

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

February 27, 2004
8:52 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. 478

"An Act relating to the issuance of commercial fishing interim-use permits; 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 478

SHORT TITLE: COMMERCIAL FISHING INTERIM USE PERMITS

SPONSOR(S): REPRESENTATIVE(S) WILSON

02/16/04	(H)	READ THE FIRST TIME - REFERRALS
02/16/04	(H)	FSH, RES
02/27/04	(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
02/18/04	(H)	Heard & Held
02/18/04	(H)	MINUTE(FSH)
02/27/04	(H)	FSH AT 8:30 AM CAPITOL 124

WITNESS REGISTER

FRANK M. HOMAN, Commissioner

Commercial Fisheries Entry Commission (CFEC)

Alaska Department of Fish & Game (ADF&G)

Juneau, Alaska

POSITION STATEMENT: Testified on HB 478, discussing the history and current status of limited entry and interim-use permits; answered questions.

JON GOLTZ, Assistant Attorney General

Natural Resources Section

Civil Division (Anchorage)

Department of Law

Anchorage, Alaska

POSITION STATEMENT: Called HB 478 a technical fix and discussed reasons it is desirable; answered questions.

PAUL SHADURA, President

Kenai Peninsula Fishermen's Association

Soldotna, Alaska

POSITION STATEMENT: Testified in support of HB 478 to make it easier for CFEC to issue interim-use permits; testified in support of HB 415 in the context of setnet fisheries and the desire for expansion and an opportunity.

JACK HOPKINS

Cordova, Alaska

POSITION STATEMENT: Testified in support of HB 415.

E.J. CHESHER

Cordova, Alaska

POSITION STATEMENT: Expressed emphatic support for HB 415, citing the need to put different salmon permits in his own name and his wife's in order to fish in two areas.

KENNETH DUCKETT, Executive Director
United Southeast Alaska Gillnetters (USAG)
Ketchikan, Alaska

POSITION STATEMENT: Testified in opposition to HB 415, voicing concern about increasing the pressure and number of active permits in Southeast Alaska; stated support for the current regulation in order to protect local participants.

BRUCE SCHACTLER, President
United Salmon Association
Kodiak, Alaska

POSITION STATEMENT: Said the majority of his organization's members support HB 415; opined that it doesn't go far enough and that he should be able to use one boat anywhere he has a permit.

ROBIN SAMUELSEN, President
Board of Directors
Bristol Bay Economic Development Corporation (BBEDC)
Dillingham, Alaska

POSITION STATEMENT: Testified in total opposition to HB 415; expressed concern that it will increase the burden on nonmobile fishermen and do serious damage to coastal communities.

BRUCE WALLACE
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 415 as written, saying he supports the concept as part of a package.

WESLEY J. HUMBYRD
Homer, Alaska

POSITION STATEMENT: Testified on HB 415; offered a copy of his request form to the Board of Fisheries and related what he'd been told about the board's decision not to hear it.

KURT KVERNVIK
Petersburg, Alaska

POSITION STATEMENT: Testified that he is strongly in favor of HB 415; spoke of the need for diversification.

PETER ANDREW
Dillingham, Alaska

POSITION STATEMENT: Testified in opposition to HB 415, citing increased competition as a concern.

BRUCE MARIFERN

Petersburg, Alaska

POSITION STATEMENT: Urged support for HB 415, mostly for the reason of diversification.

JERRY LIBOFF

Dillingham, Alaska

POSITION STATEMENT: Testified in opposition to HB 415, expressing concern about locals, including those who own permits and make money by working on boats owned by others.

MIKE DAVIS

Dillingham, Alaska

POSITION STATEMENT: Testified against HB 415, voicing concern about local people and fisheries; asked that it at least not be adopted in communities that will be negatively affected.

BOB THORSTENSON, President

United Fishermen of Alaska (UFA)

Juneau, Alaska

POSITION STATEMENT: Said HB 415 is one of UFA's highest priorities this session, and characterized it as a housekeeping measure.

SCOTT McALLISTER

Juneau, Alaska

POSITION STATEMENT: Testified that he likes HB 415 as written, for reasons stated by Mr. Thorstenson; suggested the legislature should deal with this or at least send a resolution, for example, asking the Board of Fisheries to do so.

STEPHEN WHITE, Senior Assistant Attorney General

Natural Resources Section

Civil Division (Juneau)

Department of Law

Juneau, Alaska

POSITION STATEMENT: During hearing on HB 415, followed up on Bruce Twomley's memorandum; said CFEC and the Department of Law are neutral on the bill, but offered points to think about.

ACTION NARRATIVE

TAPE 04-11, SIDE A

Number 0001

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at 8:52 a.m. Representatives Seaton, Wilson, Ogg, Samuels, Guttenberg, and Gara were present at the call to order. Chair Seaton announced that Representative Heinze was excused because of illness.

HB 478-COMMERCIAL FISHING INTERIM USE PERMITS

CHAIR SEATON announced that the first order of business would be HOUSE BILL NO. 478, "An Act relating to the issuance of commercial fishing interim-use permits; and providing for an effective date."

Number 0085

REPRESENTATIVE WILSON, sponsor, referred to the written sponsor statement and said HB 478 relates to issuance of a commercial fishing interim-use permit. The court of appeals recently held that the Commercial Fisheries Entry Commission (CFEC) lacked authority to issue these interim-use permits in fisheries that they don't have authority to limit. Calling it a housekeeping measure, she said this clarifies that CFEC has authority to issue interim-use permits in these fisheries. This clarification is consistent with the original intent and purpose of the current statute, she said, and is what has been done all along. She deferred to Mr. Homan for further details.

Number 0201

FRANK M. HOMAN, Commissioner, Commercial Fisheries Entry Commission (CFEC), Alaska Department of Fish & Game (ADF&G), noting that Jon Goltz of the Department of Law would address legal aspects, said HB 478 is short but has a lot of meaning. For the last 30 years, since the beginning of CFEC, two types of permits have been issued: an entry permit for fisheries that were limited, and an interim-use permit (IUP) for fisheries that weren't.

MR. HOMAN explained that a couple of EEZ [Exclusive Economic Zone] fishermen in the halibut fishery came into the state without an interim-use permit probably a couple of years ago and were cited; it went to court, and the Alaska Court of Appeals took a very narrow reading of the statute and said CFEC didn't have authority to issue IUPs for fisheries it couldn't limit. Since the halibut fishery is limited by international agreement, [CFEC] doesn't have that authority. Mr. Homan said this bill is to clarify that the legislature, in the beginning, meant that an

IUP could be used for any fishery that was not limited. It is to broaden the language, he said, and to reaffirm that the legislature meant CFEC could issue an IUP for those other fisheries.

Number 0482

MR. HOMAN, suggesting [Mr. Goltz] could speak to it further, continued:

Apparently, the wording here that ... got the court of appeals' attention was ... in the existing statute it says pending the establishment of a maximum number, and that means pending a limited entry designation; we call it a maximum number, but it means when you limit the fishery. But then it goes on to say that in all other cases the commission will issue interim-use permits for each fishery to all applicants who apply. So, because the fishery is not limited, we give IUPs to anyone for any fishery that has not come under ... limitation.

So those two used to, for 30 years, cover all features of ... people who needed permits to sell fish in Alaska. It got a little bit more complicated in 1984, when there was established a landing permit. ... But it had a very narrow focus and was discretionary - it wasn't a mandatory permit - and this was up to the commissioner of [ADF&G] to issue when it arose that [an] EEZ fisherman would come in to state waters and wanted to unload fish that were already limited by the state.

Because they were not part of the limited entry permit, they couldn't get a limited entry permit. And they couldn't get an IUP because that fishery was already limited. So there was a dilemma in 1984, and so they established what they call a "landing permit" in those cases, and ... at that time it was only two boats that this applied to.

There was a landing permit established at the discretion of the commissioner of [ADF&G] for those cases where a fisherman from outside wasn't able to get an IUP for a fishery because it was already limited internally. ... But this was never used; a landing permit has never been issued. So ... those

two fishermen went away, and I don't know what ever happened to them, but they never came back, apparently.

Number 0711

MR. HOMAN reiterated that [HB 478] is needed to clarify that CFEC can issue an IUP to fisheries it doesn't limit. However, it's a complex legal matter because the issue is in the supreme court right now; he suggested Mr. Goltz could speak to that.

Number 0762

REPRESENTATIVE OGG expressed concern about liability and whether there may be a class of people out there, if this effective date is used, who might say the state didn't have the right to issue these permits and thus they want their money back for that period of time.

MR. HOMAN deferred to Mr. Goltz.

CHAIR SEATON suggested that may relate to the Carlson case.

Number 0881

JON GOLTZ, Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law, noting that he has worked with CFEC on issues related to this bill for a few months, said the Department of Law agrees this is essentially a technical fix to the statute; the goal primarily is to eliminate the word "pending", which has been interpreted broadly by the agencies since the Act was initially adopted, but has been subject to a narrower constriction by the court of appeals recently.

MR. GOLTZ explained that the bill would close the potential loophole that Mr. Homan mentioned whereby there might be some fisheries that are neither subject to a maximum number, so no entry permit can be issued for them, nor pending the establishment of a maximum number, so no interim-use permit can be issued for them. The result would be reduced ability to enforce the fisheries laws and reduced data-collection ability. Therefore, it would be helpful to close this loophole.

MR. GOLTZ said he believes, based on his research, that this bill is consistent with the original intent of the law regarding the issuance of interim-use permits, and is especially

consistent with the legislature's 1977 decision to eliminate gear licenses. He explained that from statehood until 1977, gear licenses were required for the operation of fisheries gear. They were eliminated in 1977 primarily because it was recognized that they were duplicative of the interim-use and entry permit requirements. Thus the bill is consistent with that.

Number 1040

MR. GOLTZ turned to the question posed by Representative Ogg about potential liability. He said the issue has already come up, in the sense that since the court of appeals issued the decision that Mr. Homan mentioned, there have been two class action cases filed against the state. Each alleges that the plaintiffs are owed reimbursement for interim-use permit fees they paid in the past for participation in halibut fisheries; their claims are based on the holding of the court of appeals, which was that CFEC lacks authority to issue interim-use permits in the halibut fisheries because a maximum number of entry permits is not pending in those fisheries.

MR. GOLTZ explained that those cases are currently stayed because the court of appeals decision on which they're based has been appealed by the state to the supreme court. If the supreme court accepts the state's argument in that case, it will address the main issue that the agencies and the Department of Law have. Nonetheless, he said, [the department] believes this bill is desirable because it eliminates any ambiguity about the scope of interim-use permits, and would conform the language of the statute a little closer to the way it has been interpreted and applied for 30 years.

Number 1178

MR. GOLTZ addressed the effective date, saying he wasn't aware of any implication it would have on either the pending class action cases for reimbursement or any other case that somebody might bring. Explaining that the Department of Law maintains that the [Alaska] Court of Appeals decision is based on an erroneous interpretation of the current statute, he added:

We don't believe that the term "pending" was intended to be as restrictive as the court of appeals interpret it to be in the scope of application for interim-use permits. So ... we actually would take the position, I believe, that this bill and the current language effectively mean the same thing as to the scope of the

issuance of interim-use permits. It's just that this bill makes it a little clearer and, hopefully, avoids the result that we are living under currently with the court of appeals [decision].

Number 1275

MR. GOLTZ, in reply to a question from Representative Ogg, said he hadn't analyzed how a retroactive effective date would affect [those pending court cases].

REPRESENTATIVE OGG suggested perhaps the situation could be rectified through a legislative Act and then there'd be no need to go through the courts.

MR. GOLTZ, in response to Chair Seaton, agreed to do an analysis. In reply to Representative Guttenberg, he explained that he'd submitted the [appeal] briefing to the supreme court at the end of January and that the respondents' briefing is awaited. "I think we have a good position in that case," he remarked. In further response, he said this bill has no direct bearing on that case, but if it passes this session, it likely will be mentioned during an oral argument as an expression of the state's reaction to the court of appeals decision.

REPRESENTATIVE GARA requested that Mr. Goltz also provide an opinion on the constitutionality of a retroactive provision.

MR. GOLTZ said he'd incorporate it into his analysis.

Number 1496

CHAIR SEATON observed that the landing permits that Mr. Homan discussed were generated to look at the question of fisheries outside of state waters; a number of fisheries might have vessels operating totally outside of state waters. He asked whether clarification is needed that this interim-use permit also acts as a landing permit for fish coming into state [waters], instead of necessarily for fisheries that are controlled by the state.

MR. GOLTZ said it's a good question. The extent of state control over fisheries, both within and especially beyond state waters, is complicated and varies from fishery to fishery. For example - and to show that halibut isn't the only fishery that this bill would apply to - he said the state currently manages many of the crab fisheries that occur in the EEZ, in federal

waters adjacent to state waters, through a complex relationship with the federal fishery managers. He continued:

But we do require interim-use permits for many of those fisheries, even though they exist outside state waters. There are statutes that require a CFEC permit for a person to land or deliver or sell fish in the state waters. And that would apply to somebody who legally harvested fish outside of state waters without an interim-use permit but then brought them into state waters for landing.

There also, in fact, is a CFEC regulation that says that anybody who possesses fish for a commercial purpose in state waters has to have either an entry or interim-use permit to authorize ... that possession. So I think that with those statutes and that regulation currently in effect, ... the result is that anybody who is operating in a commercial fishery inside state waters, even if this ... harvesting actually took place in federal waters, is subject to this permit requirement.

Number 1685

CHAIR SEATON recalled harvesting tuna outside the EEZ and attempting to get a CFEC permit; CFEC didn't and wouldn't issue a permit and had said it had no way to do that in international waters; ADF&G didn't want any fish tickets; and he'd had to pay landing fees to the Department of Revenue. Noting that fishermen are starting to bring tuna into Kodiak or Homer from international waters, for example, Chair Seaton highlighted the need to ensure that there aren't any loopholes in the bill so another bill isn't required. He asked Mr. Goltz to look at it carefully in this regard.

MR. GOLTZ agreed, but said CFEC has a fair bit of discretion to determine what is a fishery, which has an impact on determining when a permit is required for a particular fishery.

Number 1896

PAUL SHADURA, President, Kenai Peninsula Fishermen's Association, testified in support of this change to make it easier for CFEC to issue interim-use permits. He asked whether this will allow CFEC to issue permits for yet-to-be-classified commercial-use fisheries.

CHAIR SEATON requested clarification.

MR. SHADURA said he sits on the board for the Kenai River Special Management Area, and though he doesn't represent that board, it is dealing with contentious issues relating to guide restrictions in Kenai and other areas, predominantly on the Kenai River. In some of those discussions and in discussion of another bill introduced by Representative Heinze, he said, "We were trying to wrestle with different ways that possibly the guide industry could be accommodated with some kind of limitations based on CFEC regulations." He added that with the change in this language, it allows a little more flexibility. Acknowledging that other questions are involved with this, he said this is something he wants to bring back to "the working committees that will be conducted here in the next month, with the possibility of maybe some changes in this language that would help facilitate, possibly, some guide limitations."

Number 2018

CHAIR SEATON, saying he didn't want to get into the crux of the other bill that was alluded to, asked Mr. Homan to address whether there would be a need in that kind of circumstance to put anything in [HB 478] to address that issue.

MR. HOMAN, asking that Mr. Goltz assist if he was still on teleconference, related his understanding that with the ability to issue an interim-use permit, CFEC would be able to cover all commercial fisheries. He said he believed the answer, therefore, was that if it's a commercial fishery, CFEC would have authority with [HB 478] to issue those permits.

REPRESENTATIVE OGG declared a conflict as a halibut permit holder.

REPRESENTATIVE WILSON objected [to his removing himself from voting on the bill].

CHAIR SEATON announced that he'd have the same conflict, as others on the committee might.

REPRESENTATIVE OGG objected [to Chair Seaton's removing himself from voting on the bill]. [HB 478 was held over.]

HB 415-FISHING IN MORE THAN ONE FISHERY

Number 2142

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." [Before the committee, treated as adopted on 2/16/04, was a proposed committee substitute (CS), Version H.]

Number 2161

JACK HOPKINS, Cordova, testified on his own behalf in support of HB 415. He suggested if the legislature wants to help the fishermen and the fisheries, this is going in the right direction. In answer to questions from Representatives Gara, Seaton, and Ogg, he said it would allow him to go to another area and "catch some prime fishing time," and then people who stayed to "scratch fish and stay" where he'd left could do so. He participates primarily in the salmon gillnet fisheries now and believes most of the permits in his area are being fished.

REPRESENTATIVE OGG asked whether Mr. Hopkins or someone fishing with a similar gear type has approached the Board of Fisheries with a proposal similar to what this legislation would do.

MR. HOPKINS said he wasn't aware of it.

Number 2324

E.J. CHESHER, Cordova, testified on his own behalf. Expressing emphatic support for HB 415, he said it allows someone to fish a permit he/she has legally bought and probably has loans to pay for. He suggested it will help fisheries and fishermen like him diversify in order to feed their families. Presently, someone who owns two or more permits in the same gear-type fishery must place a permit in someone else's name in order to go fishing; in some cases, people don't have a relative to use for this purpose, which is probably the most palatable alternative. Calling it a "silly pre-limited-entry hoop," he said many fishermen end up fishing all their permits at the same time in the same season. He suggested passage of the bill would decrease that likelihood and there'd be less risk and hassle.

MR. CHESHER proposed that if fishermen could leave one fishery that is past its peak and go to another entering its peak, this would be good for the first fishery and would have little impact on the second. In the case of Bristol Bay, he remarked that it's "just what the doctor ordered" in a year like this. Noting that he has fished in Prince William Sound his whole life, he said his wife holds the Bristol Bay permit and they've sent their son, beginning when he was two years old, to a relative's house in Washington State every year they've fished that permit. "It's either do that, lie to CFEC to get an emergency transfer, or put it in someone else's name and risk losing your permit, which has happened in my own family since limited entry," he said, adding that it's time to change this "antiquated" law.

MR. CHESHER indicated he'd sent this proposal to the [Joint Legislative Salmon Industry Task Force ("Task Force")] last year as a [proposed regulation change] for the Board of Fisheries that required only fishing one permit at a time and that only addressed gillnet fisheries in hopes of a better chance of passage. He said he can't see why it shouldn't apply to all salmon fisheries, however.

Number 2510

MR. CHESHER, in response to Chair Seaton, specified that he seines and gillnets in Prince William Sound, gillnets in Bristol Bay, and participates in the gillnet herring fishery off Bristol Bay. In response to Representative Ogg, he said he'd been trying to get this [proposal] passed for some time, but had missed the statewide proposal deadline [for the Board of Fisheries]; thus he'd sent it to the Task Force instead, but in the format one would use for a regulation change to be put before the Board of Fisheries.

Number 2580

REPRESENTATIVE WILSON asked Mr. Cheshier how prevalent it is that fishermen want to fish and thus do all kinds of things to ensure another family member is on board, for example, in order to stay within the law.

MR. CHESHER said several of his friends do exactly that. In response to questions from Representative Gara, he said he has no plan to expand further, since it's difficult enough to "fish both ends of the state at the same time right now." He said it's a hassle he must go through every year, and his wife is worried about going to Bristol Bay again. He added, "My wife

doesn't care to go at all, but I make her go because I cannot own the permit in my name."

CHAIR SEATON asked whether anyone from Mr. Cheshier's fishing group has had this proposal go to the Board of Fisheries.

MR. CHESHER said no, though he knows someone who'd support this, since "he's one of the guys that has to lie to CFEC every year" to get an emergency transfer of his permit to a crewmember.

Number 2738

KENNETH DUCKETT, Executive Director, United Southeast Alaska Gillnetters (USAG), testified in opposition to HB 415, noting that [members of USAG] in Southeast Alaska see this as increasing pressure on the number of active permits and the use of those permits during the peak of the season. Quite frankly, he said, they don't want company from folks from other areas. He explained:

We think the regulation the way it exists now was developed that way for a purpose. It was developed to keep areas available to local fishermen so that when runs were good, ... the people who stay in an area can fully utilize those runs ... and make a living off of them, and then make some cash flow when they scratch the rest of the time.

MR. DUCKETT, replying to Representative Ogg about similar proposals before the Board of Fisheries, indicated he wasn't aware of any specifically, although there have been discussions of multi-area fishing for a long time "in a number of different forms." In response to Representative Gara, he expressed high regard for the department's management of [the Southeast gillnet] fishery, and said he doesn't believe this is a conservation concern. Perhaps 350 permits of the 482 are actively fished; a few people have fished only an opening or two and then participated in other fisheries because of price considerations and so forth. He said it's really a matter of competition: if all permits were fully utilized and people were participating at the peak of the sockeye salmon run in Lynn Canal or in District 6, the increased pressure would be detrimental.

Number 2949

BRUCE SCHACTLER, President, United Salmon Association, told the committee his association represents members statewide; the majority, but not all, support this bill. Stating his personal support, he remarked that the state has given people the opportunity to invest in the fisheries, and that no problems have been seen in the herring fisheries.

TAPE 04-11, SIDE B

Number 2985

MR. SCHACTLER said although some areas will see added [fishing] effort at some times, they'll see a dramatic decrease when fishing is slower; he suggested those "shoulders of the fishery" are the best times to get rid of the effort anyway, when there are fewer fish. Surmising that those who'd take advantage of the bill would primarily fish in peak seasons in different areas, he opined that a few added boats during peak seasons won't make much difference, that there won't be any detriment to the majority of people, and that it will add opportunity for people to realize a benefit from their investment.

MR. SCHACTLER offered his personal opinion that the bill doesn't go far enough, and suggested the need to allow his boat to fish wherever he has a permit, just as it is in the herring fisheries. He added that just having a permit in an area doesn't mean the fisherman can find someone to buy the fish, "due to the consolidation within the processing sector." Because the bill won't help with marketing, he suggested this is self-limiting, although it will create some opportunity.

Number 2796

CHAIR SEATON questioned the assertion that increased fishing during the peak of the season wouldn't make much difference. He pointed out that if people begin utilizing now-inactive permits at the time of the highest catch rates, the greatest number of fish will be removed in the shortest period of time.

MR. SCHACTLER replied:

What I'm referring to is the effect that it's going to have on the fishermen that are there already. If you're in the peak of the season, especially in today's fisheries and today's access to markets and processing capacity, most people are on limits anyway. Most people, you're not going to be able to come in,

as I said before, and fish anyway, 'cause you don't have a market, especially in these volume fisheries.

You come in at the peak of the season, ... there's fish everywhere. It's really a matter of how many you can sell, not how many you can catch. And ... for me, to be out here fishing, for a half a dozen boats or 10 boats ... to come in to the Kodiak seine fishery, for 10 boats to come in to the Southeast Alaska fishery that is stretched over 250 miles, ... it's a nonissue. There's so many fish, you can't sell them, and you can't catch them anyway. So, for each individual boat that's worried about some added competition, it's a nonissue.

Number 2685

CHAIR SEATON, surmising that this discussion pertains mainly to seining, asked about the ability for a really good fisherman from Kodiak, for example, who had market leverage there, to come in and "peel off" some of that limited marketing capacity in Southeast Alaska, having a dramatic effect on fishermen who currently are limited to Southeast Alaska.

MR. SCHACTLER answered that he didn't think it would have a dramatic effect, although it could have an effect. He acknowledged that there wouldn't be this [processing] limitation for those who come to an area to process on board. This would create an opportunity for those people to get different species by going to a different area. In response to Representative Wilson, he said he isn't concerned because the amount of fish processed on board by someone is very small in the grand scheme of things. He said numerous people are trying to process on board now and get a few thousand pounds and then "drift off into the sunset processing them" before they can catch more.

Number 2470

REPRESENTATIVE OGG pointed out that setnetters had provided written testimony in opposition to this bill. He asked Mr. Schactler to elaborate on the gear types used by his organization's members in each area, how many members there are, and whether a vote had been taken in each area.

MR. SCHACTLER said the only area he knew of that took an official vote, "sort of a straw poll," was in Kodiak, at a meeting he attended as a board member a couple of days before;

of the board, there were eight setnetters and one seiner - himself - and those polled were unanimously in favor of this bill. In further response, he indicated other members statewide hadn't taken a position chapter by chapter.

Number 2401

REPRESENTATIVE OGG asked whether Mr. Schactler's organization has put a related proposal before the Board of Fisheries.

MR. SCHACTLER said no. In further response, he recalled that it was tried perhaps five years ago, but didn't recall the board's reasoning for not adopting it.

REPRESENTATIVE OGG asked that Mr. Schactler provide related information, if he found any, to the committee.

CHAIR SEATON also requested that testifiers on teleconference provide any written testimony.

Number 2303

REPRESENTATIVE WILSON surmised that if a proposal was before the Board of Fisheries five years ago, it was prior to the glut of farmed fish on the market and the downturn of salmon prices.

MR. SCHACTLER agreed the world is different in the last two years in the salmon business, let alone five or ten years.

Number 2249

REPRESENTATIVE GARA asked what the legislature needs to do to ensure there are markets, at least at the local processor level.

MR. SCHACTLER mentioned options including [existing legislation] for direct marketing and [increasing] the 58-foot limit so people can process their own fish, and the bigger chore relating to state fisheries policies and even up to the National Marine Fisheries Service. He suggested creating an environment that allows new investment related to processing capacity in these areas that have lost so much.

Number 2100

ROBIN SAMUELSEN, President, Board of Directors, Bristol Bay Economic Development Corporation (BBEDC), testified in total

opposition to HB 415, noting that BBEDC represents 17 communities within the Bristol Bay area. He explained:

We feel that it will increase absentee ownership and allow fishermen just to cherry pick fisheries and be disruptive. Most of our fishermen in Bristol Bay are nonlocal fishermen. The local fishermen that fish here - there's 30 communities in Bristol Bay - some of them participate in the ... salmon season and herring fishery and 100,000-pound CDQ [community development quota] allocation halibut fishery.

We've requested an optimum-yield study to be done for Bristol Bay with hopes of doing a buy-back. We've instituted the first of its kind in the state of Alaska, a Bristol Bay restructuring study, which has been completed. We are now going through a study with Northern Economics to see the effects on five Bristol Bay communities with various handpicked options.

I think this will increase the burden on nonmobile fishermen. ... We have a crisis in the state of processors and lack of processors and processing capacity. An earlier gentleman said this is what the doctor ordered for Bristol Bay this year. Bristol Bay has a salmon forecast return of 34 million harvestable fish. The early analysis shows that there's going to be about 9 million surplus ... sockeye salmon that are going unharvested. The price the processors are talking is 35 cents a pound, and they're looking at putting Bristol Bay fishermen on limits ... right around June 25th, June 26th; that'll probably be a 10,000-pound limit, which will severely limit the income ... of the region residents.

Number 2001

MR. SAMUELSEN recalled that this was brought up before the Board of Fisheries, and surmised it was turned down because of overwhelming testimony against it. Today, he said, there is a mobile fleet, "a few chosen by the processors to be a mobile fleet that could cherry pick fisheries." Local residents cannot get markets in the Togiak herring fishery; even though they've participated in the past, he said, the processors are picking and choosing who they want.

MR. SAMUELSEN turned attention to the salmon fishery and latent permits. Noting that two years ago 600 people didn't show up to fish Bristol Bay salmon, he remarked, "With the big run, they're all begging to get back in the door, but because of lack of processing capacity, ... a lot of the processors are telling fishermen, 'If you haven't fished in the last two years, no, we don't want you back - we don't have the processing capacity for them.'"

Number 1944

MR. SAMUELSEN expressed concern that this [bill] will do serious damage to Alaska's coastal communities, including his own. Referring to legislation introduced by then-Representative Scalzi a few years ago and noting that the Board of Fisheries recently had allowed "permit stacking," he remarked, "Both times, the increase of selling and buying permits, outside ownership, increased." Emphasizing that this is within the board's purview, he said:

I think people are looking at the Alaska legislature to rationalize fisheries and take the power away from CFEC [Commercial Fisheries Entry Commission], especially the Board of Fisheries. And I don't think that's right. I think we need to go to a board of fish and argue these things out, not through the Alaska legislature. If you've given the power to the Board of [Fisheries], don't take it away. Let these people that want to change the fishery and rationalize the fishery and just have a few of us left standing - let them go to the Board of [Fisheries].

MR. SAMUELSEN noted that he represents small-boat fishermen who use 18-foot skiffs in Togiak, mom-and-pop operations, not 58-foot seiners or "wannabe 70-foot seiners" traveling from Southeast Alaska to Norton Sound. He emphasized that 30 communities in Bristol Bay have their sole livelihood from salmon and herring. He expressed concern about how his communities, boroughs, and school districts will stay open, because people who come up from Seattle just take the money and leave after harvesting fish, and even bring their groceries; the only thing they buy locally is fuel, and they leave behind trash, but no economic benefit.

MR. SAMUELSEN said there's a crisis. Opportunities for people within his region are closing rapidly. Referring to talk of "rationalizing the fishery," he said people in his area don't

have the capital to participate in a rationalized fishery; thus outside interests will come in and buy up the permits, and then communities and school systems will have to close, and many people will be laid off. He suggested this [bill] will speed up the demise of local residents, with cherry pickers coming in during good seasons and fishing elsewhere when it's a bad season. He offered his belief that previous legislatures hadn't envisioned that happening.

Number 1725

CHAIR SEATON, noting that Mr. Samuelsen had been a Board of Fisheries member, asked whether there had been a proposal to get rid of the administrative areas entirely or to allow certain administrative areas.

MR. SAMUELSEN agreed with Mr. Schactler that it had come up five or six years ago.

Number 1608

BRUCE WALLACE, Ketchikan, testified in support of the bill as written. Recalling that this [issue] came before the Board of Fisheries at least five or six times from about 1983 forward in different forms, he said it largely ended up being a question of a statewide proposal, which made it contentious. Referring to Representative Wilson's question and Mr. Schactler's point about changing conditions, Mr. Wallace said he wouldn't have expected to hear as much support in past years, which he attributed to changing circumstances.

MR. WALLACE said one advantage not raised so far is that fewer permits are being used and thus fewer crewmembers will need to earn a living wage; he proposed that fishermen will have to be able to work across a broader spectrum than "most anything that a single region would do." As to how this fits in today, he said Mr. Schactler had spoken to it and that it's a question of "the definition of opportunity as the state will see it."

MR. WALLACE suggested this is larger than HB 415 and needs to be judged in the new context; he opined that a lot of testimony today had been from a lack of understanding of how the future fisheries' profiles will look. He stated support for the concept as part of a package; said it's appropriate; and closed by proposing that negative and positive impacts cannot be judged until "we've sort of come to the new age, if you will."

Number 1424

CHAIR SEATON asked why Kodiak and Southeast Alaska seiners, for example, couldn't ask the Board of Fisheries to reduce the administrative restriction between those two areas, rather than having it statewide.

MR. WALLACE said he didn't recall its ever being requested as a structure or limitation between two registration areas, didn't know the legal ramifications, and wasn't sure why that iteration [of a board proposal] hadn't occurred. In further response, he specified that he fishes herring, seines for salmon, and runs some tender operations.

Number 1285

WESLEY J. HUMBYRD, Homer, said he'd fax a copy of the agenda change request form he'd sent to the Board of Fisheries on July 7, 2001. He explained that he'd attempted this proposal through the board's statewide agenda change [process] because he knew it affected many areas; however, the board had decided it wasn't its position to make a decision on this and had believed it was up to the legislature or CFEC. In response to Chair Seaton, Mr. Humbyrd said he'd only received a verbal response, from Art Hughes, to his belief, whom he'd called in Juneau to find out why he hadn't heard anything. Turning attention to the market, he offered his belief that it should have no bearing on this; if the market isn't there and somebody wants to buy a permit in any area for future years, for example, it should be that person's decision.

MR. HUMBYRD, in response to Representative Wilson, said he'd tried to get this changed for many years and believes he is discriminated against because he is a single person [and thus has more difficulty putting a second permit in another's name]. He reiterated that the board didn't want to hear his proposal and that Art Hughes had said the board didn't know whether it's the legislature or CFEC that has the legal right.

Number 0981

REPRESENTATIVE OGG referred to a memorandum in committee packets from CFEC [dated February 25, 2004, sent by Bruce Twomley, chair, because he'd be out of town and unable to testify].

MR. HUMBYRD said he had it, but hadn't had a chance to read it.

REPRESENTATIVE OGG observed that the memo says the board, by regulation, requires [Alaskan salmon fishermen to choose a single net area in which to fish each season], and that CFEC has adopted a complementary regulation; it cites those regulations [5 AAC 39.115 for the Board of Fisheries and 20 AAC 05.1940, 20 AAC 05.1942, and 20 AAC 05.1944 for CFEC]. Thus he said it seems clear that the board and CFEC have regulations and the authority to adopt them.

MR. HUMBYRD asked, if that's the case, why the board hasn't accepted the one agenda change [request] he'd submitted.

REPRESENTATIVE OGG suggested the need for verification of the verbal response Mr. Humbyrd had received from Art Hughes.

CHAIR SEATON encouraged Mr. Humbyrd to fax to the committee his request to the board, as agreed to previously.

Number 0843

KURT KVERNVIK, Petersburg, a commercial fisherman for the last 24 years, testified in favor of HB 415 as follows:

I would first like to point out that many fishermen whom I know cannot attend this hearing; they are currently brown crabbing in Southeast or preparing to depart for longlining. This is called diversification, which is the topic that I would like to talk about today.

I'm a Bristol Bay salmon gillnetter, and I own a permit up there. And I owe far more on my permit than it is currently worth, which financially ... prevents me from selling it to move on to a different salmon fishery. To help supplement my income, I would like to diversify into the Southeast seine ... fishery, which is a completely different gear type, a different area, a different vessel, and more crew.

Currently, the only way that I can do this is to find a seine permit holder to come on board each season. This method carries financial risks that are unacceptable to most lending institutions. The law as it is currently written prevents me from making further capital investments in our state salmon fisheries. This law prevents me from employing more people in the state.

I think that we should be able to choose which salmon fishery might best support our families, depending on the market and its conditions for each season. It is clear to me that just fishing one salmon fishery will not support my family. If I am allowed to [diversify] with multiple permits, I will be able to decide which fishery that I will participate in, and when.

The state limited entry system has already addressed the issue of maximum effort for each fishery, so I do not see this increased effort, or lack of it, as being an issue. If the new studies lower the permit thresholds, then my argument remains the same.

Number 0717

MR. KVERNVIK continued:

The salmon industry is going through some very hard times. There are many hundreds of permits that are not currently being fished for economic reasons. This, in effect, has resulted in lost jobs, lost community revenue, and lost fish taxes. I think, if the state were to allow multiple registration, that there are those of us who are willing to step up to the plate and invest in the permits, invest in the boats and the gear and the crews that have been washed out of our salmon fishery for the last decade.

This law needs to be changed. The salmon fishermen of this state should be allowed to diversify for their own benefit and for the good of the state. For those reasons, I am strongly in favor of House Bill 415.

Number 0642

MR. KVERNVIK, in response to a question from Chair Seaton, offered the following clarification:

The point I was trying to make, the first point, on Bristol Bay: since I owe so much more money on that permit than I could sell it for, it's not feasible for me to sell the permit and then just move into another salmon fishery entirely, which is pretty much what you're forced to do.

The other one I was talking about is for seining. It's difficult to go for a bank, and for me to go get a competitive seine vessel and everything that goes along with that, when I don't even have a permit in my own name. Currently, I've got a guy from Washington that comes up and steps on the vessel. And ... it makes it near impossible for me to upgrade when I really have no rights to that fishery.

Number 0525

PETER ANDREW testified in opposition to HB 415. A 30-year commercial fisherman who has lived in Dillingham all his life, Mr. Andrew said he has family in other villages that have problems getting markets [for fish]. Of the approximately 40 percent of Bristol Bay permits not being fished, many are local. He expressed concern that [the bill will result in] a great increase in competition for the few fish they'll be able to harvest this summer.

Number 0393

BRUCE MARIFERN, a Petersburg resident and commercial fisherman for 20-some years, spoke in favor of HB 415, mostly for the reason of diversification. Involved in several salmon fisheries, Mr. Marifern said he looks at this somewhat as a housekeeping measure, and highlighted the desire to extend into other fisheries. He voiced his opinion that this would result in less overall impact on the state's salmon industry; with several permit holders [in a family, for example], there could be several fisheries going at the same time, but he'd be inclined to go from one fishery to another if he held the permits. Urging support for HB 415, he surmised that others in his community who are out fishing [and thus unable to testify today] would support it as well.

Number 0238

JERRY LIBOFF testified in opposition to HB 415. Noting that he has lived in Dillingham almost 40 years and manages a local village corporation, he specified that he was testifying on his own behalf. Mr. Liboff reported that at a meeting in Koliganek - a nearby village of 160 people including 15 or so permit holders, where [fishing] is the main source of nongovernmental income - every person opposed changing the current system. Agreeing that this bill will tend to accelerate permits' drifting out of local communities, he suggested the rich will

get richer and the poor will get poorer and be driven out of business. Locals who cannot afford to buy into another fishery will be forced to compete with those who can.

MR. LIBOFF, calling it an [allocation] issue, said he sees the next piece, if this passes, as the ability to transfer boats from district to district. He expressed concern that already plenty of highly competitive boats come from other areas or out of state, and people in his region cannot compete because those boats are bigger, faster, and so forth. If the boats are then enabled to move from district to district, the cherry-picking issue will arise repeatedly.

MR. LIBOFF emphasized keeping local permits in local hands. Pointing out that some permit holders don't own boats that are in good shape or competitive, he said he has helped a number of local villagers get on boats owned by people from other areas who don't have a local permit. Thus the restriction of fishing one permit a year per district has actually helped a number of local people make money.

TAPE 04-12, SIDE A

Number 0001

MR. LIBOFF concluded by stating concern that the price of permits will be driven up, making it even more difficult for locals to compete. In reply to a question from Representative Wilson, he surmised that most salmon fishermen in Alaska are going through hard times now, but said it's an individual issue. He related his belief that most [permit holders] in Koliganek are eking out a living and earning a few dollars, rather than making a good living, but are optimistic, which he indicated is characteristic of fishermen.

Number 0211

PAUL SHADURA, President, Kenai Peninsula Fishermen's Association, stated support for HB 415 in the context of setnet fisheries. He said Alaska has more setnet limited entry permits than any other, and he doesn't perceive the bill as creating an influx or large change in who'd utilize it; rather, it allows a small opportunity to remain viable within the industry. As for concern about an influx of new permits into an area, he said this works within the limits already established. He surmised it will reduce latent permits in some areas, and if those areas institute a buy-back program, will reduce the burden on those left within communities such as those in rural areas.

MR. SHADURA turned attention to direct marketing in the Cook Inlet area and said 80 percent of the 745 setnet permit holders there are residents of the area. He mentioned reductions implemented by the Board of Fisheries over the years, including [fishing] time, and said opportunities are limited. He spoke in favor of expansion that allows use of vessels in different areas and remarked:

We have really tried hard in the Cook Inlet area to devise ... regional marketing programs and to go to a direct-marketing program. And those opportunities ... are coming about. Larger processors seem to be ... divesting their interests here in the Cook Inlet area, but we have [an] influx of ... smaller direct-marketing companies that, in fact, are looking for a high-quality product.

This bill would allow us ... to accommodate that, and a problem being, ... with such a short season, if you do establish your own market, that your market's very limited and [your business is] subject to the fluctuations within your regional area.

Number 0482

CHAIR SEATON asked whether Mr. Shadura represents mainly setnetters.

MR. SHADURA said yes.

CHAIR SEATON asked: If this allowed another couple of hundred drift permits in Cook Inlet to be utilized during the peak of the season, since the setnet sites are pretty well taken, would that create any conflict or problems for members of his organization, or would he be comfortable with that?

MR. SHADURA answered that it would possibly be more of a management problem at that point. If a high effort on a particular section of the run occurred, for example, it might reduce the available fishing time. Relating his experience with the Board of Fisheries over 10 years, he recalled that this proposal has come up several times; said [the board] has power to expand regulatory boundaries and to include adjacent areas; and surmised that the board has felt uncomfortable making that widespread policy decision and so has looked to the legislature to reinforce [the board's] authority to do that.

CHAIR SEATON agreed that if there is any confusion on the board, the legislature can certainly [provide that reinforcement].

Number 0682

MIKE DAVIS, Dillingham, testified in opposition to HB 415. Noting that he has been setnetting there for 25 years, he suggested looking at local communities and people who'll be negatively affected by this blanket piece of legislation in their ability to participate in this fishery. Pointing out that other Dillingham testifiers had illustrated what could happen to the Bristol Bay region, he urged members to not adopt this legislation, or at least not adopt it in regions where it will negatively affect communities.

Number 0871

BOB THORSTENSON, President, United Fishermen of Alaska (UFA), told the committee that this is one of [UFA's] highest priorities this session; that the impact is limited; that boats cannot move into other areas to impact other communities; and that UFA voted this in largely as a "simple housekeeping measure" because since limited entry began in 1974, all the things that people on both sides of the issue have testified about have already happened. He likened it to owning a taxi company in Homer and Juneau, but not being able to have the Homer company in one's own name.

MR. THORSTENSON referred to a brochure relating to trade adjustment assistance (TAA) for fishermen ["TAA Alaska Salmon Technical Assistance Study Guide"] and read the following from a page of Chapter 2 that had been provided:

Over the years, many salmon fishermen have diversified their way to prosperity. One way has been to buy a second salmon permit, one that allows them to fish the peak of two different runs that do not coincide with one another.

MR. THORSTENSON asserted that this has taken place to such a widespread degree for 30 years that it's the "number-one diversification option in trade adjustment assistance put together by the University of Alaska Fairbanks." He said he feels for the person who is single and doesn't have trusted, close family in whose name to put a second permit, but related a story about his own relatives and a divorce. He continued:

The reason we favor this so strongly at UFA and we have such solid support throughout most of Southeast, Kodiak, Cook Inlet, Prince William Sound and the peninsula, and ... not necessarily in the Bristol Bay region, but a lot of fishermen from Alaska who do fish Bristol Bay, is ... simply because it really doesn't do very much but straighten up this situation that's occurred for the past 30 years where people have to put permits in different people's names.

MR. THORSTENSON said the only problem he sees in going to the Board of Fisheries [to resolve this] is that the board is overworked and it would take several years, if it could even be done there. Noting that Mr. Shadura and another in the audience had experience dealing with the board, he offered the belief that the legislature - and this committee, in particular - has the prerogative and should act on this bill, and he urged that the bill move from committee as soon as possible.

Number 1208

REPRESENTATIVE SAMUELS stated that he thinks these are good arguments, on all sides of the issue, to have before the Board of Fisheries, where he suggested [UFA] could be successful in having it put on the agenda. Indicating legislators have to hear numerous issues, he said this sounds like the kind of issue the legislature has turned over to the board for a general policy call. He pointed out that legislation heard the previous week would give the board some authority.

MR. THORSTENSON replied that the main difference is that [increasing the] 58-foot limit [for seiners, the subject of that legislation] will come up region by region. He also suggested that Dillingham residents will have less opportunity to weigh in, if there's a statewide board meeting in Anchorage, than they do [before the legislature]. Noting that the legislature could give the board [certainty about] the board's authority to address this issue or that the attorney general could issue an opinion, he voiced concern that it will take three or four years. He opined that this won't be a major change "other than a businesslike approach, that people that actually ... control permits will hold them in their own names."

Number 1401

REPRESENTATIVE GARA pointed out that the board has expertise such that it could decide in which areas this makes sense. He asked what Mr. Thorstenson would say to the testifiers from Bristol Bay if he believes the bill should pass.

MR. THORSTENSON answered that he understands the concern "in any region" and indicated Southeast gillnetters have concerns similar to those of Dillingham fishermen. He said he'd talked with Bruce Twomley of CFEC yesterday, and the typical business practice has been that if [the permit isn't held by] a spouse or child, a life insurance policy is taken out for the permit holder. Mentioning chutzpah, he said the lack of HB 415 hasn't prevented people from going to Bristol Bay, for example, and most people have a crewmember [in whose name to put a permit]. Acknowledging that he doesn't understand the setnet leasing situation as much in Cook Inlet, for example, he nonetheless suggested this might help some people to consolidate permits. He opined that the fears of people who believe there will be negative consequences are "far overblown."

Number 1595

REPRESENTATIVE OGG addressed the board's powers, noting that the 1990 State v. Hebert case dealt with the superexclusive herring fisheries in Western Alaska; as a result, someone could fish for herring in a particular area, but couldn't fish in other areas as well, in an effort to protect the local fishery. He said it is clear the Board of Fisheries has authority, at least according to the Alaska Supreme Court, to do exactly what is in state regulations right now. He asked why [the legislature] would want to take up the Board of Fisheries' power and create a statewide [law] based on today's testimony that indicates fishermen in one region of Alaska are fearful of competition and are pretty strongly against removing their exclusive-use area.

MR. THORSTENSON said, "First of all, we didn't bring this bill. This bill is actually from Representative Williams. But we support it." Indicating Mr. McAllister would further discuss the board, he added that if it goes before the board and it takes longer, so be it. He questioned whether folks from Dillingham would be any more comfortable with the board's handling of it, since they'd had a less-than-desirable outcome at a board meeting the previous week.

Number 1777

MR. THORSTENSON, in reply to a question from Chair Seaton, said UFA isn't asking for a management tool to be taken away from the board, but doesn't believe the board has authority to deal with this. If it is clarified that the board has authority, however, he said he's very comfortable that the board will pass this, though it will take more time. He expressed concern that it may become a dead-end, with the legislature saying the board can do it, but the board saying it cannot.

CHAIR SEATON said clarification could be obtained and noted that there was a memorandum from CFEC.

Number 1847

REPRESENTATIVE SAMUELS referred to page 5 of the [memorandum dated October 15, 2003, from George Utermohle, legislative counsel, to Senator Ben Stevens], which lists options for legislative action. He also noted that the CFEC [memorandum dated October 24, 2003, to Senator Ben Stevens disagrees with the first memo and] says on page 3 that the Board of Fisheries has the power. Pointing out that page 5 of the first memo lists the options of leaving it for the courts to decide later or clarifying that the [Board of Fisheries and CFEC] have the power, Representative Samuels proposed perhaps having a bill from the committee to provide that clarification.

CHAIR SEATON suggested it possibly could be a committee substitute (CS) for HB 415.

Number 1909

SCOTT McALLISTER, Juneau, lauded the current process for airing the pros and cons in the big picture, which he said has been difficult under the board process. He said he'd put in his first Board of Fisheries proposal in 1983 to "do exactly this," has put in one since, and has seen as many as four proposals in any given year to deal with this before the board. Saying the board deals with regional issues every three years and statewide issues come up every three years as well, he remarked that under "statewide" the board has a history of traveling from community to community to make it accessible.

MR. McALLISTER, a purse seiner who fishes in multiple areas of the state, explained that he wants to own these permits, start his season the first week of June, and end in September or October. He emphasized the desire to diversify and, with capital investments, maximize the potential for profit in an

"otherwise failing industry." He said this clearly, if vessels were included, would maximize his potential as a purse seiner.

MR. McALLISTER said he likes the bill as written, for the reasons stated by Bob [Thorstenson]. Referring to AS 16.43.140 and remarks by Representative Samuels, he noted that subsection (c) of that statute says in part, "(c) A person may hold more than one interim-use or entry permit issued or transferred under this chapter only for the following purposes: ... (2) fishing in more than one administrative area". He suggested either allowing the legislative process to have its due on this or at least addressing the board with a resolution, for example, that says this issue needs to be dealt with.

MR. McALLISTER spoke about a friend under scrutiny by CFEC, people's unwillingness to compromise their investments by adhering to the letter of the law, and trying to make money in an industry that is going through hard times. He closed by saying it's important for the legislature to address this in some form and clean up this "housekeeping" that is very messy right now.

Number 2237

STEPHEN WHITE, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Juneau), Department of Law, noted that he'd been advising and representing the Board of Fisheries for about a dozen years. He told members:

I guess I'm following up some of the comments that Bruce Twomley [chair of CFEC], who's my client, made in his written comments here. ... CFEC's neutral on the bill. Of course, the Department of Law's neutral on the bill. We don't have any policy issues; we're just here to ... talk about legal implications and things to think about.

I think there's two things you need to think about. This bill would remove the board's authority to take a certain management action, which they've done in the past, which is called "superexclusive area registration." And that's something Mr. Twomley referred to, and that's where the board decides that even though a person may fish different areas sequentially and whatever, ... they have to register ... one of those areas, and if they register to choose

one of those areas, they can't fish in any other areas. That's superexclusive registration.

MR. WHITE said he's not aware of the foregoing being done in any salmon fisheries, although someone told him of a case in Togiak that he hadn't been able to confirm. Rather, it has been employed in herring fisheries; one purpose and goal is to allow local people to have more opportunity and less competition. If this bill passes, that tool no longer would be available in salmon fisheries.

MR. WHITE noted that another possible consequence, which he hadn't really thought through, is that inside fisheries there are registration requirements that tend to limit competition within those fisheries, at least from area to area. For example, in Bristol Bay a person must register for a district to fish, and before fishing there, to his belief, must wait for a period of time.

MR. WHITE said he's not certain whether the bill would restrict that kind of management scheme. However, he suggested that if there's any uncertainty, it would be worthwhile to discuss whether the intent also is to restrict that type of internal fishery-registration scheme or a limitation on people's participating in different districts or areas of a fishery. "If that's not your intent, I would like to have that on the record so if anyone claims that this bill would have that effect, ... we can at least go ... to the record and say, 'No, that wasn't the intent,'" he advised the committee.

Number 2376

MR. WHITE noted that he'd just received Mr. Utermohle's memo and hadn't read it. Relating his belief that the Board of Fisheries clearly has the ability to undo what it already has done by regulation, and indicating willingness to verify this, he explained:

If they established this prohibition by regulation, someone made a determination in my office they had authority to do that. So if they have authority to do it, they certainly would have the authority to undo it, either completely or ... area by area, and I believe that they could ... consider a proposal at a statewide meeting.

Number 2408

CHAIR SEATON indicated the committee would appreciate receiving Mr. White's analysis. Since this [bill] deals exclusively with salmon, he also asked whether there'd be any implication relating to the regulatory scheme for crab fisheries, for example.

MR. WHITE said no, he didn't believe it would restrict the board to do superexclusive fisheries in anything other than the salmon net-gear fisheries, and it wouldn't undo the superexclusive herring fishery that the court already said was fine.

Number 2475

CHAIR SEATON, in response to Representative Gara, specified that he'd like Mr. White to provide a legal opinion on Mr. Utermohle's research. He announced the intention of holding the bill for further review.

REPRESENTATIVE GARA voiced a general concern about relying on legal opinions from people who may have only recently delved into an issue, but acknowledged Mr. White's experience in this particular instance.

MR. WHITE clarified that he is one of three or four attorneys [at the Department of Law] who represent the Board of Fisheries, and said they'd consult and come up with a consensus among themselves on this.

Number 2560

REPRESENTATIVE OGG inquired about Mr. McAllister's assertion that statewide issues only come up at the Board of Fisheries every three years.

MR. WHITE recalled that [the board] has a statewide meeting every year, and said anything that has a statewide implication can be proposed to the board at that meeting. However, if someone has put an agenda-change request before the board at a meeting where it otherwise wouldn't be considered, the board has discretion to say it will wait and consider it at another meeting; he suggested that may have happened when [Mr. Humbyrd's] proposal wasn't heard.

Number 2604

REPRESENTATIVE OGG requested that Mr. White include something about CFEC, which had adopted language that comported with the Board of Fisheries [regulation].

MR. WHITE agreed to that.

CHAIR SEATON also asked for input on whether [the legislature] needs to take action to clarify that it confers upon the Board of Fisheries the regulatory authority, and what form such clarification should take, if there is a question about it.

MR. WHITE agreed to offer such a suggestion if there is any question.

Number 2679

REPRESENTATIVE OGG declared a conflict of interest, since he holds a setnet limited entry permit for Kodiak.

CHAIR SEATON announced that he tenders fish, but isn't a permit holder in the salmon fishery.

Number 2695

CHAIR SEATON closed the public hearing. [HB 415 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:07 a.m.