

**ALASKA STATE LEGISLATURE  
HOUSE SPECIAL COMMITTEE ON FISHERIES**

March 15, 2011

5:04 p.m.

**MEMBERS PRESENT**

Representative Steve Thompson, Chair  
Representative Craig Johnson, Vice Chair  
Representative Alan Austerman  
Representative Bob Herron  
Representative Scott Kawasaki  
Representative Bob Miller

**MEMBERS ABSENT**

Representative Lance Pruitt

**COMMITTEE CALENDAR**

OVERVIEW: COMMERCIAL FISHERIES ENTRY COMMISSION (CFEC)

- HEARD

HOUSE BILL NO. 20

"An Act providing for a priority for a fishery that is restricted to residents when fishing restrictions are implemented to achieve a management goal."

- HEARD & HELD

HOUSE BILL NO. 181

"An Act requiring the Department of Fish and Game annually to collect confidential information related to days worked by commercial fishing crewmembers and to compile statistical data."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 20

SHORT TITLE: PERSONAL USE FISHING PRIORITY

SPONSOR(S): REPRESENTATIVE(S) STOLTZE, KELLER

01/18/11	(H)	PREFILE RELEASED 1/7/11
01/18/11	(H)	READ THE FIRST TIME - REFERRALS
01/18/11	(H)	FSH, RES

03/15/11 (H) FSH AT 5:00 PM CAPITOL 120

BILL: HB 181

SHORT TITLE: COMMERCIAL FISHING CREWMEMBER STATISTICS

SPONSOR(s): REPRESENTATIVE(s) AUSTERMAN

03/09/11 (H) READ THE FIRST TIME - REFERRALS

03/09/11 (H) FSH, FIN

03/15/11 (H) FSH AT 5:00 PM CAPITOL 120

**WITNESS REGISTER**

BRUCE TWOMLEY, Commissioner

Commercial Fisheries Entry Commission (CFEC)

Juneau, Alaska

**POSITION STATEMENT:** Presented the overview of the Commercial Fisheries Entry Commission (CFEC).

REPRESENTATIVE BILL STOLTZE

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Introduced HB 20, as prime sponsor.

CHARLIE SWANTON, Director

Division of Sport Fish

Alaska Department of Fish and Game (ADF&G)

Juneau, Alaska

**POSITION STATEMENT:** Responded to questions during the hearing on HB 20.

BEN MULLIGAN, Legislative Liaison

Alaska Department of Fish & Game (ADF&G)

Anchorage, Alaska

**POSITION STATEMENT:** Responded to questions during the hearing on HB 20.

REPRESENTATIVE ALAN AUSTERMAN

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Introduced HB 181, as prime sponsor.

ERIN HARRINGTON, Staff

Representative Alan Austerman

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Presented HB 181, on behalf of Representative Austerman, prime sponsor.

MARCUS HARTLEY, Vice President and Senior Economist  
Northern Economics Consulting  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 181.

ERIK O'BRIEN, Member  
Southwest Alaska Municipal Conference (SWAMC)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 181.

JEFF REGNART, Director  
Division of Commercial Fisheries  
Alaska Department of Fish & Game (ADF&G)

**POSITION STATEMENT:** Testified in support of HB 181.

JULIANNE CURRY, Executive Director  
Petersburg Vessel Owner's Association  
Petersburg, Alaska

**POSITION STATEMENT:** Testified in support of HB 181.

SHAWN DOCHTERMANN, Executive Director  
Crewman's Association  
Kodiak, Alaska

**POSITION STATEMENT:** Testified in support of HB 181.

MARK VINSEL, Executive Director  
United Fisherman of Alaska  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 181.

#### **ACTION NARRATIVE**

[5:04:07 PM](#)

**CHAIR STEVE THOMPSON** called the House Special Committee on Fisheries meeting to order at 5:04 p.m. Present at the call to order were Representatives Thompson, Miller, and Austerman. Representatives Johnson, Herron, and Kawasaki arrived while the meeting was in progress.

#### **OVERVIEW: Commercial Fisheries Entry Commission (CFEC)**

[5:04:35 PM](#)

CHAIR THOMPSON announced that the first only order of business would be a presentation from the Commercial Fisheries Entry Commission (CFEC).

[5:05:49 PM](#)

BRUCE TWOMLEY, Commissioner, Commercial Fisheries Entry Commission (CFEC), began by distinguishing the two departmental agencies, Commercial Fisheries Division and CFEC, stating that the division implements regulations established by the Board of Fisheries (BOF) to govern ongoing commercial fishery activities, while the CFEC is an independent agency with separate statutory and regulatory authority to limit the number of units of gear in a commercial fishery via limiting the number of licensed captains. A fishery is authorized by the BOF and is defined by an area, the gear used, and the targeted resource. The limitation process is imposed when certain conditions are met: limitations would serve conservation/help prevent economic distress among fishermen. The Alaska Constitution establishes these two needs, and statute requires and defines the appropriate action to be followed by the CFEC. A four-year window of activity is used, in accordance with Alaska Supreme Court directives, to establish the maximum number of units of gear to be allowed in a fishery, to wit: the maximum can be no lower than the highest number of units of gear in one of the four years prior to the limitation decision. Further, due to the transient nature of the fishing fleet, applicants are ranked based on past participation and economic dependence. The process is inherently lengthy and involves a number of legal challenges, but once completed a list is compiled by point ranking and the commission is able to issue permits accordingly. However, the maximum number has been exceeded in the past, particularly during the early salmon fisheries, due to two primary reasons. One is a lawsuit, which resulted in more applicants for some salmon fisheries than the CFEC anticipated; and the second is that statute requires the CFEC to issue a permit despite exceeding the maximum established fishery number, if an applicant holds a point rank indicating a high dependency on a fishery.

[5:10:34 PM](#)

REPRESENTATIVE AUSTERMAN noted that the limited entry act allows permits to be allocated based on conservation, the economic health and stability of the fishing industry, and the optimal number of permits. He asked how the economic health is

determined, and how it relates to the number of permits authorized.

MR. TWOMLEY replied that a fishery is usually limited because it's already experiencing economic trouble, which was the case with the 26 salmon fisheries in the early 1970's, when the CFEC was initiated. The maximum number of permits doesn't directly relate to the economic health of a fishery. The CFEC can request an optimum number study, which establishes the number that would be accurate for conservation purposes and economic health. The results would indicate that either a fishery has become too exclusive, or that a fishery is in trouble and permit numbers need to be reduced. In the first instance more permits would be issued, but in the second case the only method CFEC has to reduce the number of permits issued is via a buy-back program, which is financed by fishermen.

REPRESENTATIVE AUSTERMAN maintained interest in understanding how the economic value of each permit is determined.

MR. TWOMLEY said an optimum number study would be conducted, which includes an examination of the fishery, over a long period of time, in order to model the effects of all the known variables and establish future projections. The study measures the rates of economic return to individual fishermen. He said the process is lengthy, elaborate, intrusive, and expensive, requiring review of individual income tax returns, and other applicable records. To a follow up question, he established that halibut IFQ's [individual fishing quotas] are not under the purview of the CFEC.

[5:16:23 PM](#)

MR. TWOMLEY continued, stating that the CFEC work is a challenge because of the constitutional requirement to consider and uphold the rights of all citizens to access the state's resources. He described the tension that exists due to the considerations that must be given to the various statutory provisions, which creates a constitutional "tight rope" upon which the CFEC balances its actions; between the Alaska Supreme Court and the needs of a given fishery. If the Supreme Court finds cause, it can overturn and make retroactive, a CFEC decision, with far reaching results which affect all user types. Hence, the CFEC proceeds with caution and diligence and, to date, no limited entry fishery has been struck down by the Supreme Court. Further, he said that because of the limited entry statutes being in place, Alaska has averted a possible influx of fishing

pressure from fleets displaced by the failure of salmon fisheries located along the west coast states. At the end of the process, a permit is issued, which is typically transferable and allows Alaskan families to maintain access to traditional fisheries. He reported that approximately 153 more permits have been transferred between Alaskan families than have been transferred from Alaskans. However, migration of permits, that is permits retained by persons who are no longer residents, presents a less appealing statistic. He said that fisherman pay their own way, as CFEC is funded through the licensing process. Further, he reported that the CFEC case load is now a manageable number. One pending case is casting a significant shadow on the agency, the class action suit of Carlson v. State of Alaska. It is in its fifth appeal before the Alaska Supreme Court, and when the judgment is handed down it could affect 95,000 class members. Monetary settlements will be provided to only a fraction of those participants, and the approximate 80,000 members not receiving awards may challenge the CFEC calculations, upon which the disbursements will have been based. He predicted that only a small percentage may carry merit, but even 10,000 claims would present a daunting task to the commission.

The committee took a brief at-ease at 5:24 p.m.

#### **HB 20-PERSONAL USE FISHING PRIORITY**

[5:24:38 PM](#)

CHAIR THOMPSON announced that the next order of business would be HOUSE BILL NO. 20, "An Act providing for a priority for a fishery that is restricted to residents when fishing restrictions are implemented to achieve a management goal."

[5:28:18 PM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, speaking as the prime sponsor, said the intent of the bill is to ensure local fish for subsistence users and local fisherman.

[5:30:50 PM](#)

REPRESENTATIVE AUSTERMAN asked for further discussion regarding the subsistence and personal use definitions. The bill may need to have the language clarified.

REPRESENTATIVE STOLTZE indicated that the personal and subsistence use terms have been used interchangeably in the bill to ensure that Alaskans are served.

[5:33:24 PM](#)

REPRESENTATIVE HERRON referred to the back-up material in the committee packet and asked for comment on whether this bill effectively handicaps the BOF.

REPRESENTATIVE STOLTZE said no, and opined that the BOF will be better served because the bill neutralizes biases, clarifies political facets, and removes perceived handcuffs for making policy decisions. He reported that, during the last BOF cycle, a measure was introduced to restrict the dip net authorization to 10 fish per family, and, also, litigation has been lodged by fishery associations to eliminate personal use dip net fisheries altogether. An estimated 100,000 Alaskans participate in this fishery, and it should be prioritized for Alaskans first, he opined.

[5:36:26 PM](#)

REPRESENTATIVE AUSTERMAN recalled that a statute, or regulation, may exist, which establishes a priority for the personal use fishery.

REPRESENTATIVE STOLTZE offered to provide that information to the committee.

[5:37:28 PM](#)

REPRESENTATIVE HERRON said intercept debates occur in the district he represents, and asked whether HB 20 addresses intercept fisheries.

REPRESENTATIVE STOLTZE stated his belief that the bill may help the situation on the Yukon River and similar intercept fisheries.

REPRESENTATIVE HERRON restated, and said that the escapement grounds are up-river from the personal use fisheries and commercial fisheries occur further down river. He asked how escapement can be achieved under those circumstances, and does the bill modulate that type of multiple uses.

REPRESENTATIVE STOLTZE stated his belief that the bill allows ADF&G the appropriate latitude to ensure that escapement goals are achieved.

[5:41:39 PM](#)

REPRESENTATIVE MILLER queried what agency would have authority for making the decisions called for in the bill.

REPRESENTATIVE STOLTZE replied that the regional department biologist determines whether escapement is being attained, and it appears that, currently, the decisions are made too late to benefit the personal use fisheries.

[5:43:25 PM](#)

REPRESENTATIVE AUSTERMAN questioned whether the bill language protects the resource specifically for Alaskan residents.

REPRESENTATIVE STOLTZE agreed that clarity may need to be considered, and "resident" may not be the best term.

[5:45:22 PM](#)

REPRESENTATIVE JOHNSON predicted that when HB 20 becomes law there will be a lawsuit.

REPRESENTATIVE STOLTZE pointed out that lawsuits have already been filed by Cordova United Fisherman, based on residency criteria. Therefore, the battle has already begun.

[5:47:00 PM](#)

CHARLIE SWANTON, Director, Division of Sport Fish, Alaska Department of Fish and Game (ADF&G), said the issue is contentious regarding fisheries resources, and reported that perhaps 55 personal use fisheries exist across the state, ranging from the harvest of salmon to shellfish. To a committee question, he said the department has a neutral position on HB 20.

[5:49:13 PM](#)

REPRESENTATIVE MILLER noted that the bill language takes an affirmative stance and asked whether the department will be able to maintain a neutral position.

MR. SWANTON stated his belief that the department has historically done a reasonably good job of managing the personal use fisheries while meeting escapement objectives and providing opportunities for the co-existence of multiple fisheries under the current regimen.

[5:52:53 PM](#)

CHAIR THOMPSON observed that if there is a restriction due to a declining run, it could require a larger escapement to ensure that the personal use fishery would be fulfilled, and asked for comment.

MR. SWANTON responded:

It certainly could manifest itself in that framework. It just depends on the fishery, how it's configured and where the personal use fishery fits into the stream of various uses.

[5:54:12 PM](#)

REPRESENTATIVE JOHNSON asked if it is consistent with every fishery that, when restrictions are implemented, the priority is always adhered to in order to achieve management goals.

MR. SWANTON replied that meeting established escapement numbers is the primary goal.

[5:55:59 PM](#)

REPRESENTATIVE HERRON requested that the department provide a position on HB 181, rather than remaining neutral.

[5:58:05 PM](#)

BEN MULLIGAN, Legislative Liaison, Alaska Department of Fish & Game, offered that discussions have occurred and an official position can be brought to the committee, upon request.

CHAIR THOMPSON asked that a written response be made to the committee.

REPRESENTATIVE AUSTERMAN indicated that this is a policy issue for the legislature, providing a directive to the BOF, regardless of whichever position the department holds.

6:01:06 PM

REPRESENTATIVE STOLTZE indicated that there will be a large number of Alaskans who will testify on HB 20. He called for a deliberative committee process for crafting the bill, and said he would like to avoid an initiative process from constituents; cautioning that pent up frustration surrounds the issue.

CHAIR THOMPSON announced that HB 20 would be held over.

The committee took a brief at-ease at 6:03 p.m.

**HB 181-COMMERCIAL FISHING CREWMEMBER STATISTICS**

6:03:34 PM

CHAIR THOMPSON announced that the final order of business would be HOUSE BILL NO. 181, "An Act requiring the Department of Fish and Game annually to collect confidential information related to days worked by commercial fishing crewmembers and to compile statistical data."

6:06:18 PM

REPRESENTATIVE ALAN AUSTERMAN, Alaska State Legislature, speaking as the prime sponsor, paraphrased from the sponsor statement, which read as follows [original punctuation provided]:

Economists estimate that the Alaska seafood industry is the largest private sector employer in the state. In November 2010, the Alaska Department of Labor reported that the industry employed at least 53,500 workers—skippers, crew and processing workers—at some point during ... during 2009. This number is a best estimate, though, because commercial fishermen, as self-employed people, are outside of standard labor data collection. At present, data to describe the workforce of 20,000 crewmembers who work in Alaska's fisheries is almost non-existent. We cannot determine whether an individual crewmember fished 5 days or 250 in a given year; whether he or she fished in a single salmon fishery or in seven fisheries across five regions of the state; on a single boat or on 10; or whether he or she fished a single year as an adventure, or is a 25-year veteran of the industry.

State and federal fishery policy can have strong impacts—positive or negative—on employment in the seafood industry. At present, however, decision makers have extremely limited information that can guide their policy direction with respect to the labor force in the fishing industry. They are asked to formulate resource policies that impact the largest labor force in Alaska, without the benefit of information on that labor force. Time and time again—particularly in federal regulatory arenas—Alaskans have seen regulations implemented that have significant and deleterious impacts on the seafood industry that could have been foreseen, mitigated, or avoided had this information been in hand.

HB 181 is the result of five years of work by fishing industry participants, coastal municipalities, and the Alaska Department of Fish and Game to develop a program and approach that addresses the policy needs and interests of Alaskan fishermen and communities. It establishes a pilot crew data program in the Alaska Department of Fish and Game. Simple year end reports from commercial fishing crew will provide information on fishery participation through the course of the year, and allow the department to link crewmember data with harvest data for aggregated statistical analysis.

HB 181 has a 5-year sunset. This provides the Legislature the opportunity to review the efficacy of the program and ensure it meets the intended policy goals.

[6:08:52 PM](#)

ERIN HARRINGTON, Staff, Representative Alan Austerman, Alaska State Legislature, directed attention to the committee packet and the report titled "Improving Seafood Harvesting Labor Data," prepared for the Southwest Alaska Municipal Conference (SWAMC), and published in March 2007; the first comprehensive report to establish the importance of crewmember data for policy making purposes. She noted that the bill is an important step in filling a significant information gap regarding Alaska's labor force. Fishermen are self employed contract workers, reporting income to the Internal Revenue Service (IRS) on form 1099. The self employed status exempts them from unemployment insurance reporting, which is Alaska's major source for data of valid employment. Thus, the Department of Labor & Workforce

Development (DLWD) cannot include crewmember statistics in employment reports. As a result, it is not possible to characterize the crewmember work force regarding contributions to Alaska's economy, which presents a major disconnect in the system. She referred to the previously named handout, page 23, which mentions the ramifications that occur when municipalities apply for certain federal programs, but lack the data indicating the seasonal industry impacts. Further, lack of this data presents a challenge to communities performing comprehensive planning processes.

[6:17:35 PM](#)

MS. HARRINGTON explained that Section 1 adds a requirement for ADF&G to distribute a crew activity form, to crewmembers, when practicable. Section 2 describes the new program, one in which crewmembers would report fishing activity at year's end and describe the ways in which they had participated. The subsections establish: what information is to be collected; ensures that information will be maintained as confidential and used for statistical purposes only; names the agencies with which the information can be shared; allows rebuttal privileges regarding the accuracy of the information collected; allows the department to establish regulatory authority; and defines the terms used in the bill. She elaborated on the meaning of the term "obligated to a vessel."

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REPRESENTATIVE HERRON asked, "Why don't we require them to fill the log books out."

MS. HARRINGTON indicated that it has been discussed but there is stipulation that crewmembers "shall" fill out log books; it may be an oversight.

REPRESENTATIVE HERRON referred to the fiscal note narrative, and suggested contracting with a private agency to handle the log books, rather than expanding bureaucracy.

[6:25:10 PM](#)

REPRESENTATIVE MILLER inquired how HB 181 will be enforced and reporting handled.

MS. HARRINGTON responded that ADF&G would be honing the process over the next five years and the sunset date provides an

opportunity for the legislature to review the effectiveness of the program. She indicated that enforcement would be handled through the regulatory process.

[6:27:22 PM](#)

MARCUS HARTLEY, Vice President and Senior Economist, Northern Economics Consulting, stated support for HB 181, and said that the need for crewmember data has been a concern since the establishment of the individual fishing quota (IFQ) system. At the time, estimates were made based entirely on assumptions regarding how many crewmembers might be on a particular type of fishing boat. Accurate data still does not exist and analysis of fisheries continues to be absent crewmember information, which, he opined, if it existed, could prove to be helpful. He provided an anecdotal story regarding the convoluted process that ensued when a U.S. Congressional award was made to compensate fishermen damaged by a ruling. Not having information on crewmembers greatly impeded the award process. Also, the lack of crewmember data has an effect on the economic analysis that is currently being undertaken to characterize communities and which could be used to support municipal developments being considered.

[6:32:45 PM](#)

CHAIR THOMPSON noted that the accuracy of the information would be important, and asked whether there is concern for exactitude received from residents versus non-residents.

MR. HARTLEY stated his belief that both resident and non-resident crewmembers participate seriously in the fishing life style, and would understand the importance of providing information to support the activity. He acknowledged the difficulty in arriving at a verifiable, enforceable, and simplistic system. In response to a follow up question, he suggested that a possible means for enforcement of compliance would be to deny renewal of a crewmember's license.

[6:34:51 PM](#)

ERIK O'BRIEN, Member, Southwest Alaska Municipal Conference (SWAMC), stated support for HB 181, and said the organization has worked for seven years to establish a means for gathering crewmember information, which will allow better economic decisions to be made in municipalities.

[6:37:55 PM](#)

JEFF REGNART, Director, Division of Commercial Fisheries, stated support for HB 181, and said that the state sells approximately 20,000 crewmember licenses annually, but fails to recoup any information regarding the participation level of the licensees. Collection of the information will enable the state to more fully describe the contributions of commercial fishing to the state's local economies, as well as provide valuable information to policy and rule making bodies

[6:39:12 PM](#)

REPRESENTATIVE HERRON asked if collection of the data could be accomplished by contracting with the private sector.

MR. REGNART replied that it could be possible; however, the confidentiality issue may be a concern.

[6:40:31 PM](#)

JULIANNE CURRY, Executive Director, Petersburg Vessel Owner's Association, stated support for HB 181, and said the previous attempts to collect this information were met with opposition. However, concerns have been addressed and the lack of crewmember information is a gaping hole in Alaska's employment statistics, not to mention the inability of the fishing industry to gather an accurate picture of a member's presence in the state. To illustrate the difficulty that can occur in tracking crewmember information, she offered that as a crewmember, who also owns a licensed boat, she is not required to purchase a crewmember license.

[6:42:25 PM](#)

SHAWN DOCHTERMANN, Executive Director, Crewman's Association, stated support for HB 181, and suggested a means for collecting the data via a swipe card system. He suggested inserting language that fishing vessels, which deliver seafood products, should be required to furnish crewmen with contract and reconcilable settlement sheets, which would address the issue of crewmembers not receiving contracts and appropriate settlement sheets for tax purposes. He offered to provide further information regarding these issues to the committee.

[6:45:12 PM](#)

REPRESENTATIVE MILLER asked whether accuracy might pose a problem, and what the general attitude might be among crewman requested to fill out paperwork.

MR. DOCHTERMANN stated his belief that collecting the information, as requested in the bill, may not be productive. However, the alternative suggestion of using a swipe card could make it plausible. He said United Fisherman of Alaska did not agree with having the swipe card approach and, thus, the suggestion died in the task force committee meeting.

[6:47:46 PM](#)

MARK VINSEL, Executive Director, United Fisherman of Alaska (UFA), stated support for HB 181, and said that UFA has never opposed collection of this data. He recalled that UFA offered comments on a proposal that required a skipper generated log book, but which proved to have numerous problems.

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REPRESENTATIVE AUSTERMAN said questions would be circulated to the committee for future discussion.

CHAIR THOMPSON announced that HB 181 would be held over.

[6:50:46 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 6:51 p.m.