

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

March 3, 2004

3:30 p.m.

TAPE(S) 04-19 & 20

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 282

"An Act relating to the identification of finfish in food products and to the misbranding of food products consisting of or containing finfish."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 70

"An Act relating to the emergency order authority of the commissioner of fish and game and to meetings of the Board of Fisheries."

HEARD AND HELD

SENATE BILL NO. 339

"An Act relating to reclamation bonding and financial assurance for certain mines; relating to financial assurance limits for lode mines; establishing the mine reclamation trust fund; and providing for an effective date."

MOVED SB 339 OUT OF COMMITTEE

SENATE BILL NO. 347

"An Act relating to moratoria on entry of new participants or vessels into a commercial fishery; relating to the establishment

of a moratorium on entry of new vessels into state groundfish fisheries in the Gulf of Alaska and adjacent state marine water; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 281

"An Act relating to labeling and identification of genetically modified fish and fish products."

MOVED SB 281 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 70

SHORT TITLE: BD OF FISHERIES MEETINGS/EMERGENCY ORDERS

SPONSOR(s): SENATOR(s) WAGONER

02/14/03	(S)	READ THE FIRST TIME - REFERRALS
02/14/03	(S)	RES, JUD
03/24/03	(S)	RES AT 3:30 PM BUTROVICH 205
03/24/03	(S)	Heard & Held
03/24/03	(S)	MINUTE(RES)
03/03/04	(S)	RES AT 3:30 PM BUTROVICH 205

BILL: SB 339

SHORT TITLE: MINING RECLAMATION ASSURANCES/FUND

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/16/04	(S)	READ THE FIRST TIME - REFERRALS
02/16/04	(S)	RES, FIN
03/03/04	(S)	RES AT 3:30 PM BUTROVICH 205

BILL: SB 347

SHORT TITLE: COMM. FISHING MORATORIA, INCL. AK GULF

SPONSOR(s): SENATOR(s) STEVENS B BY REQUEST

02/16/04	(S)	READ THE FIRST TIME - REFERRALS
02/16/04	(S)	RES
03/03/04	(S)	RES AT 3:30 PM BUTROVICH 205

BILL: SB 281

SHORT TITLE: GENETICALLY MODIFIED FISH

SPONSOR(s): SENATOR(s) ELTON BY REQUEST OF SALMON INDUSTRY TASK FORCE

01/28/04	(S)	READ THE FIRST TIME - REFERRALS
----------	-----	---------------------------------

01/28/04 (S) RES, FIN
03/03/04 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

Ms. Amy Seitz
Staff to Senator Thomas Wagoner
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 70.

Mr. Bob Loeffler, Director
Division of Mining, Land and Water
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724
POSITION STATEMENT: Supports SB 339.

Mr. Rich Heig, President
Council of Alaska Producers
General Manager, Greens Creek Mining Company
PO Box 32199
Juneau AK 99803
POSITION STATEMENT: Supports SB 339.

Mr. Steve Borell, Executive Director
Alaska Miners Association
3305 Arctic Blvd, Ste 105
Anchorage AK 99503
POSITION STATEMENT: Supports SB 339.

Ms. Cheryl Sutton
Staff to Senator Ben Stevens
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 347 for sponsor.

Ms. Erin Harrington
Kodiak AK
POSITION STATEMENT: Commented on SB 347.

Mr. Arne Fuglvog, President
Petersburg Vessel Owners Association
Petersburg AK
POSITION STATEMENT: Supports SB 347.

Mr. Alvin Burch, Executive Director

Alaska Draggers Association
PO Box 991
Kodiak AK 99615
POSITION STATEMENT: Supports SB 347.

Mr. Arne Thompson, Executive Director
Alaska Crab Coalition
Kodiak AK 99615
POSITION STATEMENT: Supports SB 347.

Mr. Joe Childers, Director
Western Gulf of Alaska Fishermen
Kodiak AK 99615
POSITION STATEMENT: Supports SB 347.

Ms. Cora Crome, Director
Petersburg Vessel Owner's Association
Petersburg AK
POSITION STATEMENT: Supports SB 347 with an amendment.

Mr. Oliver Holm, Chairman
Kodiak Fish and Game Advisory Committee
Kodiak AK 99615
POSITION STATEMENT: Opposes SB 347.

Ms. Cathy Hanson, Executive Director
Southeast Alaska Fishermen's Alliance
9369 North Douglas Hwy.
Juneau AK 99801
POSITION STATEMENT: Commented on SB 347.

Mr. Bruce Schactler
Kodiak AK 99615
POSITION STATEMENT: Opposes SB 347.

Ms. Kristin Ryan, Director
Division of Environmental Health
Department of Environmental Conservation
410 Willoughby
Juneau, AK 99801-1795
POSITION STATEMENT: Commented on SB 347.

ACTION NARRATIVE
TAPE 04-19, SIDE A

^#SB70

SB 70-BD OF FISHERIES MEETINGS/EMERGENCY ORDERS

VICE CHAIR THOMAS WAGONER called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present were Senators Ben Stevens, Fred Dyson, Ralph Seekins, Kim Elton and Vice Chair Thomas Wagoner. Senator Georgianna Lincoln arrived at 3:36 and Chair Scott Ogan arrived at 5:05. The first order of business to come before the committee was SB 70.

VICE-CHAIR WAGONER said that no testimony would be taken on SB 70, but a letter from Commissioner Duffy would be read into the record.

MS. AMY SEITZ, staff to Senator Wagoner read the letter:

Thank you for your February 23 letter requesting a written statement of my authority as commissioner to issue emergency orders under AS 16.05.060. As stated in your letter, there has been some discussion about whether section 2 of SB 70, an act relating to the emergency order authority of the commissioner of [the Department of] Fish and Game and to meetings of the Board of Fisheries, it would expand the commissioner's EO [executive order] authority to supersede a regulatory decision adopted by the Board of Fisheries. The scope of the commissioner's authority to issue an EO that contravenes a management plan adopted by the Board of Fisheries was addressed by the Alaska Supreme Court in Peninsula Marketing Association (PMA) versus Roper.

The Department of Law has advised me that under the PMA case, EO authority includes the authority to override a board-adopted management plan, but only if, in the judgment of the commissioner or his delegate, doing so is justified by new information or events that have arisen since the time of the board's decision.

Section 2 of SB 70 authorizes the commissioner to, on the basis of new information, supersede a regulatory decision of the Board of Fisheries by means of an emergency order. I consider that to be a restatement of authority that is already vested in the commissioner under the current version of AS 16.05.060 and the PMA case. Accordingly, I do not consider section 2 of SB 70 to expand the commissioner's EO authority. I trust this response to your enquiry and I would be happy to provide additional information that

might be helpful to your work on the fish and game issues.

Sincerely,
Kevin C. Duffy, Commissioner

VICE CHAIR WAGONER commented that the letter speaks for itself.
#

SENATOR GEORGIANNA LINCOLN arrived at 3:36

^#SB339

SB 339-MINING RECLAMATION ASSURANCES/FUND

VICE CHAIR THOMAS WAGONER announced SB 339 to be up for consideration.

MR. BOB LOEFFLER, Director, Division of Mining, Land and Water, Department of Natural Resources (DNR), said that SB 339 brings DNR's reclamation bonding program into the era of the large mines like Fort Knox, True North, and in the future, Donlin. He asked to spend a minute on reclamation, a minute on a problem with existing law and then explain the three major changes in the bill.

Before a mine begins, DNR requires a reclamation bond so if the company defaults, the bond can be seized to reclaim the mine. The law went into effect in 1991 when Alaska had only placer mines. Since then, a number of large mines have been developed and the current bonding program that has worked so well for the placer mining industry needs some updating to accommodate large mines.

The three changes SB 339 makes are first, it expands the \$750 cap for large mines. Placer mines currently have a \$750 per acre cap, but it costs large mines much more than that to reclaim land. Greens Creek and Pogo have \$24 million and \$26 million bonds, for instance. Companies thus far have been voluntarily putting up a bigger bond. SB 339 removes the \$750 cap for large mines, but keeps the program working as it has for exploration and placer mines.

The second change expands the suite of financial instruments that companies can use to satisfy the bonding requirement to include CDs, cash, surety insurance and things like that.

The third change establishes a mine reclamation trust fund, a voluntary alternate method to meet bonding requirements. A mine company would provide money to the state that would hold the money for the reclamation. The fund builds interest that would not be taxed (since the state government is not taxed).

The advantages to the state are twofold. One is that it provides a mechanism for us to bond long-term or perpetual reclamation needs. So, for example, if Red Dog Mine, as expected, is going to need perpetual water quality treatment, that is water treatment forever, to satisfy that with a bond, you need a bond that retains the interest, a mini-permanent fund. Illinois Creek is going to need 30 years of monitoring. That's a much smaller bond if we can retain the interest. So, for the state, it provides us a way to accommodate the perpetual or long-term reclamation needs, a situation we only have with the large mines, not the placer industries.

The second advantage is one Mom always told me - cash is best. Someone has got to put up a bond. If they can give us cash, that is, in fact, the best security for the state. The advantages to the company are two-fold. First, if the state holds the reclamation trust fund, then, in fact, the interest is tax free, because we're not a taxable entity. So, there's some advantages to the company for the state actually holding it.

A typical use might be... if you have a 30-year mine... as the mine gets closer and closer to closure, they may be putting more and more money in this trust fund if they should decide to use it....

MR. RICH HEIG, President, Council of Alaska Producers, said he is also general manager of Greens Creek Mining Company. The Producers' Council supported SB 339 because it makes several important changes to the requirements for bonding and financial insurance for mining operations. It allows the state to recognize the higher reclamation requirements associated with hard rock mining operations as compared to placer operations and supports what DNR and DEC have been requiring for several years anyway. It recognizes the needs for companies to have several methods available to them for providing financial assurances for reclamation enclosure that Mr. Loeffler has outlined. The cost and availability of conventional bonds or letters of credit are becoming much more difficult and this bill would allow for other

means of financial assurance including CDs and corporate guarantees.

MR. STEVE BORELL, Executive Director, Alaska Miners Association, supported SB 339 because it makes several important changes to the requirements for bonding and financial insurance as described by Mr. Loeffler.

SENATOR GEORGIANNA LINCOLN asked if the trust fund money would be dedicated to the reclamation or would the Legislature somehow have access to the cash and be able to use it elsewhere.

MR. LOEFFLER replied that the Department of Law has agreed with him that the Legislature could never fully be prevented from doing anything. "I can't bind the hands of future legislators no matter what my wish is." The way SB 339 is crafted, a contract or memorandum of understanding (MOU) would be agreed upon with the company. If the Legislature reappropriated the money out of the fund, the company would have a legal cause of action against the state.

SENATOR LINCOLN asked if the company goes out of business and the reclamation hasn't occurred, would anyone have a cause of action.

MR. LOEFFLER replied if it's on state land, maybe no one would, but if it's on private land, like Red Dog, NANA would have a cause of action.

In general, this is one of our only methods of, in fact, insuring long-term or perpetual reclamation, but again, it doesn't bind the hands of future legislatures.

SENATOR LINCOLN said that she likes the bill, but she didn't want the Legislature to get its hands on this money if there's a way to prevent that.

SENATOR DYSON moved to pass SB 339 out of committee with the accompanying zero fiscal note and individual recommendations. There were no objections and it was so ordered.

#

3:50 - 3:52 - at ease

^#SB347

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

VICE CHAIR THOMAS WAGONER announced SB 347 to be up for consideration.

SENATOR BEN STEVENS, sponsor, moved to adopt the CSSB 347(RES), version \I, for discussion. There were no objections and it was so ordered.

SENATOR STEVENS explained that he sponsored the bill at the request of the Board of Fisheries, the North Pacific Fisheries Management Council and the Gulf of Alaska Groundfish Rationalization Task Force. The task force is a combination of the Board of Fish, the Department of Law, the National Marine Fisheries Service and the North Pacific Fisheries Management Council that has been meeting for almost two years with the mission to pursue approaches to provide harvest opportunities under the Gulf of Alaska rationalization program in state waters that does not conflict with state law.

He endorses this bill because he was asked to sponsor it by all the aforementioned organizations and handed out information that graphically indicated the growth rates of numbers of fishing vessels and the dates they fished. In 1985, 2,700 vessels were registered for halibut statewide and in 1991, there were 4,400. In 1994, 3,400 vessels were registered and in 1995 when rationalization was implemented, the number went down to 2000. The same thing occurs in the sablefish industry.

This bill is an attempt to prevent the instability that occurred during this period of deliberation. It was instability for participants... the communities that were dependent on harvesting that resource, the instability that occurred for the managers of that resource. We're now at another period in time, 10 years after implementation of that first rationalization program, to where there's contemplation of rationalization in probably the most complex fishery in the North Pacific, which is the Gulf of Alaska. There's more participants in that fishery than in any other fishery in the state. There's more communities involved than in any other fishery in the state; there's more species involved than in any other fisheries in the state.

SENATOR STEVENS explained that SB 347 has two main parts. Sections 2 and 8 relate to statutes authorizing the Commercial

Fisheries Entry Commission (CFEC) to administratively establish a temporary moratorium on entrants into the fishery. Sections 1 through 9 establish a moratorium in the Gulf of Alaska on specific state water groundfisheries that were recommended by the Gulf of Alaska Groundfish Rationalization Task Force.

VICE CHAIR WAGONER asked if this only pertains to Alaskan waters.

SENATOR STEVENS indicated that is correct and added that it pertains to state waters up to three miles offshore.

VICE CHAIR WAGONER led the committee to understand that the feds have already had a vessel moratorium for about 12 years in federal waters.

SENATOR GEORGIANNA LINCOLN asked what the difference is between the original bill and the CS.

MS. CHERYL SUTTON, staff to Senator Ben Stevens, replied that the CS has no substantive differences. The department had requested certain terms to be used in the original bill. After further research, the terms were changed on page 7 regarding species terminology for consistency in statute.

SENATOR LINCOLN noted that the title was changed, also. She asked for further clarification on the charts that Senator Stevens handed out. His answer was that she referenced the number of days during which a fisher could catch his/her quota. It doesn't mean that a person could fish that number of days.

VICE CHAIR WAGONER answered that the numbers listed under 1980 to 1995 indicate the number of openings that were given to halibut fishermen to catch an areawide quota. When the IFQ system began, a fisher had 145 days total in which to catch his/her percentage of the quota.

SENATOR LINCOLN said one of her constituents wanted to know if this bill in any way would create more processor shares as has been seen in the Bering Sea Crab Program.

SENATOR STEVENS replied no, the moratorium specifically prevents migration into the fishery and doesn't develop any criteria for allocation or long-term rationalization plans.

SENATOR KIM ELTON said:

The way I read the bill, especially the definition of the Gulf of Alaska being north and west of Dixon Entrance, it would seem to me that the provisions of this bill or the moratorium would cover two open-access fisheries that we have in Southeast Alaska, the Inside cod fishery and some of the rock fisheries. I'm assuming that it covers those fisheries. If not, maybe the testimony can expand on it. If these fisheries... are not over-capitalized, so they could handle additional entry, how or would they be allowed or precluded under provisions of the bill?

SENATOR STEVENS replied if fisheries in the Eastern Gulf fall under 1,2,3 or 4 of the CS, the answer would be yes. In another section of the bill, the CFEC could develop a vessel moratorium if it determined it was necessary, but this bill doesn't implement one there now unless it's listed in section 9.

MR. ED DERSHAM, Board of Fisheries, commented that the Southeast groundfisheries have been outside the workgroup discussions. During federal fisheries the state has a parallel fishery and under the rationalization program as contemplated by the North Pacific Fisheries Management Council, the state would not be able to continue to have state water fisheries, because the effort that would be freed up on the federal side would increase the race for fish and management problems in state waters. In order to get their arms around fisheries in the pot, longline and trawl fisheries that take place inside state waters, a temporary moratorium is the only way to stop new entry while protection for the fisheries and communities are considered.

MS. ERIN HARRINGTON, Kodiak, said she supported the goals of the legislation and requested that jig gear be included in section 9 that describes the gear types. Jigging is another way of targeting cod and is a fishery that has new entrants. In 2002, the last year that ADF&G has a fish report for the cod fishery, 54 boats landed cod in the jig fishery. By February 27, 2004, there were 20 new registrants in that fishery. "A number of people out there [are] doing what we call prospecting for permits." She thought that was typical when rationalization is being discussed. She supported giving CFEC the ability to implement a moratorium or having the Legislature institute it.

SENATOR STEVENS responded that Ms. Harrington has valid concerns that need to be addressed, but there is valid reasoning behind deleting jig gear that would be explained later in the meeting.

MR. ARNE FUGLVOG, President, Petersburg Vessel Owners Association, said he is also on the North Pacific Fisheries Management Council. He appreciated the work everyone is doing to come up with a rationalization program that compliments both federal and state waters. He asked the committee to not include the Eastern Gulf in the bill, because those fisheries do not have problems with overcapitalization and reaching their quotas. The Southeast fisheries don't have the aggregation of the species that happens in the Gulf and Southeast outside waters are not included in the federal Gulf rationalization program. Lastly, he asked the committee to consider why there are different fees for different gear types and to let the participants know.

MR. ALVIN BURCH, Executive Director, Alaska Draggers Association, said he is a commercial fisherman and owns two vessels fishing out of Kodiak.

In my association, at any given time, I have between 35 and 55 medium to small vessels, basically trawlers, but they fish a significant number of halibut Qs [quotas] and also some pot fish.

I approve of the moratorium, but the devil is in the details. In 1977, we tried to do a moratorium on the shrimp fisheries. We had about 50 vessels fishing out of Kodiak. Talk of that moratorium triggered, just as Senator Stevens said, a run. Those 50 vessels generated 175 permits that would have been legal to fish aboard vessels... because every member on those vessels got a permit card, made a delivery and became a legal entity... The moratorium I would ask to be on the vessel.

MR. ARNE THOMPSON, Executive Director, Alaska Crab Coalition, said his boats fish primarily for crab in the Bering Sea, but also fish for cod with pots in the Bering Sea and the Gulf of Alaska and to a lesser extent in state waters. They have had a lot of experience with limited entry programs and concurred strongly with Mr. Burch's recommendation that the permit be assigned to the vessel. If permits go to the people who have been working on the vessels, you could end up with an additional 50 percent of permit holders.

4:20 p.m.

TAPE 04-19, SIDE B

MR. JOE CHILDERS, Director, Western Gulf of Alaska Fishermen, said his members fish combination vessels that are primarily 58 ft. in length. They fish mostly in the groundfish, trawl and pot fisheries. He said the fisheries have a tremendous ability to stimulate coastal development in the Gulf of Alaska. Rationalizing the fisheries jeopardizes the sustainability of the existing infrastructure dramatically. The ability for the whitefish industry to be prosecuted in a sustainable rationalized manner is critical for plants to remain open for salmon fisheries.

It's very important that this gets done. The reason that we're here is because the federal fishery and the state fishery have a lot of overlap. The federal fisheries are actually managed across both state and federal [indisc]. The state has a fishery called a parallel fishery, which occurs inside state water during the period of time when the federal fishery is open. The federal fishery on the outside requires a limited entry permit, an LLP they call it, License Limitation Program, but you can actually fish inside state water during the federal season without any license other than just a fishing license. So, the failure to close off the state water part of the fishery creates an unlimited latency in these fisheries. There is no way to rationalize the federal fishery, because anybody can pile into state water to fish during the federal season. It completely thwarts any efforts on the federal side to do anything. So, that's really why this is so important now....

Capacity reduction in fisheries is almost undeniable that it has tremendous impact as far as improving the fisheries in terms of economic efficiency, quality of recovery, plant utilization, etc. The ability to react nimbly to what is becoming a constant almost avalanche of environmental problems with the Stellar sea lions and now the sea otters.... The ability for these fishermen to operate in a rationalized manner where they can control their rates of harvest is essential. So, we support the moratorium and we hope it goes quickly.

MR. CHILDERS agreed that including Southeast fisheries is not necessary, because they are not at all similar to the Central Gulf and Western Gulf fisheries.

SENATOR STEVENS directed attention to page 10, lines 11 - 16, where those fisheries are excluded. The language is a little awkward because the regions are listed on page 7.

MR. CHILDERS pointed out that using the time period of 1998 to present is a problem because the federal program has already started using the 1995 - 1998 time period. Regarding Mr. Thompson's concern about the fee structure, his vessels fish multiple gear types and in multiple areas and they are looking at spending thousands of dollars to register for a moratorium. He also felt that licensing vessels is important, because a lot of the fisheries are year-round where vessels are operated for months on end and it's very common for those boats to have multiple skippers.

SENATOR FRED DYSON asked what would happen if a vessel owner loses a vessel or decides to upgrade under the proposed legislation.

MR. CHILDERS replied that the bill has a provision that allows the replacement of a vessel if it was lost or taken out of the fishery. Today, if a person wanted to buy a new vessel, he would sell his license with his old boat and pick up one of the many LLP licenses "that are just laying around" to go with the new one.

SENATOR DYSON asked if there is a way to transfer the license from an old vessel to a new one.

MR. BURCH responded:

In the federal fisheries, you can retire a vessel and transfer your license to a new vessel within a certain vessel length. You can't take a 60-footer and transfer that license to a 200-footer....

Senator Dyson brought up a real good point.... In my case, my skipper died back before Christmas [and] page 10, line 10, would give the commissioner the authority to release that data to me as the vessel owner in order to get that permit so my new skipper could continue to run the vessel.... That's something that's very important; that's something we don't have now.

MS. CORA CROME, Director, Petersburg Vessel Owner's Association, asked the committee to amend SB 347, section 9, to delete fisheries 1 through 4 in the Eastern Gulf. The fisheries are not overcapitalized and don't have an excess number of participants; they don't have derby-style openings and never reach the quota. They are one of an ever-smaller group of fisheries in this state for which one can buy a \$50 license. "We would like to see those entry-level opportunities preserved."

She said that the North Pacific Council took the Eastern Gulf of Alaska out of consideration under this rationalization program early in the process, because of the reasons she already stated. The association does not think that displaced fishers would migrate to Southeast, but if that happened, it could be dealt with under the CFEC moratorium program outlined in sections 2 - 8.

4:35 p.m.

SENATOR ELTON said it's important to note that Ms. Crome represents the group of fishermen that would be affected if rationalization out west pushed effort back into Southeast. Southeast fishermen don't really think that would happen.

MS. CROME agreed and elaborated that for some reason groundfish in the Eastern Gulf of Alaska is not aggregated in the volumes as it is in other areas of the Gulf.

That's the reason we don't have a directed fishery of any sort of large economic magnitude. We don't think that for some of these large-scale operations in the Gulf, it's not going to be a viable alternative....

In addition, there are some record-keeping problems with those stocks that we would have to believe that perhaps the people that have been harvesting that resource in the past might not qualify under this moratorium. For example, people that participate in other fisheries sometimes take small amounts of cod to use as bait for their other fisheries. That doesn't ever get landed or recorded and that harvest wouldn't be allowed under this moratorium....

MR. OLIVER HOLM, Chairman, Kodiak Fish and Game Advisory Committee, said he participated in the last Gulf rationalization Board of Fish committee meeting. It was the first time he had seen the bill and the Advisory Committee has not had time to

take any action on the bill one way or the other. His comments are on his own behalf.

The Advisory Committee does have an opinion about federal management and rationalization.

That opinion is not very high as far as regarding what the federal government has done in several other fisheries about protecting the interests of the communities, the effect on actual fishermen that participate in these fisheries. There's been economic consequences on the halibut fishery that we've observed and I think definitely things could be done better, but we're not very confident that the council process is going to get us there. Therefore, we're pretty much of the opinion that the state waters fishery should be managed by the state and managed separately and probably managed differently than the federal fisheries.

In going to the meeting and my knowledge of the fisheries in the Gulf, the different areas of the state covered by the Gulf rationalization plan are quite different in their fleets, where the percentage of the groundfish resources that are available in state waters, and the history of development of the number of gear types that are used in some instances. I guess having a blanket moratorium... is kind of premature. I would be in favor of giving the CFEC the tools to do the moratorium and then to go through the hearing process before the Entry Commission.

The part of the bill dealing with the vessels' licensing is problematic to me. We've seen it in federal fisheries and it may be appropriate for some fisheries that have a lot of absentee ownership, corporate ownership, but other gear types in the state waters fishery don't have much of that and I think it should be considered up front that some of those fisheries should stay as vessel operator on board-type of permits as the state system generally has been - with two recent exceptions that this Legislature passed.

There are consequences to absentee vessel ownership rather than the permit. Processors can own vessels.... which has an effect on who gets to harvest the

resource, the concentration of the resource and number of hands that get to benefit from it in our communities and that's the concern.

Putting the moratorium on vessel size in the vessel category for all these fisheries means that these fisheries, like groundfish and longlining pots that are covered in this bill - these boats a lot of them are smaller boats. A lot of them fish in a whole bunch of different fisheries - halibut, state managed fisheries and, with some exceptions, there aren't vessel limits that they are dealing with. For the entire period of this moratorium, you're freezing these operators. If they want to continue participating in the ground fisheries with their own vessels, they're not going to be able to switch vessels. They'll go to a bigger vessel that may be justified in another fishery.

CFEC has ways of weeding out multiple permits based on multiple landings off of individual vessels. That certainly has occurred in other fisheries and it could lead to too many permits in the state fisheries once the CFEC gets to the actual licensing. In the Kodiak tanner crab fishery, what they've done, they've taken permits based on landings from one vessel and you could apply, but you don't get all the points you would get, if you're a small limit landing off of a boat. If there are multiple landings off of one boat, they don't get all the points. They have to split up the points or they decide that one operator gets the points. That way, when you come back to the point system, some of those multiple landings and multiple permits, go away. So, CFEC does have a way to deal with that.

In some of these fisheries we have a large participation, a lot of people - not generally the trawl fisheries, but the other gear types. The consequence to the working fishermen is that when you have vessel ownership, that the people on the boat in rationalization that are actually catching the fish are probably going to get less money, because probably more of the money goes to the owner. Less to the hired skipper or the crew. That's been the pattern in rationalized fisheries. I think, at least, for some of

these fisheries that we still want to go that way, because of the effects on the community.

The jig fishery exemption probably we'd hope would stay in the bill. The jig fishery generally has a fairly low catch rate that's quite dependent on the availability of cod, their schooling. Some times of the year the cod just aren't available; they don't bite. It's generally a slower fishery. A lot of people who participate in the jig fishery are also going to participate in the pot fishery in state waters or the long ling fishery and would be getting permits under this moratorium in those gear-types anyway.... I think you really need to consider that you need to have an open fishery where people can get started and go in and out of it at will and I think the jig fishery is the best fishery that's used for that.

MS. CATHY HANSON, Executive Director, Southeast Alaska Fishermen's Alliance, opposed including the Eastern Gulf of Alaska in this legislation, because effort probably would not be redirected down into the Southeastern area. She was also assured by the North Pacific Fisheries Management Council at the beginning of the program that the Eastern Gulf would not be covered in this program. "To see this pop up in this legislation was somewhat of a shock and a surprise and it's not necessary."

MR. BRUCE SCHAETLER said he lived in Kodiak for 32 years and represented himself and others like him. He is involved in fisheries other than the ground fishery.

Many of my peers drive boats for people like Mr. Burch and a tremendous amount of the people that own these vessels. They're gone from this fishery if you put this on to the vessel. In the halibut [and] sable fisheries right now the majority of the people are paying for their IFQs that they purchased. By taking it right off the top of their crew, the captains of the vessels are paying for those. If you don't like it, just go find another boat to work on. The people who have developed the fishery, the people that drive this fishery, are the captains and the crews, not the vessels.

As Oliver said and we found out during the American Fisheries Act and further, it's real easy to buy a vessel. A cannery can go buy 15 vessels if they want

and pretty soon the vessels are owned by the very people that we talk about not wanting to have anything to do with - this heavy consolidation of vessels into corporate hands.

The jig fishery, briefly, is the slowest fishery on earth. There's a lot of little boats in Kodiak. I see them go by my house every morning and come back every evening - a couple thousand pounds here, a couple thousand pounds there. The guys are paying rent. That's what this is all about. There ain't nobody getting rich off the jig fishery.

The State of Alaska went out and created this bottom fishery in state waters for its residents, for these small boat guys to get out there and pay some rent for some little economic development. To think about excluding something like that, I think is a big mistake. That is the point of the state fishery - was for the state to come in and manage its own fisheries not be driven by what the feds have screwed up for so many years.... I would suggest how about anybody with the federal fishery can just stay in federal waters and they can't even fish in the state waters. Now, we have no parallel fishery. We just have a state fishery for state residents or for state people that aren't fishing that never got an LLP. There's many ways to go about doing this, but just to cop to the deal that we have a Gulf rationalization program going on to rationalize the screwed-up federal fishery and we have to deal with it on their terms is, I think, a little rash. I just don't want the state, through statute, on a very short time-line, to get ahead of itself and do something it may regret doing to its residents....

What happens during that timeout? What about the people that have just barely entered the fishery? How about people that are just barely able to start their fishing, they just got out of school or whatever? People who have just finally been able to buy a boat big enough?... What has happened to this discussion during this moratorium? The odds are that guy is already cut out and he's never going to get back in. So, this really isn't a time out; this is the camel's nose under the tent. You start a moratorium and anybody that hasn't been in the fishery unless you people are going to take care of it in statute...

they're done.... I urge you to take this as slow as you can.

SENATOR DYSON said he assumed that most of the small boat guys are Alaskans and asked Mr. Schactler if he thought most of the big boat owners are from the Lower 48.

MR. SCHACTLER replied that he didn't know that to be true. A big contingency of boat owners live in Kodiak. "But, there are more and more absentee skippers. Those guys who started those big rigs are now old...."

SENATOR DYSON asked if he thought more of the big boat skippers were from down South.

MR. SCHACTLER replied not really.

SENATOR DYSON said the committee shouldn't be considering licensing a boat as opposed to the skipper on the basis of which one would encourage the most Alaskan participation.

MR. SCHACTLER replied:

I think it should be based on participation, period, and the participation by the people who are out there risking their lives catching the fish, not the person that may be in Palm Springs that owns the boat.

VICE CHAIR WAGONER thanked him and asked for further questions. There were none and he said the bill would be held until Friday.
#

^#SB281

SB 281-GENETICALLY MODIFIED FISH

VICE CHAIR WAGONER announced SB 281 to be up for consideration.

4:55 - 4:57 - at ease

SENATOR KIM ELTON, sponsor, said that SB 281 is a proactive bill that provides that labeling identify genetically modified (GM) fish and fish products, which are defined as "foods in which genetic structure has been altered at the molecular level by means that are not possible under natural conditions or processes." This bill addresses concerns raised by consumers, people in the environmental community, people in the health community and Alaska fish marketing groups. It requires Alaska

retailers to identify and label food containing fish and shellfish products that have been genetically modified. The bill is similar to and based upon legislation introduced in other states, like Oregon and California, and it comes to this committee and to the Legislature with the unanimous support of the Joint Legislative Salmon Industry Task Force.

SENATOR ELTON noted that genetically modified fish are not allowed in the marketplace currently. However, SB 281 anticipates future entry into the consumer markets as the Food and Drug Administration (FDA) has a pending proposal to allow the production of a genetically modified salmon. He noted that country of origin labeling legislation is now being considered in Washington, D.C.

SENATOR DYSON said he appreciated Senator Elton bringing this issue forward. He asked what labeling SB 281 would require of frozen or fresh salmon, not in a container.

SENATOR ELTON replied that most retail outlets identify fresh fish on a placard.

My intention would be that it be identified on the placard.... I do think Alaska consumers are relatively sophisticated and any retail outlets... caught selling genetically modified fish, I would think that's almost a self-policing kind of a thing. The difficulty that Alaska consumers have is mostly [with] packaged fish and shellfish that are coming from... other foreign countries. The intent would be to label it on a placard. That's probably the least likely place for this to enter the marketplace in Alaska.

SENATOR DYSON respectfully disagreed, because he has seen farmed fish being sold as fresh fish in both restaurants and meat markets.

I see genetically modified fish coming out of the farms as one of the first assaults we'll have.... I'm not sure your bill makes it really clear that if it's not packaged, it should be placarded. I won't hold the bill up for that....

He asked what Senator Elton intended for fish that is sold in restaurants.

SENATOR ELTON agreed that if Alaska gets genetically modified fish, it would probably be through the farm system. He may be too optimistic, but in coastal communities he is familiar with, when a retailer is selling unpackaged farmed fish, there's a lot of pressure and he thought that pressure would double or triple if it were GM. He said the bill just covers retail fish, but he would double check on that.

SENATOR RALPH SEEKINS asked what the state's remedy was for misbranding.

SENATOR ELTON replied that is a problem. Current law has a labeling provision for retail fish. "It is a problem of enforcement." He expected that people would notice mislabeling and report it to the department and hoped that retailers would choose to follow the law.

CHAIR OGAN arrived at 5:10 p.m.

SENATOR SEEKINS said it seems that intentionally or even unintentionally mislabeling food is an unfair trade practice. For instance, it would be an unfair trade practice if he sold a used car as a new car.

When it comes to the health of individuals, we rely on DEC and a few other things like that. But having come from the retail sector myself, I wonder why if we're really serious.... why we don't do treble damages, cease and desist orders and a few things like that.... What would really compel me not to comply?

SENATOR ELTON agreed with him completely. The existing situation is that it would not be an attempt to deceive if the law doesn't require you to identify it. So the issue is being raised to that level.

TAPE 04-20, SIDE A

SENATOR SEEKINS asked if a statement could be inserted stating that violation of this bill constitutes an unfair trade practice under AS 45.50.

SENATOR ELTON responded that he would consider that, but the problem is that this is a fairly large area. Section 1 is existing law. The only thing that is being added is the genetically modified component.

If we did decide to do that, I would think it would require a great deal of discussion with all of the other elements that are covered already in existing statute and that's a pretty big bite to chew off right now.

MS. KRISTIN RYAN, Director, Division of Environmental Health, Department of Environmental Conservation (DEC), said SB 281 has a zero fiscal note because the FDA has not allowed genetically modified fish to be sold in the country, yet. However, a fiscal note would be associated with enforcement if the FDA does approve it in the future. She informed them that HB 378 puts many stipulations on misbranding in this chapter as a violation of the Fair Trade Practices Act.

SENATOR LINCOLN moved to pass SB 281 out of committee with individual recommendations and accompanying fiscal notes. There were no objections and it was so ordered. There being no further business to come before the committee, VICE CHAIR WAGONER adjourned the meeting at 5:15 p.m.

#