

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

March 29, 2004

9:05 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Cheryll Heinze
Representative Les Gara

COMMITTEE CALENDAR

SENATE BILL NO. 315

"An Act relating to the administration of commercial fishing entry permit buy-back programs."

- MOVED SB 315 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 347(RES)

"An Act relating to moratoria on entry of new participants or vessels into a commercial fishery; relating to vessel permits for, and the establishment of a moratorium on entry of new vessels into, state Gulf of Alaska groundfish fisheries; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 315

SHORT TITLE: ENTRY PERMIT BUY-BACK PROGRAM

SPONSOR(S): SENATOR(S) STEVENS B BY REQUEST OF SALMON INDUSTRY TASK FORCE

02/11/04 (S) READ THE FIRST TIME - REFERRALS
02/11/04 (S) L&C, FIN
02/24/04 (S) L&C AT 1:30 PM BELTZ 211
02/24/04 (S) Heard & Held
02/24/04 (S) MINUTE(L&C)

02/26/04 (S) L&C AT 1:30 PM BELTZ 211
 02/26/04 (S) Moved SB 315 Out of Committee
 02/26/04 (S) MINUTE(L&C)
 02/27/04 (S) L&C RPT 3DP 1NR
 02/27/04 (S) DP: BUNDE, SEEKINS, STEVENS G;
 02/27/04 (S) NR: FRENCH
 03/09/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/09/04 (S) Moved SB 315 Out of Committee
 03/09/04 (S) MINUTE(FIN)
 03/10/04 (S) FIN RPT 5DP 2NR
 03/10/04 (S) DP: WILKEN, HOFFMAN, OLSON, BUNDE,
 03/10/04 (S) STEVENS B; NR: GREEN, DYSON
 03/17/04 (S) TRANSMITTED TO (H)
 03/17/04 (S) VERSION: SB 315
 03/18/04 (H) READ THE FIRST TIME - REFERRALS
 03/18/04 (H) FSH, FIN
 03/29/04 (H) FSH AT 9:00 AM CAPITOL 124

BILL: SB 347

SHORT TITLE: COMM. FISHING MORATORIA, INCL. AK GULF
 SPONSOR(S): SENATOR(S) STEVENS B BY REQUEST

02/16/04 (S) READ THE FIRST TIME - REFERRALS
 02/16/04 (S) RES
 03/03/04 (S) RES AT 3:30 PM BUTROVICH 205
 03/03/04 (S) Heard & Held
 03/03/04 (S) MINUTE(RES)
 03/05/04 (S) RES AT 3:30 PM BUTROVICH 205
 03/05/04 (S) Moved CSSB 347(RES) Out of Committee
 03/05/04 (S) MINUTE(RES)
 03/08/04 (S) RES RPT CS 3DP 2NR NEW TITLE
 03/08/04 (S) NR: OGAN, LINCOLN; DP: WAGONER,
 03/08/04 (S) STEVENS B, ELTON
 03/08/04 (S) FIN REFERRAL ADDED
 03/09/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/09/04 (S) Moved CSSB 347(RES) Out of Committee
 03/09/04 (S) MINUTE(FIN)
 03/10/04 (S) FIN RPT CS(RES) 3DP 4NR
 03/10/04 (S) DP: WILKEN, BUNDE, STEVENS B;
 03/10/04 (S) NR: GREEN, HOFFMAN, OLSON, DYSON
 03/22/04 (S) TRANSMITTED TO (H)
 03/22/04 (S) VERSION: CSSB 347(RES)
 03/24/04 (H) READ THE FIRST TIME - REFERRALS
 03/24/04 (H) FSH, RES, FIN
 03/29/04 (H) FSH AT 9:00 AM CAPITOL 124

WITNESS REGISTER

CHERYL SUTTON, Staff
to the Joint Legislative Salmon Industry Task Force
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 315 and SB 347 on behalf of
the sponsor, Senator Ben Stevens.

MARY McDOWELL, Commissioner
Commercial Fisheries Entry Commission
Alaska Department of Fish & Game
Juneau, Alaska

POSITION STATEMENT: Discussed Sections 2-8 of CSSB 347(RES).

ED DERSHAM, Chair
Board of Fisheries
Anchor Point, Alaska

POSITION STATEMENT: Testified that SB 347 is a necessary first
step.

SUE ASPELUND, Federal Management Resource Coordinator
Office of the Commissioner
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Testified that ADF&G supports efforts to
amend CFEC's statutory authority in Sections 2-8 of SB 347.

MICHAEL RUCCIO, Fishery Biologist
Division of Commercial Fisheries
Alaska Department of Fish & Game (ADF&G)
Kodiak, Alaska

POSITION STATEMENT: During discussion of SB 347, answered
questions.

HERMAN SAVIKKO, Fishery Biologist
Division of Commercial Fisheries
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: During discussion of SB 347, answered
questions.

GLENN MERRILL
Sable Fisheries Division
National Marine Fisheries Service (NMFS)
Juneau, Alaska

POSITION STATEMENT: During discussion of SB 347, discussed
halibut by-catch rates.

DAVID POLUSHKIN
K-Bay Fishing Association
Homer, Alaska

POSITION STATEMENT: Testified in support of SB 347 as it's the beginning of the rationalization process.

JULIE BONNEY
Kodiak, Alaska

POSITION STATEMENT: As the representative of 25 trawl vessels that fish out of Kodiak in the Central Gulf of Alaska regulatory area, urged the committee to forward SB 347.

JOE SULLIVAN, Attorney at Law
Mundt MacGregor L.L.P.
Seattle, Washington

POSITION STATEMENT: As the representative for the City of Kodiak regarding Gulf groundfish rationalization issues, testified in support of the Gulf groundfish moratorium components of SB 347.

SAM COTTON
Aleutians East Borough
(Address not provided)

POSITION STATEMENT: Testified on SB 347.

GLENN CARROLL, Fisherman
Homer, Alaska

POSITION STATEMENT: Testified in general support of SB 347, but expressed concern with regard to the fate of the jig fishery.

BUCK LAUKITIS, Fisherman
Homer, Alaska

POSITION STATEMENT: Characterized SB 347 as an interim step, and expressed concerns with regard to a vessel-based system.

YAKOV REUTOV, Fisherman
Homer, Alaska

POSITION STATEMENT: Related his support of SB 347.

ALAN PARKS
Homer, Alaska

POSITION STATEMENT: Testified in support of SB 347, but expressed concerns with regard to a vessel-based system.

ILIA KUZMIN, Fisherman
Homer, Alaska

POSITION STATEMENT: Testified in support of SB 347 and Mr. Laukitis' testimony.

JOE CHILDERS, Director
Western Gulf of Alaska Fishermen
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 347.

ACTION NARRATIVE

TAPE 04-17, SIDE A

Number 0001

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at 9:05 a.m. Representatives Seaton, Wilson, Ogg, and Samuels were present at the call to order. Representative Guttenberg arrived as the meeting was in progress.

SB 315-ENTRY PERMIT BUY-BACK PROGRAM

CHAIR SEATON announced that the first order of business would be SENATE BILL NO. 315, "An Act relating to the administration of commercial fishing entry permit buy-back programs."

Number 0128

REPRESENTATIVE SAMUELS moved to adopt SB 315, Version D, as the working document. There being no objection, it was so ordered.

Number 0170

CHERYL SUTTON, Staff to the Joint Legislative Salmon Industry Task Force, Alaska State Legislature, informed the committee that SB 315 is the companion to HB 410, which this committee heard and moved out on February 9, 2004. She stressed that SB 315 is precisely the same legislation as HB 410. Simply put, SB 315 modifies existing law governing buy-back programs. The legislation would allow the Commercial Fisheries Entry Commission (CFEC) to "front fund" a buy-back program if an appropriation were received for that purpose. Senate Bill 315 has a zero fiscal note, she mentioned. She concluded by urging the committee to report SB 315 from committee.

CHAIR SEATON, upon determining no one wished to testify, closed the public hearing on SB 315.

Number 0362

REPRESENTATIVE WILSON moved to report SB 315 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, SB 315 was reported from the House Special Committee on Fisheries.

SB 347-COMM. FISHING MORATORIA, INCL. AK GULF

CHAIR SEATON announced that the final order of business would be CS FOR SENATE BILL NO. 347(RES), "An Act relating to moratoria on entry of new participants or vessels into a commercial fishery; relating to vessel permits for, and the establishment of a moratorium on entry of new vessels into, state Gulf of Alaska groundfish fisheries; and providing for an effective date."

Number 0442

CHERYL SUTTON, Staff to the Joint Legislative Salmon Industry Task Force, Alaska State Legislature, informed the committee that Senator Ben Stevens introduced SB 347 at the request of the Board of Fisheries, the North Pacific Fishery Management Council (NPFMC), the Alaska Department of Fish & Game (ADF&G), and the Commercial Fisheries Entry Commission (CFEC). She related that Senator Ben Stevens supports SB 347 and agrees with the requestors that it's necessary. This legislation was heard in the Senate Resources Standing Committee and the Senate Finance Committee and passed the full Senate with a unanimous vote. Ms. Sutton related her understanding that the chair has requested specific data from ADF&G and CFEC, and has also indicated that he didn't intend to move SB 347 from committee today. Therefore, she deferred to the specific agencies. She concluded by relating Senator Ben Stevens' request to report SB 347 from committee.

Number 0600

MARY McDOWELL, Commissioner, Commercial Fisheries Entry Commission, Alaska Department of Fish & Game, specified that she would speak to Sections 2-8 of SB 347, which amends the provisions in current law that provide CFEC the authority to administratively establish a temporary moratorium on entrants of new participants into a fishery. Although the aforementioned exists in current law, its current construction is virtually unusable, and therefore no moratorium has ever been enacted

under it. She highlighted that the state has had four to five moratoriums over the past few years, but those had to be enacted by the legislature. Ms. McDowell explained that the idea behind a moratorium provision is to buy time in order to determine the best, long-term solution for controlling growth and ensuring the manageability of a fishery. In a fishery where there appears to be a need to get a handle on rapid growth, imposing a moratorium rather than a permanent limitation may be a better option in some cases. Currently, the choices are to permanently limit a fishery or to leave it open access. Therefore, a moratorium could be used in a situation in which there is insufficient data regarding whether limited entry is justified and needed. The constitution provides for limited entry so long as it impinges on open access, and therefore a moratorium is a good tool. Furthermore, the fact that a moratorium provision already exists illustrates that the legislature has already recognized the utility of such a tool. However, the provisions in the legislation are narrow and don't provide much flexibility with regard to structuring the most effective moratorium possible. Moreover, the process required in the legislation is so cumbersome that it might generate a rush into a fishery rather than prevent such.

MS. McDOWELL highlighted that the need to address the state waters ground fisheries has arisen and points to the need to [put in place a moratorium provision] for future fisheries in order to avoid the need for special legislation to address a problem. She pointed out that the current law [addressing moratoriums] uses language specifying the ability to use [a moratorium] if there is already a problem in a fishery. The current process is extremely slow and first requires the commissioner of ADF&G to make findings and request permission of the Board of Fisheries to petition CFEC. The Board of Fisheries has to schedule the request at one of its meetings, which means that there has to be 15-day public notice of the meeting. If the Board of Fisheries approves the request, the commissioner may petition CFEC, which can then begin an analysis. Furthermore, the current law has no provision allowing for an extension of the moratorium. After issuance of a moratorium, at least five years must pass before another moratorium can be issued. Therefore, without the ability to extend a moratorium, there could be a situation in which the area would return to open access and create a "real mess." The aforementioned is why the legislation proposes giving CFEC the authority, if necessary, to extend a moratorium for an additional two years.

Number 1034

CHAIR SEATON surmised that under the current moratorium law in order to issue a moratorium, it must be shown that there are too many fishermen who will approach too much harvest.

MS. McDOWELL clarified that the current law specifies that CFEC "may establish a moratorium on new entrants into a fishery that has experienced recent increases in fishing effort beyond a low sporadic level of effort and that has achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery, and for which insufficient biological and resource management information necessary to promote the conservation of sustained yield management of the fishery."

CHAIR SEATON further surmised that the desire is to be proactive and have the ability to establish a moratorium without the above conditions.

MS. McDOWELL pointed out that [CSSB 347(RES)] specifies:

the commission may establish a moratorium if the commission finds that a moratorium is necessary to promote the conservation of sustained yield management of the fishery and the economic health and stability of the fishery, and either to allow the commission to develop regulatory legislative proposals to address the needs of the fishery that cannot be met under existing regulations or statutes or to allow the department of fish & game and the board to open a commercial fishery that would otherwise remain closed to protect a fishery resource from over exploitation resulting from unrestricted access to the fishery.

CHAIR SEATON related his understanding then that the desire is to provide CFEC and the Board of Fisheries with more open-ended, less specific requirements regarding the institution of a moratorium.

MS. McDOWELL clarified that the criteria [specified in the legislation] is just as specific, but one doesn't have to prove that the situation is already at the point of being unmanageable.

Number 1229

REPRESENTATIVE WILSON surmised then that the current law

addressing moratoriums is cumbersome and if a moratorium was called under the current law, it might be too late because of the waiting. Therefore, this legislation would allow a moratorium to be put into place before a situation is too far gone.

MS. McDOWELL agreed, adding that the moratorium allows [the department] to buy time while assessing the situation without being pushed to a permanent program.

MS. McDOWELL turned attention to the sectional analysis included in the committee packet, as well as a table comparing existing statute to the legislation. Section 2 of CSSB 347(RES) specifies the purposes for which CFEC may establish a moratorium. Section 3 specifies that a moratorium may be for one or more fisheries or one or more species, gear types, or areas. For example, the ground fish fishery has multiple species in areas that [CFEC] may want to contain all at once. In response to Chair Seaton, Ms. McDowell reminded the committee of the moratorium the legislature placed on the Southeast dive fishery in which several fisheries were included. This legislation would allow CFEC to do such administratively. In further response to Chair Seaton, Ms. McDowell said that this legislation would provide CFEC flexibility to determine how to best handle a situation.

Number 1488

CHAIR SEATON posed a situation in which there is a fishery with a problem and other fisheries without problems. He surmised that in such a situation there could be a moratorium that would target the fishery with a problem, but also include other fisheries that aren't distressed.

MS. McDOWELL said that would be difficult. She highlighted that folks can challenge any actions [taken by CFEC]. Furthermore, a moratorium is a temporary measure that isn't as restrictive as a permanent limitation. She clarified that this [legislation] provides CFEC with the flexibility to do something appropriate for a given fishery.

MS. McDOWELL turned to Section 4, which provides the ability to administratively extend a four-year moratorium an additional two years, if necessary to achieve the purposes of the moratorium. Section 5 expands the current law's directive for CFEC to analyze whether a fishery should be limited under the existing limited entry program. Section 5 directs CFEC to evaluate all

the post-moratorium options in order to determine the best possible long-term solution for the fishery. Section 6 discusses a qualification date not just criteria for the moratorium, and therefore establishes an "as of" date for eligibility in a moratorium. Section 6 also provides the ability to establish a moratorium on persons, vessels, or both. Although this legislation would allow CFEC to temporarily cap entrants of new vessels, CFEC has no authority to do a permanent vessel-based limitation. In response to Representative Ogg, Ms. McDowell explained that a couple of years ago the legislature passed legislation giving CFEC the ability to use a vessel-based permanent limitation program in the Bering Sea hair crab and scallop fisheries. The only authority for a permanent program other than the aforementioned is CFEC's traditional person-based program. Therefore, if, at the end of a moratorium, CFEC felt a variation on the current program was appropriate, CFEC would have to approach the legislature with a proposal requesting additional authority for a permanent program.

REPRESENTATIVE OGG interjected his understanding that CFEC could use an interim use or limited entry program.

MS. McDOWELL agreed, indicating those are traditional programs.

Number 1833

REPRESENTATIVE OGG turned attention to Section 6, which [on page 4, lines 8-9] refers to [the eligibility criteria] for "an interim-use permit, vessel permit, or both". However, the next sentence [on page 4, line 10] doesn't use the same language; it only refers to an interim-use permit or a vessel permit. He asked if that's a typographical error.

MS. McDOWELL replied no. She explained that the language is specifying that if the program is person-based, interim-use permits would be issued to that person. However, if the program is vessel-based, a vessel permit would be issued to a qualifying individual. If [the program] is a combination, then both types of permits would be issued during a moratorium. Ms. McDowell related her belief that the language on page 4, lines 10-11, means that "whatever kinds of permits you're issuing under this thing the eligibility criteria must include minimum requirements for past and present participation."

REPRESENTATIVE OGG expressed interest in the language [on page 4, lines 8-9 and lines 10-11] to "track the same."

Number 2009

MS. McDOWELL returned to her sectional analysis. In Section 7, subsections (g), (h), (i), and (j) are necessary to address a vessel-based program because current law only pertains to person-based permits.

CHAIR SEATON surmised then that there is no relationship between current vessel licenses and the vessel license fees that are charged on that and the vessel permits under this legislation. Therefore, this legislation proposes a vessel permit exclusive of the current vessel license system.

MS. McDOWELL agreed, and added that in a vessel-based moratorium the skippers will have to obtain interim-use permits to run the vessel that has a permit to participate, as is the case in an open access fishery. Ms. McDowell continued with Section 7(k), which she explained is trying to discourage speculation. Furthermore, this provision also means that one participating during a moratorium doesn't have a claim for a permanent permit. However, there may be reasons to include a combination of pre-moratorium and moratorium participation in a subsequent limitation. The aforementioned decision would be made when a permanent program is proposed. She reiterated that this provision puts people on notice that any future limitation may be based strictly on pre-moratorium participation.

CHAIR SEATON surmised then that the provision means that [CFEC] may or may not base [participation] on past catches.

Number 2206

MS. McDOWELL moved on to Section 7(l), which makes the general provisions pertaining to interim-use permits under the standard program applicable to person-based moratorium permits. Section 7(m) is standard boilerplate language in the existing program specifying that nothing in this provision limits the powers of the Board of Fisheries and ADF&G. Section 7(n) addresses the fishing history of applicants. If a vessel-based program were used, there could be a dilemma in which the catch history in a fishery is based on fish tickets, which are in the name of the skipper with the interim-use permit. The aforementioned is confidential information that's only releasable to that skipper. The vessel owner wouldn't have access to that information. Therefore, without [Section 7(n)] a vessel owner may not have any legal access to the records of his vessel, which are necessary to prove the participation of the vessel in order to

apply for a vessel-based permit.

CHAIR SEATON requested that Ms. McDowell discuss [Section 7(n)] in relation to the individual fishery quota (IFQ) program and the halibut and sable fishery, in which the federal government gave all the rights to the vessel owner while the fishing history was held by the skipper. This provision would allow all information to be available to the vessel owner.

MS. McDOWELL clarified that the amount of information necessary to prove the participation of the vessel would be releasable [to the vessel owner]. Both the hair crab and scallop fisheries have provisions such as [Section 7(n)].

Number 2368

REPRESENTATIVE GUTTENBERG related his impression that some of these vessels have multiple skippers. He asked if [Section 7(n)] allows the fishing/harvest history to be released to other captains or is it from each individual captain to the vessel owner.

MS. McDOWELL replied, "The latter." Under Section 7(n), the applicant, the vessel owner, would apply and the information would be made available by the applicant. The CFEC has this fish ticket information. When there is an application period, CFEC notifies the applicant of his or her fishing history per CFEC's records. If the applicant believes he or she has fishing history that CFEC isn't aware of, then the applicant has to bring in documentation of that.

CHAIR SEATON recalled that currently ADF&G has a form for the vessel owner to use to obtain the vessel's history from each operator.

MS. McDOWELL referred to the aforementioned as a third-party release.

CHAIR SEATON inquired as to the result of this in the case of a lease. He recalled that this was a large issue in the halibut and sable fish fisheries. He further recalled that if the vessel was leased, the leasee would have the rights to the fishery whereas the vessel owner would retain the rights to the fishery if a skipper was hired.

MS. McDOWELL explained that in this general portion of the legislation, it says that a moratorium may be to the person, the

skipper, or to a vessel owner. Therefore, whether there was a lease wouldn't be an issue because the permit would go to the vessel or its owner. In further response to Chair Seaton, Ms. McDowell said that if a vessel-based moratorium occurred, ownership would be established by regulation. She mentioned that under the vessel-based limitation programs in hair crab and scallop fisheries, there are detailed definitions in the regulations regarding documenting the owner.

Number 2608

REPRESENTATIVE OGG said that this legislation doesn't establish the authority to issue vessel permits, which will have to be a later statute.

MS. McDOWELL interjected, "Or permit program."

REPRESENTATIVE OGG posed a situation during the period of 1998-2004 in which someone sells his or her vessel in 2002. He asked if the intent is for the latest owner to receive all the information or would the information related to the period of ownership be given to each owner.

MS. McDOWELL reiterated that such would be defined under any regulations implementing a program. Most likely, it would be defined as the current owner at the date of the effective date or the moratorium, she said. In further response to Representative Ogg, Ms. McDowell said that the language could be included in the legislation.

REPRESENTATIVE OGG clarified that he is trying to avoid ambiguity because there could be two different owners under the current language. There could be an owner for a period of time and the vessel could be sold to another owner. Representative Ogg suggested that the language could refer to the present owner or the history during a period of ownership.

MS. McDOWELL, in trying to provide Representative Ogg some comfort, suggested that the language could refer to the "release to the current owner" because that's the intent.

Number 2711

REPRESENTATIVE WILSON asked if the aforementioned is usually in statute or regulation for other fisheries.

MS. McDOWELL answered that definitional language is usually done

in regulation. However, under the existing program it's simple because it [refers] to human beings who [don't change identity] whereas a vessel can go through a name change, a number change, and vessel owner change. It's more complicated when dealing with vessels, she said.

REPRESENTATIVE OGG recalled when the halibut fishery went to an IFQ under which he said he believes one with previous ownership could obtain an IFQ for that period. Therefore, he expressed the need to be clear.

MS. McDOWELL reiterated that this refers to a temporary moratorium not a transferable-use privilege.

CHAIR SEATON posed a situation in which a vessel that was fished in 1998 was sold to someone in San Diego, California. If the "current owner" language is utilized, the information would be given to the owner in San Diego who would qualify for this moratorium permit based on another owner's participation in Alaska.

MS. McDOWELL clarified that this section [Section 7(n)] strictly addresses who has access to the fishing history of a vessel. Under the other provisions of this moratorium provision, the CFEC would have to establish the criteria to obtain a moratorium permit. More than likely, eligibility would require the vessel to have made landings in certain years or even at a certain threshold. The [current] vessel owner would have access to the fishing history of the vessel, while there would be regulations that would determine whether one would get in. The [fishing history of the vessel] would allow the owner to determine whether it's worth applying for a moratorium permit.

Number 2939

REPRESENTATIVE WILSON said that the owner of a vessel would be the current owner, and therefore she questioned why the word "current" would be added.

CHAIR SEATON specified that the discussion also involves the fishing history of the vessel. Often the sale of a vessel contains contractual provisions saying that they retain the fishing history or rights of the vessel. However, this legislation proposes that the fishing history is transferred to the new [owner].

REPRESENTATIVE WILSON maintained that "current" isn't necessary.

TAPE 04-17, SIDE B

REPRESENTATIVE WILSON said, "I'm either the owner or I'm not."

REPRESENTATIVE OGG agreed with Representative Wilson, but pointed out that the fishing history goes back to prior owners.

CHAIR SEATON reiterated that this provision transfers fishing history information from a past owner to a current owner. Often in rationalization/restructuring programs, the permit holder will have [the fishing history]. This provision isn't attempting to establish policy for the program, rather the question is whether some policy changes may preclude future choices.

Number 2924

REPRESENTATIVE OGG said that he merely wanted clarity in this area because standard language in sales contracts specify that the [vessel] is being sold but any and all fishing rights and "Exxon" rights and anything that may accrue to the vessel during the period of ownership [accrue to the vessel owner]. Therefore, the new owner wouldn't have any of that information [or rights from the time period under the former owner]. This legislation would now say that the new owner would have the right to review the aforementioned data even if it isn't included in the contract. Therefore, the question and concern is in regard to whether the [legislature] wants to over power the contractual right explained above.

MS. McDOWELL reiterated that this section only pertains to whether [a vessel owner] may know the fishing history of his or her vessel. This section doesn't grant anything. Furthermore, this section wouldn't impact the data that's collected. The same information will be collected with or without this section; the fish tickets will specify which IUP holder sold the fish and the vessel on which it was landed. This section merely addresses with whom the information may be shared.

Number 2745

MS. McDOWELL continued the sectional analysis with Section 8. She explained that if a fishery has been under a moratorium and is subsequently limited under CFEC's traditional program, then a qualification date may be used to review participation, which may or may not include time during the moratorium. Since this

legislation isn't available now, ADF&G and the Board of Fisheries have proposed creating a section that would statutorily create a moratorium for the ground fish fisheries, for which there is no time.

Number 2663

ED DERSHAM, Chair, Board of Fisheries, informed the committee that for several years NPFMC has been working on the goal of rationalizing the groundfish fisheries in the Gulf of Alaska. About nine months ago, the Board of Fisheries started a process to consider what the state would do in reaction to a finalized NPFMC rationalization for groundfish fisheries in the federal waters. A working group and the Board of Fisheries have met on this matter and so far it has been determined that [NPFMC] will try to finalize the rationalization process sometime in 2005.

MR. DERSHAM noted that most of his comments will be about Pacific cod because it engenders most of the discussion in the groundfish fishery. In the Pacific cod fishery there is a parallel fishery that takes place in the state waters the same time the federal fishery occurs in the Pacific cod fishery. There is a separate state waters fishery at other times in which pots and jigs are allowed from Prince William Sound to the Southwest Peninsula. There are restrictions in some areas, he noted. From the working group it is clear that the status quo can't be maintained in the state waters until the rationalization process is finalized. Furthermore, the Board of Fisheries will be very limited in its options if there isn't a moratorium on the groundfish fishery participants first. Mr. Dersham said that with a completely open entry, it would become a huge derby that would impact the fishermen and the resource itself. Therefore, the working group recommended that a moratorium is a necessary first step in order to identify the participants in the fisheries and the waters, and determine the best way for the state to react. The options range from the aforementioned open state water fishery to an integrated process that would approximate what occurs between the two fisheries. The latter would probably require legislative action, but would still need to meet constitutional standards, in particular the least impingement clause. The Board of Fisheries is very focused on what is best for the state and the economies of the local regions. Without a temporary moratorium, most of the options are eliminated and [the state would be] left with only the large state water fishery and may only be limited to pot and jig gear types. Mr. Dersham said that basically the desire is to keep the options open and this legislation is a necessary

first step in that venue.

MR. DERSHAM explained that the first eight sections are a consensus recommendation of the work group, but the problem is the timeline. With the timeline, a moratorium from CFEC couldn't begin in time to deal with the reaction to the process on the federal side.

Number 2233

CHAIR SEATON asked if the Board of Fisheries took a position with regard to the vessel permit structure versus the normal CFEC limited entry interim-use permit structure.

MR. DERSHAM replied, "No." He explained that the vessel-based provision came from the department. In further response to Chair Seaton, Mr. Dersham confirmed that the Board of Fisheries didn't take any counteraction. In fact, most of the board members spoke in favor of a vessel-based moratorium. However, it wasn't unanimous and the work group and the Board of Fisheries didn't take a specific position.

CHAIR SEATON requested that Mr. Dersham discuss why the Board of Fisheries doesn't believe it could regulate under the same provisions currently being used in the parallel fishery.

MR. DERSHAM informed the committee that he has been informed that there may be some by-catch apportionment problems with managing the longline fishery in state waters. Therefore, he said he feels that without a moratorium [the state] would have less options.

CHAIR SEATON surmised then that the conflict with the parallel fishery isn't in regard to the provisions that violate the Board of Fisheries guidelines for establishing a new state fishery.

MR. DERSHAM confirmed that this is related to something other than by-catch that the department brought forward.

Number 2042

SUE ASPELUND, Federal Management Resource Coordinator, Office of the Commissioner, Alaska Department of Fish & Game (ADF&G), began by announcing that ADF&G supports efforts to amend CFEC's statutory authority as in Sections 2-8 of the legislation. As Mr. Dersham described actions pending in the NPFMC will likely limit entry or rationalize the Gulf groundfish fisheries. The

state is working a similar process. However, neither action is likely to occur prior to the 2006 Gulf groundfish fishery's seasons. Ideally, the department would like for the state to be able to take administrative action to institute a moratorium. However, even if provided with that statutory authority, it's unlikely that CFEC, given the complexities of the state's Gulf groundfish fisheries, would be able to implement a moratorium within the timeframe the department believes necessary to adequately protect the fisheries from speculation and the increased pressures resulting from the federal groundfish rationalization process. Therefore, ADF&G supports the Board of Fisheries finding for the immediate implementation of a moratorium on the entry of new vessels into the state groundfish fishery as requested in its finding, 2004-FB-228, of February 23, 2004. She highlighted the language in Section 1(b)(1), which specifies the purpose to be immediately imposing a moratorium on entry of new vessels in the state's groundfish fisheries.

MS. ASPELUND explained that when a fishery has been identified for limitation, a pattern of speculation has been observed. Speculation exacerbates the problems that a proposed limitation seeks to prevent, such as increased competition, additional capitalization, decreased economic viability for the participants, localized depletion, et cetera. Ms. Aspelund emphasized the need to remember that [the department] is seeking only a moratorium in SB 347. The proposal in the legislation isn't the permanent program. She then turned attention to Section 9, which describes the fisheries that would be included in the moratorium. She pointed out that vessels were chosen for limitation over persons because it's believed it would define a smaller pool of participants during the period of the moratorium, which would more effectively achieve the goal of controlling the growth during the development of the permanent program. Initially, this legislation included the Gulf groundfish fisheries in Southeast Alaska, but those were removed in the Senate Resources Standing Committee. The Southeast participants believe the nature of their fishery is such that they don't fit the more general demographic of those fisheries that have been included. Furthermore, the jig fisheries were exempted from the legislation in order to provide entry-level access to Gulf groundfish fisheries throughout the Gulf. Section 9(b) specifies that a vessel use permit is a use privilege rather than a property right. Section 9(c) provides the date of implementation of the moratorium while Section 9(d) describes the qualifying years for the moratorium. Ms. Aspelund explained that the years 1998-2003 were used because the Board

of Fisheries first authorized a state water Pacific cod fishery in 1997. Therefore, it wasn't until 1998 that there was a full state waters Pacific cod fishery, which is why that was chosen as the qualifying year. She further explained that the aforementioned is believed to maximize the benefits to Alaskan residents.

MS. ASPELUND pointed out that Section 9(e) is hoped to be a disincentive for a race for fish during a moratorium. Section 9(f) specifies that CFEC regulations can supersede subsections (d)-(e). Section 9(g) allows for the substitution of a vessel in the event of loss, destruction, and damage. Section 9(h) allows for sales of vessels during the provisions of the moratorium. Section 9(i) addresses the vessel's size restriction and allows the transfer of a vessel permit to a vessel that's shorter. Section 9(j) establishes fees for the vessel permits. Ms. Aspelund emphasized that Section 9(k) is of particular importance because it directs CFEC, in corporation with ADF&G and the Board of Fisheries, to conduct necessary investigations to determine appropriate alternatives for management of entry and to bring those proposals back to the legislature if statutory or constitutional amendments are necessary to implement the recommendations. Section 9(l) authorizes CFEC to adopt regulations. Section 9(m) exempts the halibut and black cod fisheries. Section 9(n) provides definitions. Sections 10-11 correlate with a previous section regarding access to landing. She concluded the sectional analysis with Section 12, which is a cleanup section.

Number 1635

CHAIR SEATON directed attention to the definition of "Gulf of Alaska" on page 10, line 17. He asked if the definition means to include all of the waters to the end of the Aleutian Islands.

MS. ASPELUND deferred to other department representatives.

Number 1535

MICHAEL RUCCIO, Fishery Biologist, Division of Commercial Fisheries, Alaska Department of Fish & Game (ADF&G), related his understanding that NPFMC's directive is to only rationalize Gulf fisheries and for those purposes the Gulf of Alaska would end 170 degrees west longitude, which is in the vicinity of the Four Mountain Island in the Aleutian Chain. Beyond the 170 degrees west longitude, that portion of the Aleutian Islands is considered part of the Bering Sea Aleutian Islands Management

Area and isn't slated for rationalization by NPFMC.

CHAIR SEATON clarified that this legislation is speaking to a moratorium, not NPFMC.

MR. RUCCIO acknowledged that and clarified that his response was framed in terms of the fact that 170 degrees west longitude is the end of the Gulf of Alaska as defined by NPFMC.

CHAIR SEATON reiterated that this legislation in no way relates to NPFMC or the federal program. He related his understanding that this legislation addresses a state water moratorium for state waters, and the state waters are defined as all waters west of Cape Suckling to the end of the Aleutian Islands. Therefore, he indicated the need to obtain further clarification on this point.

MS. ASPELUND turned attention to a map in the committee packet labeled Figure 2, which shows the South Alaska Peninsula, Area M. The line between Area M and the Bering Sea is what is described in the definition of the Gulf of Alaska. She related her belief that "this is the state's definition of Gulf of Alaska waters." She offered to check on this matter.

MS. ASPELUND directed attention to page 10, line 10, which specifies "In this section". Therefore, the definitions listed only pertain to this legislation. In response to Chair Sutton, Ms. Aspelund said that she listened to the work group and was support staff for it.

Number 1292

CHAIR SEATON asked if, under vessel licenses, the work group considered the amount of [vessels owned by] residents versus nonresidents.

MS. ASPELUND related that the data isn't yet available. She informed the committee that one of the difficulties and complexities in this process is juxtaposing federal data and state data.

REPRESENTATIVE OGG asked if the work group discussed who actually fished the boats as opposed to who were absentee owners who didn't fish.

MS. ASPELUND said that is included in the data request regarding residency, which isn't available yet. The [work group] has

mainly focused on the statutory and constitutional boxes by which they're constrained. Many folks are familiar with the federal statutes and regulations, but less familiar with the state process. Therefore, most of the discussion has been in regard to the state's authority.

CHAIR SEATON recalled that Mr. Dersham had said that the department had said [the Board of Fisheries] didn't have the ability to manage a longline fishery or the parallel fishery. The aforementioned seems to be the driving force [behind the legislation]. Therefore, he requested an explanation.

Number 1087

HERMAN SAVIKKO, Fisheries Biologist, Division of Commercial Fisheries, Alaska Department of Fish & Game (ADF&G), turned to the question of gear. He explained that when the Board of Fisheries originally developed a state water fishery for Pacific cod, the gear in use was reviewed. Of the four major gear group users, the pot and jig have the least impact on halibut by-catch, which is why the fishery within 0-3 miles was restricted to that gear. However, the department doesn't have the ability to allocate additional prohibited species catch in that 0-3 miles.

CHAIR SEATON recalled the change in the state water Pacific cod fishery, which was partially based on the halibut [by-catch in the 0-3]. He asked if the board's guidelines are problematic because they include low by-catch gear and don't allow the board to regulate the parallel fishery.

MR. SAVIKKO clarified that halibut are an international treaty fish and the [International Pacific] Halibut Commission actually dictates the allowable catch and the allowable by-catch in those fisheries. A number for the by-catch in the 0-3 mile fishery isn't specified. In further response to Chair Seaton, Mr. Savikko specified that he is referring to by-catch retention. He explained that in order to have a fishery from 0-3 miles, a specific amount of halibut by-catch wouldn't be allocated to longline gear.

CHAIR SEATON offered, "I guess it's a prohibited species in the P-cod [Pacific cod] fishery wherever it occurs so it's not allocated to the P-cod fishery in federal waters either. So, ... it has to be thrown back from January 1 until the opening of the halibut fishery." He questioned whether he is missing something.

Number 0828

GLENN MERRILL, Sable Fisheries Division, National Marine Fisheries Service (NMFS), explained that when the federal government establishes by-catch rates for various fisheries, it's done in concert with the International Pacific Halibut Commission (IPHC). When the aforementioned is done, specific rates are established for certain time periods based on the amounts necessary to maintain the groundfish fishery. In the case of the longline fishery, there is a specific allocation of by-catch mortality, which is provided on an annual basis and broken into seasons. The aforementioned can be taken in federal and state waters during the parallel fishery. However, he understood Mr. Savikko to be pointing out that there isn't a separate process for establishing a halibut by-catch cap or mortality cap within state waters specific to a state-managed fishery. The aforementioned would need to be negotiated separately with IPHC.

CHAIR SEATON surmised then that the fish with an established by-catch rate and by-catch mortality rate caught with longlines in the parallel fishery in state waters aren't currently allocated to a state water fishery because it hasn't been established. However, if that same fishery continued to occur, he asked if Mr. Merrill is saying the council or the IPHC wouldn't extend the same by-catch and mortality rate in the fishery as it currently occurs.

MR. MERRILL replied that the state could negotiate that with the IPHC in concert with the council. However, the point is that it doesn't currently exist.

Number 0607

DAVID POLUSHKIN, K-Bay Fishing Association, informed the committee that the K-Bay Fishing Association is a small boat longline fleet out of Homer. The boats in the fleet range from 32 feet to 50 feet. Currently, there are 34 members in the association and the membership is 100 percent Alaska residents. He noted that during the winter the members fish mostly out of Kodiak. Mr. Polushkin opined that SB 347 is intended to curtail the race for fish while the federal government proceeds through the rationalization of the Gulf of Alaska. The state is also doing its part of the process, he remarked. Mr. Polushkin related that the K-Bay Fishing Association does support SB 347 as it's the beginning of the rationalization process and will

help those currently participating in the fishing industry. Furthermore, it will help those Alaska residents fishing in the Pacific-cod fishery.

Number 0485

JULIE BONNEY informed the committee that she represents 25 trawl vessels that fish out of Kodiak in the Central Gulf of Alaska regulatory area. Most of the vessels aren't operated by the owner. Therefore, if there is a move to a permit-based skipper program, there will be a disconnection which the owner won't have a permit to access inside (indisc.). In order for the fishery to operate efficiently, the owner on shore deals with the vessel to deal with the mechanics, gear, and delivery to the processor. It's normal for the owner not to operate the vessel in this gear type.

MS. BONNEY pointed out that the federal process has looked at the ownership of limited liability partnerships (LLPs). For groundfish in the North Pacific, it has been found that the Gulf of Alaska has the highest amount of Alaska residents that participate in that fishery. In the central Gulf of Alaska, 85 percent of the fixed gear vessels are owned by Alaska residents. Within the trawler fleet, Alaska ownership is between 30-50 percent whereas the AFA and the pollock in the Bering Sea only have about 6 percent Alaska ownership. Therefore, giving permits to vessels really means giving permits to Alaskans. Ms. Bonney concluded by urging the committee to forward SB 347 and to ensure that vessel owners have access to obtain the permit.

MS. BONNEY, in response to Chair Seaton, suggested that he request from ADF&G documentation provided by Northern Economics regarding the number of Alaska residents versus nonresidents for every groundfish fishery in the Gulf of Alaska.

MS. ASPELUND indicated that the aforementioned information would be provided to the committee.

Number 0183

JOE SULLIVAN, Attorney at Law, Mundt MacGregor L.L.P., informed the committee that he represents the City of Kodiak in Gulf groundfish rationalization issues. He mentioned that he is a member of the board's Gulf groundfish rationalization task force. He said he supports the general changes to the moratorium provisions. Furthermore, he said he supports the adoption of the Gulf groundfish moratorium components of SB 347.

Rationalization is important for the Gulf of Alaska, in terms of addressing resource issues and the need to address economic stability in the Gulf of Alaska. It's necessary to level the playing field as there are other groundfish fisheries, such as Bering Sea pollock, halibut, and sable fish, that have been rationalized. Mr. Sullivan highlighted the importance of the groundfish fishermen in the Gulf of Alaska having the same tools available as is to other fisheries.

MR. SULLIVAN turned to the point of view of the task force, and commented that the moratorium is intended to be a placeholder rather than a program. The notion behind this is to stabilize the fishery while the ultimate program is being developed through the CFEC [process].

TAPE 04-18, SIDE B

MR. SULLIVAN said that a vessel-based approach is preferable for purposes of maintaining the stability within the fleet currently participating in the Gulf of Alaska groundfish fisheries. Often, vessels have skippers who are individuals other than the owners and sometimes there are multiple skippers. He highlighted that a person-based permit system may strand a vessel and it's crew with the owner being unable to employ the boat. The aforementioned situation could also result in allocating a number of permits, which could increase the amount of participation in the fishery.

Number 0105

MR. SULLIVAN opined that the committee has identified a couple of important issues that should be addressed in connection with the legislation. One such issue is related to what is done when a vessel has been lost or transferred during the moratorium qualification period. The legislation contemplates the aforementioned situation after the moratorium permits have been issued. However, the legislation doesn't contemplate a situation in which one party owned the vessel while it made the qualifying landings and transferred the vessel to another person while the seller retained all the fishing rights. Unless there are provisions to allow the seller to apply for a vessel permit, there will be problems. Therefore, one should consider how to address the aforementioned situation.

MR. SULLIVAN turned to the long-term program and said that it wasn't the expectation of the members of the task force that it would necessarily consider a vessel-based program going forward.

The discussions were about working on a program that would address a trans-boundary fishery because the pollock and cod stocks in the Gulf of Alaska move back and forth between the 3-mile line. Without a companion system under which a state system is coordinated with a federal system, there is the potential to disrupt the activities of the fishing fleet that has fished those trans-boundary stocks. The NPFMC has been reviewing a person-based system, and therefore he surmised that the state would want to review how to develop a person-based eligibility and rationalization system that would meet the state's constitutional requirements and policy goals while coordinating with the federal system that is expected to be person-based as well. He concluded by reiterating that he didn't believe the ultimate system should be vessel-based.

Number 0425

SAM COTTON, speaking on behalf of the Aleutians East Borough, informed the committee that he is also a member of the Board of Fisheries groundfish committee. He explained that the Sand Point, King Cove, and False Pass areas have resident fleets that use trawl, pot, and jig gear to harvest groundfish, primarily Pacific cod and pollock in the western Gulf. Most of the hook-and-line fishing is done by nonresidents. Mr. Cotton related that there is support for this proposed moratorium from his communities, especially in light of the possibility of an expanded state fishery. As Mr. Dersham pointed out, there are two different state fisheries. Under the Gulf of Alaska rationalization proposals, there is a risk that the state would lose management control over some of those fish that have historically been harvested in state waters.

MR. COTTON acknowledged concerns with regard to owner versus operator issues. There are also concerns with regard to boats larger than 58 feet that fish in the parallel fishery that would be grandfathered in somehow. In the state water fishery, the boat must be 58 feet or smaller in the western Gulf. However, during the parallel fishery in state waters larger boats can enter and have a great advantage because they can put more gear in the water. Therefore, he wasn't sure how folks would react to grandfathering those boats into a state fishery. There is also concern because although there may be restrictions related to size, the ticket could be passed to another boat. Moreover, there is concern regarding whether this could apply to pollock as well as cod. There are a few local boats that are capable of harvesting all of the pollock that's allowed. In fact, as much

as 75 percent of the pollock harvested in the western Gulf has been taken within state waters.

MR. COTTON related his understanding that SB 347 won't be reported from committee from today, which would [be agreeable because it would] allow the advisory committees to meet and discuss the issues. Most of the members of the advisory committees are fishermen and have been fishing as the jig fishery is still open, he noted.

CHAIR SEATON confirmed that the legislation will be held over.

MR. COTTON turned to the statistics describing boat size and other issues and informed the committee that the department has provided some raw data. He opined that once the data is complete, it's the data to which folks should refer because it will be the most recent and most exhaustive research.

Number 0833

GLENN CARROLL, Fisherman, informed the committee that he has fished in the pot and jig fishery for Pacific cod for about 10 years and has participated in the Board of Fisheries task force group. Mr. Carroll related his view that the task force and the Board of Fisheries envision most of the issues and concerns will be taken up next year. Mr. Carroll related that in general he supported the legislation. However, as a result of this [legislation] the jig fishery will be disenfranchised. Again, he expressed hope that the jig fishery can be addressed once the moratorium is in place.

Number 0963

BUCK LAUKITIS, Fisherman, commended the goal of SB 347 and the Board of Fisheries and Mr. Dersham for their work on the Gulf of Alaska groundfish rationalization. The Gulf groundfish fisheries issues are complex. As a state issue, there are more species, vessels, gear types, and communities involved than probably salmon limited entry in the 1970s. Mr. Laukitis opined that there is the potential to unlock economic benefits for coastal communities in the state, if all rationalization was handled successfully. A well-developed plan would make it possible to control rates of harvest, improve product quality, promote harvest during processor synergies, enhance safety, and ensure the sustainability of the resources. However, the failure to act would seriously disadvantage state water participants because of the pending rationalization program.

Although SB 347 is an interim step toward a more comprehensive groundfish rationalization plan, he opined that the use of vessels rather than permits probably predetermines the outcome of the final plan. The aforementioned is a significant policy that should be fully addressed.

MR. LAUKITIS related his own experience in the state water cod fishery in which he has been an owner and operator of his own family-owned boat. He recalled that he has been in the following situations: running a boat as a hired skipper; leasing a boat that he operated; hiring a skipper to run his boat; and being a skipper of a boat that he owned with a business partner. Therefore, in six years he has fished under five different business structures on four different boats. Mr. Laukitis said that a vessel moratorium will work for him as will a permit-based system because an owner and/or operator would be covered under either situation. He related the following, "Permits are issued to individuals in state water fisheries because the state thought it would be a good policy to ensure that persons, not companies, canneries, banks, or investment groups be allowed to control the privilege to harvest the state's resources." Mr. Laukitis stressed the need to realize that non owner-operated business structures are disenfranchised by a permit moratorium while skippers are disenfranchised by a vessel moratorium. Therefore, the question is regarding whether it's possible to develop moratorium criteria to include both permits and vessels. He related his belief that the aforementioned is possible, and therefore it's important to pursue this.

Number 1313

YAKOV REUTOV, Fisherman, related his support of SB 347.

ALAN PARKS said that although he supported SB 347, he was concerned with the vessel-based permit system. He reminded the committee of his testimony regarding the Korean hair crab fishery in which he had feared [moving to a vessel-based permit system] would be used as a precedent, which is what is happening.

ILIA KUZMIN, Fisherman, informed the committee that he has fished in the Gulf of Alaska for about 10 years. He said that he supports SB 347 and Mr. Laukitis' testimony.

Number 1471

JOE CHILDERS, Director, Western Gulf of Alaska Fishermen, informed the committee that Western Gulf of Alaska Fishermen consist of 23 vessels that are combination vessels that fish in most of the fisheries in the Gulf of Alaska. The commonality in the group is that all [the vessels] are Western Gulf-based trawlers. Mr. Childers related that the organization supports the legislation. He opined that the most important aspect of this is the fact that this issue has been elevated so high in the Alaska State Legislature. This is a very important piece of legislation that will be a part of the rationalization of the Gulf of Alaska groundfish fisheries and the remaining unrationalized fisheries in Alaska. He explained that this legislation is trying to address the fact that there is a state water fishery, a parallel fishery, and a federal fishery. The parallel fishery is managed by the state and federal government and it overlaps state water boundaries. Therefore, any efforts implemented on behalf of the federal system for the rationalization effort are fairly well nullified by the fact that people can fish state water under the same tax and thus create a race for fish inside state waters. The Board of Fisheries task force, of which Mr. Childers is a member, has been grappling with this issue for some nine months. The moratorium is basically an effort to stop folks from piling into the fisheries that aren't economically viable today. It's true that fewer people are participating today than in the past. In fact, many of these fisheries are very depressed. Mr. Childers informed the committee that the Western Gulf of Alaska Fishermen support the moratorium legislation and being vessel-based. The support for the vessel-based system is because these fisheries don't need to have more participants eligible than have ever fished. The efficacy of the vessel-based moratorium is that it places a cap on participation. Mr. Childers concluded by highlighting that the moratorium legislation is just that, not rationalization legislation.

Number 1701

CHAIR SEATON announced that there would be another hearing on SB 347. [SB 347 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:3 a.m.