

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

January 30, 2008
8:39 a.m.

MEMBERS PRESENT

Representative Paul Seaton,
Representative Kyle Johansen
Representative Craig Johnson
Representative Gabrielle LeDoux
Representative Peggy Wilson
Representative Bryce Edgmon
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 16

"An Act providing for an effective date by delaying the effective date of repeal of the authority of the Commercial Fisheries Entry Commission to maintain the vessel-based commercial fisheries limited entry systems for the Bering Sea Korean hair crab and weathervane scallop fisheries, and the effective date of conforming amendments related to the repeal of those systems."

- HEARD AND HELD

OVERVIEW: FISH AND GAME COMMERCIAL FISHING DIVISION SCALLOP MANAGEMENT

- HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 16

SHORT TITLE: EXTEND LIMITED ENTRY SUNSET: CRAB/SCALLOP

SPONSOR(S): REPRESENTATIVE(S) SEATON

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	FSH, RES
04/04/07	(H)	FSH AT 8:30 AM BARNES 124

04/04/07 (H) Heard & Held
04/04/07 (H) MINUTE(FSH)
05/04/07 (H) FSH AT 8:30 AM BARNES 124
05/04/07 (H) Heard & Held
05/04/07 (H) MINUTE(FSH)
01/30/08 (H) FSH AT 8:30 AM BARNES 124

WITNESS REGISTER

JOHN HILSINGER, Director
Commercial Fisheries Division
Department of Fish and Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Presented the overview on HB 16 for the Department of Fish & Game (ADF&G).

FRANK HOMAN, Chairman, Commercial Fisheries Entry Commission (CFEC)
Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 16.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at [8:39:21 AM](#). Representatives Johansen, Edgmon, Johnson, and Seaton were present at the call to order. Representatives Wilson, LeDoux, and Holmes arrived as the meeting was in progress.

OVERVIEW OF FISH & GAME COMMERCIAL FISHING DIVISION SCALLOP MANAGEMENT PLAN

HB 16-EXTEND LIMITED ENTRY SUNSET: CRAB/SCALLOP

[8:39:42 AM](#)

CHAIR SEATON announced that the only order of business would be the Scallop Management Proposal from the Department of Fish & Game with discussion of HOUSE BILL NO. 16 "An Act providing for an effective date by delaying the effective date of repeal of the authority of the Commercial Fisheries Entry Commission to maintain the vessel-based commercial fisheries limited entry systems for the Bering Sea Korean hair crab and weathervane scallop fisheries, and the effective date of conforming amendments related to the repeal of those systems."

8:39:58 AM

CHAIR SEATON said that public testimony on HB 16 was closed on May 4, 2007. Today there will be invited testimony from the Commercial Fisheries Entry Commission (CFEC) and the Department of Fish & Game (ADF&G); HB 16 will not be moved today. Chair Seaton explained that it is unknown at this time whether the state needs to prepare for state management of the [Korean hair crab and scallop] fisheries. The sunset will take place and state management will need to accommodate the scallop fishery; Korean hair crab management will not be reviewed due to the fact that there is no stock viability at this time.

8:41:34 AM

JOHN HILSINGER, Director, Commercial Fisheries Division, Department of Fish and Game (ADF&G), presented an update on the management options for the scallop fishery under the assumption that HB 16 does not pass. He informed the committee that the ADF&G supports HB 16 and the continuation of the vessel based limited entry system. Without the passage of HB 16, there will be no limited entry system in state waters unless there is intervention by the Commercial Fisheries Entry Commission (CFEC). Federal waters outside of three miles will continue to operate under the federal license limitation program. At this time, ADF&G does not have a good estimate on the number of boats that may fish in state waters if the fishery is designated open entry. ADF&G has requested the Alaska Board of Fisheries (Board) to consider changes to the scallop management plan for state waters in the absence of HB 16. In addition, ADF&G staff has met statewide to develop management options and to solicit public proposals. Mr. Hilsinger explained that the difficulty of management under the open entry system is that there are three centrally located scallop beds where the state and federal boundaries meet: Shelikof Strait, Kayak Island, and Yakutat. It is necessary to manage each as two separate areas, state and federal. The management options proposed to the Board are: no changes to the basic statewide management plans; and continuing management under guideline harvest levels. ADF&G proposes regional plans for Shelikof Strait, Kayak Island, and Yakutat with some minor differences. He stated that ADF&G staff agrees that the plans should incorporate a registration year from the first of April to the thirty-first of March and a registration deadline of the first of April. A registration deadline will give staff time for assessment of the fishery and to set up the mandated onboard observer program. Observers have to be

identified, trained, and approved prior to being placed in their positions.

[8:49:50 AM](#)

MR. HILSINGER continued to explain that vessels will be required to register to fish in state or federal waters and are restricted to the waters in which they are registered. Fishing in federal waters requires a federal permit. ADF&G will set separate guideline harvest levels for state and federal waters.

[8:50:41 AM](#)

REPRESENTATIVE LEDOUX asked for the reason that a state permit will not allow fishing in federal waters and vice-versa.

[8:51:06 AM](#)

MR. HILSINGER explained that catch accounting must be kept separate to ensure accurate harvest reporting; if not, scallops caught in federal waters may count against the state harvest guideline and inadvertently close the fishery. However, a boat can register to fish in other waters at other times during the season.

[8:51:42 AM](#)

REPRESENTATIVE LEDOUX opined that the observers could report the catch accurately.

[8:51:59 AM](#)

MR. HILSINGER stated that observers are not monitoring 24 hours per day. Observers do help with reporting, but staff feels that registration is important. He noted that an added change provision requires that, when a boat wants to move, for example, from state to federal waters, it must call ADF&G 12 hours in advance, shuck its scallops, and report its harvest prior to the move. He continued to say that ADF&G envisions that there are separate guideline harvest levels, managed separately, so areas can be closed if necessary, and others can remain open. He cautioned that good stock assessment data for Shelikof Strait and Yakutat is lacking and that guideline harvest levels will be set by the historical distribution of catch until guideline assessment techniques are improved.

[8:55:09 AM](#)

CHAIR SEATON recalled that historic data reported about 40 percent of the catch comes from state waters.

[8:55:30 AM](#)

MR. HILSINGER agreed. He explained that there is catch accounting data; however, a single "tow" can come from state and federal waters. Thus, catch accounting is not perfect and the overall average is about 30 percent from state waters.

[8:56:26 AM](#)

CHAIR SEATON relayed that the problem is less for scallops than it is for stock that moves from one area to another.

[8:56:52 AM](#)

MR. HILSINGER said yes. He assured the committee that future assessments will be more complete. Returning to the accounting for the beds, Mr. Hilsinger pointed out that each area must identify its crab bycatch limits. Some areas have both tanner and king crab present.

[8:57:53 AM](#)

CHAIR SEATON asked for details on bycatch limits.

[8:58:15 AM](#)

MR. HILSINGER answered that, if the crab bycatch limit is reached, the fishery is closed. Scallop fishermen rarely reach bycatch limits and have an incentive to stay away from crab. The limits are based on population size estimates and can vary by location and species.

[8:59:29 AM](#)

CHAIR SEATON asked whether juvenile crab would be included in the bycatch limit.

[8:59:45 AM](#)

MR. HILSINGER replied that the limit remains the same regardless of the size of the crab. He continued to explain that the 12 hour notice prior to changing registration is sufficient for the

vessel to shuck and weigh scallops and complete its fish tickets.

[9:00:20 AM](#)

CHAIR SEATON advised that testimony from fisherman favored the limitation of dredge size to ten or twelve feet. In federal waters, sixteen foot dredges are used. He asked how a vessel would carry legal gear for both waters.

[9:01:22 AM](#)

MR. HILSINGER acknowledged that, if the Board were to adopt dredge size limitations in state waters, there would be conflicts with enforcement. In fact, ADF&G will not propose dredge size limitations at this time because it is confident that the fishery will be managed successfully. The Board would need to review a proposal of dredge limits, and develop governing regulations if it were adopted.

[9:03:27 AM](#)

CHAIR SEATON pointed out that limiting gear is a common management technique to prevent overharvesting. State water fishermen have proposed a ten or twelve foot limitation, and the size of the gear will also affect the speed [of] and the number of vessels. An unlimited fishery can be difficult to regulate, particularly if [ADF&G] does not use the techniques proposed by the fisherman. He remarked:

The department would get a lot better handle if they went with a, what has been proposed by the fisherman. That is limiting those and then, if that is not a problem, opening it up further in future years. ... I would just like to get a little more analysis from you later on the reasoning for that and how that interacts with the number, with your primary concern about maybe [there] being too much participation.

[9:05:24 AM](#)

MR. HILSINGER stated that ADF&G envisions daily reporting, but three times per week may be deemed sufficient. In addition, staff is also proposing a vessel monitoring system (VMS) requirement and will soon have access to the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) vessel monitoring system database. This system,

with the observer data, will help determine whether boats are fishing in the proper areas. He concluded by informing the committee that ADF&G may be making some additions to closed waters. The location of scallops is known, and ADF&G wants to prevent dredges wandering around outside of the scallop beds, particularly in the Shelikof area. The recommendations to this program are statewide staff's best assessment of a management plan designed to meet guideline harvest levels; other conditions and proposals from fisherman will be submitted to the Board with comments.

[9:08:37 AM](#)

CHAIR SEATON offered to forward to ADF&G all of the fisher's testimony submitted to the committee regarding dredge size and limitations. He noted that currently the North Pacific Fisheries Management Council (NPFMC) does not require VMS on scallops fished in federal waters and asked whether ADF&G would coordinate with them on this requirement.

[9:09:47 AM](#)

MR. HILSINGER relayed that the state has the management delegation from the federal government; therefore, state regulations are in effect out to 200 miles. He opined that, for some fisheries the cost of VMS is a burden to the fisherman, but not for scallops. Requiring VMS is reasonable in this case and the requirement would apply in state and federal waters.

[9:10:47 AM](#)

REPRESENTATIVE JOHNSON asked for the cost to implement the plan that was outlined.

[9:11:00 AM](#)

MR. HILSINGER said that, if the current management plan stays in effect, there is no additional cost. A major problem is that \$500,000 of the scallop stock assessment and research money is in federal grants that are depleted. ADF&G is looking for funding from the state; however, funding is a significant problem.

[9:12:01 AM](#)

REPRESENTATIVE JOHNSON further stated that a ballpark cost needs to be provided to the committee in anticipation of a supplemental request next year.

[9:12:44 AM](#)

REPRESENTATIVE EDGMON asked whether ADF&G reports to the NPFMC in order to share information about regulations and policies.

[9:13:16 AM](#)

MR. HILSINGER said that there is a scallop plan team that reviews the stock assessment and works with ADF&G staff. The two entities work closely together and reports are made to the NPFMC regarding the scallop fishery.

[9:13:51 AM](#)

REPRESENTATIVE EDGMON asked for the effect on the NPFMC if HB 16 does not pass.

[9:14:05 AM](#)

MR. HILSINGER replied that, absent HB 16, the changes will be within state waters. Federal waters are subject to federal license limitations. He opined that the Board may regulate; however, NPFMC is not prepared or able to manage scallops in federal waters. If the state is inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act the NPFMC may invoke a review in the future. He suggested that ADF&G and the Board should submit its recommendations to NPFMC prior to the board meeting.

[9:15:40 AM](#)

CHAIR SEATON listed many of the fisheries that are managed in state and federal waters and said that the scallop fishery is not unusual. In fact, scallops will be easier to manage than some.

[9:16:58 AM](#)

REPRESENTATIVE JOHANSON asked for clarification about the suit between the state and the F/V Mr. Big over an application for a permit. He said, "... What is the effect on failure or passage of this bill regarding this vessel's ability to fish this stock out?"

9:18:20 AM

MR. HILSINGER responded that, if HB 16 does not pass, state waters will be open to any vessel, of any size, that wants to participate in the scallop fishery until, or unless, some other form of limited entry comes in effect.

9:19:02 AM

REPRESENTATIVE JOHANSON surmised that it is possible that a trawler can come in and scoop up.

9:19:25 AM

MR. HILSINGER agreed. He said that they could come in and fish as long as they are following regulations. They must register and stay within state waters. Mr. Hilsinger reviewed the proposed recommendations to the Board and opined that fishing activities will be controlled.

9:20:51 AM

CHAIR SEATON asked for background on the differences between the situations prior to the F/V Mr. Big dispute and now.

9:21:00 AM

MR. HILSINGER recalled that there was no fishery management plan for scallops in federal waters. The F/V Mr. Big relinquished its state registration and was fishing in federal waters. Federal waters were closed for about 18 months and reopened under a fishery management plan. He opined that the present regulatory environment is tighter.

9:22:28 AM

REPRESENTATIVE WILSON expressed her understanding that if HB 16 is not passed, it will be the first time the state has stopped a limited entry access fishery and the stability of the fishery may be threatened. She emphasized the importance of the economic value of the fishery.

9:23:53 AM

MR. HILSINGER re-stated that ADF&G supports the passage of the bill. He said that the vessel based limited entry program has

worked well and has provided a sustainable fishery; however, it does limit participation. Analysis by the CFEC determined that there was the possibility of 27 permits being issued for the fishery; this had the potential for overuse. With open entry, the economics of the fishery are unknown and the Board may be forced to issue limitations on trips or gear. Mr. Hilsinger expressed his desire for maintaining a viable fishery and said that he supports the public process. He assured the committee that, in an emergency, the fishery can always be closed.

[9:26:59 AM](#)

REPRESENTATIVE WILSON expressed her concern that this situation can jeopardize the fishery.

[9:27:34 AM](#)

CHAIR SEATON repeated the highlights of the recommended monitoring process and the proposed gear limitations from fisherman.

[9:28:21 AM](#)

REPRESENTATIVE WILSON asked, "If it's working now, why change it?"

[9:28:46 AM](#)

REPRESENTATIVE LEDOUX asked whether there was a legal rationale to exclude the F/V Mr. Big from access to an open fishery.

[9:29:16 AM](#)

MR. HILSINGER said no. He explained that regulations allow closures due to illegal fishing and the fishery would be closed to everyone, not one ship.

[9:29:53 AM](#)

REPRESENTATIVE LEDOUX assumed that the F/V Mr. Big was fishing illegally.

[9:30:13 AM](#)

MR. HILSINGER further explained that, to his knowledge, ADF&G can cite an individual for illegal activities but can not exclude someone for something they might do.

[9:30:57 AM](#)

REPRESENTATIVE LEDOUX asked whether the F/V Mr. Big was cited.

[9:31:13 AM](#)

MR. HILSINGER said that he was unsure, except that the F/V Mr. Big was stopped from fishing.

[9:31:36 AM](#)

CHAIR SEATON confirmed that ADF&G will make a further presentation to the Board on the third of March.

[9:32:00 AM](#)

FRANK HOMAN, Chairman, Commercial Fisheries Entry Commission (CFEC), Department of Fish & Game (ADF&G), informed the committee that the CFEC encourages more discussion and action on HB 16.

[9:32:42 AM](#)

CHAIR SEATON asked whether there was any change in the participation in the fishery this year. At last count, three vessels were harvesting all of the scallops in the state.

[9:32:55 AM](#)

CHAIRMAN HOMAN said no. The guideline harvest level is about 500,000 pounds of shucked scallops.

[9:33:21 AM](#)

CHAIR SEATON asked whether there could be just one vessel harvesting all of the scallops.

[9:33:24 AM](#)

CHAIRMAN HOMAN said yes.

[9:33:32 AM](#)

CHAIR SEATON further asked whether the current program allows one vessel, working in conjunction with others, to harvest all

of the scallops and then pay the proceeds to the outside corporations that hold the permits.

[9:33:49 AM](#)

CHAIRMAN HOMAN replied that the guideline harvest of 500,000 pounds can be taken by one vessel whether there are agreements or not.

[9:34:19 AM](#)

CHAIR SEATON observed that the current vessel based system does not require the permit participant to be on board. He opined that this situation leads to the constitutional problem of the special right of fishery, and warned of the danger of designing a system that results in the exclusion of Alaskan participants. Chair Seaton recalled testimony that the catch is sometimes off-loaded in federal waters, resulting in the loss of revenue to Alaska. He expressed his concern that, even though the fishery is easier to manage, Alaska is losing: people, jobs, participants in the fishery, boats, and revenue. He questioned how this system fulfills the legislature's constitutional responsibility to gain the maximum benefit of the resource for the people of Alaska. He concluded that testimony to the committee indicates that the structure in place creates constitutional questions.

[9:37:23 AM](#)

REPRESENTATIVE LEDOUX commented that enacting or extending legislation that will basically allow just one or two boats to scoop up all of the resource has the same result as the actions by the F/V Mr. Big.

[9:38:31 AM](#)

CHAIRMAN HOMAN stressed that open access does not guarantee that only Alaskans will fish. The F/V Mr. Big was fishing illegally in the 90s; in fact, there are now more regulations in place to prevent similar conduct.

[9:39:45 AM](#)

REPRESENTATIVE LEDOUX questioned whether the F/V Mr. Big was fishing illegally.

[9:39:56 AM](#)

CHAIRMAN HOMAN said, "Well, I don't know that legally or illegally, but, but there were no regulations to keep him out, the only thing they could do was to close the fishery."

[9:40:02 AM](#)

REPRESENTATIVE LEDOUX remarked:

But the bad thing about it was that it ended up with just one boat scooping up the resources and doesn't this very bill allow just one or two boats to scoop up the resources?

[9:40:16 AM](#)

CHAIRMAN HOMAN said:

The limitation program that we have in place now is regulated and the boats that are fishing in it are, have state regulations and, and the state manages, the state, and the federal, so there are, there are, controls on them. But, but one of them could go out and scoop up all the fish if he ignored all of the rules, so, the same thing could happen, but the fishery was closed for a year and a half or two years so they could get those rules in place.

[9:40:49 AM](#)

REPRESENTATIVE WILSON asked what will happen if many boats are there and the limit is reached on the very first day.

[9:41:34 AM](#)

CHAIRMAN HOMAN answered that, if the harvest limit is caught the first day, the fishery is closed.

[9:41:55 AM](#)

REPRESENTATIVE WILSON further asked whether the state is due revenue from a catch in federal waters.

CHAIRMAN HOMAN explained that there is economic value to Alaska from the servicing and staffing of the vessels.

[9:43:22 AM](#)

REPRESENTATIVE WILSON further asked whether the state can tax the catch from federal waters.

[9:43:58 AM](#)

CHAIR SEATON explained that, when fish come to dock in Alaska for delivery, there is a landing or raw fish tax paid to the state. However, if the catch is transferred at sea and does not enter state waters, no tax is paid.

[9:45:19 AM](#)

REPRESENTATIVE JOHANSON asked Chairman Homan to respond to the Chair's prior comments.

[9:45:54 AM](#)

CHAIRMAN HOMAN stated that the original principle that started the vessel limitation program was a response to a conservation issue. When individual recipients receive permits there can be too many for a small fishery to sustain. Prior to 2002, the CFEC determined that the current program of individual permits would not work for the scallop fishery and the legislature passed a bill that allowed a five-year vessel license program for the two small fisheries only. The authorization for that program is now up for review and reauthorization.

[9:47:31 AM](#)

CHAIR SEATON added that the purpose of the sunset was to reevaluate the program. He recalled fears, expressed at the passage of the legislation five years ago, that the licensing of vessels to corporations would allow an extreme consolidation of the fishery into a few hands; testimony has shown that there are now three participants in the fishery. This is the outcome to be judged and debated.

[9:48:32 AM](#)

REPRESENTATIVE JOHNSON asked whether legislation could be introduced that states that, if a boat does not fish for two consecutive years, it loses its permit.

[9:49:16 AM](#)

CHAIRMAN HOMAN replied that the legislature can pass a law like that; however, it would be subject to legal challenge. He added that there are continuous court challenges to regulations.

[9:49:52 AM](#)

CHAIR SEATON asked whether the licenses are issued to the vessel or to the vessel owner.

CHAIRMAN HOMAN responded that licenses are issued to the vessel owner.

REPRESENTATIVE JOHNSON suggested making changes to the program rather than abandoning it. He opined that the legislature has equal constitutional charges: to elevate the resource and to maximize the benefit of the resource. The resource has been protected by this program and small changes, such as limiting the number of boats in the fishery, are in order.

[9:51:21 AM](#)

REPRESENTATIVE WILSON asked for the number of boats that have agreements with other fisherman. She pointed out that many fisherman are still benefitting in the fishery, even if it is as a member of a corporation.

[9:52:17 AM](#)

CHAIRMAN HOMAN answered that most of the vessels are owned by corporations. He explained that most are small corporations created to save money and this results in a more manageable system that works well. The consolidation of boats is a balance of economics that is an acceptable thing to do. Because of the expected high participation in the scallop fishery, the vessel licensing made sense and the CFEC was given permission to do this for only two fisheries in 2002.

[9:55:21 AM](#)

REPRESENTATIVE LEDOUX pointed out that the hair crab fishery has not been open during the course of this legislation; therefore, there is no history with respect to the hair crab fishery.

[9:55:56 AM](#)

CHAIRMAN HOMAN agreed that the hair crab fishery has not been open; however, if it does open the protection and control of limited vessels will apply.

[9:56:50 AM](#)

REPRESENTATIVE LEDOUX asked whether the hair crab fishery was open when the legislation was enacted.

[9:57:10 AM](#)

CHAIRMAN HOMAN said he did not think so.

[9:57:23 AM](#)

REPRESENTATIVE LEDOUX surmised that the hair crab fishery was a problem that did not exist.

[9:57:46 AM](#)

CHAIRMAN HOMAN opined that more Alaskans will be involved in the hair crab fishery when it is open.

[9:58:08 AM](#)

CHAIR SEATON clarified that this is the only fishery in which one can reap the rewards without being present. Otherwise, participants are required to be present with the gear during operation. In this structure, corporations from outside can own the resource and the crew sends a check. Chair Seaton drew an analogy between the policy created by this legislation and sharecropping. He expressed the committee's interest in the future discussion of this topic and thanked the speakers.

[HB 16 was held for further discussion.]

[9:59:41 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 9:59 a.m.