

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

March 22, 2004
9:12 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Cheryll Heinze
Representative Ralph Samuels

COMMITTEE CALENDAR

HOUSE BILL NO. 309
"An Act prohibiting the release of nonindigenous predatory fish
into public water."

- MOVED CSHB 309(FSH) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 309

SHORT TITLE: PROHIBIT RELEASE OF PREDATORY FISH

SPONSOR(S): REPRESENTATIVE(S) WOLF

05/08/03	(H)	READ THE FIRST TIME - REFERRALS
05/08/03	(H)	FSH, RES
05/16/03	(H)	FSH AT 7:30 AM CAPITOL 124
05/16/03	(H)	Heard & Held
05/16/03	(H)	MINUTE(FSH)
03/22/04	(H)	FSH AT 9:00 AM CAPITOL 124

WITNESS REGISTER

REPRESENTATIVE KELLY WOLF
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HB 309.

DOUG VINCENT-LANG, Assistant Director

Division of Sport Fish
Alaska Department of Fish & Game
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 309 and answered questions.

ACTION NARRATIVE

TAPE 04-16, SIDE A

Number 0001

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at 9:12 a.m. Representatives Seaton, Wilson, Ogg, and Gara were present at the call to order. Representative Guttenberg arrived as the meeting was in progress.

CHAIR SEATON reported that he'd conversed with [assistant attorney general Stephen White of the Department of Law, legal counsel to the Alaska Department of Fish & Game], and that a legal opinion will be provided by the end of the week with regard to the ability of the Board [of Fisheries] to change the multiple areas of net-fishing for salmon in a single year.

HB 309-PROHIBIT RELEASE OF PREDATORY FISH

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

Number 0147

REPRESENTATIVE WILSON moved to adopt the proposed committee substitute (CS), Version 23-LS1097\S, Utermohle, 3/12/04, as a work draft. [No objection was stated, and Version S was treated as adopted.]

Number 0182

REPRESENTATIVE KELLY WOLF, Alaska State Legislature, sponsor, explained that HB 309 is aimed at nonindigenous fish in Alaska. Noting that he would reference the Southcentral area specifically, he advised of a growing problem over the last 25 or so years on the Kenai Peninsula and in the valley involving the invasion of nonindigenous fish species, specifically, northern pike. In the last couple of years, the Alaska Department of Fish & Game (ADF&G) also discovered that yellow

perch on the Kenai Peninsula had been brought in illegally; he suggested someone from ADF&G could identify the monetary amount it costs the state to use rotenone on the [unspecified] lake in the northern Kenai Peninsula area to extinguish those.

REPRESENTATIVE WOLF said the concern is that "bucket biology" is taking place. Although northern pike are considered game fish in some of the Interior and some other states, they're not indigenous to Southcentral Alaska; it costs ADF&G an undetermined amount of money to control them through rotenone and education. He said the department currently has an educational program, as do other organizations, to provide public awareness about northern pike, their habit, and what the actions of some "bucket biologist" can create for an entire watershed. Explaining that ADF&G has worked on [Version S] and to his belief supports it, Representative Wolf deferred to Doug Vincent-Lang to address what it costs the department to get rid of yellow perch in the lake.

Number 0450

DOUG VINCENT-LANG, Assistant Director, Division of Sport Fish, Alaska Department of Fish & Game, said he wasn't sure of the name of the lake, but estimated \$20,000 to \$30,000 in terms of personnel and so forth in order to poison the lake. He stated the desire to get ahead of the situation, rather than constantly be responding to invasive species that have been introduced into lakes. Expressing concern that it's cost-prohibitive to use rotenone after the fact, he said this legislation would provide another tool for prevention.

REPRESENTATIVE GARA asked what impact the rotenone has on rainbow trout or other fish.

MR. VINCENT-LANG answered that rotenone will kill all the fish in the lake; clearly, it's a last-ditch effort. Thus [ADF&G] is always trading off between the need to control an invasive species and reintroducing the other species back into the lake.

CHAIR SEATON asked whether there have been any problems with sticklebacks.

MR. VINCENT-LANG replied that sticklebacks are "pretty ubiquitous" around Southcentral Alaska and there hasn't been much of a problem with people moving them. The fish that people have moved around in Alaska are northern pike, into the Southcentral region, and now yellow perch on the Kenai

Peninsula. He added that northern pike appear to be showing up increasingly on the Kenai Peninsula as well, which causes concern to [the department] in terms of the standard stocks on the Kenai Peninsula.

Number 0684

REPRESENTATIVE OGG mentioned people who transport crab from the Bering Sea to the Gulf of Alaska, but don't have a permit and have to get rid of them into the water because they aren't able to offload them. Pointing out that this could put fertilized crab eggs into the Gulf of Alaska and mentioning that water might be released as well, he asked whether this bill would make those commercial fishermen subject to a class C felony.

MR. VINCENT-LANG said he was trying to think that through, and one question is whether there is a difference between the species in the Bering Sea and those in the Gulf of Alaska. He then said there is a possibility "that could be done," but he wasn't sure what language could be added to ensure that isn't occurring now and isn't damaging to the health of the ecosystem.

CHAIR SEATON offered his belief that there definitely are different species if people may release live crab in such a situation, and that it's not appropriate to do that. He pointed out that although these aren't "ornamental fish," seawater must be circulated around live crab the entire time. He said it's a valid point that should be covered here.

Number 0885

REPRESENTATIVE GARA noted that this has focused on the problem of impacts on freshwater fish. He said he hadn't heard a concern about this with regard to saltwater species. He asked what Mr. Vincent-Lang would think if this were limited to just freshwater species.

MR. VINCENT-LANG replied that invasive species clearly are a problem in fresh water and salt water, although the major problems [raised] to date are in fresh water. He recalled that perhaps some laws or policies on the state level deal with invasive species in the marine environment.

CHAIR SEATON asked whether Representative Wolf had a comment.

REPRESENTATIVE WOLF said not at this time, and that this had caught him off guard.

CHAIR SEATON remarked that that's a reason for the committee process.

Number 0995

REPRESENTATIVE GARA suggested perhaps exempting conduct in salt water that is an accepted commercial fishing practice. He added that he didn't know whether what Representative Ogg was discussing involved accepted commercial fishing practices.

REPRESENTATIVE OGG explained that he is just concerned that this doesn't subject commercial fishermen to a class C felony for doing what they've normally done for many years, such as bringing golden king crab or blue king crab from the Bering Sea to the Gulf of Alaska if they somehow escape or the eggs go out in the seawater system. He recalled that last time the committee talked about this, there was also the issue of escaped fish from salmon farms or other fish farming, in case that is permitted in the future.

Number 1110

CHAIR SEATON suggested, however, that it should be illegal if a fisherman comes back with golden king crab or some other species that isn't native to Kodiak, Cook Inlet, or Prince William Sound and releases those to plant a new stock, unless there is a permit issued by the commissioner [or the commissioner's designee]; he referred to the language in subsection (a) on [page 1] line 7. He added that if such a permit were held, which would be required in a mariculture or aquaculture situation, this wouldn't apply. He requested confirmation from Mr. Vincent-Lang that [subsection] (a) allows for a mariculture or aquaculture operation that is permitted to "not be held to this section."

MR. VINCENT-LANG said that's correct, and clearly the intent was that if a permit is issued by the department, [the permittee] would be exempt. With regard to commercial fishermen, he said he'd have to check whether or not transporting fish to a different area and the landing of those fish are covered under a permit. He surmised that selling would be covered under a permit, but not the release of any live fish into a different ecosystem; thus it would remain illegal.

CHAIR SEATON noted that this talks about "either that," wastewater, or eggs. Reiterating that crab tanks must

continuously circulate water and thus water flows overboard, he emphasized that this is a normal activity of crab fishing, and said it seems "a more important part than introducing live crab and releasing them."

Number 1291

REPRESENTATIVE WOLF asked Mr. Vincent-Lang whether he could define fish species versus crustacean or crab species.

MR. VINCENT-LANG replied that he thinks the way "fish" is defined under regulations, crustaceans would be included. He said he was wondering whether another way to get around this is to exempt activities currently covered under water discharge permits from the Department of Environmental Conservation (DEC), if commercial fishermen needed water-quality permits from DEC to release wastewater.

CHAIR SEATON answered that it isn't the case, however; crab fishermen don't need a DEC permit, and yet they circulate sea water from outside the boat through the crab tank, through the crab, and then back overboard to bring in oxygen and keep the crab alive.

Number 1392

REPRESENTATIVE WILSON began discussion of what would become Conceptual Amendment 1. Referring to the wording "does not apply to" [Section 1, page 1, line 9], she suggested there could be a paragraph (3) that says: "conduct that is acceptable fishing practices by commercial fishermen".

REPRESENTATIVE GARA proposed another addition: "or the inadvertent release by commercial fishermen of an Alaska species from one area into another".

CHAIR SEATON noted that in commercial crab fisheries two actions take place. First, water is circulated as described previously, and the water that goes overboard could carry eggs or something else; this is a normal commercial practice. Second, when taking crab out of the tanks, fishermen discard crab that they think are dead, generally by throwing them overboard; some crab might not really be dead, though.

CHAIR SEATON surmised that the "incidental release" language would cover both, but reiterated that he doesn't want to go to the extent of allowing intentional release or transport to

establish [a new area for those crab or other species]. Expressing concern about genetics-related problems, for example, he requested confirmation that Representative Ogg's intention isn't to permit that.

Number 1613

REPRESENTATIVE OGG affirmed Chair Seaton's understanding. He proposed language along the following lines: "generally accepted conduct in relation to permitted commercial fishing".

REPRESENTATIVE GARA said he thinks the language Representative Ogg used is fine, but suggested limiting it to saltwater commercial fishing. He explained that he'd hesitate to deal with the argument from someone who believes more hatchery salmon are needed in a freshwater body, for example, since something like that might be generally accepted among a number of commercial fishermen.

REPRESENTATIVE OGG responded that he had no problem with that, but was trying to understand where commercial fishermen would be "carrying buckets of salmon eggs into a lake."

REPRESENTATIVE GARA replied that it's not really buckets and that he doubted anybody could convince a court it's a generally accepted practice, but explained that perhaps someone could argue that hatchery fish already exist in many salmon streams and that he or she was only furthering the commercial purpose of adding more hatchery fish here. "Well, we don't want you to do that," he remarked, added that he doesn't want to leave any room for argument in the freshwater area.

CHAIR SEATON said that makes sense to him because those activities can be permitted and someone should have a permit before doing it. He mentioned genetic stocks.

REPRESENTATIVE OGG pointed out that salmon do transfer between salt water and fresh water, and that Alaska has commercial salmon fisheries in fresh water. He again expressed concern that it might impact commercial fishermen who are doing what they normally do in the course of their business.

Number 1796

REPRESENTATIVE WOLF referred to page 1, line 6, which addresses live fertilized eggs of nonindigenous species. He said someone is required to carry a permit to do any fertilization in any

lake within Alaska. Recognizing Representative Ogg's concerns about crab, he said he'd fully accept the conceptual amendment that has been under discussion.

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

Number 1882

REPRESENTATIVE OGG moved to adopt Conceptual Amendment 1, to perhaps have a paragraph (3) [after page 1, line 12] that covers this concept: generally accepted conduct in relation to permitted commercial fishing would be excluded.

CHAIR SEATON objected for purposes of discussion. With regard to salt water, he referred to Representative Wolf's discussion of "nonindigenous" and asked:

Does that really take care of all of the ... freshwater problems? In other words, if you're on the Yukon River, any fish you catch there are going to be indigenous? This would relate to ornamental fish, or this would relate to ... other nonindigenous [species] and eggs of nonindigenous fish. So, do we have a situation where we are talking about anything that ...?

Number 1980

REPRESENTATIVE OGG replied that not being a freshwater fisherman "except for sheer joy," he doesn't know and would rather leave it to the department. He reiterated his desire to avoid having commercial fishermen be subject to a class C felony if it is limited to just salt water "and then we cause that to happen to somebody." He said he didn't know if there is an event that would do that, but if the department comes back and says there is nothing in fresh water that would be affected if [the exemption] is limited to salt water, he has no problem with it. "But I don't want to set the parameter for them to say 'just salt water', because they may not look beyond that," he added.

CHAIR SEATON asked whether within Conceptual Amendment 1, then, is that if the department feels it would be beneficial to have 'salt water' included and that it wouldn't impact commercial fisheries in fresh water, Representative Ogg would accept having it in there.

REPRESENTATIVE OGG affirmed that, if it's acceptable to the sponsor.

CHAIR SEATON asked Representative Gara whether that satisfies his concerns.

REPRESENTATIVE GARA replied, "Sure, ... if it's OK with the department to add 'saltwater commercial fishing', just to make that term 'saltwater commercial fishing', just to be safe, that would make me comfortable, I guess." He asked whether Representative Wolf would be asked to work with the department or whether the committee would "pass out the amendment and have Representative Wolf report to us on the floor."

CHAIR SEATON pointed out that it will go to the House Resources Standing Committee. He said he was comfortable enough with that direction to the department. He asked whether anyone else had a problem with giving the department leeway to specify "saltwater" if it wouldn't negatively impact any freshwater commercial fisheries. He then said Conceptual Amendment 1 inserts, approximately on line 12 [page 1], a new [paragraph] (3) that adds a generally accepted conduct in relationship to a permitted commercial fishing activity, or to permitted commercial fishing.

Number 2116

CHAIR SEATON removed his objection.

CHAIR SEATON asked whether there was any objection to adopting Conceptual Amendment 1. There being no objection, it was so ordered.

Number 2128

REPRESENTATIVE GARA moved to adopt Conceptual Amendment 2 as follows:

Page 2, line 1, after "class C felony"
Add ", and must pay a fine of at least \$1,500"

CHAIR SEATON objected for discussion purposes.

REPRESENTATIVE GARA explained his reasoning: although this kind of crime in many senses isn't as serious as one involving a human victim, it is, in some sense, a crime against the whole community. Tens of thousands of Alaskans cherish that Alaska has wild fish that in size and number are similar to what

they've always been. "We've done a very good job managing our fisheries, and when somebody commits the kind of conduct that Representative Wolf is trying to prevent, ... they impact the lives of the whole community at the same time," he explained.

REPRESENTATIVE GARA noted that ADF&G has ongoing efforts to deal with this impact and has biologists who are concerned right now with how to deal with predatory, introduced, nonnative fish. Therefore, he said, he believes it's appropriate for somebody who commits this crime to pay a minimum fine, since it occupies the time of the state and impacts the interests of its people. Furthermore, he opined, this is the kind of conduct ADF&G can help to deter by talking about the minimum \$1,500 fine, by posting it in appropriate places, for example. Thus he suggested a minimum fine in this regard is important.

Number 2237

CHAIR SEATON asked what the range of fines and penalties is for a class C felony.

MR. VINCENT-LANG answered that the maximum fine is up to \$50,000 and up to five years in jail for a class C felony. Clearly, he said, a \$15,000 penalty would be ...

CHAIR SEATON clarified that it's \$1,500.

MR. VINCENT-LANG responded that a \$1,500 penalty would be in line with the maximum allowed under a class C felony.

CHAIR SEATON asked whether there is a minimum currently in statute for a class C felony.

MR. VINCENT-LANG said he wasn't sure.

Number 2278

REPRESENTATIVE GARA expressed confidence that there's no such minimum, but made the commitment that if this amendment passes and it turns out there is a minimum [already in statute], he'd work with the sponsor to delete the language.

REPRESENTATIVE OGG suggested conditional language such that if there is no minimum fine [already in statute], this will be the minimum.

REPRESENTATIVE GARA accepted that as a friendly amendment that might result in the following language: "Unless a minimum fine is provided elsewhere in law, the minimum fine for a violation of this section shall be at least \$1,500". In response to a request from Chair Seaton to repeat it, he reworded it slightly: "To the extent a minimum fine is not provided elsewhere by law, the minimum fine for a violation of this section shall be \$1,500." He offered to do research on the minimum fine so the language could be cleaned up on the House floor.

CHAIR SEATON specified that he wanted it done in the House Resources Standing Committee. He requested confirmation that the intention, if there is a minimum fine elsewhere in law, is that this amendment won't be incorporated.

REPRESENTATIVE GARA affirmed that.

Number 2450

CHAIR SEATON removed his objection.

CHAIR SEATON asked whether there was any objection to adopting [Conceptual Amendment 2, as amended]. There being no objection, it was so ordered.

CHAIR SEATON noted that the halibut commission has found that 15 percent of supposedly dead halibut come back to life and survive.

Number 2532

REPRESENTATIVE GUTTENBERG referred to page 2, line 11, paragraph (4), "water of the state". He asked whether that definition is consistent throughout statute.

MR. VINCENT-LANG said it's a definition of how [ADF&G] applies public policy.

CHAIR SEATON asked whether any of the other definitions are new.

MR. VINCENT-LANG replied that they're basically consistent with how [ADF&G] has been applying this in terms of managing the fisheries.

Number 2591

REPRESENTATIVE OGG moved to report CSHB 309, Version 23-LS1097\S, Utermohle, 3/12/04, as amended, out of committee with individual recommendations and the accompanying [zero] fiscal notes. There being no objection, CSHB 309(FSH) was reported from the House Special Committee on Fisheries.

MR. VINCENT-LANG said he'd be glad to work on the aforementioned language.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 9:51 a.m.