

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

February 25, 2008
8:37 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
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. 134

"An Act relating to conservation and protection of wild salmon production in drainages affecting the Bristol Bay Fisheries Reserve; and providing for an effective date."

- MOVED CSHB 134(FSH) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 134

SHORT TITLE: PROTECTION OF SALMON SPAWNING WATER

SPONSOR(S): REPRESENTATIVE(S) EDGMON

02/14/07	(H)	READ THE FIRST TIME - REFERRALS
02/14/07	(H)	FSH, RES
02/28/07	(H)	FSH AT 8:30 AM BARNES 124
02/28/07	(H)	Heard & Held
02/28/07	(H)	MINUTE(FSH)
03/02/07	(H)	FSH AT 8:30 AM BARNES 124
03/02/07	(H)	Heard & Held
03/02/07	(H)	MINUTE(FSH)
03/05/07	(H)	FSH AT 8:30 AM BARNES 124
03/05/07	(H)	Heard & Held
03/05/07	(H)	MINUTE(FSH)
05/09/07	(H)	FSH AT 8:30 AM BARNES 124
05/09/07	(H)	Heard & Held

05/09/07	(H)	MINUTE(FSH)
09/24/07	(H)	FSH AT 4:30 PM Newhalen
09/24/07	(H)	Heard & Held
09/24/07	(H)	MINUTE(FSH)
09/25/07	(H)	FSH AT 2:00 PM Naknek
09/25/07	(H)	Heard & Held
09/25/07	(H)	MINUTE(FSH)
09/26/07	(H)	FSH AT 8:30 AM Dillingham
09/26/07	(H)	Heard & Held
09/26/07	(H)	MINUTE(FSH)
02/18/08	(H)	FSH AT 8:30 AM BARNES 124
02/18/08	(H)	Heard & Held
02/18/08	(H)	MINUTE(FSH)
02/20/08	(H)	FSH AT 8:30 AM BARNES 124
02/20/08	(H)	Heard & Held
02/20/08	(H)	MINUTE(FSH)
02/22/08	(H)	FSH AT 8:30 AM BARNES 124
02/22/08	(H)	Heard & Held
02/22/08	(H)	MINUTE(FSH)
02/25/08	(H)	FSH AT 8:30 AM BARNES 124

WITNESS REGISTER

DICK MYLIUS, Director
 Central Office
 Division of Mining, Land and Water
 Department of Natural Resources (DNR)
 Anchorage, Alaska
POSITION STATEMENT: Responded to questions on HB 134.

LYNN TOMICH KENT, Director
 Division of Water
 Department of Environmental Conservation (DEC)
 Anchorage, Alaska
POSITION STATEMENT: Responded to questions on HB 134.

ACTION NARRATIVE

CHAIR PAUL SEATON called the House Special Committee on Fisheries meeting to order at [8:37:54 AM](#). Representatives Seaton, Edgmon, LeDoux, Johansen, Johnson, and Wilson were present at the call to order. Representatives Holmes arrived as the meeting was in progress.

HB 134-PROTECTION OF SALMON SPAWNING WATER

[8:38:21 AM](#)

CHAIR SEATON announced that the only order of business would be HOUSE BILL NO. 134, "An Act relating to conservation and protection of wild salmon production in drainages affecting the Bristol Bay Fisheries Reserve; and providing for an effective date." [The motion to adopt CSHB 134, Version 25-LS0381\M, Kane, 2/22/07, was left pending at the 2/28/07 meeting.] [The motion to adopt CSHB 134, Version 25-LS0381\O, Kane, 1/22/08, was left pending at the February 18, 2008 meeting.]

CHAIR SEATON explained that the motion to adopt Version M was still pending, with an objection, when a motion to adopt Version O was offered. He asked that Representative Johansen withdraw the motion for Version O, and the committee would proceed with the pending Version M.

REPRESENTATIVE JOHANSEN removed his motion for the adoption of CSHB 134, Version 25-LS0381\O, Kane, 1/22/08.

[8:39:06 AM](#)

There being no objection, it was so ordered.

CHAIR SEATON asked if there was an objection to removing the motion to adopt CSHB 134, Version 25-LS0381\M, Kane, 2/22/07.

REPRESENTATIVE JOHNSON objected, stating that he would prefer to adopt [the original bill]. He offered his belief that this version was more inclusive, not as targeted toward a specific project, and a better version.

CHAIR SEATON explained that Version M is not the original bill, but is the version that exempted fisheries, transportation, and energy projects. He noted that Version M was being discussed, though not adopted, when the committee went to Bristol Bay to hear public testimony.

The committee took an at-ease from 8:40 a.m. to 8:48 a.m.

[8:48:14 AM](#)

CHAIR SEATON announced that the committee has Version M, Version O, and the original bill in front of them.

REPRESENTATIVE JOHANSEN asked Representative Edgmon to clarify the changes to each of the bill versions.

CHAIR SEATON clarified that he has requested to remove the motion to adopt Version M, and Representative Johnson has objected to that motion.

[8:49:43 AM](#)

REPRESENTATIVE EDGMON noted that the original version of HB 134 was introduced on February 14, 2007, and the subsequent Version M was offered as a working draft on February 22, 2007. He explained that on page 2, line 23, of Version M "transportation projects, energy projects, or seafood processing" were added as categories that would be exempted from the applied penalties.

REPRESENTATIVE WILSON pointed out that the language "unincorporated communities; or", was also added to Version M on page 2, line 22.

[8:51:42 AM](#)

REPRESENTATIVE JOHANSEN asked if the original bill was ever discussed, or was there an immediate motion to adopt Version M.

REPRESENTATIVE EDGMON deferred.

CHAIR SEATON offered his belief that there were discussions about the broad implications of the original bill.

REPRESENTATIVE JOHNSON asked to speak to his objection. He expressed his belief that the original bill is not specifically anti-Pebble Mine, and pertains to clean water and saving the salmon habitat. He commented that the original bill better broadens the protection of salmon, and is not a special legislation. He allowed that he would like to see the bill become even broader and he does not agree with "grandfathering" to allow already existing water polluters to continue.

[8:54:17 AM](#)

CHAIR SEATON asked for specification of the "grandfathering" language in the original bill. He offered his belief that the testimony from Alaska Department of Fish & Game (ADF&G) and Department of Natural Resources (DNR) states that there is no "grandfathering" and that this bill would shut down most of the lodges.

REPRESENTATIVE JOHNSON explained that he is referring to the prohibited list "permitted before the effective date." He

expressed his belief that the term "grandfathering" applies to "already permitted."

[8:55:14 AM](#)

REPRESENTATIVE EDGMON summarized that all of the bill versions were put forth in the spirit of authorizing higher levels of conservation and providing the most stringent standards to ensure salmon protection in the Bristol Bay area. Currently, he said, there is one major [mining] project moving toward the permitting phase, and he read that there are now three large mining companies doing exploration in the salmon fisheries area. He commented that it is his belief that the people of Bristol Bay want the salmon fishery protected above all else. He recommended that Version O is the best means for accomplishing this protection.

[8:56:28 AM](#)

CHAIR SEATON clarified that there is a motion before the committee to adopt Version M, with an objection.

REPRESENTATIVE LEDOUX asked if Representative Johnson supports the original bill.

[8:57:42 AM](#)

REPRESENTATIVE JOHNSON said that he does not support any version of this bill. He offered his belief that the bill will pass out of committee and he will try to make the bill the "least egregious." He relayed that he can not support this bill as he has a responsibility to his constituents. He expressed his concern that HB 134 will be harmful, so he feels the challenge to make it less egregious.

CHAIR SEATON announced that public testimony is closed, but that DNR and ADF&G representatives are on line to answer questions.

[8:58:58 AM](#)

REPRESENTATIVE JOHANSEN said that, after listening to hundreds of people testify during the committee trip to the Bristol Bay area, he recognizes that the salmon are the most important thing to this region. He expressed his belief that the original bill does the most to protect the salmon resource, which is the cultural and economic value of the area. He explained that Version M gives "unincorporated communities" a different

standing than incorporated communities, as there are different issues between the two. He went on to explain that transportation, energy, and seafood projects are included in the exemption. He offered his belief that energy projects, including dam projects, are a huge concern for the health of a salmon population. He allowed that seafood processing plants have challenges with waste and clean water. He relayed that he heard during the Bristol Bay testimony that protecting the salmon is the highest priority, and he offered his belief that the original bill best protects the salmon.

REPRESENTATIVE LEDOUX pointed out that "unincorporated communities" was added to Version M to give them the same status as "ordinary existing and future municipal uses" mentioned in Section 2(b)(3).

[9:03:51 AM](#)

CHAIR SEATON replied that there is a difference between "unincorporated communities" and "municipal uses," as one is for a use, and the other is not defined. He offered his belief that the undefined use, and the lack of definition for "transportation projects, energy projects, or seafood processing" is problematic. He said that he also objects to adopting Version M.

[9:05:40 AM](#)

CHAIR SEATON reminded the committee that there is still a motion to adopt Version M, and that there is an objection by Representative Holmes and Representative Johnson.

REPRESENTATIVE HOLMES said that she will withdraw her objection to Version M.

CHAIR SEATON announced that the committee will vote to adopt Version M.

REPRESENTATIVE LEDOUX asked whether it makes a difference for Version M to be adopted in order to move on to Version O, which she prefers.

CHAIR SEATON responded that a motion to adopt Version O will still be available after the committee determines whether to adopt Version M, or retain the original bill.

[9:08:39 AM](#)

REPRESENTATIVE EDGMON asked to clarify whether the vote on adopting Version M really matters, as the committee can still adopt Version O.

CHAIR SEATON confirmed that the committee can continue to have motions to adopt future working documents.

REPRESENTATIVE EDGMON said that he is going to vote to adopt Version M, and then ask for a motion to adopt Version O.

REPRESENTATIVE LEDOUX asked to clarify that a yes vote is to adopt Version M as the working draft.

CHAIR SEATON said that the vote is to adopt Version M as the working draft.

[9:09:59 AM](#)

A roll call vote was taken. Representatives LeDoux, Holmes, and Edgmon voted in favor of adopting Version M as the working draft. Representatives Wilson, Johnson, Johansen, and Seaton voted against it. Therefore, the motion to adopt Version M as the working draft failed by a vote of 3 yeas-4 nays.

REPRESENTATIVE EDGMON moved to adopt Version O as the working document.

REPRESENTATIVE JOHANSEN objected.

[9:11:11 AM](#)

REPRESENTATIVE JOHANSEN said that he is objecting for the same reasons he objected to Version M.

REPRESENTATIVE JOHNSON stated that Version O is a further narrowing of special legislation to target a specific operation. He offered his belief that Version O does little to protect the salmon habitat from anything other than mining, and is a disservice to the constituents, the salmon, and the fresh water of Bristol Bay.

[9:12:23 AM](#)

REPRESENTATIVE WILSON said that she is going to vote against Version O. She expressed her belief that the economy of Southeast Alaska is in trouble, and that there is a lot of

mining, and mining potential in this area. She allowed that mining and salmon fishing co-exist in Southeast Alaska and she is concerned that Version O may change that.

[9:13:19 AM](#)

REPRESENTATIVE EDGMON said that he heard quite clearly [during testimony in Bristol Bay] that there is great concern and desire to protect the watershed from any unintended consequences. He specified that Version O attempts to bring the mining industry up to the same standard as the oil industry. He said that he supports increasing economic development. He stated that AS 46 lists a penalty of \$10 per gallon of oil that enters an anadromous stream or other fresh water environment, and he asked why there should be less stringent standards for the mining industry. He noted that the Pebble Partnership and other mining claims are moving forward, while announcing that there will be no net loss to fisheries. He expressed his belief that it seems contradictory for the mining industry to set up a fund to enhance the fisheries, while at the same time putting mining by-products into anadromous streams. He referred to the confusion during the Oil Pollution Act Of 1990, and offered his desire to never again have to put laws into place after the fact. He reminded the committee that they heard what the people in the region wanted.

[9:15:47 AM](#)

REPRESENTATIVE WILSON said that she listened and heard comments from both sides. She noted that many people want more economic development. She said that she heard concerns that the permitting is in DNR, however the permitting is now back with ADF&G. She offered her belief that the permitting process is working, but that Version O narrows things down too much and it will shut down many areas that are good for the economy. She wanted to know the reason for change when the process is working to protect the fish and promote economic development.

REPRESENTATIVE LEDOUX said that this procedural gambit concerns her. She expressed her belief that she heard people ask for "a chisel, not a sledge hammer." She compared Version O to the chisel, as it addresses the concerns of the Bristol Bay region. She relayed that the public testimonies toward the original bill and Version M are concerned with unintended consequences.

REPRESENTATIVE JOHNSON observed that comparing a fine of \$10 a gallon for an oil spill with a fine of \$1 million for drawing water from a stream is not fair and equal treatment.

[9:22:04 AM](#)

CHAIR SEATON directed attention to the title of HB 134, noting that there is clarification in the bill title that this is not a statewide bill, but a bill about Bristol Bay.

[9:23:21 AM](#)

A roll call vote was taken. Representatives LeDoux, Holmes, Edgmon, Seaton voted in favor of adopting Version O as the working draft. Representatives Johansen, Johnson, and Wilson voted against it. Therefore, Version O was adopted as the working draft by a vote of 4 yeas-3 nays.

[9:24:06 AM](#)

REPRESENTATIVE EDGMON offered three amendments to Version O.

[9:24:45 AM](#)

The committee took an at-ease from 9:24 to [9:26:14 AM](#).

[9:26:16 AM](#)

CHAIR SEATON brought attention to Amendment 1, labeled 25-LS0381\O.1, Kane, 2/19/08, which read:

Page 3, line 6:

Delete "appropriate resolution"

Insert "**law** [APPROPRIATE RESOLUTION]"

REPRESENTATIVE EDGMON moved to adopt Amendment 1.

REPRESENTATIVE JOHNSON objected for discussion.

[9:26:52 AM](#)

REPRESENTATIVE EDGMON explained that Amendment 1 would remove "appropriate resolution", and replaces it with "law" because a resolution is advisory and non-binding and would not have any impact.

REPRESENTATIVE WILSON asked for a definition of "controlled land" on page 3, line 5.

REPRESENTATIVE EDGMON explained that this is a technical term from AS 38.

CHAIR SEATON offered his belief that this is land the state does not own but has selected for possible ownership.

[9:28:33 AM](#)

REPRESENTATIVE JOHNSON offered his concern with the concept that the legislature is the final decision maker. He quoted "what we need here is science not political science" and said that the decision should be based upon research and appropriate findings by the departments. He expressed his belief that testimony does not qualify a legislator to make the same decisions as made by a scientist in the field. He expressed his great concern with HB 134 becoming a political decision instead of a scientific decision. He stated that he prefers maintaining the word "resolution" in Amendment 1 because it is non-binding.

CHAIR SEATON explained that, although the Legislative Legal and Research Services said that a resolution is only advisory, it is not possible to obtain a permit unless the legislature agrees. In this bill a resolution creates a binding commitment, as the permitting cannot go forward without it. He offered his belief that the issue is for the appropriate use of the two terms, "law" or "resolution". If the construction of Version 0 is to be binding, then the appropriate term needs to be used, and in this case the term should be "law." He agreed with Representative Johnson that the secondary issue is whether the legislature should be involved.

[9:32:04 AM](#)

REPRESENTATIVE JOHNSON expressed his belief that the larger issue is legislative involvement. He agreed that, if this bill is to be passed, "law" would be the better term.

REPRESENTATIVE JOHANSEN opined that a new legislature might not have the same opinion.

[9:33:38 AM](#)

CHAIR SEATON directed attention to the Legislative Legal and Research Services memo by Brian Kane, dated February 12, 2008, that read:

The court stated that when the legislature wishes to act in an advisory capacity, it may do so by resolution; but, when it intends its action to have a binding effect on people outside the legislature, it may do so only by following the enactment procedures for bills.

REPRESENTATIVE JOHNSON removed his objection to Amendment 1.

[9:35:03 AM](#)

There being no objection, Amendment 1 was adopted.

[9:35:12 AM](#)

REPRESENTATIVE EDGMON moved to adopt Amendment 2, labeled 25-LS0381\0.2, Kane, 2/19/08, which read:

Page 3, lines 2 - 5:

Delete ", a permit or lease for the exploration, development, or extraction of minerals as authorized by AS 38.05.135, or a cooperative mineral leasing agreement as authorized by AS 38.05.137"

Insert "or a lease or other approval for disposition of minerals authorized under AS 38.05.185 - 38.05.275"

REPRESENTATIVE JOHNSON objected for discussion.

REPRESENTATIVE EDGMON reported that Amendment 2 is at the recommendation of DNR for a more specific definition.

[9:36:37 AM](#)

REPRESENTATIVE JOHNSON opined that the amendment speaks to his problem with the entire bill, namely that the bill crosses the line of specific legislation and equal protection under the law. He offered his belief that the bill is now closer to being unconstitutional, as the intent is specific to a region, a project, and a company.

REPRESENTATIVE WILSON asked what the effect will be of the statute changes in Amendment 2.

[9:38:40 AM](#)

DICK MYLIUS, Director, Division of Mining, Land and Water, Central Office, Department of Natural Resources (DNR), explained that state law defines two broad categories of minerals: leasable minerals such as oil, gas, coal, phosphates, and oil shale which are opened to competitive bidding; and locatable minerals, such as gold, silver, and platinum which are acquired by staking mining claims. The original Version 0 defined leasable minerals, and the amended version defines locatable minerals.

[9:41:37 AM](#)

MR. MYLIUS listed the leasable minerals to include coal, phosphates, oil shale, sodium, sulfur, potassium, oil and gas, and geothermal resources. He explained that at statehood, the Alaska State Constitution established that any minerals acquired by staking mining claims under federal law would also be available under state law. There is not a staked claim process for leasable minerals, which include oil and gas, as DNR determines the areas to be opened, and offers a competitive lease.

REPRESENTATIVE JOHNSON asked if an open pit coal mine would be allowed in Bristol Bay.

MR. MYLIUS responded that DNR initiates the coal process by deciding the areas to be opened for leases, whereas hard rock mining is initiated by the staking of claims.

REPRESENTATIVE JOHNSON confirmed that DNR has the authority to decide that should there be a coal deposit, there could be a lease.

MR. MYLIUS responded that if the department determines there is coal then it is possible to obtain the appropriate permits.

REPRESENTATIVE EDGMON said that he does not believe there is any coal in the region.

[9:44:07 AM](#)

REPRESENTATIVE LEDOUX asked if DNR could currently permit a coal mine, or only if Amendment 2 is adopted.

MR. MYLIUS responded that DNR could permit a coal mine both currently and with Amendment 2, but they could not with the unamended Version 0.

[9:44:46 AM](#)

REPRESENTATIVE HOLMES clarified that the unamended Version 0 would allow DNR to permit with legislative approval.

MR. MYLIUS responded that Version 0 without Amendment 2 creates a difficult situation, as DNR will only be able to lease with legislative approval. He offered his belief that it will be difficult for DNR to offer a permit, without knowing if there will be legislative approval.

REPRESENTATIVE WILSON asked to clarify what DNR will be able to do if Amendment 2 is approved.

MR. MYLIUS replied that DNR can currently approve mining permits for locatable minerals through the appropriate process. He opined that should Amendment 2 pass, DNR could not approve hard rock mining permits, as legislative approval would be necessary before a mine could be developed. He offered his belief that it would be possible to obtain a conditional state agency approval, contingent on the final approval of the legislature.

[9:49:53 AM](#)

REPRESENTATIVE WILSON opined that this is the concern of Representative Johnson.

CHAIR SEATON offered his agreement, but identified that the problem is in Section 3. He declared that Amendment 2 correctly defines locatable minerals. He offered his belief that Amendment 2 is a technical amendment, and not a substantive amendment.

REPRESENTATIVE JOHNSON removed his objection to Amendment 2.

REPRESENTATIVE WILSON asked if it is possible to have both leasable and locatable mineral claims in the same area.

MR. MYLIUS responded that it is possible, especially in a large geographic area.

[9:52:10 AM](#)

REPRESENTATIVE WILSON withdrew her objection to Amendment 2.

[9:52:54 AM](#)

There being no objection, Amendment 2 is adopted.

[9:53:06 AM](#)

REPRESENTATIVE EDGMON brought attention to Amendment 3, labeled 25-LS0381\0.4, Kane, 2/19/08, which read:

Page 2, line 25, following "for":
Insert "(A)"

Page 2, line 27, following "zinc":
Insert "or;
(B) gold associated with any of the
minerals listed in (A) of this paragraph."

REPRESENTATIVE EDGMON moved to adopt Amendment 3.

There being no objection, Amendment 3 was adopted.

[9:54:27 AM](#)

REPRESENTATIVE JOHNSON moved to adopt Conceptual Amendment 4, which would delete from page 2, line 28 to page 3, line 7. He explained that this would remove the legislative purview.

CHAIR SEATON clarified that Conceptual Amendment 4 would eliminate all of Section 3 from Version O.

[9:55:04 AM](#)

REPRESENTATIVE EDGMON objected.

REPRESENTATIVE EDGMON explained that Section 3 allows for a legislative review from a broad policy perspective, as the value of the fishery and the anadromous streams constitute a circumstance in which the legislature should be involved. He emphasized that the bill only applies to the Bristol Bay Fisheries Reserve and that the prospect for anadromous streams to be in conflict with large scale mining operations does not currently exist elsewhere in the state. He argued that Section 3 is pertinent to the bill, but stated that he is not as intent to keep Section 3 as he is to keep Section 2, which he described as the "teeth in the legislation."

REPRESENTATIVE JOHANSEN referred to the many sections of the Alaska Lands Act, AS 38.05, and expressed his concern that DNR approval of permits will have to wait for legislative approval. He concurred with Representative Johnson's statement that "what we need here is science not political science," and voiced his disagreement with Section 3, which he describes as "trumping the regulators that we've given the authority to make those decisions." He offered his support for Conceptual Amendment 4.

[9:59:34 AM](#)

REPRESENTATIVE LEDOUX posed the possibility for DNR to make preliminary permitting decisions subject to legislative final approval.

CHAIR SEATON offered his belief that this is beyond the scope of Conceptual Amendment 4.

REPRESENTATIVE JOHANSEN opined that this permitting process proposal is reverse to the way government should work.

[10:01:46 AM](#)

CHAIR SEATON explained that Conceptual Amendment 4 would only delete Section 3 from Version 0, and nothing more.

[10:02:57 AM](#)

REPRESENTATIVE LEDOUX expressed her belief that her earlier question to the permitting procedure is relevant to the amendment. She asked again if DNR will do a preliminary permit subject to legislative approval.

CHAIR SEATON replied that Section 3 states that the permit or lease would not be effective "until the legislature by appropriate law specifically finds that the entry will not constitute danger to the fishery."

REPRESENTATIVE LEDOUX offered her belief that this is the intent, but she is asking for clarification from DNR.

[10:04:34 AM](#)

MR. MYLIUS acknowledged that DNR has not had the opportunity to review the proposed process, but he offered his interpretation. He explained that [locatable] mining rights are applicant

driven, so DNR would be obligated to process an application for authorization. He opined that the DNR process would only allow for conditional approval, and then the application would proceed to the legislature for final approval.

REPRESENTATIVE WILSON posed the scenario that removal of the legal description for Bristol Bay in Section 3 would permit statewide authority.

MR. MYLIUS agreed that would be the result of the removal of the legal description. He noted that the current legal description does not include the uplands.

CHAIR SEATON directed attention back to Conceptual Amendment 4, which will delete Section 3 from Version 0 and not make changes to any existing statutes.

REPRESENTATIVE WILSON offered a conceptual amendment to Conceptual Amendment 4.

REPRESENTATIVE JOHANSEN asked for a clarification from the sponsor of Conceptual Amendment 4.

REPRESENTATIVE JOHNSON explained that the intention is to remove Section 3 from Version 0 and to leave the existing statute unchanged.

[10:08:45 AM](#)

REPRESENTATIVE WILSON asked for a clarification from DNR.

MR. MYLIUS explained that the current statute only applies to oil and gas surface entry permits in Bristol Bay, so if Section 3 is removed, the oil and gas restrictions in Bristol Bay would remain unchanged.

CHAIR SEATON posed that the boundaries for Bristol Bay would remain the same if Section 3 is deleted from Version 0.

MR. MYLIUS agreed.

REPRESENTATIVE WILSON withdrew her conceptual amendment to Conceptual Amendment 4.

[10:10:13 AM](#)

REPRESENTATIVE LEDOUX posed that an application for an oil or gas lease in Bristol Bay can not be issued until the legislature finds that the lease will not constitute a danger to the fisheries.

MR. MYLIUS stated that this is partly correct. He explained that the statute prohibits any surface entry within the Bristol Bay Fisheries Reserve for an oil or gas lease. He allowed that DNR could issue an oil or gas lease for directional drilling as long as there is not a surface entry within the Bristol Bay Fisheries Reserve. If a company stated that it is not possible to access the oil or gas through directional drilling, it would become necessary to request a permit from the legislature for a surface entry within the Bristol Bay Fisheries Reserve.

REPRESENTATIVE LEDOUX posed a situation whereby a company deemed it necessary for a surface entry within the Bristol Bay Fisheries Reserve, and asked if the permit procedure would be initiated through DNR or the legislature.

[10:12:48 AM](#)

MR. MYLIUS said that DNR has never gone through this process, but he speculated that DNR would request the initial permit application include a requirement for directional drilling. When the company subsequently submits their development plan, they would state the need for a surface entry within the Bristol Bay Fisheries Reserve, as the company has determined that directional drilling is not possible. He did not know whether DNR would then allocate a conditional approval dependent on legislative approval, or if another process would be pursued.

[10:13:30 AM](#)

REPRESENTATIVE JOHNSON asked for speculation of applicant reactions to a requirement for legislative approval prior to DNR lease approval for permits in the Bristol Bay Fisheries Reserve.

MR. MYLIUS offered his belief that this would be an added consideration to the applicants, but he would "not hazard a guess" as to the reaction.

[10:15:58 AM](#)

A roll call vote was taken. Representatives Wilson, Johansen, Johnson, and Seaton voted in favor of Conceptual Amendment 4. Representatives Holmes, Edgmon, and LeDoux voted against it.

Therefore, Conceptual Amendment 4 passed by a vote of 4 yeas-3 nays.

REPRESENTATIVE JOHNSON moved to adopt Conceptual Amendment 5, which he explained would delete everything in Section 2.

[10:17:11 AM](#)

CHAIR SEATON replied that Conceptual Amendment 5 would nullify the bill as it would only leave legislative findings, therefore, it was not in order for amendment procedures. He asked that the request be withdrawn.

REPRESENTATIVE JOHNSON withdrew his request to adopt Conceptual Amendment 5.

[10:18:03 AM](#)

REPRESENTATIVE JOHNSON moved to adopt Amendment 6, labeled 25-LS0381\0.7, Kane, 2/25/08, which read:

Page 2, line 12, following "operation":

Insert "or the discharge of a hazardous substance"

Page 2, line 16, following "operation":

Insert "or the discharge of a hazardous substance"

Page 2, following line 24:

Insert new paragraphs to read:

"(2) "discharge" means any addition of a hazardous substance to water described in this section;

(3) "hazardous substance" means

(A) an element or compound that, when it enters in or upon the surface or subsurface water of the state, presents a danger to the public health or welfare, including a danger to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or vegetation are found;

(B) oil; or

(C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14);"

Renumber the following paragraph accordingly.

REPRESENTATIVE WILSON objected for discussion.

REPRESENTATIVE JOHNSON offered his belief that Version 0 is targeted legislation, and that Amendment 6 allows for true protection of Bristol Bay. He explained that Amendment 6 adds "discharge of a hazardous substance," includes any polluters, and allows for equivalent fines regardless of the hazardous subsistence. He stated that Amendment 6 affirms that "if you pollute, you will pay." He noted that his intention is to keep Bristol Bay water clean and protect the fish.

[10:20:32 AM](#)

CHAIR SEATON expressed his belief that Amendment 6 would remove the need for the proposed Alaska Clean Water Initiative.

REPRESENTATIVE JOHNSON said that he does not think this would be the case, as Amendment 6 only applies to Bristol Bay. He noted that it is not his intention to include the whole state in this amendment.

[10:21:34 AM](#)

REPRESENTATIVE HOLMES offered her belief that Amendment 6, lines 12-15, which define "hazardous substance" are vague, and she requested a clearer definition.

REPRESENTATIVE JOHANSEN asked Ms. Kent for a definition for "hazardous substance."

LYNN TOMICH KENT, Director, Division of Water, Department of Environmental Conservation (DEC), offered to research the definition of "hazardous substance."

[10:23:04 AM](#)

REPRESENTATIVE JOHANSEN asked for the federal definition of "hazardous substance."

REPRESENTATIVE EDGMON directed attention to line 13 of Amendment 6 which reads "water of the state," noting that Version 0 is concerned with the waters of Bristol Bay.

[10:24:25 AM](#)

CHAIR SEATON asked if the sponsor's intention with "or the discharge of a hazardous substance" indicates any amount, or is to be applied only to levels above the standards in the permitting process.

REPRESENTATIVE JOHNSON responded that his intention is to indicate any amount of pollution into the water, but he is not opposed to a friendly amendment using the current water standards.

[10:26:28 AM](#)

REPRESENTATIVE EDGMON offered his belief that both he and Representative Johnson agree on the concept of HB 134. He said that he does not want a broad application for the bill, preferring to focus on sulfide mining operations.

REPRESENTATIVE JOHNSON expressed his belief that Version 0 is special legislation, stating that Amendment 6 makes Version 0 a clean water bill, not an anti-mining bill. He indicated his support for the protection of clean water and the salmon habitat, but he does not want to target a specific industry anywhere in the state. He said that he wants to see completion of the permit process for Pebble Mine before he makes a determination about the mine.

[10:29:31 AM](#)

REPRESENTATIVE LEDOUX asked how Amendment 6 mitigates any effect on the Pebble Mine.

REPRESENTATIVE JOHNSON responded that the amendment will do nothing to mitigate the effects on any industry, but it removes Version 0 from the special legislation category. He mentioned that Amendment 6 would make this area a sanctuary.

[10:30:49 AM](#)

REPRESENTATIVE LEDOUX opined that if there is not any mining, then there won't be anything else.

REPRESENTATIVE JOHNSON declared that "if there is going to be pollution of any kind in a district, there should be pollution of no kind in a district."

REPRESENTATIVE LEDOUX asked if Representative Johnson advocates the removal of all planning and zoning regulations.

10:31:19 AM

CHAIR SEATON reminded the committee not to move beyond the scope of Amendment 6.

MS. KENT responded that she received a copy of Amendment 6 and she has researched a definition for "hazardous substance." She identified AS 46.03.826, definition 5, which reads:

... means an element or compound which when it enters into the atmosphere or in or upon the water or surface or subsurface land of the state presents an imminent or substantial danger to the public health or welfare including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found; (B) oil; or (C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

REPRESENTATIVE JOHNSON explained that the only difference he intended with the definition Ms. Kent read is to remove the atmospheric discharge from the Amendment 6 definition.

CHAIR SEATON noted that the Amendment 6 definition did not include a reference to "imminent danger."

10:33:25 AM

MS. KENT read from the statute definition: "presents an imminent and substantial danger to the public health or welfare, including but not limited to... ."

CHAIR SEATON asked Ms. Kent if the inclusion of those words make a difference in the interpretation or enforcement.

MS. KENT offered her belief that the question will be whether a permitted discharge meets the definition of a hazardous substance. She explained that DEC would not consider a discharge that was permitted under the terms of their water quality standards to be an imminent and substantial danger to the public health and welfare.

CHAIR SEATON posed the question that the removal of "imminent and substantial" from Amendment 6 allows for a different interpretation.

10:34:52 AM

MS. KENT said that DEC does not interpret a permitted discharge to present a danger, imminent and substantial or otherwise.

CHAIR SEATON offered his belief that it is best to keep the definitions, and he asked the sponsor if that was acceptable.

REPRESENTATIVE JOHNSON replied that it is his intention to be more restrictive, in order to protect this area.

10:36:16 AM

REPRESENTATIVE WILSON asked DEC if this amendment would interfere with the current fishing industry, from fishermen to processors, in Bristol Bay.

MS. KENT offered that her interpretation of Amendment 6 allows other kinds of permitted discharges.

10:37:11 AM

CHAIR SEATON asked the sponsor if the addition of "or the discharge of a hazardous substance" is to not allow permitting for the discharge of a hazardous substance.

REPRESENTATIVE JOHNSON replied that this is his intention.

REPRESENTATIVE EDGMON asked DEC to detail the civil or monetary penalty for violating the hazardous substance laws.

MS. KENT requested the assistance of an attorney to answer the question.

REPRESENTATIVE EDGMON asked if DEC considered the language in Amendment 6 to be necessary or desired.

MS. KENT asked to defer the response to an attorney.

10:39:24 AM

REPRESENTATIVE JOHNSON asked for a DEC determination as to the necessity of HB 134 for permitting in Bristol Bay.

MS. KENT responded that DEC has not taken a position on the bill. She said that DEC has a good set of water quality

standards, as well as a good permitting process for all types of operations that discharge waste water.

CHAIR SEATON clarified that the intent of the amendment is to prevent any hazardous discharge including any new discharge permits for wastewater, pollution, or mixing zones.

REPRESENTATIVE JOHNSON added that Amendment 6 also carries the same penalties for all polluters.

[10:41:15 AM](#)

A roll call vote was taken. Representatives Johnson and Johansen voted in favor of Amendment 6. Representatives LeDoux, Holmes, Edgmon, Wilson, and Seaton voted against it. Therefore, Amendment 6 failed by a vote of 2 yeas-5 nays.

CHAIR SEATON asked if there were any more amendments, and, seeing none, he asked for discussion of the bill.

[10:42:11 AM](#)

REPRESENTATIVE JOHNSON expressed his belief that HB 134 is targeted legislation. He offered his estimate of the undeveloped resource value and calculated that the cost to the state will be in the billions if there is a determination that this is a "takings" issue. He said that any legal proceedings could include NAFTA, and consequently could be contested outside Alaska. He said that he does not support the legislation as he believes it to be ill advised. He announced that the legislation puts a "not open for business" sign on Alaska. He allowed that there is not enough information to make a decision regarding the Pebble Mine and he will not make a decision until the feasibility study is completed.

[10:45:52 AM](#)

REPRESENTATIVE EDGMON opined that this is a good bill that creates higher conservation standards by applying a stiff monetary penalty if there is damage done to anadromous streams through the operation of a sulfide mine. He agreed that the bill is specific to the Bristol Bay region. He explained that he is not passing judgment on the mining industry, as this bill only pertains to the Bristol Bay region. He posed a question to the Pebble Partnership that if they are truly looking at "no net loss, no damage" to the fisheries, they should support HB 134 to help gain the public's trust. He stated that "takings" is not

an issue as the exploration stage is not complete; otherwise the state will be in a legal battle with many mining companies which are currently exploring in Alaska. He reminded the committee that the Alaska State Constitution declares to "protect the public health, life, and safety of its residents" and engage in higher conservation standards. He offered his belief that HB 134 upholds the constitution and presents an opportunity for the state to clarify "takings." He offered his belief that HB 134 is a good, necessary bill to protect the resources of Bristol Bay.

[10:49:48 AM](#)

CHAIR SEATON offered his belief that HB 134 does not address water quality standards. He specified that the bill does not mention waters that are not contiguous with the aquifers that flow into the anadromous watersheds. He expressed his belief that the "takings" issue needs to be more directed in further legislation. He opined that the House Special Committee on Fisheries has done as much as possible with HB 134.

[10:51:15 AM](#)

REPRESENTATIVE HOLMES said that while she thinks HB 134 is not a perfect bill, she believes the committee has conducted extensive hearings and she is voting to move the bill out of committee.

CHAIR SEATON announced that HB 134 is public policy issue, so a conflict of interest may be stated on the record, but these conflicts are not used for voting in the committee.

[10:53:20 AM](#)

REPRESENTATIVE EDGMON explained that HB 134 was not introduced to engender any benefits to the Native corporation he represents or to himself. He allowed that the bill does not provide benefits for anyone, but the intent is to provide protection for the watershed and for the fishing industry.

[10:54:15 AM](#)

REPRESENTATIVE EDGMON moved to report CSHB 134, Version 25-LS0381\0, Kane, 1/22/08, as amended, out of committee with individual recommendations and no fiscal notes.

[10:54:33 AM](#)

REPRESENTATIVE JOHNSON objected.

10:54:42 AM

A roll call vote was taken. Representatives LeDoux, Holmes, Edgmon, Wilson, and Seaton voted in favor of adopting CSHB 134, Version 25-LS0381\0, Kane, 1/22/08, as amended, with individual comments. Representatives Johnson and Johansen voted against it. Therefore, CSHB 134(FSH) was reported out of the House Special Committee on Fisheries by a vote of 5-2.

10:55:28 AM

REPRESENTATIVE SEATON announced that CSHB 134(FSH) was reported from the House Special Committee on Fisheries with individual recommendations and indeterminate fiscal notes.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 10:55 a.m.