

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

March 19, 2008

3:38 p.m.

MEMBERS PRESENT

Senator Charlie Huggins, Chair
Senator Bert Stedman, Vice Chair
Senator Lyda Green
Senator Lesil McGuire
Senator Gary Stevens
Senator Bill Wielechowski
Senator Thomas Wagoner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 284

"An Act relating to the membership of the Board of Fisheries;
and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE JOINT RESOLUTION NO. 14(RLS)

Urging the United States Congress to enact H.R. 2419, sec.
12801, so that individuals receiving a damage award from the
Exxon Valdez oil spill can benefit from the income averaging and
retirement contribution provisions of the bill.

MOVED CSHJR 14(RLS) OUT OF COMMITTEE

Confirmation Hearing:

Alaska Commercial Fisheries Entry Commission

Frank Homan - Juneau AK

CONFIRMATION ADVANCED

PREVIOUS COMMITTEE ACTION

BILL: SB 284

SHORT TITLE: BOARD OF FISHERIES: MEMBERSHIP

SPONSOR(s): SENATOR(s) GREEN

02/19/08	(S)	READ THE FIRST TIME - REFERRALS
02/19/08	(S)	RES, FIN
03/11/08	(S)	RES AT 5:30 PM BUTROVICH 205

03/11/08 (S) Heard & Held
03/11/08 (S) MINUTE(RES)
03/19/08 (S) RES AT 3:30 PM BUTROVICH 205

BILL: HJR 14

SHORT TITLE: EXXON PLAINTIFFS; H.R. 2419, SEC. 12801

SPONSOR(S): FISHERIES

03/14/07 (H) READ THE FIRST TIME - REFERRALS
03/14/07 (H) FSH, RES
03/19/07 (H) FSH RPT CS(FSH) NT 7DP
03/19/07 (H) DP: JOHNSON, LEDOUX, WILSON, JOHANSEN,
HOLMES, EDGMON, SEATON
03/19/07 (H) FSH AT 8:30 AM BARNES 124
03/19/07 (H) Moved CSHJR 14(FSH) Out of Committee
03/19/07 (H) MINUTE(FSH)
03/21/07 (H) FSH AT 8:30 AM BARNES 124
03/21/07 (H) <Bill Hearing Canceled>
04/03/07 (H) RES REFERRAL WAIVED
02/28/08 (H) RLS AT 5:00 PM CAPITOL 120
02/28/08 (H) Moved CSHJR 14(RLS) Out of Committee
02/28/08 (H) MINUTE(RLS)
02/29/08 (H) RLS RPT CS(RLS) NT 7DP
02/29/08 (H) DP: KERTTULA, JOHNSON, SAMUELS,
FAIRCLOUGH, GUTTENBERG, HARRIS, COGHILL
02/29/08 (H) RETURNED TO RLS COMMITTEE
03/03/08 (H) TRANSMITTED TO (S)
03/03/08 (H) VERSION: CSHJR 14(RLS)
03/04/08 (S) READ THE FIRST TIME - REFERRALS
03/04/08 (S) RES
03/19/08 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE PAUL SEATON,
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HJR 14.

PAUL SHADURA, representing himself
Soldotna AK

POSITION STATEMENT: Supported HJR 14.

JERRY MCCUNE
Cordova District Fishermen United
Cordova AK

POSITION STATEMENT: Supported HJR 14.

FRANK HOMAN, Commissioner
Commercial Fisheries Entry Commission (CFEC)
Juneau AK

POSITION STATEMENT: Nominee for reappointment to the Board of Fisheries.

DWIGHT KRAMER, Chairman
Kenai Area Fisherman's Coalition
Kenai AK

POSITION STATEMENT: Opposed SB 284.

GERRY MERRIGAN, representing himself
Petersburg AK

POSITION STATEMENT: Opposed SB 284.

LEROY CABANA, representing himself
Homer AK

POSITION STATEMENT: Opposed SB 284.

WADE WILLIS, representing himself
Anchorage AK

POSITION STATEMENT: Supported SB 284.

ROD ARNO, Executive Director
Alaska Outdoor Council
Anchorage AK

POSITION STATEMENT: Strongly supported SB 284.

PAUL SHADURA, Executive Director
Kenai Peninsula Fishermen's Association
Kenai AK

POSITION STATEMENT: Opposed SB 284.

YAKOV REUTOV
K-Bay Fisherman's Association
Homer AK

POSITION STATEMENT: Opposed SB 284.

JESSIE NELSON, representing herself
Homer AK

POSITION STATEMENT: Opposed SB 284.

ACTION NARRATIVE

CHAIR CHARLIE HUGGINS called the Senate Resources Standing Committee meeting to order at [3:38:32 PM](#). All members were present at the call to order.

CSHJR 14(RLS)-EXXON PLAINTIFFS; H.R. 2419, SEC. 12801

[3:40:39 PM](#)

CHAIR HUGGINS announced CSHJR 14(RLS) to be up for consideration.

SENATOR GREEN asked what the net affect the resolution would have.

REPRESENTATIVE PAUL SEATON, sponsor of HJR 14, replied that this resolution came from the House Fisheries Committee. H.R. 2419 is a farm and energy bill that allows the over 30,000 plaintiffs in the Exxon lawsuit, if they get a judgment from the Supreme Court, to take this one-time amount and income average over a three-year period just like farmers can. It would also increase the cap for a deposit into a retirement account each year. He explained that U.S. Senators Murkowski and Stevens were able to have this provision included in H.R. 2419, which is now in conference committee.

CHAIR HUGGINS asked what the present time line is for the Exxon Valdez settlement.

REPRESENTATIVE SEATON replied the decision from the Supreme Court should happen some time in June.

SENATOR GREEN asked again what the net effect this measure would have and if this income would have to be declared in the year of the claim.

REPRESENTATIVE SEATON replied it would be totally dependent on the individual circumstances because the settlements are based on a claimant's participation in a fishery. It would allow fishermen to put a larger amount into their IRA or SEP account. Right now \$25,000 is the maximum amount per year that can go into a SEP IRA and this would raise that to \$100,000. The justification is that people didn't have this money over a long period of time when they could have invested it for their retirement.

SENATOR GREEN asked if any other groups had been allowed this type of provision.

REPRESENTATIVE SEATON answered that farmers can now income average over a three-year period because they have highly variable income.

CHAIR HUGGINS asked if the Exxon claimants would be able to income average from 1994 through 2008.

[3:47:19 PM](#)

REPRESENTATIVE SEATON answered he understood it that way.

[3:47:53 PM](#)

SENATOR STEVENS said fishermen have variable incomes from year to year and asked if an average \$75,000 award could be spread out over a three-year period - \$25,000 per year.

REPRESENTATIVE SEATON replied that's the way it works for farmers. This measure applies to the time of the original award in 1994 through the present; so that \$75,000 would be spread out over more years.

SENATOR STEVENS said that concept is justified because fishermen have been so mistreated through this whole thing. "It's taken years and years to be resolved."

SENATOR WIELECHOWSKI asked, for instance, if someone gets \$1 million, instead of paying the maximum tax rate of \$370,000 this year at a 37.5 percent rate, they can spread it out over 13 years (back to 1994) and pay a much lower tax rate and also be able to put \$4,000/year into a Roth IRA.

REPRESENTATIVE SEATON answered that was his understanding.

SENATOR STEDMAN asked Representative Seaton if he is a beneficiary of this potential settlement and if so, how much.

REPRESENTATIVE SEATON answered that he had tenders that participated in the cleanup and lost income, but he didn't know how much that would be because tenders' distributions haven't been calculated yet.

SENATOR WAGONER said the methodology is there, but the figure isn't.

SENATOR STEDMAN asked if the beneficiaries have been defined yet.

REPRESENTATIVE SEATON answered 33,000 class action folks are listed.

CHAIR HUGGINS asked if former legislators might be candidates on the list.

SENATOR WAGONER replied that he was one.

REPRESENTATIVE SEATON added that former Speaker Sam Cotton was also on the list.

CHAIR HUGGINS went back to page 1, lines 14 and 15, about the increase in deductions and asked if that was referring to Roth IRAs.

REPRESENTATIVE SEATON replied yes.

[3:54:12 PM](#)

PAUL SHADURA, representing himself from Soldotna, said he is one of the claimants and this has been going on a long time and he supported HJR 14. Our delegation has been working towards finalization and it's important to realize that this bill allows those claimants who are residents of the state to maintain some kind of retirement prospects here. Increasing the amount that could be put into an IRA would take the burden off the state as the claimants' age and require more assistance. The bill has a lot of good things that will help keep the incomes within the state. Otherwise, most of this money would go directly to the federal government.

JERRY MCCUNE, Cordova District Fishermen United, said his organization has a large percentage of the claimants. He explained that this would not get fishermen out of paying taxes; because once the money is withdrawn from an IRA, taxes have to be paid. It just increases the amount (to \$100,000) that fishermen can put into an IRA because for many years after the spill they couldn't fish and the price of fish was down because of the spill when they could. So they couldn't contribute to their retirements for all those years. The income averaging would drop their tax obligation from 35 percent to around 28 percent.

[3:56:59 PM](#)

SENATOR MCGUIRE said only certain kinds of settlements are taxable. Compensatory medical settlements are not taxable, for instance. She asked if they are trying to narrow down the punitive damages.

REPRESENTATIVE SEATON answered yes and the settlement in the Supreme Court is for punitive damages. He was hoping this would encourage people to put more money into a retirement account because "if a settlement comes through, there's going to be a lot of money on the table quickly and people often make mistakes and don't invest wisely...."

SENATOR MCGUIRE said the resolution is phrased confusingly; it's not referring to compensatory damages and really doesn't replace lost income. Punitive damages designed to deter, she explained, and the policy behind that is if someone is being compensated for a loss to make him whole, you wouldn't tax him; but punitive damages are taxed. She thought the language should be clearer.

SENATOR GREEN agreed with her and pointed out that language on line 9 says "suffered economically." As a result of that, she assumed it was compensatory damages and not taxable. She asked if claimants would actually be able to recalculate their taxes over the last 14 years.

REPRESENTATIVE SEATON replied that's what he understands H.R. 2419 says.

MR. MCCUNE said his update on the bill's negotiations indicates that it's not 14 years now, but he thought it was \$100,000 for the IRA and a five-year income averaging.

CHAIR HUGGINS said this resolution is not binding; it's just showing support. He asked if people who were commercial fishermen when this happened were included in this resolution.

REPRESENTATIVE SEATON replied that was his understanding.

SENATOR WAGONER said some people elected not to be in the class action lawsuit and worked out their own settlements.

MR. MCCUNE said at least one plaintiff lives in all of the states including HI.

[4:03:42 PM](#)

CHAIR HUGGINS asked if these claimants had already been compensated in some shape or form from this occurrence.

MR. MCCUNE replied that there was a quick settlement among fishermen and other affected people from Alyeska. Exxon paid for the hearing right off the bat because Prince William Sound had

no season; the compensatory damages came out and haven't all been awarded yet because some of that money is held back. Plus mitigation happened. For any settlement, fishermen can pretty well figure half the money will go to attorneys and the other half to the IRS - except this lets them put it into an IRA. There were compensatory damages, but each claimant had to pay his share of mitigation whether they were fishing or working.

CHAIR HUGGINS asked how much of an award a "lucky person" would have gotten up front.

REPRESENTATIVE SEATON replied that he wouldn't classify any of the claimants as lucky. The compensatory numbers were based on a person's fishing history. He didn't know of anyone who received more than they would have fishing minus their expenses which had to be taken out. The compensatory damages were calculated on a person's direct loss.

CHAIR HUGGINS asked how much money a good fisherman would receive.

MR. MCCUNE replied that's hard to answer because it depends on where you fished. In Prince William Sound some of those guys probably received \$20,000 to \$70,000 minus the mitigation.

REPRESENTATIVE SEATON replied a seine boat captain and permit owner would have received much more.

[4:07:57 PM](#)

SENATOR WAGONER said every fishery is different. Payments were made to some fishermen early because they couldn't fish and those ranged from \$20,000 to \$100,000 based on an individual's previous five years of production. In addition, the Native corporations agreed to a settlement, but then gave up those monies to join the punitive damage lawsuit. It's very complex.

SENATOR STEVENS moved to report CSHJR 14(RLS) from committee with individual recommendations and attached fiscal note(s).

SENATOR WAGONER objected to state that he is a party to the lawsuit; then he removed his objection. There being no further objections CSHJR 14(RLS) moved from committee.

[4:10:41 PM](#) at ease [4:13:19 PM](#)

Confirmation- Commercial Fisheries Entry Commission (CFEC)

[4:13:25 PM](#)

CHAIR HUGGINS announced the committee next would hear from the Governor's nominees to the Commercial Fisheries Entry Commission.

FRANK HOMAN, Commissioner, Commercial Fisheries Entry Commission (CFEC), said he is up for reconfirmation.

CHAIR HUGGINS mentioned he had been a resident of Alaska for more than 60 years and was in the Special Forces.

MR. HOMAN related that was one of the highlights of his life. He was a three-time volunteer for first the Army, the Airborne and then Special Forces. He spent most of his time in North Carolina and was out in 1965 before Viet Nam. He was in the Intelligence Unit and debriefed teams coming back from Viet Nam and made lessons learned for those going over. He moved to Alaska when his father worked on the Alaska Highway during the war. When the war was over, he moved to Ketchikan with his father and became a fisherman.

SENATOR STEVENS said it has been a pleasure working with Mr. Homan over the years and asked him to comment on the Homan McDowell Marketing Service.

MR. HOMAN related that in 1975 Eric McDowell had a small business called McDowell Marketing Services and at the same time he had an economic consulting business. They were often hiring each other on their projects and formed a partnership that lasted for many years. They parted and he went on to work with the Senator Sturgulewski and the legislature. Mr. McDowell continued with what is now the McDowell Group.

CHAIR HUGGINS asked what he thought about the retirement liability since he was in the legislature before it became an issue.

MR. HOMAN said it was a long time ago and he wouldn't have guessed it could have happened.

CHAIR HUGGINS asked what major learning experience he has had based on being a part of the process.

[4:22:55 PM](#)

MR. HOMAN answered that the three commissioners sit as an appeal board that people can use when they are denied an entry permit. What means a lot to the commissioners is that they are dealing

with peoples' livelihoods. So, if they are denied, they lose the access to the fishery and the only option is to buy into it. The commissioners have to look at the history of the person and the participation they had in a fishery and try to come to a fair and reasonable decision based on statutes and regulations. "It's not a decision that is made lightly....Each case is important to somebody."

He explained that the commission has two appeal processes. It could take several years because people have opportunities to provide information and ask for hearings.

CHAIR HUGGINS asked if he had any experience with permit buy-backs.

MR. HOMAN answered they hadn't had a permit buy-back on the state level although the CFEC has a provision for it that requires a complicated analysis. An optimum number study is prerequisite to buy-backs in several fisheries. The problem with state statute is that the buy-backs have to be funded by someone - either by the fishermen or the legislature and neither have allocated those funds. The federal government could fund through the Magnuson Stevens Act.

CHAIR HUGGINS asked if he is concerned about any aspect of fisheries.

[4:26:02 PM](#)

MR. HOMAN answered the Gulf of Alaska ground fishery where state and federal waters are divided at the three-mile line. The North Pacific Management Council is likely to limit the ground fish in the Gulf sometime in the next few years. When that happens, people will fish in the open state waters if the state doesn't do something - in his opinion.

[4:27:22 PM](#) at ease [4:27:46 PM](#)

SENATOR STEVENS moved to forward Mr. Homan's name to the full body. There were no objections and it was so ordered.

CHAIR HUGGINS read the statement indicating that forwarding his name did not commit anyone to vote in his favor on the floor.

[4:28:53 PM](#) at ease [4:31:01 PM](#)

SB 284-BOARD OF FISHERIES: MEMBERSHIP

4:31:08 PM

CHAIR HUGGINS announced SB 284 to be up for consideration. Before the committee was CSSB 284 () 25-LS1500\V.

SENATOR LYDA GREEN, sponsor of SB 284, indicated she didn't have anything more to add.

4:31:31 PM

DWIGHT KRAMER, Chairman, Kenai Area Fisherman's Coalition, opposed SB 284. They didn't support it because it dictates Board of Fisheries seat requirements for select user groups and takes away the governor's flexibility to fill seats as necessary to maintain balance between user groups and diverse demographic areas throughout the state. He said the need for regulatory changes in the state's personal use fisheries have been minimal. The Kenai and Kasilof Rivers provide the largest personal use fishery opportunity in the state and the board has made very few changes to the regulations in this fishery.

4:34:21 PM

GERRY MERRIGAN, representing himself from Petersburg, opposed SB 284. He said he had been attending Board of Fisheries meetings on an off for the last 20 years for Southeast and statewide crab and Bering Sea issues. If you look at the volume of proposals the board goes through, you get a healthy respect for what they do.

He opposed SB 284 because it designates seats by sectors and limits family affiliation and what family members can do for a living. Both are very impractical. He explained that the pool of knowledgeable good people who are willing to do this job and make the necessary time commitment and fill out the new financial disclosure forms is small; this legislation will make that pool even smaller. If the goal is to have a fair board that follows a good public process and uses the best science, this legislation doesn't do it. Designating seats to sectors will do just the opposite. The result will be members that will be entrenched and represent just their sector and not the public interest at large.

MR. MERRIGAN said the issues before the board are related 70 percent to commercial use, 20 percent sport and personal use and 5 percent subsistence and probably 5 percent related to allocation issues. Unfortunately, the 5 percent of allocation issues gets all the attention. He asked the committee to look at the entire volume of board decisions over multiple cycles of addressing the same issues. This legislation seems to be

responding to one event at one time that is no doubt important to those constituents. But the legislation proposes to fix a system that is not broken and uses a sledge hammer to do it. Some people think the process is fair if they just got what they wanted, but it's really an issue of whether the public can provide input along with the ADF&G and the Department of Law. The board members can then make a decision weighing all the factors.

CHAIR HUGGINS asked what might improve the board's performance.

MR. MERRIGAN replied to get good people on it because the current members are getting worn out. Sometimes people - just to make a point - will put in the same proposals to create a paper trail. So, while he didn't want to deny the public access, he thought coming up with a way to eliminate duplicate proposals and ones that are already in regulation would be worth looking into. In terms of going for fair and balanced, you have to step back and look at it over a longer period of time and try to not react to a single issue at a single meeting.

[4:40:02 PM](#)

SENATOR GREEN observed that a de facto appointment by designation of user groups is already practiced; this would just admit what is being done and clearly define it.

MR. MERRIGAN said while there are no designated seats and you want good people, he thought they had always tried to keep Alaska's regions represented. The issues are very complicated region to region.

SENATOR GREEN agreed.

SENATOR WAGONER commented for people who hadn't tried to actually find qualified people to serve on the board and then tried to talk them into serving that a very small pool of people is available and they do it for the fish and not the user group.

[4:44:28 PM](#)

SENATOR WAGONER wanted to dispel the notion that some people have about the number Cook Inlet fishermen who have served on the board and said in fact, not one has been on the board for the last 35 years - and the biggest controversy every three years is Cook Inlet. It's not a matter of commercial/sport representation; it's a matter of fairness.

CHAIR HUGGINS said that's a debatable subject.

[4:45:24 PM](#)

LEROY CABANA, representing himself from Homer, said he owns a seine boat, but he sport and personal fishes, too. He opposed SB 284. He said he is a lifelong Alaskan person and is offended and outraged to be singled out as a commercial user when he does them all.

CHAIR HUGGINS asked if he goes to Board of Fisheries meetings.

MR. CABANA answered yes and added that years of high emotion means nasty as usual.

SENATOR STEVENS asked if he thought Mr. Merrigan's summary if the spread of issues was correct.

[4:51:05 PM](#)

MR. CABANA answered yes. Most of the stuff the board deals with provides good management. He agreed that the members must have broad experience.

CHAIR HUGGINS asked how he would improve the process.

MR. CABANA answered he thought the board process had improved except for the Susitna Valley problems. The vetting of people who are serving on the board is better.

[4:53:21 PM](#)

CHAIR HUGGINS asked when he sees the major change in the demographics that are projected to be even more major going forward, does that cause him to think the board needs to change how the resource is viewed.

MR. CABANA replied that the management of the Southcentral resources are going to be under continuous pressure just like they are in the Lower 48 and the voters would eventually prevail as far as establishing a larger percentage of the harvest. The argument is about why the fish aren't there and restructuring the board won't fix that.

[4:54:41 PM](#) at ease [4:56:19 PM](#)

WADE WILLIS, representing himself from Anchorage, said he subsists on the Copper River; he has a degree in marine biology and has submitted several proposals and supported SB 284. It will insure that the board has diversity among user groups by making sure they are fairly represented.

[4:59:34 PM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council, strongly supported SB 284.

[5:02:29 PM](#)

PAUL SHADURA, Executive Director, Kenai Peninsula Fishermen's Association, opposed SB 284 and said this measure would not encourage diverse views and promote the ability to negotiate. He pointed out that the statute also says board members should not be appointed with regard to geographic location or user group.

[5:05:22 PM](#)

YAKOV REUTOV, K-Bay Fisherman's Association from Homer, opposed SB 284. The Board Of Fisheries should make decisions based on sound biological data, not on an agenda. Besides this bill only provides for two members to represent commercial fishermen and that wasn't fair either. From his experience, commercial fishermen are the most conservation minded of people because they want to have enough fish for everybody. They will be the first to support the biologists and fisheries experts in all areas. This is just another blatant disregard by the sport fish industry for the Board of Fisheries process.

CHAIR HUGGINS noted that he is a sport fisherman and that the bill provides for only two sport fishermen, as well. So, it would be equal by design.

[5:07:11 PM](#)

JESSIE NELSON, representing herself from Homer, opposed SB 284 saying the board makes rules for fishermen all over the state for all gear types and a multitude of species and experience is vital. She said she is a commercial and sport fisherman as most commercial fishermen are. She said commercial fishermen understand the intricacies of gear and the rules more so than sport fishermen. Most sport fishermen think commercial fishermen are bad and their livelihoods should be taken away. To put five sport personal use members and two commercial members on the board in this context is just plain wrong she said.

[5:09:20 PM](#)

SENATOR STEVENS remarked that he was concerned about the amount of activity the board has that affects commercial fisheries and the limited numbers of commercial fishermen who would be allowed to serve on it.

CHAIR HUGGINS held SB 284 and commented that the more the membership gravitates toward user groups, the more self defeating the process becomes.

There being no further business to come before the committee, Chair Huggins adjourned the meeting at [5:10:48 PM](#).