALD McCUNE, Lobbyist for United Fishermen of Alaska (UFA), spoke in support of the bill, noting that he'd received a lot of calls about it from all over the state. He agreed this issue has been before the board several times, but suggested those weren't opportune times to talk about it, since the fisheries were more solid. He reported that UFA had decided, since the issue was before the Joint Legislative Salmon Industry Task Force ("Task Force") and a lot of people were urging that this happen, to bring it before the policymakers in the legislature to hear the issue out, rather than take it to the board.

MR. McCUNE said a lot of people hold two or three permits, but dual permits can only be fished inside an administrative area; a fisherman cannot run back and forth between fisheries in different areas. Saying people who own more than one permit think they are being discriminated against and should be able to fish all their permits, he remarked, "There's 50 guys ... in Copper River that have Bristol Bay permits in their wife's name or their daughter or their son's name; they go there anyway. So the theory of running around, hitting every peak, ... I don't think that's going to be really a clear option now."

MR. McCUNE pointed out the key role of markets, as [Mr. Meiners] had discussed; noted that this doesn't include vessels, just permits; and predicted that the people who'd take advantage of it first are those who have permits currently in the name of a spouse or child and would transfer those to their own name. Beside the need to buy a different vessel, he suggested it would cost perhaps \$60,000 for a new permit, harbor fees, and gear, especially for someone who hadn't made the investment already.

MR. McCUNE, noting that the [salmon] fisheries are all limited, highlighted the diversification this could provide. He questioned the ability of people to hit all the peaks if there aren't markets, and cited the seine fishery in Bristol Bay as an example. If it's limited to just a couple of areas, he suggested, it would discriminate against those who own permits in other areas. "A lot of people think it's time that ... we take a clear look at this and let people fish their permits that they do own," he concluded.

Number 1180

CHAIR SEATON asked, if this is limited by markets, whether Mr. McCune sees the ability for so-called highline fishermen from one area to displace local fisherman in another area. For example, if a processor has a really good fleet that supplies fish from both Prince William Sound and Southeast Alaska, would they be able to "leverage out" some of the local fishermen?

MR. McCUNE replied that he wouldn't think so. He said there are only so many permits anyway, and people choose to fish those permits. For example, he said, the Copper River is "maxed out" on permits, and all but nine were fished last year, though that is an exceptional fishery. He mentioned several processors by name, saying they are spread out in the state anyway "and have their own fishermen for those different areas." He added that a lot of fishermen who fish for NorQuest [Seafoods, Inc.] in the Copper River also fish in Bristol Bay.

CHAIR SEATON requested that Mr. McCune return when the bill is brought up again. Noting that time was limited, he called upon Mr. Twomley to address questions.

Number 1029

BRUCE C. TWOMLEY, Chairman/Commissioner, Commercial Fisheries Entry Commission, Alaska Department of Fish & Game, also offered

to return at the next hearing. Referring to the question of whether the board has authority to selectively lift this requirement of choosing an individual fishery to fish each season, Mr. Twomley said he thinks there is some authority found in the 1990 Hebert case. He elaborated:

The board really has a lot of authority when it comes to establishing exclusive area and superexclusive area registration. And I know that I'm told that in practice they recently did that in one of the herring fisheries. There were local individuals from Goodnews Bay who came to the board and asked the board to lift their superexclusive area status so they could bring more people and buyers into the fishery. And I'm told the board did that in the last session.

In contrast - and this was also a fairly recent development - inside Bristol Bay itself, where you've got a series of subdistricts where people register and then can't quickly move from one to another, ... they have to register and there's a waiting period before they can move - local people in the subdistrict of Togiak wanted superexclusive subdistrict area registration so they wouldn't get invaded by others in the Bristol Bay fishery. And they got that from the board. ...

And so the board ... has done both in recent times. They've established one superexclusive area among ... subdistricts that are not superexclusive, ... and they have also lifted one superexclusive area among Western Alaska herring fisheries, which are, for the most part, superexclusive areas. So, at least from practice and from the Hebert case, I would think that they could.

Number 0941

CHAIR SEATON thanked participants. [HB 415 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 9:58 a.m.