

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 20, 2004

3:35 p.m.

TAPE(S) 04-12, 13

MEMBERS PRESENT

Senator Scott Ogan, Chair
Senator Thomas Wagoner, Vice Chair
Senator Fred Dyson
Senator Ralph Seekins
Senator Ben Stevens
Senator Kim Elton

MEMBERS ABSENT

Senator Georgianna Lincoln

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 26

Requesting the United States Department of the Interior and the United States Department of Justice to appeal the decision of the United States Court of Appeals for the Ninth Circuit in *The Wilderness Society v. United States Fish and Wildlife Service* and to seek an emergency stay of the decision pending an appeal of the decision to the United States Supreme Court.

MOVED CSSJR 26(RES) OUT OF COMMITTEE

SENATE BILL NO. 303

"An Act relating to the Big Game Commercial Services Board and to the regulation of big game hunting services and transportation services; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SJR 26

SHORT TITLE: APPEAL WILDERNESS SOCIETY V U.S. F.&W.

SPONSOR(S): SENATOR(S) WAGONER

02/06/04	(S)	READ THE FIRST TIME - REFERRALS
02/06/04	(S)	RES

02/20/04 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 303

SHORT TITLE: BIG GAME GUIDE BOARD & SERVICES

SPONSOR(S): RULES BY REQUEST OF LEG BUDGET & AUDIT

02/06/04 (S) READ THE FIRST TIME - REFERRALS

02/06/04 (S) RES, FIN

02/20/04 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

Ms. Amy Seitz

Staff to Senator Wagoner

Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SJR 26 for the sponsor.

Mr. Ron Somerville, Resources Consultant

House and Senate Majority

Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Supports SJR 26 and SB 303.

Mr. Wayne Regelin, Deputy Commissioner

Department of Fish & Game

PO Box 25526

Juneau, AK 99802-5226

POSITION STATEMENT: Supports SJR 26.

Mr. Ted Popely

Counsel for the Majority

Alaska State Capitol

Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SJR 26.

Mr. John French

506 4th Ave.

Seward AK

POSITION STATEMENT: Supports SJR 26.

Mr. Drew Sparlin

Cook Inlet Aquaculture Association (CIAA)

Kenai AK

POSITION STATEMENT: Supports SJR 26.

Mr. Paul Shadura, President

Kenai Peninsula Fisherman's Association (KPFA)
Kenai AK
POSITION STATEMENT: Supports SJR 26.

Mr. Roland Maw
United Cook Inlet Drift Association
Kasilof AK
POSITION STATEMENT: Supports SJR 26.

Mr. Ken Duckett
United Southeast Alaska Gillnetters
POSITION STATEMENT: Supports SJR 26.

Representative Ralph Samuels
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 303.

Mr. Joe Klutsch
Alaska Professional Hunters Association
PO Box 91932
Anchorage AK 99509
POSITION STATEMENT: Supports SB 303.

Mr. Paul Johnson
Juneau AK
POSITION STATEMENT: Supports SB 303.

Mr. Matt Robus, Director
Division of Wildlife Conservation
Department of Fish & Game
PO Box 25526
Juneau AK 99802-5226
POSITION STATEMENT: Commented on SB 303.

Mr. Rob Hardy
Wasilla AK 99687
POSITION STATEMENT: Opposes SB 303.

Mr. Henry Webb
Staff to Representative Ralph Samuels
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 303 for the sponsor.

ACTION NARRATIVE

TAPE 04-12, SIDE A

^#SJR26

SJR 26-APPEAL WILDERNESS SOCIETY V U.S. F.&W.

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:35 p.m. Present were Senators Thomas Wagoner, Ben Stevens, Fred Dyson, Ralph Seekins, Kim Elton and Chair Scott Ogan. Senator Georgianna Lincoln was excused. The first order of business to come before the committee was SJR 26.

MS. AMY SEITZ, Staff to Senator Wagoner, sponsor of SJR 26, said the resolution requests the Department of Interior and the Department of Justice to appeal the decision the Ninth Circuit Court made on December 30 saying that the Tustumena Lake Salmon Enhancement Project was in violation of the 1964 Wilderness Act.

The enhancement project started 30 years ago as a research project conducted by the Alaska Department of Fish and Game (ADF&G). In 1993, it was turned over to the Cook Inlet Aquaculture Association (CIAA), a non-profit, that takes eggs from salmon returning to Tustumena Lake and incubates them at the Trail Lakes Hatchery at Moose Pass. In early spring of every year, the salmon fry are returned to Tustumena Lake to follow the rest of their regular cycle in Cook Inlet. The project has been jointly assessed a number of times by the CIAA and the U.S. Fish and Wildlife Service. The Wilderness Act Consistency Review found that the project doesn't conflict with the 1964 Wilderness Act since it's not a commercial enterprise. A District Court decision also stated the project is not a commercial enterprise and does not conflict with the 1964 Wilderness Act. However, the Ninth Circuit Court, on December 30, reversed the decision of the District Court saying the project does violate the Wilderness Act by being a commercial enterprise and offends its mandate to preserve the natural conditions that are a part of the wilderness character of the Kenai wilderness. SJR 26 requests that decision be appealed so the enhancement project can continue. It also asks the Department of Interior and the Department of Justice to request a temporary stay of the decision so the 6 million hatchery fry are not terminated.

CHAIR OGAN asked where the hatchery is located.

MS. SEITZ replied in Moose Pass.

CHAIR OGAN pondered aloud the concept of hatchery fish swimming in the river violating the wilderness quality of the area. "Am I missing something here?"

MS. SEITZ nodded agreement.

SENATOR THOMAS WAGONER corrected him saying that the fish are swimming in a lake, not a river. He explained that basically, if the 6 million fry can't be put back into the system from which they came or another lake isn't found to put them in, a lot of money and fry would be wasted.

CHAIR OGAN groaned, "I'm sorry, the Ninth Circuit drives me nuts, sometimes. You can put that on the record."

SENATOR RALPH SEEKINS asked if Tustumena Lake was withdrawn by the federal government prior to statehood.

MS. SEITZ replied that it would have been made a refuge in 1964.

SENATOR SEEKINS said:

As I understand the Equal Footing Doctrine, Submerged Lands Act, unless it was reserved prior to statehood, that's a state navigable waterway and not subject to federal jurisdiction. Under the Submerged Lands Act, it would be subject to state management. I don't understand how the federal government with an act that came into play after statehood has somehow or another changed the nature, the management structure, of a state-owned navigable waterway.

CHAIR OGAN responded, "Possibly by asserting the Reserved Water Rights Doctrine...that's probably a question to ask the attorneys."

SENATOR WAGONER maintained that the area was withdrawn before statehood and was known as the Kenai Moose Range. The Range was a federal reserve dedicated to the continuation of the species of the Kenai moose. He didn't know how that would mesh with the state's navigable water issues.

SENATOR SEEKINS asked if the waterways were withdrawn when the Kenai Moose Range was established.

MR. RON SOMERVILLE, Resources Consultant, House and Senate Majority, affirmed that the Kenai Moose Range was created prior

to statehood, but added that litigation in the Ninth Circuit Court still occurs over whether or not those pre-statehood withdrawals included tide and submerged lands. The Ninth Circuit has said unless Congress makes it very clear that it is withdrawing something when a state becomes a state, transfer of submerged lands to the state is precluded - and this is one of those areas.

The Ninth Circuit has been all over the wall with us when it comes to the state's rights.

There are two things. One is the Wilderness Area was created in 1980, actually, when ANILCA passed, which included the Tustumena - was part of that Wilderness Act. It's also one of those areas like the boundary waters where, in fact, the federal government exercises the authority given to them by Congress - the agency does - to regulate activities on state navigable waters, because they own the adjacent lands. I mean that's what the federal agencies are claiming in these cases. That's apparently what the Ninth Circuit kind of leaned on to.... They are saying that the Wilderness Act, itself, has a provision that says if [tide and submerged lands] become part of the Wilderness Act System, which was created in 1964, that it precludes commercial activities, except for certain recreational and other activities that are exempted.

SENATOR SEEKINS related that the Utah case said withdrawals have to be very clear.

MR. SOMERVILLE agreed and surmised that since this area was a pre-statehood withdrawal, federal agencies and courts have liberally interpreted their authority to manage lands that are adjacent to theirs when they, in fact, may only own the submerged lands, which haven't been litigated.

CHAIR OGAN said that the Anchorage Daily News reported that this particular lawsuit was brought by the Wilderness Society and the Alaska Center for the Environment.

SENATOR KIM ELTON asked if the appeal needs to be filed in a certain timeframe and is that a concern.

SENATOR WAGONER reminded the committee that one of the critical times is the smolt release.

I think it's going to be done. The problem is that the State of Alaska doesn't have the authority to do it; we had to have a federal official file the appeal.

CHAIR OGAN wistfully jested, "You're welcome to stick them in Big Lake."

SENATOR ELTON pointed out the date of the decision was December 30, 2003 and asked when the smolts are to be put into the lake.

SENATOR WAGONER replied that the date isn't critical, but if the fry can't be put in Tustumena Lake, permits for other lakes would be needed from ADF&G. "You can't just take salmon smolt out and dump them in any lake." An appeal can be filed up to 90 days from the date of the decision.

SENATOR ELTON asked, "Aren't there genetic requirements? You can't just take those smolt and dump them into another system, can you?"

SENATOR WAGONER replied that ADF&G has to permit another system in which to release the smolt.

SENATOR SEEKINS asked what this decision would do to ecotourism and commercial activities other than fishing.

MR. SOMERVILLE reiterated that the Wilderness Act does have an exemption for recreational activities and the argument could be made that salmon enhancement is not commercial. He noted that Bill Horn, attorney for the majority, expressed his concern that the courts didn't clearly indicate whether commercial activities relate to commercial fishing only or to projects like this. Mr. Horn maintains that the recreational exemption needed to be clarified or commercial activities like ecotourism and guiding could be illegal.

SENATOR WAGONER said it is estimated that the 6 million salmon fry will return 100,000 fish to be used by all groups.

This isn't a commercial enterprise; this is done by Cook Inlet Aquaculture as an enhancement. Those fish come through the gillnet system, set nets, and drift gillnets. They come into a personal use net fishery in the mouth of the Kasilof River for personal use, sometimes a dip net fishery; in addition to that, there's a sport fishery. It's becoming a very viable sport fishery. So, it's a multiple use and as much a

recreational use as it is a commercial use. That's the way that aquaculture basically operates. They're funded 100 percent by commercial funds, but at the same time - I can't totally speak for the aquaculture association, but I was one of the original board members founding it - and at that time our philosophy was, 'If we can't bring the fish through the commercial area and into sports fishing areas, then it wasn't a project that we really wanted to spend a lot of time and effort on.' And that's pretty well the way that Cook Inlet has gone, if you look at all the projects Cook Inlet does....

CHAIR OGAN said he wanted to move this bill as quickly as possible so that he could tell the Energy Council it is a priority issue.

3:55 p.m.

MR. SOMERVILLE summarized that quite a bit has been going on including a request from the Speaker of the House and President of the Senate to Secretary Norton and Attorney General Ashcroft asking them to appeal this case. Governor Murkowski, Attorney General Renkes and other aquaculture associations have requested an appeal, as well. The initial reaction from the Department of Interior is that this one issue is no big deal and only applies to one lake in Alaska. However, Mr. Somerville noted an e-mail from another state saying the Ninth Circuit interpretation could be a problem for it, as well.

CHAIR OGAN asked how the salmon fry are released.

SENATOR WAGONER explained that the fry are transported by truck to the lake, taken on a boat away from the mouth of the lake and released. Predation by trout would be pretty horrendous if the fry were released near the mouth.

MR. WAYNE REGELIN, Deputy Commissioner, Department of Fish and Game (ADF&G), said the administration supports the resolution. He had some language suggestions that would make it more accurate and powerful. He said that actually this issue has gone to the Ninth Circuit two times. The first time, a three-judge panel upheld the District Court ruling, which was appealed to an en banc group [the entire group] of 11 judges who overturned it. He thought the committee might want to insert a new whereas clause stating that and that the first decision was made by a

vote of two to one and the last decision was made by an en banc vote of 11 to zero.

Part of the reason was they never took up ANILCA (the Alaska Native Interest Land Claims Settlement Act). I think this 11-judge panel totally ignored all of the provisions of ANILCA that allow preexisting uses to continue - and I think that you might want to put in on page 2, line 20, something about that.... But the court ruled that the stocking program didn't compromise the wilderness values that they prohibited [if] it was commercial. The commercial activity occurs way down stream off of the wilderness area.

He suggested making the first resolve clause on page 2 a little more general than just appeal to the Supreme Court. He felt that the Department of Justice did not want to take this issue to the Supreme Court, although taking the same issue back to the Ninth Circuit would be unusual after 11 judges ruled against it. He reiterated that the court totally ignored all the provisions and protections that ANILCA offered in 1980.

MR. REGELIN updated the committee that The Wilderness Society has decided it doesn't want to be blamed for killing 6 million fish and has asked for a meeting with the Fish and Wildlife Service and other people to see if the smolt can be put back into Tustumena Lake one more time. He thought the Fish and Wildlife Service would probably do that.

But we don't want this to be just a one-time thing about 6 million fish; we want the whole thing fixed, because it's a very onerous decision, we feel.... Secretary of Interior Norton has never been the problem. She has agreed with us from the very beginning. It's the Solicitor General that is reluctant to do this and his staff, because they don't feel it's a broad enough case for them to appeal to the Supreme Court.

MR. REGELIN offered the committee a few wording changes for their review.

CHAIR OGAN asked him to read the changes into the record.

MR. REGELIN began by suggesting the following conceptual amendments:

- 1) Add a new whereas clause on page 1, line 14, that would say, "Whereas a three-judge panel of the Ninth Circuit affirmed the decision of the District Court"
- 2) Insert "eleven-person panel" on page 1, line 14
- 3) Insert "the Ninth Circuit concluded that the stocking of salmon fry did not compromise wilderness values, yet they ruled to prohibit the action on page 2, line 20
- 4) Insert "or to the full panel of the Supreme Court" after "Ninth Circuit" on page 2, line 30

CHAIR OGAN asked if the Department of Law had a position on the proposed amendments.

MR. REGELIN replied that he hadn't had time to do that, but he had been working with them since this situation began and didn't think any of the legal issues had changed.

MR. TED POPELY, Counsel for the Majority, suggested rephrasing the first resolve clause on page 2, line 30, [Mr. Regelin's item 4] to say:

Be it resolved that the Alaska State Legislature respectfully requests that the Department of the Interior and the United States Department of Justice appeal the decision of the U.S. Court of Appeals, Ninth Circuit in The Wilderness Society case to an appropriate judicial body.

SENATOR SEEKINS asked if copies of the resolution should also be sent to members of the Ninth Circuit (page 3).

MR. POPELY opined that he didn't know if they would accept it and it certainly would not become a part of the record on an appeal and he thought it would probably be returned to the Legislature.

SENATOR SEEKINS pointed out that the opinion was written by Ronald M. Gould and wondered if he was related to Rowan Gould, Regional Director, U.S. Fish and Wildlife Service who received a copy of The Wilderness Society's memorandum.

SENATOR ELTON asked if the 6 million salmon fry could be released in any other lake.

MR. REGELIN replied that there may be other places, but the analysis hasn't been finished, yet. Now that The Wilderness Society has backtracked, he didn't think it was a problem.

SENATOR BEN STEVENS noted that a letter, dated February 18, from The Wilderness Society said a meeting was scheduled between Cook Inlet Aquaculture Association and the U.S. Fish and Wildlife Service and asked if it had taken place.

MR. REGELIN said he didn't know.

SENATOR WAGONER moved to adopt Mr. Regelin's conceptual amendments as amended by Mr. Popely. There were no objections and it was so ordered.

CHAIR OGAN said he would make sure the committee got to look at the draft before it moved out.

MR. JOHN FRENCH, Seward resident, said he is a former professor with the University of Alaska, School of Fisheries. He is now a self-employed toxicologist and represents the City of Seward on the CIAA Board. He supported SJR 26.

The problem usually has not been the U.S. Fish and Wildlife Service. They have been permitting this release for a good number of years when they had jurisdiction. I think, from our point of view, and perhaps from the most onerous point of view throughout the nation, is the fact that the Circuit Court is defining it as a commercial operation. Cook Inlet Aquaculture Association is chartered as a non-profit under state statute. I'm not a commercial fisherman.

One of the things I've been very impressed with since being on the board, which is since 1998, is the number of non-commercial fisheries related projects that Cook Inlet Aquaculture Association does. The bulk of the Cook Inlet Aquaculture Association money does, indeed, come from the Salmon Enhancement Tax and, therefore, from commercial fishermen. There is certainly a significant portion that comes from other [indisc.] such as the contract with the Seward Chamber of Commerce and the silvers that were put in Resurrection Bay and the more recent release over in Kachemak Bay that was paid for by the City of Homer, as I understand. It's clear that all the fish that go back into the Tustumena system - we are very careful with

the fish that are released back into the wild are done in a manner that is consistent with good ecological risk management principles and maintaining the genetic stock. Tustumena fish go back into Tustumena....

It was mentioned to put Tustumena stock fish elsewhere will require an additional permitting process. The Department of Fish and Game could probably process it. Whether we could handle 6 million fish elsewhere - that's a different question. But, the really key issue is that the Tustumena Lake system is one of the most productive systems that [is] being enhanced in the Cook Inlet area. It's important not just to commercial fisheries, but to personal use sports fisheries and subsistence fisheries. Everybody uses these salmon....

It's very hard for us to understand why the Circuit Court chose to rule this as a commercial operation. It has also been pointed out earlier [that] all the commercial take of these fish occurs after they have not only left the wilderness area, but they've gone out to sea and come back again....

MR. DREW SPARLIN, CIAA, said the board had a meeting this morning and Gary Fandrei, Executive Director, CIAA, wrote a letter [in their packets]. He endorsed the previous speakers' comments and added:

The Tustumena Lake Salmon Enhancement Project has been in continuous operation since 1974. It was developed and managed first by the Alaska Department of Fish and Game and is now managed by Cook Inlet Aquaculture Association. For over 29 years, this well designed project has provided fish for sport and personal use, subsistence and commercial fisheries in the heart of Alaska's Cook Inlet fisheries. It has evolved into a model of hatchery supported enhancement projects throughout Cook Inlet and the rest of the state.

Cook Inlet Aquaculture Association is not just a commercial operation. We're formed under Alaska Statute 16.10.380 as a qualified non-profit regional association that includes all user groups representative of local communities. The only user group that is being restricted from the fish being produced in the Cook Inlet Aquaculture Association is

the commercial fishery. It's open to users of all other uses.

All fish that are released in Tustumena Lake are screened for disease prior to release. Another point is that all fish in Tustumena Lake are marked. CIAA annually monitors Tustumena Lake tributaries to assess the impact of the spawning populations. All fish that are released in Tustumena Lake are incubated at Trail Lakes Hatchery and the hatchery rearing is minimal.

CHAIR OGAN asked him if he knew who the executive director of The Wilderness Society is.

MR. SPARLIN replied that he didn't.

CHAIR OGAN said he thought it was Nicole Whittington Evans and intimated that her husband is one of his most outspoken critics.

MR. PAUL SHADURA, Kenai Peninsula Fisherman's Association (KPFA), noted that the state constitution allows for the promotion of fish development and aquaculture within the state. In 2002, 1.4 billion fry were released and 26 million fish were harvested in common property fisheries. CIAA provides benefits for commercial, sports, personal use and subsistence fisheries. In 2002, 22 percent of the common property sockeye salmon caught in Cook Inlet commercial salmon fisheries originated in the Cook Inlet Hatchery with an estimated value of \$2 million to \$3 million. KPFA is predominately comprised of set netters and many of their fishing families would be affected. "A 22 percent reduction would be extremely painful and deleterious to the economies and the local [indisc.] communities...."

He explained that the Wilderness Act contains special provisions that allow exemptions for certain activities to be conducted. Congress has allowed cattle ranching, mining, oil exploration, water rights, corridors for utilities, towers, etc. "So there are some commercial activities, but they are let under special provisioning."

MR. SHADURA pointed out that section 7 of the Submerged Water Act says, "Nothing in this act shall constitute an expressed or implied claim or denial on the part of the federal government as to its fish and except for state water laws."

He also pointed out that the Alaska National Interest Lands Conservation Act (ANILCA), Title XIII [Aquaculture Section], says:

In accordance with the goal of restoring and maintaining fish production in the State of Alaska to optimum sustained yield levels and in a manner which adequately assures protection, preservation, enhancement and rehabilitation of the wilderness resource, the Secretary of the Agriculture may permit fishery research, management, enhancement, and rehabilitation activities within national forest wilderness and national forest wilderness study areas designated by this Act. Subject to reasonable regulations, permanent improvements and facilities such as fishways, fish weirs, fish ladders, fish hatcheries, spawning channels, stream clearance, egg planting....' etc. As long as these activities are reasonable....

He said the National Aquaculture Act of 1980 authorizes development of a national plan for aquaculture and establishes the Department of Agriculture as the lead federal agency for coordination and dissemination of national aquaculture permit information. [END OF SIDE A]

TAPE 04-12, SIDE B

4:25

MR. SHADURA also quoted a 1956 act that predated the Wilderness Act, which said:

Congress declares that the fish, shellfish and wildlife resource of the nation make a material contribution to our national economy and food source supply to the health, recreation and wellbeing of our citizens....

MR. ROLAND MAW, United Cook Inlet Drift Association, agreed with previous testimony. He said that the 6 million fry produce about 100,000 fish that return to the Kasilof River in early May and continue through late August. During that time, the subsistence fishery, the dip net fishery and the commercial gillnet fishery work on them. However, his point is that the period of time the commercial fishermen are on the fish is less than half the time they are available to all citizens of the state.

MR. KEN DUCKETT, Executive Director, United Southeast Alaska Gillnetters Association (USAG), supported SJR 26. He pointed out that activities in wilderness areas are coming under more and more attack. Fishing rights have been lost in Glacier Bay National Park and now there's this situation with enhancement. A number of fishing areas are immediately adjacent to wilderness areas and this is a trend that needs to be stopped.

SENATOR WAGONER moved to pass CSSJR 26 (RES) from committee with attached fiscal note and individual recommendations. There were no objections and it was so ordered.

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4:30 p.m. - 4:32 p.m. - at ease

^#SB303

SB 303-BIG GAME GUIDE BOARD & SERVICES

CHAIR SCOTT OGAN announced SB 303 to be up for consideration.

REPRESENTATIVE RALPH SAMUELS, Chairman, Legislative Budget and Audit Committee, explained that this bill is in response to an audit that came out in October that listed the problems that have resulted in the absence of the Big Game Commercial Services Board.

Guides have been licensed since before statehood and they were regulated by a board from 1973 until the board sunsetted in 1995. The audit, which was requested in the previous Legislature, when it came out, it gave a number of issues and concerns that have not been addressed. You should have a copy of the audit in your packet.

The first one was a lack of the ability of the Department of Community & Economic Development (DCED) to coordinate with all the state and federal agencies required in an industry such as the guide industry.... Some of the agencies that are involved in the discussion are the Alaska Department of Fish and Game (ADF&G), Department of Public Safety (DPS), Department of Natural Resources (DNR), Department of Environmental Conservation (DEC) and the Department of Community and Economic Development (DCED); and on a federal level, Bureau of Land Management (BLM), the Forest Service (USFS), U.S. Fish and Wildlife, the Park Service, the Coast Guard and the FAA.

The second thing the audit noted was a lessening of ethical standards with the disappearance of the board that was not adopted into the statute. A lack of a detailed operating standards for guides, a weaker focus on hunter safety.... Another point in the audit was a diminished disciplinary climate for unsafe, unethical or even illegal conduct. There are no ethics standards to steer how guides or transporters conduct business.

It needs a little direction from the department to address consumer complaints. Usually, their only recourse for a dissatisfied customer goes straight to litigation. Under the current system, there are no sanctions for multiple consumer complaints or game violations. Fines for infractions have been greatly reduced and the qualification exams are only for the registered guides, not for the assistant guides. It's been suggested that these issues could be addressed by the department and without a board. However, after meeting with a lot of the players that are involved, it seems apparent that the department would have a hard time solving all these problems alone. If they could have, they probably would have in the past 10 years.

The reestablishment of the board would provide a more accessible public forum to address the problems that face the hunting industry, its interaction with hunters and the various private and public land managers. We are a world-class hunting destination. People spend a lifetime of savings to come up here to go hunting and we should protect both our reputation and the resource.

In practical terms, the bill does three things. It moves responsibilities from the department to the board; it changes the term from guide to guide outfitter - we had a hearing two hours ago in House Resources and that was one of the concerns that came up that we should identify.... Before the next hearing, we will come up with a way to better define the combining of the guide and the outfitter term. It also raised potential fines from \$1,000 to \$5,000....

CHAIR OGAN said it was late in the day and he wanted to give priority to people who had flown in to testify. He didn't intend to move the bill today.

MR. RON SOMERVILLE, member, Board of Game, noted the March 2003 letter from the board asking leadership to examine the possibility of reinstating a commercial services board. In some areas of Alaska, the perception exists that some hunters are being dumped and not picked up. The Board of Game does not have any authority over transporter activities and supports a commercial services board that would exude some control over them. Currently if there is a biological problem, the Board of Game has to either initiate some sort of reduction that applies to locals and non-locals alike or initiate aircraft closures, which hurt locals and the legitimate guiding programs that rely heavily on aircraft. "It creates all sorts of ripple effects when the board takes those sorts of actions. I want to stress that, because from the board's standpoint, that is a major problem."

He said economic opportunity exists for residents of the Bush and the state in general to derive some benefit if changes are made. The proposed board would provide focus, motivation, expertise and development of a performance ethic, which is drastically lacking right now. It would provide enforcement and a forum for resolving conflicts and maintain reporting requirements.

Finally, a new board would add impetus for creation of training mechanisms for people in rural Alaska, which was being attempted before it was eliminated. Also, it's critical to have some sort of reporting requirement for commercial transporters taking big game hunters to a remote area.

SENATOR RALPH SEEKINS asked if someone has hunted rabbits for the last two years in Alaska, could they be an assistant guide to hunt grizzly bears in reference to language on page 8, line 2, under requirements to have an assistant guide.

MR. SOMERVILLE replied that would be theoretically possible. He added that a training program could include first aide, how to skin a big game animal, preservation of trophies and things a big game guide should know.

SENATOR SEEKINS said if he was spending the big bucks to go hunting and had an assistant guide who didn't know the big game animal he was hunting, he would feel a little bit gypped.

MR. SOMERVILLE replied that a class A assistant guide has to book through a registered guide who would be responsible for making sure the assistant guide had the necessary help in the field.

SENATOR SEEKINS said in reinstating the board, he wanted to make sure qualifications were at a reasonable level or tighten them up before rather than later.

CHAIR OGAN informed him that he was on the Big Game Commercial Services Board before he was in the Legislature and helped Senator Halford rewrite the law. At that time, taking away testing for assistant guides was favored because a lot of rural Alaskans couldn't take a test, but made really fine guides.

A registered guide is legally responsible for the mistakes that the assistant under his supervision makes in the field. It's like he did it himself. And I don't think there's any other profession where if you're a doctor and your nurse does something criminal, you go to jail for what your nurse did....

The committee decided to let the guides make the judgment call.

SENATOR SEEKINS asked if someone is convicted of a violation based on state statutes and then transported illegally, wouldn't that be a better to say that than language on page 10, lines 23 -24, which says, "(1) is convicted of a violation of a state statute or regulation relating to hunting or to provision of big game hunting services or transportation services;".

MR. SOMERVILLE replied that the board hadn't dealt with that particular question, but he agreed that some provision could be made for the board to revoke a license if a person had been convicted of any major federal law.

CHAIR OGAN related a case when federal agents caught some hunters killing wolves and the board took their licenses for one year. "So, there has been some history in the past for doing that."

SENATOR SEEKINS had a question on page 16, section (b), about whether another guide area could be added to areas that needed more intensive management. He suggested inserting, "unless otherwise provided by law" to facilitate that.

CHAIR OGAN and Mr. Somerville thought that was a good suggestion.

MR. JOE KLUTSCH, Alaska Professional Hunters Association, said he is a registered master guide and has been involved in the guiding industry for over 30 years. When he was an assistant guide in the early '70s, he attended the very first guide board meetings and attended them until the Owsichuk decision. He helped the Legislature recreate a commercial service board. In other words, he has some historical knowledge of this process.

CHAIR OGAN stated for the record that the Owsichuk decision took away exclusive guide use areas. The state took away the guide board and created the Big Game Commercial Services Board that wrote regulations that redefined and redrew the guide use areas.

MR. KLUTSCH said the Association represents the majority of the active full-time contracting guides in the state and the vast majority of members support the reestablishment of a Commercial Service Board.

We see the board and the board process as a great forum for interaction between the members of the industry, both guiding and transporting, and the various agencies, state and federal. It's an open forum; it's a public forum and it's really the type of situation where you get an active dialogue. You can't do these kinds of things in communications, either e-mails, conference calls or a few phone calls from all different directions, and count on regulations being developed administratively. It just doesn't work; it's too sluggish. All the respective agencies, in particular state and federal, are confused and disconnected about what each other is doing and that's really caused us some problems in the last five years.

In absence of the board, we've had a lack of responsiveness in enforcement of existing statutes and regulations. We're left over with some bits and pieces of statutes and regs that were there prior to sunseting. Public safety is at a loss to enforce a lot of the existing statutes and regulations. There have been no enforcement actions to my knowledge in the last five years related to ethics, misrepresentation of services, reimbursement of money for services not provided, unethical conduct. It just

hasn't been there and it's been very harmful to the reputation of this industry and the state....

MR. KLUTSCH said that Representative Samuels did an excellent job of outlining the inter-relationships between the various agencies and also the justifications for recreating the board. However, he underscored this message for the committee:

The guiding industry in particular does not want to see any regulatory board create more regulations or unnecessary regulations.... We want clear and concise statutes and regulations that can be enforced....

He also agreed with Senator Seekins' comments and that this is a critical juncture.

CHAIR OGAN took a minute to clarify that he wasn't a big fan of creating more boards and, in fact, wanted to get rid of a whole bunch of them, but he felt this board would be self-supporting. He asked Mr. Klutsch what gave him comfort that a new regulatory board wouldn't write regulations.

MR. KLUTSCH conceded the point and said the last thing guides want to see is additional unnecessary regulations.

But, as circumstances evolve, land use patterns change, management objectives change, we need a degree of flexibility and a board has that flexibility. We'll be there to participate in the process. We will hopefully have knowledgeable members from all sectors of the commercial service industry represented on the board, members of the public and lots of input from the respective agencies, state and federal.

SENATOR SEEKINS asked if his experience with the period of autonomy that has existed until now has been good or bad.

MR. KLUTSCH replied:

It's had a negative effect not having a board there to be able to adjust regulations where they are unclear as it relates to the driving statutes about who can do what, about reporting requirements, about disciplinary actions, about coordinating with the federal agencies. It's had a very negative effect.

The quality of visitor services - we're a key component of Alaska's tourism industry. And Alaska's reputation for having quality big game hunting is slipping relative to Canada and other destinations in the world. I attribute it directly to proper and concise regulations.

SENATOR SEEKINS asked if he thought this board would do a good job for the people of Alaska in general and that it's not a capitulation to big game guides and their out-of-state clients.

MR. KLUTSCH observed that as another good point and reasoned, "If we're well regulated, resident hunters benefit, subsistence hunters benefit, wildlife viewers benefit. If it's done properly, it benefits everyone."

SENATOR WAGONER said a prevalent problem in the last several years is that transporters take people out, especially in Prince William Sound, and drop them off on an island or beach and then pick them up sometimes many days after they said they would return. He hoped this board would put some controls on that, because one of these days lives would be lost.

MR. KLUTSCH righteously agreed. He explained that a serious problem associated with those transporting activities is lack of compliance with reporting requirements. The intent of the required form is to provide accountability - that everyone has a license, proper tags and when they are picked up, how many pounds of meat they brought out, its condition, etc. "They are required, if things are out of order, to report it to [the Department of] Public Safety."

He related that a transporter in the King Salmon area admitted to turning in at least a half dozen of his moose clients. "It works. It takes enforcement."

CHAIR OGAN commiserated that wasting meat in the field is the number one issue in rural Alaska. He's heard of racks coming in with just the backstrap.

SENATOR SEEKINS said he didn't live in rural Alaska, but felt offended, as well.

MR. PAUL JOHNSON, Alaska guide, said he had been in the business for over 30 years. He pointed out that the guiding industry had never asked the Legislature for loans, advertising or disaster relief.

What we're asking for here is reasonable regulations and a board back. We have an opportunity in this state to save some industry here so that guiding will be here for a long time.

MR. JOHNSON said that Alaska guides are competing in a global market. People who come to our state have the opportunity to go to a lot of other places and that won't continue to happen "unless we clean it up." A lot of things have fallen through the cracks since a board existed. There has been a big changeover in administrators and there is no collective history.

There's confusion on enforcement, there's confusion within the Department of Fish and Game on getting information - they can't get, can't retrieve - complete confusion over definitions - that weren't there before.

He agreed with the issues that Mr. Somerville and Senator Seekins raised and emphasized that state agencies aren't coordinated among themselves or with the federal agencies. A new board could solve those problems. "So, it actually saves money. It can't be seen right on top."

MR. JOHNSON said the original task force, led by Henry Springer, was working when it was sunsetted; then the whole thing collapsed. He repeated, "The whole thing has collapsed.... We desperately need this. I think this is a shot in our arm that has to happen...."

MR. MATT ROBUS, Director, Division of Wildlife Conservation, Alaska Department of Fish and Game (ADF&G), said he had met with the Department of Community & Economic Development (DCED) and Department of Public Safety (DPS), but they hadn't come to a consensus position, yet. He wanted to emphasize the importance of this issue to be considered by the Legislature.

It's been apparent over the years since the guide board has gone away, in working between my department and the Board of Game, how much of a struggle it is for that regulatory entity to get any traction on some of these issues that we're discussing here. The powers given to the Board of Game are for biological management and while the board, with information provided by the department, can be and is pretty effective in dealing with biological problems, when it

comes to allocation between user groups, things become very difficult, because the tools in the Board of Game tool box really aren't the right tools to address that problem.

Unless there is a biological problem to be solved, it's really not possible for the department and the Board of Game to allocate between different user groups that may be having conflicts because they use resources in a different way and they get crosswise with each other. Largely we're talking about conflicts between local rural users in the Bush and non-local users, both non-residents and non-local Alaskans who come into the area on top of local patterns of hunting. Oftentimes those conflicts are really conflicts, but they don't occur at a level where there's a biological problem that needs to be solved. Therefore, the Board of Game really can't go there.

If there is a biological problem, then the tools that the Board of Game has can be effective in conserving the resource, but they are pretty draconian if you're one of the user groups that get taken out of the picture....

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MR. ROBUS said the Board of Game has attempted to deal with some of the conflicts and in most cases has backed away from any final action:

It gets so convoluted and so draconian that the cure is almost worse than the problem that we're trying to address. As I said, it would be a complimentary power to improve the regulation of the guiding industry and the transporting industry. I'll also make the point that the transporting industry is an extremely important part of the problem and so far has not been very much in the regulatory picture.

The final thing I'll say is just to point out that over recent years, because of the state's inability to allocate between different user groups, we have lost more and more of the wildlife management authority to federal agencies on federal lands, because those agencies do allocate between guides, transporters, private hunters, federally qualified subsistence users

- and, in some cases that I could name in Southeast Alaska, for instance, when it came time for the state to try to sort out some of those problems, we were unable to do it. Federal agencies were able to and willing to do it. Therefore, federal management is really, in effect, where state management has not been able to cope. So, for all those reasons, the Department of Fish and Game feels that this is a subject that really does require some attention from you and we will continue working with the other departments to try to come to a consensus position as soon as we can.

SENATOR SEEKINS asked, "In other words then, the department says something along this line would be beneficial to your ability to manage the fish and game resources of the State of Alaska."

MR. ROBUS replied that was a good way to put it. "Wildlife management in the big sense is more than just solving the biological problems; it's also people management."

CHAIR OGAN asked him to talk a little bit about the difference between state and federal management and why federal management was able to differentiate between users more than the state could.

MR. ROBUS replied:

In Southeast Alaska, with the proliferation of big game guides, mostly for the purposes of hunting brown bear on the ABC Islands and now on the mainland in Southeast, the Forest Service put a moratorium on additional guides joining in just because agencies were trying to solve how the existing number of guides was going to be allowed to operate. On tidelands around the fringe of those federal areas there is still the ability to go in and participate as a guide or transporter under state law. So, the proliferation can continue and the state, basically, is unable to regulate that. I'm not saying the use needs to be prevented, but there does need to be some reasonable regulation and control.

The federal agencies have the power to distinguish and decide of all the people who want to be a guide on federal land, they can choose a subset and authorize them to hunt and keep the numbers of guides down to a

level that the resource and people interactions can reasonably support.

The only way the state could do something similar would be to go to a drawing permit for those brown bears and devastate the guide industry. Because now, instead of being able to agree with a client that you're going to go hunting together and get that person a permit, you would have to go through a drawing process with no certainty that any of your clients would ever end up with a permit....

CHAIR OGAN asked if that was because the feds don't have an Owsichek-type decision.

MR. ROBUS replied yes, the feds don't have anything like that, but he is not expert enough in federal authorities to know why they can do what they do.

MR. ROB HARDY, Wasilla registered guide, pointed out paragraph 3 of the sponsor statement that says, "Wildlife populations would benefit from more coordinated enforcement of existing laws."

He thought that idea could be accommodated more interdepartmentally. He said the key point is when someone today said "if done properly," referring to reinstating the Big Game Commercial Services Board. He didn't think the board alone would be able to accomplish what people thought it would. He felt that having a 20-day timeframe for reporting violations (in HB 422) is unacceptable. If he were to witness a violation in his own operation, he would report it immediately so the enforcement could happen efficiently. He feared that recreating the board could possibly, if not probably, result in further liberalization of industry regulation. "In closing, I would like to say that this legislation as written does not have to happen on this watch."

MR. HENRY WEBB, Staff to Representative Samuels, sponsor, said the representative had to catch a plane, but would look at the transporter and guide outfitter language and consider Mr. Somerville's and Senator Seekins' concerns.

CHAIR OGAN called it a day and adjourned the meeting at 5:25 p.m.

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