

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

March 5, 2004

3:35 p.m.

TAPE(S) 04-21, 22

MEMBERS PRESENT

Senator Scott Ogan, Chair
Senator Thomas Wagoner, Vice Chair
Senator Ben Stevens
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

Senator Fred Dyson
Senator Ralph Seekins

COMMITTEE CALENDAR

SENATE BILL NO. 312

"An Act relating to natural gas exploration and development and to nonconventional gas, and amending the section under which shallow natural gas leases may be issued; and providing for an effective date."

BILL HEARING POSTPONED

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."

MOVED CSSB 282(RES) 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."

MOVED CSSB 347(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."

MOVED CSSB 303(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 282

SHORT TITLE: RESTAURANTS ETC DISCLOSE WILD/FARMED 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
03/03/04	(S)	Scheduled But Not Heard
03/05/04	(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
03/03/04	(S)	Heard & Held
03/03/04	(S)	MINUTE(RES)
03/05/04	(S)	RES AT 3:30 PM BUTROVICH 205

BILL: SB 303

SHORT TITLE: BIG GAME SERVICES & COMM. SERVICES BD

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
02/20/04	(S)	Heard & Held
02/20/04	(S)	MINUTE(RES)
02/27/04	(S)	RES AT 3:30 PM BUTROVICH 205
02/27/04	(S)	Heard & Held
02/27/04	(S)	MINUTE(RES)
03/05/04	(S)	RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

Ms. Kristin Ryan, Director

Division of Environmental Health
Department of Environmental Conservation
410 Willoughby
Juneau, AK 99801-1795
POSITION STATEMENT: Supports SB 282 with changes.

Ms. Elise Hsieh,
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Commented on SB 282.

Mr. Ed Dersham
Alaska Board of Fisheries
POSITION STATEMENT: Commented on SB 347.

Mr. Henry Webb, Staff
Legislative Budget and Audit
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 303.

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

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

Mr. Pat Carter
Alaska Professional Hunting Guides
POSITION STATEMENT: Commented on SB 303.

Mr. Robert Hardy
Unidentified
POSITION STATEMENT: Opposes SB 303.

Mr. Dick Rorick
Kodiak 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.

Captain Howard Starbard, Commander
Alaska Bureau of Wildlife Enforcement
5700 E. Tudor Rd.
Anchorage AK 99507-1225

POSITION STATEMENT: Supports SB 303.

ACTION NARRATIVE

TAPE 04-21, SIDE A

^#SB282

SB 282-RESTAURANTS ETC DISCLOSE WILD/FARMED FISH

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:35 p.m. Present were Senators Thomas Wagoner, Ben Stevens, Kim Elton and Chair Scott Ogan. Senator Georgianna Lincoln arrived at 3:36. The first order of business to come before the committee was SB 282.

SENATOR KIM ELTON, sponsor, said that currently finfish and farmed salmon are to be identified on the label for retail businesses. SB 282 extends that same notion to restaurants by requiring their menus to state whether fish it is selling in a prepared food product is wild fish or farmed fish. The definition of retail food establishments does not cover restaurants on cruise ships or bunkhouses at remote construction sites, but does include restaurants that serve food to the general public and carts that sell food on the sidewalks and streets.

SENATOR ELTON explained that page 4, line 14, says that wild fish "is harvested from a river or an ocean" and Senator Dyson had suggested inserting "lake". He noted that the fiscal note was a bit of a surprise to him, but provides for a new staff person at the Department of Environmental Conservation (DEC) for restaurant label enforcement. He noted:

When we passed the bill applying the labeling requirements at the retail level, there was no fiscal note. The difference between that bill and this bill is the word "may" and "shall". I'm working with the department to try and figure out a way that we end up with the same fiscal note we got when the retail labeling law was passed. I would also note that the

fiscal note does provide for an additional position at DEC and informally through staff I have been told that it doesn't take a full position even though a full position is noted in the fiscal note. So, I don't think it's a big problem, Mr. Chair.

CHAIR OGAN said he has a philosophical problem with mandating that businesses reprint menus with correct labeling and asked Senator Elton if he had any input from the public about printing new menus.

SENATOR ELTON replied that he has not heard from the private sector on how this would impact their business. He didn't think it would be a problem, because farmed fish that is sold at the restaurant level is labeled as fresh and is on the daily menu, not the standard menu. He said this isn't a health bill, but simply a consumer awareness bill that fits in with the country of origin labeling being discussed at the federal level.

MS. KRISTIN RYAN, Director, Division of Environmental Health, DEC, said that complaint investigation would increase the division's workload and she is working with Senator Elton to change that language. She anticipates getting frequent calls from Alaskans who are concerned that restaurants aren't following the rules. The only other issue she has with the bill is the definition of a food service establishment, which is different in SB 282 than in current regulation.

SENATOR WAGONER asked if DEC could include with their regular restaurant inspections checking menus to make sure the labeling is correct to avoid hiring another person to do that.

MS. RYAN retorted that her division does perform inspections, but not at the frequency that is necessary to insure food safety.

CHAIR OGAN asked why current inspections couldn't verify the source of the fish. "It would take another two minutes per visit."

MS. RYAN replied that the inspectors could and would do that, but there would be many more calls from the public than scheduled inspections during which the information would be checked. She added that another bill, HB 378, would add a protection attorney to Chapter 17 to enforce labeling and misbranding problems that are not health safety issues.

MS. ELISE HSIEH, Department of Law (DOL), said the country of origin labeling [7 USC 16.38(a)(3)] could possibly preempt SB 282 if it passed because it says that country of origin notice must also include whether fish is wild or farmed. Legislation was already passed with the USDA creating regulations that must be in place by September 30, 2004. The bill specifically excludes restaurants, which leaves the question of whether Congress intentionally made a policy decision to prevent restaurants from constantly having to change their menus depending on the source of their fish, which changes from day to day. The feds could argue that consumer interest in the product is not enough to overcome hindrance of interstate commerce. These are common arguments made in Congress for the RBSP labeling for milk and different grades of apples, etc. Current law does not require labeling of fish that is wild, but merely says "may" be labeled for wholesale and retail business.

SENATOR ELTON said:

I would love it if we were preempted by the feds - for two reasons. One is we don't need to have the state enforce it. So there is no state cost. But my understanding is that the federal country of origin labeling does exempt restaurants.... If their regs cover this, that's great.... But I think we need to do it now.

He said he would continue to work with DEC on use of the words "may", which he thinks is essentially toothless, and "shall".

MS. HSIEH agreed with his position and informed the committee that AS 17.20 deals with that issue.

SENATOR ELTON moved, on page 4, line 14, to add ", lake,". There were no objections and it was so ordered.

SENATOR WAGONER wanted to zero out the fiscal note and move the bill.

SENATOR ELTON assured committee members that he would work with DEC on the inspection issue no matter what happens with the fiscal note.

SENATOR WAGONER moved CSSB 282(RES) with attached fiscal note and individual recommendations. There were no objections and it was so ordered.

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3:58 - 4:00 p.m. - at ease

^#SB347

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

CHAIR SCOTT OGAN announced SB 347 to be up for consideration.

SENATOR BEN STEVENS, sponsor, informed members that after the last hearing, several participants got together to address some of the issues raised during that hearing. He moved to adopt CSSB 347, version Q, as the working document. There were no objections and it was so ordered.

SENATOR BEN STEVENS explained the changes made to version Q were a result of discussions among members of the Board of Fish, the Alaska Department of Fish and Game (ADF&G), the North Pacific Fisheries Management Council (NPFMC), and some industry representatives. First, references to the Eastern Gulf were removed from the bill. The second change of substance was made on page 9, lines 27 and 28, regarding uncertainty about the permitting and the cost of permits. An agreement was worked out for a single fee for the trawl fishery and a single fee for the pot or longline fishery.

The third change on page 9, lines 30 - 31, gives the Board of Fisheries, the Commercial Fisheries Entry Commission (CFEC) and the various management agencies the ability to explore and develop limited entry or other management options, but any proposal must be brought before the Legislature prior to implementation. He said he believes all parties are in agreement with these changes.

CHAIR OGAN asked where the constitutional amendment provision is located.

SENATOR BEN STEVENS said it is on the top of page 10. He told members:

We just wanted to say emphatically that if any of the options for management require any sort of legislative change or any constitutional change, that it will come back to us for consideration of the members....

SENATOR ELTON stated his appreciation for the process Senator Stevens used to develop the committee substitute, which reflected concerns expressed by the public.

CHAIR OGAN asked for an explanation of what this legislation would fix.

SENATOR BEN STEVENS deferred to Mr. DERSHAM for an answer.

MR. ED DERSHAM, Alaska Board of Fisheries, explained that a Board of Fisheries workgroup has been working on a reaction to the North Pacific Fisheries Management Council's rationalization of groundfish fisheries in the Gulf of Alaska for several years. That process should be complete in 2005.

When completed, it will leave our state waters in a situation to where we can't even do status quo, for example, in our codfish fishery. We couldn't continue to have our state waters fishery, because with the rationalized federal waters adjacent to our state waters, there would be a lot of latent capacity freed up that could just move into our state waters fishery up... and cause that fishery to be a much greater race for fish. We're trying to explore options of how to react to the federal process in a way that best protects the state and our state waters fisheries in all groundfish. In the meantime, we don't have any way to get our arms around the participants in the state water fisheries without a temporary moratorium to control new entrants coming in. That's the reason for step one of having this temporary moratorium.

Any reactionary plan developed by the Board of Fisheries or the CFEC, both working with ADF&G, would come before the Legislature. All agencies support that approach, because any allocation scheme would likely need clarification. He said the Board would not be able to protect the state waters fisheries, even as they exist now, without some way to stop an onslaught of new entrants that would come under federal rationalization without this temporary moratorium.

SENATOR BEN STEVENS said his brief explanation of why this bill is necessary is outlined in the numbers on the handout he provided on Wednesday. The number of participants in the halibut fishery when the halibut quota management system was first introduced in 1985 almost doubled by 1991 and, by 1994, when the quota system was implemented, the sable fishery had almost four

times the number of participants. This bill will prevent that same drastic influx into the fisheries, thereby causing instability to the participants, communities, and processors. He noted the board has been working on this issue for two years and implementation may take another two to four years - optimistically.

MR. DERSHAM recounted some concerns expressed at the last meeting by other testifiers that the state's interests would be diluted by coordinating the Board of Fisheries' decisions with those of the NPFMC, although the Board of Fisheries has been very clear throughout this process that the actions it takes will be based on strongly protecting state authority over state waters and that allocations would be based on what is best for the economy of Alaska's coastal communities.

CHAIR OGAN asked if this bill would basically give the Board of Fish authority to establish a moratorium whenever needed for these particular fisheries.

MR. DERSHAM said that is correct. He explained the bill has two parts - one gives CFEC the authority it needs to work out establishing a moratorium. The second part, beginning with section 9, is a specific moratorium on the groundfish fisheries in the Gulf of Alaska to accomplish the immediate goal that he and Senator Stevens described.

CHAIR OGAN asked Mr. Dersham to respond to criticism that this proposal is designed to protect the financial interests of the current participants rather than to protect the resource.

MR. DERSHAM said the specific moratorium this bill seeks does not include the jig fisheries for the groundfish species. The board purposely left entry in the jig fisheries open for new entrants in coastal communities and young people. The jig fisheries are growing, but the board believes there is room for additional entrants. "And it's the lowest [cost] cod fishery to get into in the groundfish fisheries so we specifically left that open." He added that the Board and ADFG believe they will be facing local depletion and probable conservation issues in state waters without the moratorium.

CHAIR OGAN commented that the 20 halibut per day limit for subsistence with no season limit would do more to deplete a local fishery than anything else.

MR. DERSHAM revealed that the Board of Fisheries made several recommendations to the NPFMC to amend the subsistence halibut fishery in areas where the 20 fish limit is in place. Regarding Cook Inlet, a trailing amendment is working its way through the National Marine Fisheries Service (NMFS) that should be on the books this summer that would greatly decrease the area in which that subsistence halibut limit would apply. The board will be meeting with NPFMC later this month and will be asking when that will be implemented.

SENATOR WAGONER asked if the board would be looking at quotas for specific gear types in addition to the moratorium. He agreed with the decision to leave jig fisheries out of the moratorium to allow people with a limited budget to get into that fishery and asked if giving the jig fishery a percent of the available harvest each year was considered.

MR. DERSHAM replied that the current state waters cod fishery has specific quotas for jigs versus pots in each area. The board is also considering a possible expansion of the quota that would be available for jig and new entrants based on protection and the interest of coastal communities.

SENATOR WAGONER asked whether the permit would be issued to a vessel or a vessel operator. He recounted that when IFQ shares for halibut were established, many halibut fishers did not receive them because they fished boats for other people. He believes that was handled incorrectly and does not want to see that happen again.

SENATOR BEN STEVENS answered that a moratorium is based on the number of vessels participating in a fishery. The concept Senator Wagoner referred to is a quota of distribution, which would happen during the rationalization options. The Legislature should not be the one to design the allocation system. A three-year moratorium on these specific areas gives the CFEC and board time to come up with options to bring back to the Legislature.

MR. DANA REED, a Kodiak jig fisherman, thanked Senator Stevens for initiating this legislation because he feels the state has let the federal government lead the way instead of shaping a state fishery. He opined:

And leaving the jig fishery out of this moratorium is absolutely asinine. It sounds good sitting from where you are to let anybody who wants to fish come into the only thing that would be left in this fishery. But I'm

here to tell you that the jig fishery - we are real fishermen too and we've been at this for a while and I'll tell you who we are, mostly are salmon fishermen who don't make the money we used to, but we need that money to live here and my cod fishery has become a very integral part of the rest of my income for this year. If it's left out of this, it will be a mess. It's almost a mess already. You can see almost everything that floats now has got jig machines on it coming up from this year. And part of it's because of this idea that they better get in here and get a piece of something that might be worth something even if they're not going to make any money doing it. A group of us jiggers have gotten together and discussed some of the possibilities of how to remedy the mess the fishery is becoming and what it would really become if you put a moratorium...[END OF SIDE A]

TAPE 04-21, SIDE B

4:25 p.m.

MR. REED continued:

...on all of the other catching vessels, but not on jiggers. One of the things with exclusive registration for gear boats and fishermen - but that doesn't address the issue of just a lot of people going out there and sucking the quota up and pushing it into a derby and turning a commercial fishery into a joke.

It is a true commercial fishery and we thought maybe something a little more palatable would be to take our quota and give a portion of that to open access - 10 percent or 500,000 pounds. Right now we were on 4.5 million pounds just split with the pot fishery, but they let that go over. So now we're cut down below 4 million pounds, which we will address at the Board of Fish....

If there's going to be a moratorium, you have to include everybody and you have to realize that jiggers are fishermen and we are dependent on that income. It's taken us several years to become as efficient as we have. We've spent a lot of time and effort getting into this fishery. If you leave us out, it's really... just pushing us off as a scapegoat and it's not fair and not acceptable. Thank you.

CHAIR OGAN thanked him, indicated there were no further participants, and closed public testimony.

SENATOR BEN STEVENS summarized:

This bill was brought by request from the industry. There were some concerns that were met and some concerns were raised on Wednesday. Some fisheries were excluded by request. The Board of Fish and Commercial Fisheries Limited Entry Commission, Department of Fish and Game, the North Pacific Council all have been involved in this with industry participants and at this point I think it's the development of a process that has a long way to go and I think that we've done about what we can do here. I would suggest that we move on to the next step. This is one of those things, Mr. Chairman, where - it's just the fish business.

SENATOR WAGONER said at the last hearing on this bill, two or three people called in expressing gratitude for not including the jig fisheries in this bill so the committee has had to weigh both sides. He said if that issue needs further consideration, that can happen as the bill moves forward.

CHAIR OGAN asked for a description of a jig fishery.

SENATOR WAGONER said it involves automatic jigs.

SENATOR BEN STEVENS added that two people could be working 9 or 10 machines that run 30 to 50 hooks.

SENATOR WAGONER moved CSSB 347(RES), version Q, and its attached fiscal notes from committee with individual recommendations. There were no objections and it was so ordered.

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4:30 - 4:38 - at ease

^#SB303

SB 303-BIG GAME SERVICES & COMM. SERVICES BD

CHAIR SCOTT OGAN announced SB 303 to be up for consideration. A motion was made to adopt the CSSB 303(RES), version \D. There were no objections and it was so ordered.

MR. HENRY WEBB, staff to Legislative Budget and Audit, said that HB 442 and SB 303 are the same bill, but the markup happened to the House bill.

CHAIR OGAN asked him to review the substantive changes for the committee.

MR. WEBB started with the first change on page 2, lines 9 - 10, which said the members of the board would not be holders of a guide license.

CHAIR OGAN asked what private landholder really meant.

MR. WEBB replied that it means the owner of a large amount of private land like a Native corporation.

CHAIR OGAN thought the term was too ambiguous.

SENATOR WAGONER said he still had a problem with it, too.

REPRESENTATIVE RALPH SAMUELS, sponsor of HB 442, said the former guide board had a representative from a Native Corporation with large land holdings that were used in the commercial hunting industry. He offered to prepare a conceptual amendment to flesh out what the committee wants it to mean or go back to the old definition.

SENATOR WAGONER surmised the intent was, "used specifically by licensed guides and transporters".

SENATOR ELTON said:

We want to make sure the private landholders who are on this board do hold land that could be subject to aircraft landings and boats going up and down the river - horseback crossings. Those are the kinds of people we really want.

CHAIR OGAN said they are talking essentially about Native corporations.

SENATOR ELTON said he couldn't think of any other large landholders who would be impacted.

SENATOR WAGONER said he thought it needed to be tightened up with a definition.

REPRESENTATIVE SAMUELS agreed.

CHAIR OGAN said the Native corporations, the University, Mental Health Trust lands are the types of large landholders that could be affected by these activities.

SENATOR GEORGIANNA LINCOLN said Native corporations are a little different than what the committee was talking about. She didn't know if private landholders needed to be defined here.

SENATOR BEN STEVENS surmised that if they start down that road, there would be a long ways to go.

REPRESENTATIVE SAMUELS broke in to say that the old language says one member who represents Native landholders. The University of Alaska and Mental Health Trust lands hold public lands.

SENATOR WAGONER said he didn't mean to say they should be included. He meant to say they are excluded from this.

SENATOR LINCOLN asked the committee about deleting "private" and inserting "Alaska Native" on page 2, line 9.

CHAIR OGAN suggested thinking about it and moved on.

MR. WEBB said the next substantive change is on page 3, lines 6 - 10. The Division of Occupational Licensing advised him that publishing an annual roster is an outdated practice and using the Internet would be more cost effective. The next change on page 3, lines 41, through page 4, line 1, offers the licensing exam orally and deletes the need for an explanation for it.

CHAIR OGAN said the original intent is that some people might not be able to pass a written test, but they would make a fine assistant guide.

MR. WEBB said the next section on page 4, lines 3 - 10, gives the board some authority to deal with a lot of the problems the audit found like a code of ethics and written contracts. Lines 22 - 27 on page 4 give flexibility to violations with a tiered approach.

SENATOR LINCOLN asked if a person would have to be imprisoned for more than five days in order for that to kick in.

CHAIR OGAN said that was correct.

MR. WEBB said the next change was on page 6, lines 6 - 7, which provides some protection for the public with a selection of bonds, insurance or property. Page 7, lines 20 - 21, adds "current" before "first aid card".

CHAIR OGAN moved that as amendment 1 and asked if CPR [cardio-pulmonary resuscitation] should be added.

MR. WEBB responded that the issue of what good CPR would do in the field without a defibrillator had been discussed during extensive meetings with the department.

We figured if you're living in a rural area and you have to come in and take a CPR class and that's another thing you have to do, it might not be worth the expense to some people.

CHAIR OGAN related how a defibrillator saved his life.

SENATOR WAGONER added that he books a few remote charters and carries a satellite phone to call the Coast Guard if necessary. "So, if somebody has a heart attack on my boat and we immediately call the Coast Guard, there's still a chance they could be saved. It's not a stretch in some cases."

SENATOR LINCOLN asked if they were leaving it as a "current" first aid card.

CHAIR OGAN replied that adding "current" was being discussed. He asked if there were any objections. There were none and amendment 1 was adopted.

MR. WEBB said the next change was on page 8, lines 19 - 20, which provides another option to someone who wants to become a Class A assistant guide by passing a board-approved course.

CHAIR OGAN asked why being in the military for three years out of state counts toward the 10 years experience - on line 16.

MR. WEBB replied that language is in existing statute. Another amendment on page 11, line 29, deletes "a" and inserts "any".

SENATOR LINCOLN moved the above language as amendment 2. There were no objections and it was so ordered.

CHAIR OGAN brought up language on page 12, line 4, that says "has breached a contract to provide big game hunting services or transportation services to a client" in regards to the board imposing disciplinary sanctions in a timely manner. He asked how the board determines that a contract has been breached.

A client can accuse a guy of breaching a contract, but unless it's been adjudicated that it's been breached, it's kind of subjective disciplinary action. I would hope just talking about it and putting it on the record would be enough to say the legislative intent was to, if you've adjudicated, go to civil court and there's been some kind of an actual proven breach rather than just an accusation of the breach.

MR. WEBB directed him to language on page 11 that says the board has to have a hearing and asked the chair if that language would satisfy his concern.

CHAIR OGAN answered it would if the intent is for the board to adjudicate whether or not a guide breached a contract with a client.

REPRESENTATIVE SAMUELS replied that the Division of Occupational Licensing has people who actually investigate these issues.

CHAIR OGAN asked if the board would somehow be an arbitrator for the purposes of disciplinary action.

REPRESENTATIVE SAMUELS stepped in and said that the board would be able to discipline, but he didn't know what the standard of proof would be for a breach of contract. Requiring a civil suit to be filed would be getting away from the idea of the board disciplining guides and that is one of the reasons for having a board.

We wanted them to have some mechanism to go in and say hey, look, guide A - you know, here's what he said he would do and here's what he did. That's kind of where we're trying to get to in this session.

CHAIR OGAN asked Mr. Paul Johnson if he was chairman of the former board.

MR. PAUL JOHNSON indicated yes.

CHAIR OGAN asked if it was customary for the board to arbitrate disputes between a client and a guide and sanction the guide based on some kind of evidence that he had breached his contract.

MR. JOHNSON replied yes, but three complaints were needed. But as SB 303 is written, the guides need a contract rather than just a hunt record.

CHAIR OGAN said he could see that being an arbitrator in contractual disputes would take up a lot of the board's time. He mused that a client could get ticked off because he didn't get his animal that cost him \$10,000 and all they have to do is file a complaint with the board.

MR. JOHNSON replied that is why there is a written contract on what lease services are being provided - like basic health and safety, number of days, etc.

SENATOR LINCOLN pointed out that the bill refers to "a contract" and asked if there is a way to be specific about what the contract is. She suggested setting the issue aside for the moment since the day was getting late.

CHAIR OGAN replied that they would continue until 5:30 p.m. and then reevaluate where they were on the bill. He said that page 12, line 9, says that the guide acted incompetently and he felt that was too subjective. Maybe it should be unethically.

REPRESENTATIVE SAMUELS responded that language had been changed from "is incompetent", which is in existing statute.

CHAIR OGAN reiterated that he thought unethical behavior was a better standard to discipline someone over.

MR. PAT CARTER, Alaska Professional Hunting Guides, elaborated that the discussion revolved around whether the guide is incompetent all the time or just for the one hunt.

CHAIR OGAN stuck to his guns saying that he thought unethical was a better way to go and moved that as amendment 3. There were no objections and it was so ordered.

CHAIR OGAN directed the committee's attention to page 12, line 28, and the word "innocent" in relation to misrepresentation.

MR. CARTER explained that discussion was that a guide should not get punished for an innocent misrepresentation. However, the Department of Public Safety raised the point that its tough to prove something was intentionally done wrong.

SENATOR WAGONER moved to delete "innocent" on page 12, line 28 as amendment 4. There were no objections and it was so ordered.

MR. WEBB jumped back into the summary saying that page 13, line 26, was put back to 20 days from 40, because the Department of Public Safety said evidence is generally gone after 40 days.

CHAIR OGAN suggested "or within 48 hours from returning to an area that has communications from the field" and noted that some guides have satellite phones and could report a violation immediately.

MR. CARTER added that there was discussion about people who might be in the field for two and a half weeks and be weathered in for another five days. He noted that language on page 13, line 25, says "promptly" in relation to reporting a violation to the Department of Public Safety and that is why it went with the 20 days for the reporting timeframe.

5:20 p.m.

TAPE 04-22, SIDE A

SENATOR LINCOLN asked if the burden of proof is higher for "knowingly" and why not just remove that word [page 13, line 24].

MR. CARTER responded, "What if the person doesn't know?"

SENATOR LINCOLN reiterated that her concern is with the burden of proof.

MR. CARTER replied that the burden is higher, but it would be unfair for a person to be punished or have to report a violation they didn't know existed.

CHAIR OGAN thought that 20 days was a little arbitrary. He has known people to have problems getting their paperwork in on time when they are out in the field. He also didn't think a person should wait 20 days to report a violation if he has a cell phone.

MR. CARTER asked if he would be more comfortable changing "promptly" to "knowingly failed to report to the Department of Public Safety" and add "as soon as possible" on page 13, lines 24 - 25.

CHAIR OGAN agreed that addressed his concern.

SENATOR LINCOLN argued that language didn't really address the problem, because "promptly" and "as soon as possible" mean basically the same thing.

CHAIR OGAN said they would come back to that.

MR. WEBB directed the committee's attention to page 14, lines 5 - 8, expanding accountability for the transporters and putting them on par with the guides. He suggested inserting "valid Alaska" on page 14, line 18, in reference to an Alaskan hunting license.

CHAIR OGAN moved to insert "valid Alaska" before "hunting" on page 14, line 18 as amendment 5. There were no objections and it was so ordered.

MR. WEBB directed attention to the next substantive change on page 17, line 11, that deletes "or transportation services" language, which separates guides from transporters for violations. The following paragraph, (b), gives the transporters their own responsibilities.

CHAIR OGAN directed the committee's attention to existing language on page 17, line 28, which allows three guide use areas in one year. He felt the language was too controversial to change, but wanted to point out:

When a guide can do that, they can literally go into an area and hunt that area really heavily of all the sheep or most of the trophy rams or most of the trophy bulls... and then move on to another area and I think it's had a big negative impact on the game in Alaska.... I'd love to see it two years, at least.

MR. WEBB pointed out that language on lines 23 - 25 clarifies that a guide is not able to pull out of whatever of the three areas he is hunting in that year.

MR. JOHNSON added that he thought it was important to be real clear that a guide had 30 days to notify the department that he

would be conducting big game hunting services in an area so that the board could consider the issue.

CHAIR OGAN asked him if he thought the board could react to something like that in 30 days.

MR. JOHNSON responded that the statute would say registration takes place at least 30 days before the hunt and that time could be extended to 60 or 90 days by the board if it chose to do so.

CHAIR OGAN relented because it would lead to more controversy, but said he would rather see it at least two years.

MR. WEBB pointed out in addition that language on page 18, lines 18 - 22 explains what guide use areas are and gives the board the authority to change them. Page 18, lines 24 - 31, through page 19, lines 1 - 5, contain language about predator management and how it ties in with the Board of Game allowing a fourth area for predator control.

CHAIR OGAN said he didn't think a wolverine was a predator.

MR. WEBB replied that wolverines are predators by definition and he wanted to cover all the bases.

CHAIR OGAN jumped back to the issue of guide use areas on page 18 and stated:

The only problem I have with amending it [to] allow the board the discretion to amend it as necessary is some operators might want to come in and they'll say oh, I need a bigger area. Let's take these two areas and make it one area. I saw that on the board when I was on there and, you know, and I wonder if we want to give them that much discretion.

MR. CARTER said:

The intent behind this amendment was to allow the board to amend the guide use areas as property boundaries change. Right now, from what we were told, is that since '94 there's been other boundaries that have changed - lands sales, land transfers, that sort of thing. And so the guide use area may not actually be down what was a boundary once before. They said they have no intent of changing them, but the board

may decide to change them and that was the intent of including the language.

CHAIR OGAN said there is a lot of incentive for a guide to petition the board to erase the line between two areas and if he's well connected with the board or is a nice guy or something - this opens that up to that type of potential abuse.

SENATOR LINCOLN moved to delete "wolverine" as a predator on page 18, lines 26 and 28, as amendment 6. There were no objections and it was so ordered.

MR. WEBB said that page 19, lines 10 - 11, gives the board authority to establish transporter use areas and adopt regulations to implement them. Currently, transporter use areas are the same as guide use areas. Page 19, line 24, is language from the Division of Occupational Licensing on how records could be shared with federal, state and local law enforcement agencies.

CHAIR OGAN also pointed out that instead of specifying fish and wildlife enforcement agencies it applies to any law enforcement agency.

MR. WEBB noted a further point on page 21, line 5, where "usually" was deleted.

SENATOR LINCOLN, referring to page 20, line 25, asked Mr. Johnson if a wolverine is considered big game and really wanted to delete it there, too.

MR. JOHNSON replied that wolverine is big game in statute since the late '70s. "It's not utilized too much, but I think once on a rare occasion it is...."

SENATOR LINCOLN asked about an inconsistency on page 22, line 26, that says it's unlawful for a non-resident to hunt brown, grizzly, mountain goat or sheep, but no other big game would be listed. She asked if that is correct.

CHAIR OGAN responded that there has been a lot of discussion about the rationale for requiring guides.

The rationale is either dangerous animals or dangerous terrain and there's been a number of people that would like to see required guides for moose. And they're generally not a dangerous animal when wounded nor do

they live in too dangerous of a terrain compared to a mountain goat or a sheep. So there has to be a rational basis for requiring a guide. It can't be too arbitrary. I think you make the argument that some of the antler restrictions you might want to have a person guide for a moose because the average hunter can't tell a spiked fork from one that's got three points.... I struggle with that myself sometimes.

MR. JOHNSON added that issue is under Title 16 and mountain goat was added in 1994 after a long arduous struggle.

CHAIR OGAN said at some point they should discuss requiring guides for moose. He brought the committee's attention back to page 2, line 9, and asked what they wanted to do.

SENATOR LINCOLN said she wasn't going to get hung up over this issue, but someone suggested two members representing non-profit and for-profit Alaska Native landholders.

MR. JOHNSON explained when the task force dealt with this in 1989 under Henry Springer, it felt it was extremely important to bring in the private landholders and it was very well acknowledge that it meant the Native landholders. Those people had many concerns including subsistence. Over time, other rural members wanted Native landholders to be included. Two members are desired because for one thing they have a substantial amount of land and it would include and encourage people in rural areas to become involved. "I don't think leaving it as it is is going to complicate anything at all."

CHAIR OGAN suggested inserting, "represent private landholders that are substantially affected by guided hunting activities," and then leave it to the discretion of the governor. He asked Senator Lincoln if that is acceptable.

SENATOR LINCOLN replied that she has no problem with that language, but it was pointed out that landholders has to mean for-profit. The non-profits are not landholders. "I don't mean to bog us down here, but I don't want later that technicality to [indisc.] this up either."

MR. JOHNSON said he thought the amendment that the chair offered would fit the intent.

SENATOR LINCOLN kept to her point saying that it could be construed to mean a Doyon Limited, a CIRI; not a Tanana Chief's Conference, not villages.

MR. JOHNSON replied, "The idea is those people who own private lands for trespass...."

CHAIR OGAN announced that the committee had lost its quorum, but he agreed with changes on page 12, lines 4 - 5 and noted that the question on page 13, lines 24 - 26 hadn't been resolved.

5:50 p.m.

MR. ROBERT HARDY, representing himself, encouraged the committee to consider other possibilities with which to regulate and control the big game commercial service provider industry. SB 303 just creates another public board and doesn't address the real issue of user conflict, which is the main problem occurring in the field that is fed by aggressive expansion and capitalization by the industry.

A means of controlling the industry through a joint effort between the Department of Commerce and the Department of Fish and Game needs to be considered. By crafting tools under statute that could look at the aggregate number of commercial service providers by area where deemed necessary as determined through the Board of Game process could go much further toward addressing user conflict in the field. The legislation at present doesn't take that step. There is no measure within the current legislation that would effectively control the industry or the conflict this expansion creates. I would also like to say that before this committee chooses to improve this bill, I would like to see several changes made.

First on page 2, lines 6 and 9 - line 6 changes from "1" to "2" licensed transporters, especially with regard to the transporter use area authority that the Big Game Commercial Services Board would have. Also on line 9, change "two private landholder representatives" to "one private landholder" and define what that means. Also, I'd have a concern as to the overly competitive nature, section 29, found on page 18, lines 23 - 31, and page 19, lines 1 - 5, creates. In my area, which is game management unit 13 in the Nalchina Basin, where I am a subsistence user

and also a registered big game guide, virtually all we have left to hunt in that area are bears. Moose and caribou are off-limits to non-residents from a guide's standpoint and sheep are very low density.

Increasing competition for the species that is the mainstay of our commercial viability is unacceptable. There are other ways to address that issue through the Board of Game process, such as two bear bag limits, etc. etc. Some of the other changes that I would like to see made, if at all possible, page 12, line 4 and 5 - the breach of contract stipulation - that needs more clarity. It needs more definition.

Page 4, lines 8 - 10, that may actually violate a privacy provision. I would like to know what Department of Law has to say about that and then on page 17, line 28, as far as the registration for guide use areas, every calendar year - I'd like to see that personally changed to every five calendar years. With that said, I would like to thank you for your time, Mr. Chair, and for hearing my concerns.

CHAIR OGAN asked him to send any written comments he has on his concerns. He sympathized with his area 13 concerns with bears and nothing else left to hunt. He asked if anyone else from the public wanted to testify.

MR. DICK RORICK, Kodiak, said he supported the changes the committee made and suggested adding one Native representing a regional corporation and a village corporation to the makeup of the board.

MR. MATT ROBUS, Director, Division of Wildlife Conservation, said that the department worked with the sponsor as the CS was put together and supports today's changes to the CS.

Both the Department of Fish and Game and the Board of Game are on record supporting the reinstatement of the Big Game Commercial Services Board.

SENATOR LINCOLN asked him if he supported the amendments to the CS.

MR. ROBUS replied that he didn't have any problems with the changes.

CAPTAIN HOWARD STARBARD, Commander, Alaska Bureau of Wildlife Enforcement, Alaska State Troopers, said he worked with the sponsor also and listened to the amendments and supported those. On the 20 day issue on page 13, lines 24 - 28, he opposed 40 days for the reasons articulated. He also didn't think that changing "promptly" to "as soon as possible" would address the situation. The fact that the use of satellite and cell phones was increasing made frequent communication common and he felt they should leave "promptly" and "20 days" in. He suggested instead of inserting "promptly" to use "as soon as possible unless no other reasonable means of communication are available."

CHAIR OGAN moved that as conceptual amendment 7.

SENATOR LINCOLN objected to ask what is meant by reasonable means of communication. "A cell phone is unreasonable when you're out there." She asked if that would cause a problem for the board.

MR. JOHNSON replied that Captain Starbard understands the limitations that are available to rural people who would have 20 days to report a violation and was confident he could work with the amendment.

SENATOR LINCOLN withdrew her objection and amendment 7 was adopted.

CHAIR OGAN announced that they were back to page 2, line 9, and proposed inserting "two members who represent private landholders that are affected by hunting activities".

MR. CARTER commented for clarification and consistency the committee might consider "guided hunting or transportation services".

CHAIR OGAN amended his motion to read, "that are substantially affected by guided hunting or transportation services and who do not hold a license issued under this chapter;".

SENATOR LINCOLN objected because the term "substantially" is in the eyes of the beholder.

CHAIR OGAN amended his amendment to delete "substantially". There were nods of approval. He asked if there were objections to adopting amendment 8. There were no objections and it was so ordered.

SENATOR WAGONER moved to pass CSSB 303(RES), version \D, from committee with attached fiscal note and individual recommendations. There were no objections and it was so ordered.
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There being no further business to come before the committee, CHAIR OGAN adjourned the meeting at 6:08 p.m.