

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

March 10, 2003

1:05 p.m.

**MEMBERS PRESENT**

Representative Hugh Fate, Co-Chair  
Representative Beverly Masek, Vice Chair  
Representative Carl Gatto  
Representative Cheryll Heinze  
Representative Bob Lynn  
Representative Kelly Wolf  
Representative David Guttenberg  
Representative Beth Kerttula

**MEMBERS ABSENT**

Representative Mike Chenault, Co-Chair

**COMMITTEE CALENDAR**

HOUSE BILL NO. 118

"An Act relating to the transportation and sale of certain commercially caught fish by an agent of a commercial fishing permit holder and to the sale of fish; and providing for an effective date."

- MOVED CSHB 118(RES) OUT OF COMMITTEE

HOUSE BILL NO. 113

"An Act extending the renewal period for oil discharge prevention and contingency plans; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HB 118

SHORT TITLE:TRANSPORTATION OF COMMERCIAL FISH

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

Jrn-Date	Jrn-Page		Action
02/21/03	0271	(H)	READ THE FIRST TIME -

			REFERRALS
02/21/03	0271	(H)	FSH, RES
02/28/03		(H)	FSH AT 8:30 AM CAPITOL 124
02/28/03		(H)	Moved CSHB 118(FSH) Out of Committee
02/28/03		(H)	MINUTE(FSH)
03/03/03	0357	(H)	FSH RPT CS(FSH) 4DP 2NR
03/03/03	0357	(H)	DP: HEINZE, WILSON, GUTTENBERG, SEATON;
03/03/03	0357	(H)	NR: BERKOWITZ, SAMUELS
03/03/03	0358	(H)	FN1: ZERO(DFG)
03/03/03	0358	(H)	FN2: INDETERMINATE(LAW)
03/03/03	0367	(H)	FIN REFERRAL ADDED
03/10/03		(H)	RES AT 1:00 PM CAPITOL 124

**BILL: HB 113**

SHORT TITLE: DISCHARGE PREVENTION & CONTINGENCY PLANS

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/19/03	0252	(H)	READ THE FIRST TIME - REFERRALS
02/19/03	0252	(H)	O&G, RES, FIN
02/19/03	0252	(H)	FN1: ZERO(DEC)
02/19/03	0252	(H)	GOVERNOR'S TRANSMITTAL LETTER
02/27/03		(H)	O&G AT 3:15 PM CAPITOL 124
02/27/03		(H)	Moved CSHB 113(O&G) Out of Committee
02/27/03		(H)	MINUTE(O&G)
03/03/03	0356	(H)	O&G RPT CS(O&G) NT 5DP
03/03/03	0356	(H)	DP: MCGUIRE, ROKEBERG, FATE, CRAWFORD,
03/03/03	0356	(H)	KOHRING
03/03/03	0357	(H)	FN1: ZERO(DEC)
03/03/03	0357	(H)	FN2: ZERO(LAW)
03/10/03		(H)	RES AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

REPRESENTATIVE PAUL SEATON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Spoke as sponsor of HB 118 by request of  
the Joint Legislative Salmon Industry Task Force.

GERALD McCUNE, Lobbyist

for United Fishermen of Alaska (UFA)

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 118.

DOUG MECUM, Director

Division of Commercial Fisheries

Alaska Department of Fish and Game (ADF&G)

Juneau, Alaska

POSITION STATEMENT: Testified on HB 118 and answered questions; suggested that as long as the provisions in [CSHB 118(FSH)] remain, ADF&G doesn't foresee problems that can't be addressed through regulations; also explained concerns about adding the shrimp and Dungeness crab fisheries to the bill.

GORDY WILLIAMS, Legislative Liaison

Office of the Commissioner

Alaska Department of Fish and Game

Juneau, Alaska

POSITION STATEMENT: Testified on HB 118; emphasized the importance that fish tickets be written at the transporter level and then taken to the point of sale, which wasn't included in the original version of the bill.

JAMES COCKRELL, Major, Deputy Director

Division of Fish & Wildlife Protection

Department of Public Safety (DPS)

Anchorage, Alaska

POSITION STATEMENT: During hearing on HB 118, testified that the current version appears enforceable, but expressed concern about expanding the bill to include the Dungeness crab and shrimp fisheries.

CHRIS GARCIA

Cook Inlet Fishermen's Fund

Kenai, Alaska

POSITION STATEMENT: Testified in support of HB 118.

SUSAN SULLIVAN, Program Coordinator

Child Support Enforcement Division (CSED)

Department of Revenue

Anchorage, Alaska

POSITION STATEMENT: Explained CSED's suggested Amendment 1 to CSHB 118(FSH).

MARY McDOWELL, Commissioner

Commercial Fisheries Entry Commission (CFEC)

Alaska Department of Fish and Game

Juneau, Alaska

POSITION STATEMENT: Testified on HB 118; answered questions relating to CSED's suggested Amendment 1.

BRUCE SCHACTLER, Board Member  
United Fishermen of Alaska (UFA);  
President, United Salmon Association  
Kodiak, Alaska

POSITION STATEMENT: Testified in support of HB 118.

CHRIS BERNS  
Kodiak, Alaska

POSITION STATEMENT: Testified in support of HB 118; he noted a "gray area" with respect to hauling fish, and his perception that the bill is a housekeeping measure.

RICK ELLINGSON  
Kodiak, Alaska

POSITION STATEMENT: Testified in support of HB 118; urged members to include the Dungeness crab fishery in the bill.

GEORGE UTERMOHLE, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency  
Juneau, Alaska

POSITION STATEMENT: Provided information and answered legal questions relating to HB 118.

CHERYL FULTZ, Planning Manager  
Southeast Alaska Petroleum Resource Organization (SEAPRO)  
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 113.

LARRY DIETRICK, Director  
Division of Spill Prevention and Response  
Department of Environmental Conservation (DEC)  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 113; suggested a five-year renewal period will streamline the review process for the industry while maintaining Alaska's strong spill prevention and response standards.

#### **ACTION NARRATIVE**

**TAPE 03-12, SIDE A**  
Number 0001

**CO-CHAIR HUGH FATE** called the House Resources Standing Committee meeting to order at 1:05 p.m. Representatives Fate, Masek, Gatto, Heinze, Lynn, and Wolf were present at the call to order; Representative Kerttula arrived shortly thereafter. Representative Guttenberg arrived as the meeting was in progress. Representative Chenault was excused.

HB 118-TRANSPORTATION OF COMMERCIAL FISH

[Contains brief discussion of HB 22]

Number 0101

CO-CHAIR FATE announced that the first order of business would be HOUSE BILL NO. 118, "An Act relating to the transportation and sale of certain commercially caught fish by an agent of a commercial fishing permit holder and to the sale of fish; and providing for an effective date." [Before the committee was CSHB 118(FSH).]

Number 0170

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, sponsor of HB 118 by request of the Joint Legislative Salmon Industry Task Force, described the legislation as "a transporter bill" that allows fishermen to contract with a tender or another vessel to transport their fish back to town. He indicated that the [transporter vessel] can be another fisherman or an independent vessel. That vessel would have to get a transporter permit, which would be issued by the Alaska Department of Fish and Game (ADF&G). He said the presumption is that the regulations will lay out the terms of the transporter permit, and it would be understood that the fisherman [contracting with the transporter] retains ownership of the fish; the transporter is hired and acts as an agent to sell that person's fish to whoever is designated at a port. He explained that processors, which have traditionally supplied tenders to all the fishing grounds, have cut back on their operations and financial commitments. He said one of the ways they've done that is by not supplying tenders, which means that the fishermen have to run their fish back to the processing plant.

REPRESENTATIVE SEATON explained that the reason for this is that there is a state law in place which specifies that it is illegal for a person to have a fish ticket signed by the fisherman, unless the person is the buyer, and the fisherman has to be present at the point of sale. He said this law creates a very

big problem in the state's current structure. He said a tender is under a contract with a processor and is an agent, so when a fisherman puts his/her fish on a tender, it's the point of sale. If there is not a tender available, then the point of sale is the dock where those fish arrive, which means the fisherman has to leave the grounds. He explained that this increases expenses and removes fishermen from the grounds, and it also doesn't allow them to work in a cooperative way, in some of the state's smaller fisheries, especially.

Number 0405

REPRESENTATIVE SEATON noted that the bill is limited to salmon, herring, and Pacific cod, and he suggested getting [the bill] into place quickly for the purpose of allowing salmon fishermen to lower their costs. Representative Seaton cited testimony given in the House Special Committee on Fisheries by people on the Aleutian Chain who said they have to quit [fishing] in the fall when the processors stop sending tenders there. He mentioned that this bill would provide the opportunity for fishermen to aggregate their catch on one of the other fishing boats and do all the paperwork including the fish tickets. He said the person would have to be there with his or her card, which would be imprinted; everything would be done, except the processor's code wouldn't go on it, and would be added when the fish were delivered back to the dock. He concluded by saying the intent of the bill is to allow fishermen flexibility and the ability to economize on getting fish off the fishing grounds and back to the processor.

Number 0530

REPRESENTATIVE MASEK moved to adopt CSHB 118(FSH) for purposes of discussion. There being no objection, it was so ordered.

Number 0671

REPRESENTATIVE SEATON indicated the Board of Fisheries, ADF&G, UFA [United Fishermen of Alaska], the industry, and others had worked the concept of this bill through several revisions, and that the bill has general support.

Number 0737

CO-CHAIR FATE called on Jerry McCune to testify. First, however, he informed members that there had been notification shortly before the meeting that perhaps some clarification of

[the statutes pertaining to] the Child Support Enforcement Division (CSED) was needed. He mentioned existing law under AS 25.27.244, the "child support licensing statute." He indicated there would be an amendment offered later, although he acknowledged that the sponsor might not have been aware of it.

Number 0792

GERALD McCUNE, Lobbyist for United Fishermen of Alaska (UFA), spoke in support of the bill, noting that it gives flexibility to fishermen to transport or "co-op" fish, especially in a lot of areas that currently are downsizing from having tender service. This allows them to move fish without having everyone leave the grounds at once. He suggested it would be useful for setnetters in some areas as well.

Number 0876

DOUG MECUM, Director, Division of Commercial Fisheries, Alaska Department of Fish and Game, indicated he and Gordy Williams, Legislative Liaison, had worked with the sponsor on this bill over the last year or so - since the issue was raised through the Board of Fisheries process - to figure out how to implement this new approach of fish transporters. "We feel like we've worked through all the ... concerns that we had ... with this new practice," he reported.

MR. MECUM pointed out the need to adopt regulations in order to implement the legislation, however, which will require going through all the existing regulations, determining what needs to be modified, and sending it out for public review and comment. If the desire is to have it in place before the salmon season, he told members, it will be doable but very tight. He added:

The other thing about the regulations - and the bill talks about this - is that there may be fisheries or areas or times when this practice would not be allowed because it might conflict with fishery conservation or management purposes. It might conflict with existing management plans and regulations that are adopted by the Board of Fisheries. And I could point out some specific problem areas ... that we already foresee in the salmon fisheries, but I don't know if you want to get into that detail or not. We think ... we have the authority, as laid out in this bill, to go ahead and deal with those ... potential problems.

Number 1019

GORDY WILLIAMS, Legislative Liaison, Office of the Commissioner, Alaska Department of Fish and Game, added to Mr. Mecum's comments, as follows:

As we worked with the legislative task force ... and the sponsor on the bill, ... it was recognized that it's really important to keep the kind of discrete, accurate information that we get now ... on what's called the fish ticket, which is written up. The original bill did not anticipate a fish ticket being written at this transporter level, and the bill does now have that important fish ticket being written by the transporter and then taken to the point of sale.

And that's really important because that's what we rely on in the department for our discrete management information. The limited entry commission [the Commercial Fisheries Entry Commission (CFEC)] relies on that data for various issues; if they have any kind of limitation issues or ... economic analysis issues, they all rely on that information, so it's very important that ... that information be there. And ... as Doug Mecum referenced, in our regulations we can determine, between fisheries, what the amount of information that might be needed to be required would be, but it certainly, at a minimum, ... would be the number of fish and other estimations. In some instances, we might actually have to require weights, which would involve ... certified scales.

Number 1126

REPRESENTATIVE HEINZE noted that she'd heard the bill in the House Special Committee on Fisheries and is very supportive of it. She requested clarification, though, about the first paragraph [of the sponsor statement for CSHB 118(FSH)], which read in part, "It also creates new possibilities for accessing fresh markets." She asked what those new markets would be and how it would occur.

MR. MECUM replied:

Well, when we first talked about this, ... this issue of marketing and quality wasn't really on the radar screen initially. The main thing, as the bill

sponsor, Representative ... Seaton talked about, is, in some areas people simply don't have any ability whatsoever to get their fish to a particular market.

But in some of the testimony that ... we've heard and in our discussions with the industry, [there could] be situations where people can improve their quality. ... If you're out in an area where you're only catching small numbers of fish and you really can't afford to run all the way back to deliver them, a group of individuals acting in a cooperative fashion could get their fish back to market more quickly. And particularly if there was, obviously, a fresh market, ... that's very important. So that's, I think, what it's addressing there.

Number 1220

REPRESENTATIVE HEINZE asked whether, then, it is somewhat a matter of quality of the fish.

REPRESENTATIVE WOLF said although he thinks it is a good bill, a couple of individuals had contacted him about [including] halibut, which aren't in the bill. He asked whether federal regulations prohibit the transport of halibut, and surmised that Pacific cod doesn't fall into that [category].

MR. MECUM replied that this certainly doesn't apply to halibut, which is under an individual fishery quota (IFQ) system. With respect to Pacific cod, he indicated the department has looked at it and believes it may be a little more complicated than for the salmon fisheries; in the cod fisheries, there are both state and federal management issues. For some Pacific cod fisheries, for example, federal waters may be open while state waters aren't; there also may be federal license-limitation issues associated with having fish on board. He said he'd asked the staff to examine the issue, although not in great detail, and although they'd expressed some concerns about it to him, they hadn't pointed out any fatal flaws that couldn't be dealt with through adopting regulations. For the Pacific cod fishery, he concluded that he didn't believe there would be "the same kind of problem that you're talking about."

Number 1356

REPRESENTATIVE GATTO said he supports the bill but requested clarification. He asked whether UFA is a bargaining unit or

just an organization, and who can join. He also asked whether the fishermen and processors support or oppose each other.

MR. MECUM said it isn't all love and kisses.

REPRESENTATIVE SEATON reported that this had gone through the fisheries task force, which included both large and small processors who supported this bill.

REPRESENTATIVE GATTO said it looks as though the processors "lose by this regulation." He requested clarification about how the system works.

Number 1491

MR. MECUM explained that this system has been in place for some time. It has always been important, when fish are caught and sold, that [ADF&G] be able to track who caught the fish and whether that person is complying with regulations on undersized crab or prohibited species, for example. Mr. Mecum indicated the need to be able to go to a processor who has the fish ticket that was issued with the person's signature on it. The chain of custody [for that fish ticket] is important for enforcement, conservation, management, limited entry purposes, child support issues, and Department of Revenue taxation. He said it didn't have to do with processors versus fishermen; rather, it was for adequate enforcement and tracking for commercial fisheries.

REPRESENTATIVE GATTO asked whether that will be lost if this bill passes.

MR. MECUM answered, "We don't believe so, as long as it is, again, based on the same system of fish tickets, and that we have the adequate authority to adopt regulations to make sure that we have adequate recordkeeping and enforcement."

Number 1562

REPRESENTATIVE GUTTENBERG asked whether any systematic problem exists in the process that couldn't be addressed [by ADF&G] through regulations.

MR. MECUM replied:

Not that I have been able to determine. And, in fact, we have looked at this issue in some depth. ... Over the course of the past year, we got all of our staff

together; they're involved with this. We did a background paper. We looked at all of the various options. And, again, as long as the current provisions in the bill stand, ... we don't see any problems that we can't address.

Number 1638

MR. MECUM, in response to a question from Co-Chair Fate about possibly broadening this bill, said:

We haven't really given a lot of thought ... to this issue of broadening it to other fisheries. ... The bill originally was a salmon bill, and it was trying to address a problem in the salmon fisheries. And we agreed to broaden it to herring and to the [Pacific] cod. In the case of the salmon and the herring fishery, they're completely under state management. There really are very few, if any, state-federal issues. The fisheries, for the most part, occur only in state waters. And, ... for the most part, we have adequate on-the-ground monitoring and presence to be able to deal with any issues that might arise in those fisheries.

As I stated, the bill sponsor wanted to add Pacific cod, and we had some reluctance for that. But as we looked into the issue more, we felt that the existing regulatory authority that's established here would allow us to work through ... that problem.

But talking about other fisheries, all you're doing is adding layers of complexity to an already complex process to try to adopt these regulations and have them in place in a short period of time. And there may be some specific issues. ... What I've heard anecdotally - and I haven't seen any language, and I haven't had any discussions with anybody personally myself - but shrimp and Dungeness crab are two other fisheries that people have talked about adding. I see some problems with that in those fisheries. ... We're open to ... any discussions you might want to have about it.

Number 1743

CO-CHAIR FATE asked Mr. Mecum to describe problems with adding those two fisheries.

MR. MECUM responded that although there are shrimp fisheries around the state, for the most part they're limited to Southeast Alaska because the shrimp resources are "pretty much chronically depressed" everywhere else. The two big fisheries are the trawl shrimp fishery, which is beam trawl, and the pot shrimp fishery, which is the largest-valued fishery and which has a whole set of management plans and a fairly complex set of regulations associated with the management of that fishery. He offered some details, as follows:

In Southeast Alaska there are 19 separate districts with separate guideline harvest levels that we manage for on an in-season basis to ensure we don't go over the quotas, to ensure the sustainability of the resource. And in some areas, those quotas are taken in two or three or four days. They're what ... you've heard referred to as derby-style fisheries. And this has caused problems in terms of being able to ensure that we're accurately managing and that we're able to obtain access to the catches to get biological samples that we need to manage the fishery and gauge the health of the resource.

And during the period of time leading [up to this] - well, probably ten years ago - there was this whole period of speculation on limited entry, and the fishery became very intense. And at that point, the department and the board and the industry worked together to try to find ways to get this fishery reined in and under control. And one of the main issues that they had - the industry brought forward, in fact - had to do with floating processors. These are vessels that come into an area, again, where there's a lot of effort and the quotas are being taken very quickly, and they purchase from a lot of people ... right on the grounds. What ... it led to was an intensification of the fishery in those areas.

Number 1857

MR. MECUM continued discussing the shrimp fisheries:

The industry came forward with some proposals to the board, and the board banned, by regulation, those

floating processors. These fish transporters, although they wouldn't technically be considered a floating processor - I don't think, unless they were actually purchasing and processing shrimp on board - could lead to the same kind of a problem in terms of the intensification of the fishery.

And, in fact, one of the main issues with respect to floating processors had to do with Canadian vessels coming into Southeast Alaska and taking a large proportion of the catch and taking it to Canada, which was running somewhat counter to what we were trying to do with respect to slower-paced fisheries ... that are more of a benefit to coastal communities in Southeast Alaska.

Number 1915

MR. MECUM said he doesn't think the problems are quite as bad with regard to Dungeness crab, although there are some problems. Noting that a tender is in a different category, being another kind of transport vessel, he explained:

If you want to tender your crab, you can do so. And a way a lot of the people do the fishery is, they have a large skiff or a smaller vessel of some kind that they use to actually work the pots. They bring that catch back to their larger vessel, and once they get a load, they take it back to the plant.

If you're going to tender other people's crab, ... right now, you have to issue fish tickets. And ... all these people would be working with a licensed processor.

The fish transporter would be a little bit different in that they wouldn't have a contract with ... a processor. But the problem we'd run into there, just like we do with tenders, is having gear on board. There's different pot limits in the Dungeness crab fishery, and [the Division of Fish & Wildlife] Protection has to be able to enforce those different pot limits. And the way that we've dealt with tenders in the fishery right now is, ... if they want to tender their crab, that's fine, but they have to register with us, and then, if they want to go back out and fish, they have to unregister. And we've been

able to deal with this problem of having gear on board, ... when it's open and when it's not, and things of that nature through that registration process. So, ... it's quite likely that we would have to do the same sort of a thing with fish transporters if [the bill] was expanded to ... that fishery.

Number 1993

CO-CHAIR FATE asked Mr. Cockrell about potential enforcement problems relating to the bill.

Number 2035

JAMES COCKRELL, Major, Deputy Director, Division of Fish & Wildlife Protection, Department of Public Safety (DPS), offered the department's analysis that the bill as written appears enforceable. He said [DPS] worked hard with the sponsor and ADF&G to come up with a workable bill. He cautioned, however, that although DPS is "on line" with the current version, there would be concerns about expanding it to include Dungeness crab and shrimp. He acknowledged that he hadn't had time to study all implications, but concurred with Mr. Mecum with regard to the Dungeness crab and shrimp fisheries. He said specific regulations in place now deal with tenders for those two fisheries. Calling the industry highly regulated, he said there are probably more complex regulations with regard to [Alaska's] shellfish fisheries than for crab, Pacific cod, and even herring fisheries. Without more time to analyze it, he said, DPS wouldn't support adding the other two fisheries to the bill at this time.

Number 2105

MR. MECUM pointed out that with the shrimp and Dungeness crab fisheries in Southeast Alaska - which is primarily where the fisheries occur - "we have formally established industry task forces that we work with" that meet annually or more often, as needed, to sort through issues related to in-season management and catch reporting in these fisheries. He said although he has concerns about adding these other species, he would willingly direct staff to sit down with the industry task forces, which are formed by the Board of Fisheries, to discuss whether it is an area to pursue and, if so, how best to do that. He offered his personal standpoint of wanting to get this bill in place and adopt these regulations to allow people to do this activity, but also wanting the opportunity to go through one season, figure

out how it works, and sort through all the problems before adding layers of complexity - and to have those kinds of discussions with the industry.

Number 2179

CO-CHAIR FATE alluded to a written amendment [later labeled Amendment 1], which read [original punctuation provided but some formatting changed]:

The Child Support Enforcement Division offers the following observation regarding HB 118, and suggests a minor amendment.

This legislation creates a new occupational permit (fish transporter permit) of the type included in AS 25.27.244(s)(2)(A), which is the statute that lists state permits and licenses subject to action if the holder is delinquent in child support payments.

For clarity, the Child Support Enforcement Division suggests that this legislation be amended to include the following addition to the child support licensing statute AS 25.27.244(s)(2)(A)(xvii): Fish transporter permit under AS 16.05.671(a). This would clarify that the permit envisioned by this legislation is specifically added to the list.

CO-CHAIR FATE asked Major Cockrell whether he supported amending the bill in this regard, whether it would increase his workload, and whether it was necessary.

MAJOR COCKRELL responded that he didn't know how to comment on that, and said this is the first he'd heard of such an amendment. He added, "I don't see where it would add to our workload. And if it would give [CSED] a way to track the amount of fish, I don't see where it would affect the bill."

Number 2269

MR. WILLIAMS mentioned discussions he'd had with the Department of Revenue. He then offered his understanding that CSED wants discrete information on fish tickets because that agency puts liens against fishermen who owe child support. He suggested that under federal law, if someone is delinquent in child support, occupational licenses can be taken. He suggested that

may be what is being referenced there, and although it may be a valid concern, he wasn't prepared to speak to that issue.

REPRESENTATIVE GUTTENBERG asked whether that concern could be written into the regulations without an amendment to this bill.

MR. WILLIAMS clarified that it would be the regulations of the Department of Revenue, not ADF&G. Noting that he didn't see anyone present from that department, he again suggested it might be a valid issue and perhaps a fairly technical issue with regard to [CSED's] compliance with federal child support laws. He also pointed out, as mentioned in a prior committee, that this bill doesn't just apply to vessels that may service transporters. It also could [apply to] other modes of transportation, such as using vehicles in the setnet fisheries in the Kenai area, or when people are trucking their fish or using an airplane to do so. Although it probably would be used for vessels, it applies more broadly.

Number 2384

CHRIS GARCIA, Cook Inlet Fisherman's Fund, testified that he was basically echoing the bill's sponsor. With the changes in the fisheries resource, he said, trying to reduce costs is very important. He noted that in some areas in Cook Inlet or Kodiak, there is no processor running tenders anymore, "and basically they've been put out of business." He also mentioned trying to fly fish [to market]. He suggested that passage of the bill would allow someone who isn't a processor to transport the fish to a processor, thereby helping everyone concerned. He specified that he is totally in favor of the bill.

CO-CHAIR FATE turned the gavel over to Vice Chair Masek.

Number 2460

SUSAN SULLIVAN, Program Coordinator, Child Support Enforcement Division, Department of Revenue, first apologized for the late submittal of [Amendment 1, text provided previously]. She then explained that a number of licenses, permits, and registrations are listed in the statute named in [Amendment 1]; this falls into that category and should as a routine matter be included. In response to a question from Representative Guttenberg, she clarified that the suggested amendment was submitted by CSED to add a [sub-subparagraph] (xvii): Fish transporter permit under AS 16.05.671(a). It would become part of a long list of the

types of permits and professional licenses included under that statute.

MS. SULLIVAN concurred with earlier testimony that the [state] statute was created as a result of federal legislation. It is part of the general child support enforcement requirements, she added.

Number 2566

REPRESENTATIVE WOLF asked whether CSED already has authority to put liens on occupational licenses and permits through federal legislation.

MS. SULLIVAN responded:

It does have the authority. And as we state in our memo [suggested Amendment 1], we're seeking clarity with this particular amendment ... for the benefit of anyone who would want to know that this particular permit is included under the list, including those permit holders, so that they would be able to see clearly in statute that they are included.

Number 2646

MS. SULLIVAN, in reply to a question from Representative Wolf with regard to why the specific listing is necessary, said, "The federal statutes require that we list the permits, licenses, and professional registrations that are lienable."

REPRESENTATIVE KERTTULA said it appears the list may be missing a lot of fishing permits. She asked whether at some point [CSED] would have to "take in others as well."

MS. SULLIVAN responded, "That's a possibility. I'm interested to know which ones you notice are missing. We are also watching House Bill 22. We feel it's a similar situation."

REPRESENTATIVE KERTTULA indicated she'd touch base with Ms. Sullivan about this, noting that the statute is specific with regard to what is being covered.

VICE CHAIR MASEK asked whether anyone was present from the Office of the Attorney General; there was no response.

Number 2721

MR. McCUNE came forward again and said:

Over the years we've worked with the child support agency to be able to go to the processor, where the tickets are and where the money's issued. Now, technically we're not employees of the processors. But ... with Commissioner Twomley [of the Commercial Fisheries Entry Commission (CFEC)] we worked out a deal to ... be able to go to the processors and be able to find out and issue lists of people that are behind in their child support, because ... federal law now says whether you miss one payment or [more], you're behind in child support. So automatically [if] you're behind, ... they put out a lien. So, we made a list available. [CSED] makes a list, and we give it to the processors. And if you're delivering to that processor, then they voluntarily take out ... the money.

MR. McCUNE noted that these people aren't employees of the processor [and thus taking the money out is voluntary].

REPRESENTATIVE KERTTULA mentioned the license itself, however, and offered her understanding that "that other statute" allows CSED to pull licenses.

Number 2795

MARY McDOWELL, Commissioner, Commercial Fisheries Entry Commission, mentioned a law now under AS 16.05. She explained that CFEC, at the time of application, collects social security numbers from permit holders when they renew their permits every year. By law, CFEC can share that information with [CSED] for purposes of child support [collection]. She noted that sunset legislation before the legislature this session will "roll forward some of the child support provisions, and that is one of those provisions." She added, "We're working with the sponsors of that bill on both sides."

MS. McDOWELL clarified that the earnings of fishermen already are covered under the child support provisions. The question now is whether the earnings of the transporter will be covered; that is new. She noted that this isn't actually an occupational license, but is a commissioner's permit. She suggested it is worth exploring the need to include a provision for this.

Number 2858

MR. McCUNE offered his recollection that permits had been omitted from "that statute" because a person who cannot go fishing cannot pay child support.

MS. McDOWELL clarified that she wasn't talking about taking permits [for a child support debt], but about taking earnings out of the fish ticket. In response to Vice Chair Masek, she said this an issue for the Department of Revenue.

MR. McCUNE suggested a possibility "that if you're using a plane, I guess that people might actually pay that person." He said he didn't have a problem if [CSED] feels a need for it, but still thinks "they're covered under this." He indicated he doesn't have a legal background.

VICE CHAIR MASEK expressed the hope of receiving comments from the attorney general or another attorney with regard to the language suggested by CSED.

Number 2938

REPRESENTATIVE SEATON told members:

On the fish themselves, we're not talking that, because the fisherman retains ownership ... of the fish; that never transfers ... to the transporter. The transporter, [if] it is a fishing vessel, has to have the fishing vessel license; each person on board has to have a commercial fishing ... license. If it was an airplane, you would have airline licenses, and you would have all the cargo - those licenses. This is basically a free permit. It's a commissioner's permit. It permits you to do something else, but it's really not an occupational licensing permit. So ... I'm not opposed to [CSED's] ... idea, but ... this permit is something that is quite, quite different than a vessel license or a guiding license or something else. This ... just allows ... [ends midspeech because of tape change].

**TAPE 03-12, SIDE B**

Number 2989

REPRESENTATIVE SEATON said his only problem is that this bill is actually just addressing AS 16.05 [and AS 16.10] and that CSED

is asking that an entire new modification to another Alaska Statute be added. He noted that he thought that might fall into a separate category.

Number 2958

REPRESENTATIVE WOLF posed a hypothetical scenario, and he expressed concerns about the possibility that fishermen [other than those owing child support] may be affected by CSED's [placing a lien on fish] if it's a free permit. He added that [if that were the case], he would be opposed to [amending the section].

REPRESENTATIVE SEATON reminded the committee that under the bill, the ownership of fish would never transfer to the transporter. The "transport-fisherman" never owns the other fish; he/she is simply given the authority to move those fishermen's fish along with his/her own from the [fishing] grounds to the dock. However, he/she would have to write out the fish ticket, the card would have to be stamped, and there would be much better tracking of who owns those fish because the fish ticket has to be made out with the permit card at that time, he explained. Representative Seaton said there have been a number of instances in the herring fishery, currently, where people "kind of co-op" and put their fish on one boat, but it's "kind of illegal" to do that, so they all get put on one person's card. So, CSED doesn't have a good "handle" on knowing who owned all of the different fish on that boat, and to "kind of get around this" and work within the current law, people just "fudge" and say they were [someone else's] fish, he said. He indicated that if a fisherman had a CSED lien against him or her, often, another fisherman would [take the fish] and write it as an expense to that fisherman so that CSED would not know about it. He said this bill will give CSED much better record keeping in knowing whose fish were harvested and on what cards.

Number 2837

REPRESENTATIVE WOLF expressed concerns about putting fishermen in jeopardy because one fisherman has a child support lien against him/her. He said he didn't have enough faith in CSED to allow it to make that judgment call.

MS. SULLIVAN indicated two different concepts were being discussed and said "we're" not discussing, at this point, about how the fish are sorted out, although Representative Seaton's explanation was excellent and [CSED] appreciates the detail with

which those particular issues, keeping track of whose fish are whose, are treated in this bill. She said that is not the focus of [CSED's] particular suggested amendment [Amendment 1]; it has more to do with the idea of a professional license. If someone owes child support and refuses to pay it, refuses to discuss the issue with [CSED], and is flagrantly in violation of his or her child support order, and that person has a professional license, [regardless of his/her profession] CSED has the authority, through federal and state statutes, to [place a] lien on that person's license, permit, or registration, she explained. She said [CSED] doesn't want to take the permit, license, or registration, and doesn't have any use for it, but it has been a very useful tool in getting the attention of a flagrant violator. Ms. Sullivan explained that the idea is to make the statute clear to a person that is a fish-transport permit holder that the permit is subject to lien just as any other professional license is.

Number 2742

REPRESENTATIVE SEATON pointed out that no one can operate with just a transporter's permit; a vessel license and an Alaska business license would also be required. He said those licenses are paid for and have some value attached to them. A transporter permit allows a person to do something a little different, he explained, but that person cannot operate outside of the business license without having a vessel license and those kinds of things. He said it's not as if this is a new classification of things that allow a person to go off and do something without having the other [required] licenses.

REPRESENTATIVE KERTTULA, noting that those were excellent points, said the only problem is that the CSED statute that allows them to [place a lien on a license] specifically exempts the business and vessel licenses. She said it is a difficult question whether the [transporter's permit] should be a license that CSED could place a lien against. She expressed concern about the statute, but noted that it says "including these things." So, she said, it might be read broadly, but then it continues with a very specific list of licenses it could attach to. She indicated it was problematic to her but noted that she could see the good that the statute would do. Representative Kerttula asked, if a fish transporter were to sink, whether the fisherman whose fish were being transported could sue the transporter for recovery.

Number 2639

REPRESENTATIVE SEATON said yes; the fisherman that owns the fish controls the fish until the [transporter] person acts as a sales agent for the fisherman at the processor, so that would depend on the private contract that the fisherman has with the transporter. He said it is one of the reasons for having a permit, so that everybody will understand that the fisherman retains ownership of his or her fish. Additionally, he explained, if the fisherman's group wants to require cargo insurance or something similar, it would be something that they do in their private business contract with the transporter.

Number 2517

BRUCE SCHAETLER, Board Member, United Fishermen of Alaska (UFA); President, United Salmon Association, testified, and noted that he was in support of [HB 118]. He explained that there was a short discussion during a recent UFA board meeting that this [bill] is needed quite badly to make [fish transporting] legal. He said [fish transporting] is something that [had been practiced] since he'd been in the fishery - for the last 35 years.

MR. SCHAETLER offered the herring and salmon fisheries as an example, and he said it's done out of necessity in virtually every fishery in the state. He said [HB 118] is viewed as a "housekeeping" bill that would legalize something that is a common practice in the fishery today, and that getting the cost down is vital because of the [high] price of fuel and the lower [market] value of many of species of fish. Mr. Schactler explained that the fresh-fish salmon markets that are not being facilitated, used, or accessed by the traditional processing industry make it more viable for each individual fisherman to do [more to lower costs]. This is something that these private contractors are going to be needed for "if we're going to stay out of jail for doing what we've been doing forever," he said. He encouraged the passage of the bill. Mr. Schactler thanked Representative Seaton for his work on the bill, and he commented that this "shows you the value of ... one of your new members."

Number 2366

CHRIS BERNIS testified, noting that he and his family fish commercially. He said this bill would make it legal to do "what I've been doing for many years anyhow," and that it makes sense in a low-volume fishery that is a long ways from town or in a slow period when not many fish are being caught. He said [often

a fisherman] would throw 300 to 400 pounds of fish onto another vessel to be hauled into town. He said there is a trust factor involved and fishermen sort it out at the dock. Mr. Berns said everybody's happy because his/her fish got to town and are paid for, instead of having to spend more money running into town or to a processor and lose money by not fishing.

MR. BERNS explained that he's been registered as a herring tender in Kodiak but he also [participates] in a gillnet fishery. He said there's a seine fishery going on during the same time and sometimes he can make an extra \$1,000 running a seine fishermen's fish to town along with his own. He said he's going that way anyhow, and it allows the seine fishermen to stay on the grounds and continue to fish. He described the practice as a commonsense thing; he said there has always been a "gray area" with regard to hauling fish. It's not a scam, he said; it would be good for jig cod because it's a low volume [fishery]. A catch might range from 2,000 to 3,000 pounds a day and require a fisherman to make 10-hour run to town and back, he said; it gets to point where it's just a wash economically. Mr. Berns said he really appreciated the bill and suggested that it's a good idea.

Number 2211

RICK ELLINGSON testified, and he described himself as a fisherman who had been involved in nearly every fishery for the last 25 years including [participating] as a setnetter on the south end of Kodiak island for 20 years. Mr. Ellingson talked about the condition of the salmon fisheries, and he said in an effort to maintain a "bush lifestyle," he had tried to branch into other fisheries. Unfortunately, he said, with the loss of the cannery at Alitak, with "Columbia Wards" folding, he'd lost his halibut market and wanted to break into the Dungeness crab fishery. Mr. Ellingson said doing the small-boat fishery with an open skiff is unsafe, and it is infeasible to run 130 miles to Kodiak to deliver. He said the kind of volume he does fishing with his children wouldn't work running a regular tender.

MR. ELLINGSON said local [ADF&G] and [Alaska State] Troopers, in discussions, agreed with him that he should be able to send [his catch] in on another fishing vessel; however, they said the legislation just isn't there. He said he was excited when he saw HB 118 and recognized the possibility that maybe it would branch into the Dungeness crab fishery. He said the only problem he'd heard about was regarding stock separation, and he

explained that the use of small barrels on the [transporter vessel] to hold the Dungeness crab in the water could provide for stock separation. He said Kodiak does not have pot limits, so it wouldn't present a problem, and he urged the committee to add the Dungeness crab fishery to the bill so that fishermen can continue to make a living.

Number 2110

REPRESENTATIVE GATTO asked if the United States Coast Guard (USCG) would hold the fish if it was holding a [transporter vessel] that had been seized for illegal [activities]. He also asked whether the fisherman having his or her fish transported was taking some risk.

MR. McCUNE remarked, "I don't know if I want to get involved with all of the illegal activities." He explained that both state enforcement and the USCG could seize the fish if [illegal activities] were to occur during the transportation of fish and would have the same ability to seize the vessel. It is a possibility, he added.

REPRESENTATIVE GATTO asked what action would be taken by the USCG to prevent seized fish from spoiling.

MR. McCUNE replied that either the USCG or state enforcement would take the fish to a fish processor, but the [profit from the fish] would also be seized until after court proceedings.

REPRESENTATIVE GATTO said he was looking at the risks, but didn't want change anything in the bill in that respect, and that he wanted this information on the record.

Number 2011

GEORGE UTERMOHLE, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, testified. Mr. Utermohle noted that he only had a copy of the bill, did not have a copy of Amendment 1, and wasn't sure what issue CSED had brought forward.

VICE CHAIR MASEK summarized Amendment 1 and indicated that she was unsure whether it would fit in with the bill.

MR. UTERMOHLE explained that he is unfamiliar with the lists that CSED is referencing. He relayed his understanding that some provisions can affect a person's license to practice or

engage in certain professions because of his or her inability or failure to pay child support. Mr. Utermohle said he's unsure what particular commercial fishing licenses and permits might be included on [CSED's] list, and he didn't know how the particular transporter permit created by this bill would fit into the scheme that is currently in place.

Number 1856

VICE CHAIR MASEK turned attention to a letter from Cordova District Fishermen United (CDFU) that expressed concerns about enforceability, how this legislation might affect the ability to monitor harvests, and the potential for harvest abuses that the system may enable.

MAJOR COCKRELL said it was indicated during extensive discussions with ADF&G and the bill's sponsor that this bill wasn't expected to cause any enforcement concerns that the department doesn't currently have and that the department views the current bill as enforceable.

VICE CHAIR MASEK turned attention to an analysis in the fiscal note from the attorney general's office, which read:

Whether passage of this legislation will have a fiscal impact on the Criminal Division depends on the number of new prosecutions that result. Without additional experience, however, we have no way of estimating how many new cases there will be, and must state an indeterminate fiscal impact.

VICE CHAIR MASEK asked if many cases arise over fish transporting.

MAJOR COCKRELL said on a statewide basis, the division deals with a small number of cases involving fish transporting. Normally, it deals with a permit violation where the permit holder wasn't on the grounds or a fisherman or tender took fish from an unlicensed fisherman who didn't have a permit. The most common scenario, he explained, is where the permit holder loans his or her permit to another family member while working another job. In Bristol Bay, he said, after the peak of the run a lot of permit holders like to run back to another state and leave their permits with their deckhands. Major Cockrell said tenders are seldom charged and usually only during investigations involving the purchase of fish from an unlicensed fisherman. In that case, he said, [the tender] should've done a better job of

checking for the permit or getting the signature of the permit holder.

VICE CHAIR MASEK asked for the sponsor's opinion on Amendment 1.

Number 1654

REPRESENTATIVE SEATON turned attention to the bill packet and talked about "component number 490" from DPS; he said the fish and wildlife protection cases were looked at and a zero fiscal note was provided. Representative Seaton said he didn't have a real problem with Amendment 1. However, he said, the bill addresses 16 statutes and the [amendment] addresses 25 [statutes] and he didn't know how much of a change to the bill would be needed. He said the permit is not like an occupational permit, which gives one the ability to have an occupation; it simply requires somebody within an occupation to do fish tickets and [fulfill] certain aspects before transporting another person's fish to the processor. He suggested [moving] the bill out of committee, and once [Mr. Utermohle's] opinion is received, forwarding [Amendment 1] "to the other side" if it's determined to be necessary.

REPRESENTATIVE WOLF said he agreed with Representative Seaton. He suggested that the transporter is not making money on transporting the fish.

REPRESENTATIVE SEATON, in response, said it would depend on the arrangement; a fisherman could hire a tender but the permit itself would not allow tendering. There would still be a requirement for a vessel license, business license, and any other required professional and occupational licenses. He suggested the bill would allow another function to be performed within the industry, but [would not create] an occupational license in itself.

Number 1427

REPRESENTATIVE WOLF suggested that a tender acts in a different capacity than a transporter.

REPRESENTATIVE SEATON said one scenario is that a transporter could be one of the participating fishermen. However, he said, if the catch is too much for the small vessels, the fisherman might hire a separate vessel, such as a tender, to run his/her fish into town. Representative Seaton remarked, "I want to segregate the word 'tender,' because that denotes somebody that

is under contract ... as an agent of a processor, and this would be an agent of the fishermen, taking his fish into town." He said one could hire another fishing boat to transport fish that isn't engaged in that fishery. Representative Seaton suggested it is more a waiver than a permit, because it waives to allow [the transportation] of someone's fish as long as the fish ticket is made out and all of the records are done.

REPRESENTATIVE WOLF reiterated his concern about putting individual fishermen at risk of losing their catch because a tender or transporter or another fisherman could be in jeopardy with a lien.

REPRESENTATIVE SEATON, in response, suggested the chance would be remote because the statute is very clear that the fisherman retains ownership of the fish, and the transporter never becomes the owner of the fish. He compared it to hiring a truck for transportation services.

VICE CHAIR MASEK verified that Mr. Utermohle had received a copy of CSED's suggested Amendment 1.

MR. UTERMOHLE explained that CSED is asking for a fairly technical amendment to the bill to include transporter licenses in the same category as commercial fishing crewmember's licenses. He said those licenses can be denied to a person if the person is in arrears, in a substantial matter, in child support. In this case, he said, this particular permit is very similar to the commercial fishing vessel license in that regard.

REPRESENTATIVE KERTTULA asked Mr. Utermohle if he was concerned that the transporter permit isn't the right kind of occupational license to be included in the list. She said she didn't know enough about federal law regarding this issue to know, really, what the definitions are of the types of occupational licenses that should be on the list.

Number 1040

MR. UTERMOHLE, in response, said (indisc.) developed a list of licenses that are subject to those provisions of the Child Support Enforcement Act. He said the crew member's license is one of the licenses on the list and the list specifically excludes entry permits or interim permits, so they are not subject to this provision, but the transporter permit that is created in the bill is more in the nature of the license that's issued to crew members.

REPRESENTATIVE SEATON said the commissioner quite often issues permits for participation. He said octopus fishing requires not only a CFEC card, but also a local permit that authorizes the activity and requires the participant to report his or her catch every 30 days. He said there's no charge for that permit; it's simply an additional permit, and a CFEC permit, which includes a crew license, is still in place and still required. He said he is trying to figure out if this is free permit that allows participation in a particular fishery. Does this really fit into the category of this occupational license, he asked.

Number 0877

MR. UTERMOHLE, in response, said to a large degree the determination of whether a particular license or permit gets added to this list is a matter of policy for the legislature to decide. The transporter permit, he said, in a sense, does create a new occupational activity, though it doesn't seem like it could, in any way, be used to generate revenue. However, it does allow a person to transport fish on behalf of a commercial fisherman. He said the bill does not require the transporter to be a commercial fisherman to have an entry permit, or to even have a crew member license; it creates a category between a crew member and a permit holder, and allows a person to possess somebody else's fish and transport that fish to a buyer.

Number 0810

REPRESENTATIVE KERTTULA remarked, "I don't think it's ... analogous to an entry permit because that's clearly a whole different section of the statute ... dealing with discrete fisheries rather than what we're talking about in terms of transporting, right?" She suggested that the entry permit would not be affected.

MR. UTERMOHLE, in response, said yes; this does not impede a person's ability to exercise his/her rights under an entry permit or interim use permit.

Number 0763

REPRESENTATIVE SEATON indicated he didn't have a problem with listing [the item in Amendment 1] if it's appropriate. He asked whether the language could be added in an additional section in the bill. He said if that could be done, he would be fine with it.

MR. UTERMOHLE said an amendment to the bill adding the transporter permit to the list of licenses subject to AS 25.27.244 would be a technical, conforming change to the bill; there would be no problem with adding that provision to the bill.

Number 0677

VICE CHAIR MASEK asked where it would fit best in the bill.

MR. UTERMOHLE said a new section would be added to amend AS 25.27.244(s)(2)(A) by adding a new provision [(xvii)] on page 5, following line 17, adding a new bill section.

Number 0602

REPRESENTATIVE GATTO moved to adopt [Amendment 1, text provided previously]. There being no objection, it was so ordered.

REPRESENTATIVE GUTTENBERG suggested that [the bill] is something that works well.

Number 0507

REPRESENTATIVE GUTTENBERG moved to report [CSHB 118 (FSH)], as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GATTO indicated he would like to offer an amendment.

Number 0476

REPRESENTATIVE GUTTENBERG withdrew his motion.

REPRESENTATIVE GATTO began discussion of Amendment 2. He indicated that he is in favor of a free market, and he said he liked the bill so much he just wanted to make one [small amendment]. He turned attention to page 2, line 30, and he said he would like to amend the section by deleting "may" and inserting "shall", and by deleting "the commissioner considers"; thus it would read "the commissioner shall adopt regulations necessary to implement this section".

Number 0366

REPRESENTATIVE SEATON said he didn't personally have a problem with [Amendment 2], but he suggested that someone from the department should speak to it because he is not familiar with how the wording would affect the regulations or whether the department feels it would be better to retain that language.

Number 0299

MR. MECUM suggested that [the question] was an issue for [Mr. Utermohle] in terms of discretionary language versus mandatory language. He suggested that the language wasn't necessary for the to bill work, and he referred to it as "boilerplate" language; he said it can be found throughout a number of laws and regulations. He remarked, "It addresses one point. If there are no regulations that are necessary to implement it, then why would it be mandatory?"

REPRESENTATIVE GATTO suggested that the current legislature has a friendly relationship with the administration, but it hasn't always been that way, and there have been instances in the past when commissioners have not adopted regulations at the insistence or [caution] of the legislature. He remarked, "If the regulations aren't adopted, would it be legal to obtain a transporter's permit; ... there would be no permit in place to obtain."

MR. MECUM deferred the question to [Mr. Utermohle], and he suggested that the bill would make a fish transporter permit attainable; however, he noted that he could be wrong and that regulations might have to be adopted to issue the permit.

REPRESENTATIVE GATTO suggested that the language would encourage free enterprise, and he said he wanted to see the regulations actually happen, and not have someone who says, "I'm not sure; it's only requesting that ... they adopt regulations necessary to implement this section."

Number 0047

MR. MECUM indicated that he understood Representative Gatto's intention, and he said there is currently a task force of six or seven staff working on developing these regulations, which have to be in place by June 15.

REPRESENTATIVE GATTO remarked, "Then there's really no problem."

MR. MECUM, in response, said that he would guess that there's not [a problem] and that it's a question of whether the language is appropriate. He again deferred the question to [Mr. Utermohle].

**TAPE 03-13, SIDE A**

Number 0001

MR. UTERMOHLE said there are two perspectives that one could take with the amendment: one perspective is that the amendment would require the commissioner to develop the regulations to implement this legislation. When the language is "shall adopt regulations to implement this section", the issue regarding whether the statute is sufficient enough to support the issuance of the permit in the absence of regulations is raised. He said the legislation is currently drafted such that the commissioner should find that the statute itself isn't sufficient enough to protect the interests of the department and the resources to allow the commissioner to adopt regulations as he/she considers necessary. The use of the word "shall" suggests that the legislation itself is inoperable without additional regulations adopted by the department, he explained.

REPRESENTATIVE GATTO suggested that the legislation couldn't stand alone if a commissioner decided not to develop regulations.

MR. UTERMOHLE said under this legislation, it's possible for the commissioner to issue these permits without additional regulations.

Number 0205

REPRESENTATIVE SEATON called attention to page 3 of the bill, and he suggested the regulations are essentially restricting the use of the transporter permit, and the legislation as it is written authorizes the transporter permit. He said the regulations are being issued to restrict the usage in certain fisheries with problems, and the regulations are used to restrict the permits when determined necessary. Representative Seaton said he preferred the original language because [he didn't want the department] to have to issue a lot of restrictions on the permits. He requested that Amendment 2 be withdrawn.

REPRESENTATIVE GATTO suggested that the language "the commissioner shall adopt regulations necessary to implement this

section" hardly seems like a hostile statement. He said the language instructs the commissioner to do something.

REPRESENTATIVE SEATON agreed, but he pointed out that the language found [on page 3, line 3] of the bill continues by saying, "permits may not be issued because of". He said the criteria for the regulations are restrictive instead of permissive, and the legislation authorizes transporters to obtain a permit, unless the commissioner issues regulations that restrict the ability of a transporter permit within a particular fishery for the specified reasons.

REPRESENTATIVE GATTO called attention to pages 1 and 3 of the bill; he suggested that this legislation includes a lot of "mays" in the language.

VICE CHAIR MASEK suggested that the current language should remain in the bill, and she noted the importance of flexibility with regard to the issue highlighted by Representative Seaton.

Number 0637

REPRESENTATIVE GUTTENBERG asked if the word "shall" would compel the administration to adopt regulations if it doesn't desire to do so.

MR. UTERMOHLE confirmed that the word "shall" is mandatory and therefore commands the commissioner to adopt regulations.

REPRESENTATIVE GATTO said the "shall" found on page 2 doesn't interfere with the "may" on page 3.

Number 0780

A roll call vote was taken. Representatives Gatto and Lynn voted in favor of Amendment 2. Representatives Wolf, Heinze, Guttenberg, Kerttula, and Masek voted against it. Therefore, Amendment 2 failed by a vote of 2-5.

Number 0817

REPRESENTATIVE KERTTULA moved to report CSHB 118(FSH), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 118(RES) was reported from the House Resources Standing Committee.

HB 113-DISCHARGE PREVENTION & CONTINGENCY PLANS

VICE CHAIR MASEK announced that the final order of business would be HOUSE BILL NO. 113, "An Act extending the renewal period for oil discharge prevention and contingency plans; and providing for an effective date."

VICE CHAIR MASEK turned to public testimony.

Number 0923

CHERYL FULTZ, Southeast Alaska Petroleum Resource Organization (SEAPRO), testified, noting that SEAPRO is an oil-spill response cooperative. Ms. Fultz said she was in support of HB 113.

Number 1065

REPRESENTATIVE LYNN moved to adopt CSHB 113(O&G). There being no objection, it was so ordered.

Number 1094

LARRY DIETRICK, Director, Division of Spill Prevention and Response, Department of Environmental Conservation (DEC), read the following from written testimony:

[The] CS for HB 113 will streamline the state's permitting process by lengthening the time for renewal of oil discharge prevention and contingency plans from the current three years to five years. A five-year renewal period will streamline the review process for [the] industry while maintaining Alaska's strong spill prevention and response standards. Oil discharge prevention and contingency plans are public-noticed, reviewed, and approved by the Department of Environmental Conservation.

Oil discharge prevention contingency plans are required for operators of oil terminals, refineries, crude-oil transmission pipelines, oil exploration and production facilities, oil tank vessels, oil barges, nontank vessels of over 400 gross tons, and railroad tank cars. There are multiple benefits from the change proposed by the bill. The bill furthers the goal of permit streamlining with no loss of environmental protection, and complements initiatives currently being undertaken by the department to shift

the emphasis away from the administrative review and approval process, to field verification of response capability.

The bill will significantly reduce the administrative burden on the regulated community and will shift the emphasis from paperwork to performance. The reduction in paperwork will increase stability of operators and the department to focus on spill prevention and facility operation. The change will allow operators more time to make practical enhancements to their spill prevention and response capabilities.

The change will also improve environmental protection and preparedness through increased field presence and the ability to work directly with operators to ensure response readiness through onsite facility and vessel inspections, spill drills, and exercises. The change will make the state renewal cycle consistent with the five-year renewal cycle for federal oil spill contingency plans required under the Oil Pollution Act of 1990, as well as those of other West Coast states.

Number 1245

REPRESENTATIVE KERTTULA asked Mr. Dietrick if he had previously testified before the committee on [HB 113].

MR. DIETRICK, in response, relayed his understanding that this is the first time this bill had been heard by the committee.

REPRESENTATIVE KERTTULA said the committee had information that the RCAC [Regional Citizens' Advisory Council], a citizens' group established after the Exxon Valdez oil spill, is quite concerned with the legislation. She said one of the things that was mentioned was that the federal contingency plan has a one-year amendment process. She asked Mr. Dietrick if he was familiar with that, and whether that could possibly be a better solution than going to a three-year cycle. She asked how it is currently handled.

MR. DIETRICK, in response, said the [state] does not participate in the annual update that's referred to by RCAC; the reviews are conducted on a federal level. He said he didn't have firsthand knowledge of how rigorous [the review is], and he suggested that the state process, as it exists currently, is better than the federal annual renewal process. Mr. Dietrick said the state

basically has the "equivalent of the Evergreen process," and that any changes made to a plan must be made on a continuous, real-time basis under current state law. He suggested that one-year or three-year renewal cycles are not important; he said existing state law requires updates on a real-time basis. He told the committee that updates and notifications of nonreadiness are provided on a continuous basis, and he suggested that the state structure is superior to the annual renewal cycles under the federal system.

MR. DIETRICK said the state is currently under a three-year renewal cycle but the federal renewal cycle is every five years and this legislation will change the state renewal cycle to every five years so that it is consistent with the federal renewal cycle.

Number 1451

REPRESENTATIVE HEINZE referred to comments from the RCAC that expressed concerns about [best available technology (BAT)]. She asked Mr. Dietrick when the last BAT conference was.

MR. DIETRICK said the regulations for BAT were put into place in 1997, and called for a conference every five years, which meant the first conference was due in 2002. He said the department had requested funds for a BAT conference and was awarded those funds last year for the purpose of initiating what would have been the first conference under the regulations. Mr. Dietrick said a workgroup had been put together and is now planning that conference with the appropriation made by the legislature last year.

Number 1522

REPRESENTATIVE HEINZE asked Mr. Dietrick if he thought switching to the five-year cycle would affect BAT [reviews].

MR. DIETRICK said the BAT analyses that have been performed are theoretical reviews; it is as important to test these as it is to review and approve them. He explained that BAT analyses do not change much over the review cycles because they're not tested and the technology development is rather slow. This change will allow [the department] to test the BAT analyses that have been provided in the individual plans and to seek corrective actions if they are flawed or have problems. He said he thought this will be an improvement that will put the BAT

reviews on the same five-year cycle now that the conference is scheduled for.

Number 1593

VICE CHAIR MASEK indicated HB 113 would be held for further consideration.

**ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at [3:01 p.m.].