

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

March 26, 2015

10:04 a.m.

MEMBERS PRESENT

Representative Louise Stutes, Chair
Representative Neal Foster
Representative Bob Herron
Representative Craig Johnson
Representative Charisse Millett
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

Representative Dan Ortiz

COMMITTEE CALENDAR

HOUSE BILL NO. 112

"An Act repealing the Alaska Commercial Fisheries Entry Commission and transferring its duties to a commercial fisheries entry division established in the Department of Fish and Game and the office of administrative hearings; and providing for an effective date."

- MOVED CSHB 112(FSH) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 112

SHORT TITLE: REPEAL CFEC; TRANSFER FUNCTIONS TO ADFG

SPONSOR(S): REPRESENTATIVE(S) STUTES

02/18/15	(H)	READ THE FIRST TIME - REFERRALS
02/18/15	(H)	FSH, RES
03/12/15	(H)	FSH AT 10:00 AM CAPITOL 120
03/12/15	(H)	<Bill Hearing Canceled>
03/19/15	(H)	FSH AT 10:00 AM CAPITOL 120
03/19/15	(H)	Heard & Held
03/19/15	(H)	MINUTE(FSH)
03/26/15	(H)	FSH AT 10:00 AM CAPITOL 120

WITNESS REGISTER

REID HARRIS, Staff
Representative Louise Stutes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As staff for the House Special Committee on Fisheries, explained the changes in CSHB 112, Version W.

JULIANNE CURRY
United Fishermen of Alaska (UFA)
Juneau, Alaska

POSITION STATEMENT: Offered testimony, answered questions, and recommended holding CSHB 112 until the legislative audit is complete.

JERRY McCUNE, President
Cordova District Fishermen United (CDFU)
Cordova, Alaska

POSITION STATEMENT: During the hearing on CSHB 112, offered support for CFEC and answered questions.

MARTIN LUNDY
Southeast Alaska Seiner's Association (SEAS)
Juneau, Alaska

POSITION STATEMENT: During the hearing on CSHB 122, testified in opposition.

AL BURCH
Kodiak, Alaska

POSITION STATEMENT: During the hearing on HB 112, testified in support.

PAUL SHADURA, II
Kasilof, Alaska

POSITION STATEMENT: During the hearing on CSHB 112, testified in opposition.

JAMI ROSS, Representative
Alaska Herring Seiners Association
Homer, Alaska

POSITION STATEMENT: During the hearing on CSHB 112, testified in opposition.

KEVIN BROOKS, Deputy Commissioner
Office of the Commissioner
Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Answered questions related to CSHB 112.

ALPHEUS BULLARD, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: During the hearing on CSHB 112, responded to a question.

BENJAMIN BROWN, Commissioner
Alaska Commercial Fisheries Entry Commission (CFEC)
Juneau, Alaska

POSITION STATEMENT: During the hearing on CSHB 112, testified and responded to previous questions and comments.

ACTION NARRATIVE

[10:04:57 AM](#)

CHAIR LOUISE STUTES called the House Special Committee on Fisheries meeting to order at 10:04 a.m. Representatives Stutes, Kreiss-Tomkins, Foster, and Heron were present at the call to order. Representatives Johnson and Millett arrived as the meeting was in progress.

HB 112-REPEAL CFEC; TRANSFER FUNCTIONS TO ADFG

[10:05:22 AM](#)

CHAIR STUTES announced that the order of business would be HOUSE BILL NO. 112, "An Act repealing the Alaska Commercial Fisheries Entry Commission and transferring its duties to a commercial fisheries entry division established in the Department of Fish and Game and the office of administrative hearings; and providing for an effective date."

[10:06:38 AM](#)

REPRESENTATIVE KREISS-TOMKINS moved to adopt CSHB 112, labeled 29-LS0485\W, Kirsh/Bullard, 3/19/15, as the working document.

CHAIR STUTES objected for discussion.

[10:07:09 AM](#)

REID HARRIS, Staff, Representative Louise Stutes, Alaska State Legislature, paraphrased from the following statement [original punctuation provided]:

Explanation of Changed HB 112, Version A to Version W

Page 11, line 22:

Delete "and quasi-judicial"

Page 13, line 18:

Delete "**hearing procedures**"

Insert "**hearings**"

Page 13, lines 21 -24:

Delete all material and insert:

"(b) An administrative hearing on a contested case under this chapter shall be conducted by the office of administrative hearings (AS 44.64.010). Notwithstanding AS 44.64.060(e), the office of administrative hearings shall render the final administrative decision."

Page 13, line 25, through page 14, line 7:

Delete all material.

Reletter the following subsection accordingly.

Page 14, lines 12- 17:

Delete all material and insert:

"administrative adjudication procedures of AS 44.62 (Administrative Procedure Act) [DO NOT] apply to administrative hearings on contested cases conducted by [ADJUDICATORY PROCEEDINGS OF] the office of administrative hearings (AS 44.64.010) held under this chapter. Final [COMMISSION EXCEPT THAT FINAL] administrative determinations by the office of administrative hearings [COMMISSION] are subject to judicial review as provided in AS 44.62 .560 - 44.62.570."

Page 32, lines 26 - 27:

Delete "regulations adopted by the **department** [COMMISSION] under 8 AS 16.43.110."

Insert "AS 16.43.110(b) [REGULATIONS ADOPTED BY THE COMMISSION UNDER AS 16.43.110]."

Page 34, line 7:

Delete "department"

Insert "office of administrative hearings"

Page 34, line 16:

Delete "department"

Insert "office of administrative hearings"

Page 34, line 24:

Delete "department"

Insert "office of administrative hearings"

Page 34, lines 27 - 30:

Delete "The show cause hearing shall be [CONDUCTED BEFORE A QUORUM OF COMMISSIONERS AND SHALL BE] presided over by a hearing officer appointed by the office of administrative hearings [COMMISSION] who shall rule on the presentation of evidence and other procedural matters."

Insert "The show cause hearing shall be conducted and a decision shall be issued [BEFORE A QUORUM OF COMMISSIONERS AND SHALL BE PRESIDED OVER BY A HEARING OFFICER APPOINTED] by the office of administrative hearings under AS 16.43.110(b) [COMMISSION WHO SHALL RULE ON THE PRESENTATION OF EVIDENCE AND OTHER PROCEDURAL MATIERS]."

Page 35, line 13:

Delete "department"

Insert "office of administrative hearings"

Page 42, following line 16:

Insert a new bill section to read:

Sec. 112. AS 44.62.330(a)(27) is amended to read:

(27) the Department of Fish and Game as to functions relating to the protection of fish and game under AS 16.05.871 or commercial fisheries under AS 16.43;"

Renumber the following bill sections accordingly

[10:07:25 AM](#)

MR. HARRIS explained that Version W, defines which cases are sent to the Office of Administrative Hearings and empowers the Office of Administrative Hearings to make final adjudication rulings themselves without the approval or oversight of the Commissioner of the Department of Fish & Game. He referred to Sec. 20, [AS 16.43.110(b)] page 13, [lines 16-24], which read:

(b) An administrative hearing on a contested case under this chapter shall be conducted by the office of administrative hearings (AS 44.64.010). Notwithstanding AS 44.64.060(e), the office of administrative hearings shall render the final administrative decision.

[10:08:09 AM](#)

MR. HARRIS explained that the change reads that the Department of Fish & Game will issue decisions on the 28 long-pending cases until a decision is issued by the Department of Fish & Game and that decision is contested, those cases will not go before the Office of Administrative Hearings (OAH). He continued that all approved permits will be handled in-house by the division, however, OAH will take jurisdiction of contested cases.

[10:08:47 AM](#)

CHAIR STUTES removed her objection. Without further objection, Version W was before the committee.

CHAIR STUTES opened public testimony.

[10:09:20 AM](#)

JULIANNE CURRY, United Fishermen of Alaska, said she represents United Fishermen of Alaska (UFA) members, and its 36 member organizations participating in fisheries throughout the state and its off-shore federal waters. She expressed that every member is impacted by the results of CSHB 112, and recommends the committee hold the bill until the legislative audit is complete, and until UFN's questions are answered.

REPRESENTATIVE MILLETT asked whether the Alaska Commercial Fisheries Entry Commission (CFEC) has been effective in the last three years, noting that minimal adjudications have been completed.

MS. CURRY responded that it is difficult for her to look the committee in the eye and say that the number of adjudications in the last year is sufficient. However, UFA worked with CFEC to develop a timeline as to how CFEC will implement changes within its organization. She advised that UFA will continue to push on CFEC to ascertain that the remaining 28 cases will be completed as quickly as possible.

10:10:04 AM

REPRESENTATIVE MILLETT surmised that with better management within the CFEC group the timeline would have been 25 years ago when it started receiving cases. She expressed that this bill is moving and it is a serious conversation about a group of employees, and some commissioners, tasked with a job who have been dragging their heels. She opined that the fishermen being adjudicated must not be pleased with the outcomes of CFEC, and asked whether fishermen have weighed in on the pace of the adjudications and their frustrations.

MS. CURRY replied that not many fishermen or board members have expressed frustration with the pace of the adjudications in that they are focusing on their fishing business, tasks ahead, and industry challenges as opposed to looking at CFEC because the organization has functioned fairly well for their purposes. United Fishermen of Alaska (UFA) supports the hiring of an executive director for CFEC who will correct the inefficiencies and operate as a healthier organization, she explained.

10:12:57 AM

REPRESENTATIVE MILLETT questioned why the Department of Fish & Game (ADF&G) could not oversee the continued operation of CFEC.

MS. CURRY advised that the majority of members have expressed keeping CFEC independent; however, UFA does not have an official position until its questions are answered in the legislative audit coming out in June. She offered that UFA will be working with CFEC, and Representative Millett's office once the audit is received to determine the path forward as to CSHB 112.

10:14:00 AM

JERRY MCCUNE, President, Cordova District Fishermen United (CDFU), said he is the President of Cordova District Fishermen United (CDFU) and United Fishermen of Alaska (UFA), and has worked closely with the Alaska Commercial Fisheries Entry Commission (CFEC) over 20 years. He pointed out that his membership does not understand whether they will receive the same services from ADF&G they are currently receiving from CFEC. Regardless, he expressed, he is aware that CFEC clean-up is necessary and stated it will be turned around and work efficiently with an executive director hired to run the staff, but ADF&G is not the place to house it. He said administrative

actions are responsive during the season and a timely defense is important. He referred to an earlier incident on December 24, when CFEC jumped in to defend the people in Yakutat when the IRS seized set net permits because "we don't have a right, we have a privilege to fish." He reminded the committee that CFEC worked on the Carlson case, and noted that the Bristol Bay fishery has also benefited from CFEC on many fronts. Although, he said he could not defend the White Cards issue in the Cordova area that issue is currently being cleaned-up, but some of those guys fished for 20 years on a White Card. He advised [CFEC] has been told to get all of the cases off as more cases are coming, and the Board of Fisheries' research division is also being used as a resource for legal issues. He opined that the division, as it was created, is separate and it should stay out of politics, have the right employees dedicated to the fishing industry, and the integrity of the limited entry law.

[10:17:06 AM](#)

CHAIR STUTES referred to his reference to December 24, and asked what year the permits were seized in Yakutat.

MR. McCUNE recalled the year "was awhile back" but recounted that the permits were preserved and CFEC helped the fishermen. He explained that a couple of Bristol Bay fishermen has passed away, and their widows received the permits but did not realize they owed taxes, so the IRS tried to seize those permits even though it was their only income. He expressed that when this law was created it wisely determined that corporations, banks, and other entities, could not get these permits "and it had to be in a person's name." He opined that CFEC has performed well in protecting permits, individuals' livelihood, and keeping the integrity of the law in place.

CHAIR STUTES added that Mr. McCune's testimony exemplifies the point that at one point in time CFEC provided a valuable service to fishermen, but it seems that CFEC has run its course which is the reason for CSHB 112.

[10:18:44 AM](#)

REPRESENTATIVE MILLETT requested an explanation of a White Card.

MR. McCUNE deferred to a commissioner, but said when limited entry was first created there were disputes on points, such as Viet Nam veterans, et cetra, and while those cases were being

adjudicated, White Cards were issued to allow fishermen to continue to operate while legal decisions were made.

REPRESENTATIVE MILLETT surmised that the December 24th incident was in the 1980s.

MR. MCCUNE said somewhere in there.

[10:19:45 AM](#)

MARTIN LUNDY, Southeast Alaska Seiner's Association (SEAS), provided testimony, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

The Southeast Alaska Seiners Association (SEAS) is a commercial fishing gear group comprised of more than 150 paying skipper and crew memberships, as well as over 75 paying business members. SEAS represents the interests of roughly 1,500 fishermen in the S01A fishery, and their families and communities throughout SE Alaska and beyond.

The combined permitting fees paid by the S01A permit holders in our limited entry fishery contributed nearly \$400,000 to the CFEC budget this past year alone.

[10:20:45 AM](#)

MR. LUNDY read from his prepared statement:

A significant amount in budgetary considerations and we demand our voice be heard on decisions affecting a governmental agency that has worked hard on our behalf for years. SEAS is uniquely positioned to comment and evaluate CFEC's job performance. Unlike some who have used a snapshot in time to render judgement on an entire agency's workings, the Southeast Alaska Seiner's Association worked for years with the commissioners and public servants of CFEC during the buyback of permits in the S01A fishery. This nearly a decade long process involving multiple parties, one of whom, a very important one is seated on the committee, was and continues to be to this day the only buyback program of its kind, not simply the state but in the country. And CFEC handled it just as it had to be done, in an exhaustive and exemplary manner. Chairman

Twomley and Commissioner's Brown and (indisc.) carry on the great work of past commissioners such as, Frank Holman, Mary McDowell, Peter Froehlich, and will buyback some various fisheries in Cook Inlet, Bristol Bay, and Southeast, on the horizon. This state needs their full competence and expertise at work. We take a dim view of the way in which the Commercial Fisheries Entry Commission has been portrayed in some corners, especially in light of our long-standing interaction with the agency. We want our commissioners, our Supreme Court of commercial fisheries intact and able to move the agency forward of their own volition. The independence of CFEC must be maintained and this will not happen if HB 112 is passed. We don't want CFEC being blown about in the political winds of the day and while we are very happy with the leadership and the men and women of ADF&G, and all that they do to ensure the sustenance of our fisheries for all manners of users, there is a special place for Commercial Fisheries Entry Commission, and it is on its own. Southeast Alaska Seiner's Association opposes HB 112 and we encourage you to do the same.

10:23:15 AM

AL BURCH, testifying in support of HB 112, described himself as a dissenting member of the United Fishermen of Alaska's (UFA) position, who has been involved in the fishing industry over 55 years, and participated on various boards and commissions. He recounted helpful actions on the part of the CFEC, but urged passage of HB 112 with ADF&G providing the support necessary. He stated he was advised previously that when the skipper leaves the boat, the \$3,000 license leaves with him. He related instances where he tried to move people off of the deck into the wheelhouse and was told that even for one trip the deckhand would have to pay \$3,000 in order to step into the wheelhouse. A bill was introduced to fix that, but it never left committee and died and he could not get it introduced again. He expressed that he hopes the committee will move this bill forward as it will put emphasis behind dealing with the problem. He said ADF&G would be quick in coming up to speed in how to deal with this. He offered that he would like to see some way he can bring someone off the deck without costing either the deck hand or him \$3,000 for one trip.

10:27:13 AM

PAUL SHADURA, II, said he is a life-long, third generation commercial fisherman within the Cook Inlet waters. He advised he has two CFEC Limited Entry set net salmon permits and there are five in his family group. Today, he advised, he is representing the South K Beach Independent Fishermen's Association, and the association "adamantly" opposes reconfiguring the Commercial Fisheries Entry Commission (CFEC) into the "schizophrenic" Department of Fish & Game, and the association is against allowing more authority to the politically fractured Board of Fisheries. He referred to Article VIII, Section 15, of the Alaska State Constitution, which reads:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [Amended 1972]

MR. SHADURA related that this section does not restrict the power of the state to limit entry into any fishery for the purposes of resource conservation, and to prevent economic distress among fishermen and those dependent on them for a livelihood. He advised it was ratified by the voters in 1972, wherein the state could then institute a limited entry program for distressed fisheries, and noted that an initiative to repeal the law was rejected by the voters in 1976. Clearly, he stated, the commercial fishing community feels strongly in his area that to have an independent body within the state agency is a blessing. He pointed out that the CFEC performed 143 adjudications last year, with 29,000 individual vessel permits yearly. Commercial fishermen have a considerable investment, some in the thousands of dollars to acquire the privilege to harvest the state's fisheries resources. He pointed out that the sports division director at ADF&G stated "the department can handle it like a sports fishing license bought at the neighborhood grocery," which is an example of the misunderstanding of the importance to the commercial fishing community. The change language, "the department shall regulate entry into the commercial fisheries resources of the state," brings fear to his eyes, he said. Commercial fishermen pay their way, and CFEC is completely funded by commercial fishing

participants' fees and, in fact, there is a surplus at present, he advised. He expressed shock that this bill comes out of the House Special Committee on Fisheries, a committee that commercial fishermen have relied upon as a voice to express changes they wish to accomplish within the state government.

10:30:52 AM

JAMI ROSS, Representative, Alaska Herring Seiners Association, said he is a representative of the Alaska Herring Seiners Association, has commercially fished in Alaska for 34 seasons, owns eight limited entry licenses, and currently holds eight-ten other non-limited entry licenses. He pointed out that the Commercial Fisheries Entry Commission (CFEC) and the limited entry system in Alaska is one of the models of fishery management in the world as many other countries have looked to this limited entry system as a way of ensuring sustainability in their fisheries. He opined that CFEC has played an important role in that Alaska's fisheries are the best in the world and continues to be so. He expressed that he just heard about this bill and that many fishermen throughout Homer have never heard about this bill, and that its content is shocking. He expressed that the biological aspect of fisheries is the Department of Fish & Game, and the business aspect is CFEC. He said, he looks at it as a separation of power and keeping those aspects of fisheries separate is critical of which the committee has heard from previous witnesses. He stressed that the potential for politicizing the entry process is enormous within the ADF&G. He said he knows the CFEC is working on limiting the fishery currently, and has heard statements that they haven't limited one in ten years. He referred to a fiscal analysis from the Office of Administrative Hearings and that the commercial fisheries are constantly in change and motion and to think that Alaska is never going to limit entry of a fishery again is extremely short sighted. He reiterated he is primarily a herring fisherman and herring is going through some tough times right now, but who is to say Alaska doesn't completely change the herring fisheries in a short period, and change them from a sacral fishery to a crude bait fishery. He pointed out that it would require the experts at CFEC to re-organize the types of limited entry licenses currently being held. He then related a story having to do with the Sitka herring fishery. He described this bill as potentially being one of the worst things that ever happened to Alaska's commercial fishing industry, which is the number two industry behind oil, and the largest public sector employer in the State of Alaska.

10:34:52 AM

REPRESENTATIVE MILLETT requested the number of permits he is holding.

MR. ROSS advised he holds eight limited entry licenses, and has held up to eight-ten non-limited entry licenses over his career.

REPRESENTATIVE MILLETT asked what his limited entry permits are for.

MR. ROSS replied that he holds four separate salmon licenses purse seine, and four separate herring licenses purse seine. He advised that an individual can only participate in one salmon fishery per calendar year and he has fished pretty much every area in the State of Alaska over his career.

10:36:04 AM

KEVIN BROOKS, Deputy Commissioner, Office of the Commissioner, Department of Fish & Game (ADF&G), [Available to answer questions.]

REPRESENTATIVE KREISS-TOMKINS asked how the department anticipates handling buybacks should CSHB 112 pass.

MR. BROOKS responded that the department's research section provides the economic analysis, the work, the enumeration of permits, and reports it to the director of the division for processing the endeavor. He acknowledged that he does not have a clear answer as to how that might implicate the Office of Administrative Hearings.

10:37:16 AM

REPRESENTATIVE MILLETT questioned whether he would remain neutral in adjudicating licenses. She opined that the licensing section within CFEC performs most of the work, which is a neutral transfer of licenses. She pointed out that with adjudications being in the Office of Administrative Hearings, philosophically it wouldn't matter who the commissioner was, and it wouldn't be politicized, or would it be politicized.

MR. BROOKS answered that he has worked for four-five commissioners in ADF&G, and each commissioner comes in with their own background and experiences, but each have brought an objectivity to dispose of their responsibilities in a fair and

efficient manner. With regard to the permits, licensing, and transfer functions, he said, staff would handle the requests and should CSHB 112 pass, those same staff will be working in a division within the department performing that same function. Staff efficiencies are considered and the possibility exists for peak period assistance within the agency. With regard to appeals on a transfer, the first review of that is handled by another staff within the division in looking for an administrative remedy, possibly the transfer is denied it will go to someone else "higher up" in the division. An appeal of the second decision would go to the Office of Administrative Hearings, he explained. Mr. Brooks said he spoke with a hearing officer there and asked whether they could care for immediate emergency transfers that risk the opportunity of a fisherman to fish and opined that although there may be complications, it can be done.

REPRESENTATIVE MILLETT queried whether there is a political "twinge" on the administrative law judges that would prevent them from being fair and appropriate in adjudicating hearings based on commercial fishing. She asked whether there is a philosophy that goes down to the administrative law judges.

MR. BROOKS expressed that the administrative law judges handle a wide portfolio of cases and are expected to be fair and impartial, which is the case here.

10:42:00 AM

REPRESENTATIVE MILLETT surmised there would be growing pains within ADF&G, but also commonality between ADF&G and what CFEC does. Although, she opined, its workload is very small now except for the licensing section and questioned whether administrative law judges could absorb the work currently being performed by the commissioners.

MR. BROOKS replied yes.

REPRESENTATIVE MILLETT questioned whether there were cost saving measures in the bill.

MR. BROOKS advised that the most obvious is that three commissioners are replaced by a single director, and over time as the department has an opportunity to review administrative functions, licensing functions, IT support, et cetra, there are efficiencies to be gained.

[10:42:54 AM](#)

REPRESENTATIVE MILLETT asked whether he sees diminishment for commercial fishermen by [transferring the duties of CFEC] to ADF&G, other than change being difficult. She advised that Frank Cullman, from CFEC, assisted with the buyback bill, and questioned whether Mr. Brooks foresees problems in organizing and putting forward legislation if other commercial fishery groups consider a commercial fisheries buyback.

MR. BROOKS answered that, today, he does not foresee a diminishment for commercial fishermen, recognizing that he cannot foresee every nuance or complication that could arise. The commitment from the department is to address situations appropriately as they arise. He stated there is an undoubted wealth of information consisting within the three commissioners that possess historical knowledge, and acknowledged that ADF&G does not possess historical knowledge, but it does have CFEC's body of work and the willingness to try to make it work.

[10:44:13 AM](#)

CHAIR STUTES clarified that not every case will be sent to the Office of Administrative Hearings. She explained that within the transfer process it will first go into a designated individual to make the decision, and if that decision is not satisfactory it then moves to the director to adjudicate. She further explained that in the event the applicant does not accept the decision it then moves to the Office of Administrative Hearings, and the applicant has the option of appealing that decision to the superior court.

[10:44:55 AM](#)

REPRESENTATIVE HERRON asked whether the department has a position on CSHB 112.

MR. BROOKS replied that the department has not taken a formal position on the bill, but believes it can keep the functions working in an effective manner.

REPRESENTATIVE HERRON commented that the previous administration had a uniform rule that it would not take a position on any legislation, but this governor has given the latitude to departments that they could take a position on legislation.

CHAIR STUTES closed public testimony after ascertaining that no one further wished to testify.

[10:46:26 AM](#)

REPRESENTATIVE KREISS-TOMKINS recalled that Alpheus Bullard and an attorney from the Department of Law (DOL) offered succinct comments in a previous hearing, regarding the potential of a case going the wrong way and setting a retroactive precedence. He asked Mr. Bullard whether he had a further perspective.

[10:47:20 AM](#)

ALPHEUS BULLARD, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, responded it is not clear what "retroactive precedent being invoked" means as the cases the commission has heard are final, and contested decisions are appealable to the superior court. He stated that should the ADF&G assume the responsibilities of the commission and the Office of Administrative Hearings hear contested cases, it is not clear what possible affect that could have on cases previously decided.

[10:48:47 AM](#)

BENJAMIN BROWN, Commissioner, Alaska Commercial Fisheries Entry Commission (CFEC), advised that case law is available regarding Supreme Court decisions addressing the issue of retroactivity and the re-opening of a previously entirely limited fishery. He pointed out that Chairman Twomley spoke about it and cited the cases a week ago, and people may want to read those cases. He opined that attorney William Milks, from the Department of Law (DOL), would have provided answers to those specific questions. He remarked that the hearings in this committee have not been adequately addressed to gain an understanding of the legal nuances relating to CFEC law in Alaska. He suggested the House of Representatives take the time to review those specific judicial legal issues before moving forward. He related that CFEC is aware of justifiable questioning, however, the nuclear option of destroying the agency in one fell swoop is not the appropriate action.

[10:51:01 AM](#)

MR. BROWN continued that as a procedural matter, this bill was introduced by Representative Seaton at the end of last session and requested a legislative audit, which is underway. He asked

the committee whether it prefers to move on the bill prior to the completion of the audit, and noted that audits are expensive and it will provide a valuable objective assessment of the commission, and the best way to move forward. The budget situation as critical, he described, but is also an opportunity, and while actions speak louder than words, so does haste makes waste and this may be a hasty move. He expressed that making a final policy decision is premature; however, it is important for the commission to take the concerns seriously and provide action. He pointed to a previous concern regarding moving a deck hand to the wheelhouse and the [\$3,000] fee, and suggested that a bill to address fees may be more in line than abolishing the agency. One point, he said, is a statutory requirement for CFEC commissioners is that they are unable to hold any ownership in a commercial limited entry permit or commercial fishing business interest, yet the bill nullifies that statute and a commissioner or director in ADF&G could own permits and effect licensing/permits. Even if all of the contested matters go to the Office of Administrative Hearings (OAH), the regulations to limit a new fishery still must be drafted by someone, and it will not be OAH, he opined.

[10:54:25 AM](#)

MR. BROWN referred to last week's amendment that deleted the phrase "quasi-judicial and before a regulatory agency," he said, and now it defines this "would be" division as a regulatory division. He remarked that he does not know what a regulatory division is, as departments adopt regulations, divisions generally do not. It will be Mr. Brooks and his colleagues at ADF&G who will adopt whatever regulations will set the exact criteria for a newly limited fishery, and according to ADF&G's fiscal note it does not presently envision that they would limit a commercial fishery during the five years reflected on the fiscal note. He pointed out, that it ignores the mandate of Alaska's Limited Entry Act to consider limitation when Alaskans come forward and advise that limitation needs to happen. In the event adjudicatory decisions will not be made by this director, who answers directly to the commissioner, the regulations that drive that process must be adopted by ADF&G. He invited the committee to review 20 AAC and the particular regulations adopted in each and every fishery the commission previously limited, as they are very specific and require expertise. He stressed that the expertise could exist, but the potential for conflict is ineradicable especially if those people are in a position to continue owning limited entry permits. He described

that as a "pretty major flaw" in the bill but that it could be cleaned up.

10:55:54 AM

MR. BROWN continued by reviewing the actions taken by the commission last year, and said there were two initial issuance limitations last year, plus one the beginning of this year, and 141 other cases completed.

He advised that limited transfers and permanent transfers are not just ministerial as they are all contested to the extent that someone has been told "no," when they want something. He described it as a policy call for a staff person, paralegal, or director making the yes or no decision before it goes to OAH. He explained that it has implications, and the farther it moves up the food chain the likelier it is that people might question the extent to which they've been given due process and a fair and just hearing. There is also the category of "miscellaneous decisions" ...

CHAIR STUTES interjected that Mr. Brown can make a few comments, but he has already had an opportunity to testify and she does not want him to plead his case all over again.

MR. BROWN indicated that buybacks is a whole new body of work for ADF&G to undertake, together with the reorganization of fishery which is different from limiting a new fishery. Currently, there are fishermen that would like to use a different type of gear in a specific fishery in the state. He opined that pressure will be brought to bear on some of the fisheries currently limited to make sure the right gear types are being used for conservation reasons, and to ascertain the economic viability of the fishery is as maximal as possible for those participating in it. He pointed to an example of when the Department of Community and Regional Affairs merged into the Department of Commerce, Community, and Economic Development, while attempting the difficult process of downsizing government. He stated that a cost benefit analysis should be performed [regarding CSHB 112].

10:59:01 AM

REPRESENTATIVE MILLETT dismissed the comparison of combining the two above-stated departments in that it does not compare to the transfer CFEC to ADF&G, and she takes offense to his comment of "destroying the agency." The legislature, over the last 30

years, has seen a blatant dwindling of adjudicated cases and her mission is to recognize an opportunity to provide efficiency. She pointed out that appropriate firewalls can be established as ADF&G has the ability to determine where conflict could arise. She acknowledged that buybacks are complicated, and expressed confidence that ADF&G would learn the process. She stressed that her concern is providing good service to the fishermen and keeping them whole, and maintained that CFEC is not effective in the manner it once was and that change is needed. This is an opportunity for CFEC to be absorbed into the ADF&G, with the same by-laws in place, same missions, and the same outcomes, she related. Realistic, streamlined expectations must be considered in every department of this government, and this is not an easy decision to come to but it is necessary, she opined.

11:02:56 AM

REPRESENTATIVE KREISS-TOMKINS referred to previous committee hearing testimony regarding insulting decisions made currently within CFEC from political influence. He asked whether he described Mr. Brown's testimony correctly in that, "if the new fisheries limited, regulations will need to be promulgated and those regulations will have to go the commissioner's office and because the commissioner's office, or people working in the commissioner's office may, or may not, have interests in certain commercial fisheries there is a potential for a conflict of interest."

MR. BROWN pointed out there are two different potential areas of concern in that there are many moving parts going on here and this is the second hearing on a complex bill. The elimination of the prohibition on having an interest in a limited entry permit doesn't exist as the bill is currently written. He said, "that's a really obvious example of something that is a diminution in the prophylactic structure of the agency that prevents the potential for conflict." He pointed to the larger issue of fishermen defining the ADF&G as a political place. The two issue are that no longer is there a prohibition on the commissioner or director from actually holding a permit on the value of which might be affected by the limitation of a new fishery and the regulations adopted to limit that new fishery, but the larger issue of "that commissioner oversees the head of the biological one, the Division of Commercial Fisheries who oversees all the managers out in the field." He pointed out those managers may have issues that trickle up to the commissioner, and trickle down to the division. He related that the executive branch ethics act would remain in effect which

prohibits the taking or withholding official action in the manner that can benefit one's self but, he described, it is a generic tool as opposed to a prohibition on ownership of any commercial fishing interests that currently exists.

REPRESENTATIVE KREISS-TOMKINS asked whether to say the short answer to his question is yes.

MR. BROWN replied yes.

[11:05:53 AM](#)

REPRESENTATIVE MILLETT pointed out that commissioners are appointed by the governor as are the three CFEC commissioners.

MR. BROWN said they are only removable for cause and there is a due process set up for that, which is different as there is no provision for removal for cause for the director or the commissioner. The way it is currently structured, the governor can fire the commissioner and the commissioner can fire the director with no hearing and no reason, he stated. He said his point is that the difference can be corrected, but the current version of the legislation does not correct it.

[11:06:49 AM](#)

REPRESENTATIVE JOHNSON noted that conversations in this building are taking place regarding every department and division of the state as to the need for efficiencies. All fiscal note items are being scrutinized and serious decisions must be made and, he stressed, this is not a personal action. He pointed out that holding the bill was requested; however, retaining it in the first committee of referral would not be appropriate, and if it is held anywhere it should be in Senate Rules where decisions can be made at the end of the day. He encouraged the committee to move the bill, gather information as the bill moves, and position it to where a decision can be made based upon its merits.

[11:09:01 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked when the last commercial fishery in Alaska was limited.

MR. BROWN responded in 2004-2005, which was a vessel based limited fishery of the Weathervane Scallop, and Korean Hair Crab. He advised that it is the only one that has reverted to

open access status so there is still a vessel based limited entry system for Korean Hair Crab on the books; it is somewhat of a virtual fishery because the conservation concerns never left for that fishery to be open.

REPRESENTATIVE KREISS-TOMKINS asked about the fisheries anticipated to be limited in the future.

MR. BROWN replied that when publically naming anticipated limited fisheries it has the effect of encouraging people to fish for history. He said there are three specific fisheries in three different geographical areas that are at the point where one or more of those would be limited in the period envisioned within the fiscal note.

[11:11:11 AM](#)

REPRESENTATIVE JOHNSON asked whether the scallop and crab limit was handled by the legislature.

MR. BROWN stated that it had to be done legislatively as it was vessel-based as it was a dramatic departure from the skipper-based limitation system, and required a new section of statutes.

[11:11:40 AM](#)

REPRESENTATIVE KREISS-TOMKINS recalled Mr. Brown's reference that there is a fishery that may be changing the gear type used and asked whether it is the Chatum Sable Fishery.

MR. BROWN explained that concerns have been expressed that using long line creates more bycatch than pot, but they are separate fisheries now. He said it is one of the unanswered question in whether two existing fisheries can be merged, and that is the area inquired about.

[11:12:37 AM](#)

REPRESENTATIVE KREISS-TOMKINS referred to the ability of the ADF&G to insulate decisions and regulations from political influence, or influence of interests within the department. He asked how the department foresees being able to limit new fisheries if required, or change the gear types used for existing fisheries. He further asked Mr. Brooks to generally respond to the issues raised by the previous witness regarding creating insulation from different competing interests that may,

or may not, exist within ADF&G as the department proceeds with the limiting of fisheries in Alaska.

MR. BROOKS deferred to the Commercial Fisheries Entry Division Director as he is far more familiar with specific fisheries and how they are prosecuted and limited. He added that with regard to insulating, ADF&G currently operates under public scrutiny and the ethics act in that no employee can take an action that personally benefits them or a family member. He stressed that the department's ethic's standard operating procedure is highly focused, including people declaring outside employment, and a department employee harvesting a species the department manages or doesn't manage. The department's biologist have a lot of interest in the resources they serve. He said that to suggest the department is not going to insulate decisions is troubling to him because the department goes to great lengths to ascertain there are no conflicts. He pointed out that when CFEC was set up these things had to be established, and ADF&G will bring it in and care for it as well, and make sure it has firewalls in place so there is no undue influence. He stressed that the department goes to great length to ensure employees do not violate public trust and will continue to do so if this bill is passed.

[11:15:59 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked Mr. Brooks to specifically speak to the limiting of entries and creating regulations.

MR. BROOKS responded that the department has regulations, and there are Board of Fish and Board of Game regulations. He explained that the two boards generate a volume of regulations in moving through the regulatory cycle every three years, wherein all parts of the state are heard on fisheries, and now there is a three-year cycle on the Board of Game. The department has always looked at the board regulations separately from the department regulations. He advised there are employees that develop regulation packages so that expertise does exist within the department, although it has not anticipated every last detail of how it would perform CFEC regulations once CFEC became a division. He stated that regulation packages are performed within the department regarding board and department regulations, and as far as limiting fisheries, he deferred to others in the department.

[11:17:48 AM](#)

MR. HARRIS, with regard to Mr. Brown's comments, directed the committee to Sec. 20, page 13, lines 20-23, which read:

(b) An administrative hearing on a contested case under this chapter shall be conducted by the office of administrative hearings (AS 44.64.010). Notwithstanding AS 44.64.060(e), the office of administrative hearings shall render the final administrative decision.

MR. HARRIS reiterated that the language states OAH will make decisions only on contested cases, so if the division cannot handle it within the division, OAH will then take over jurisdiction of the case. He pointed out that until that point the division can say "yes." If the paralegal says yes, he imagine they would sign off on it, if the division director says yes, he imagines it would be signed off on, if it goes to OAH and it says yes, it is still signed off on. He stated he does not see how this is a short fall to fishermen as far as having three commissioners make the decision and then go into the superior court, or going through the same steps with the Commercial Fisheries Entry Division. He said his second point is found in Sec. 122, page 46, lines 8-10, which read:

TRANSITION ... Certificates, orders, and regulations issued or adopted under authority of a law amended or repealed by this Act remain in effect for the term issued, or until revoked, vacated, or otherwise modified under the provisions of this Act.

[11:19:13 AM](#)

MR. HARRIS referred to a statement by Mr. Brown and said, "due to the division or OAH managing permit applications, courts could interpret this as a change to the rules and; therefore, they could open up past permit cases or entire limited entries." Mr. Harris pointed out that the drafting attorney at Legislative Legal and Research Services assured him that previous adjudications cannot be reopened because of the transfer of duties if CSHB 112 were to pass. He said the statute does not prescribe a new direction for management of limited entry rather it changes who makes the rulings on remaining and future cases. He wrapped-up, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

There is much testimony today in favor of continuation of CFEC and it is understandable that fishermen are

apprehensive about the elimination of CFEC. The commission has an excellent history of service to fishermen through successful limited entries and permit issuance when the immediate right to fish is at stake, as in transfer and emergency transfer cases. Representative Johnson, thank you, he brought up essentially the hard line is the Department of Fish & Game is going to see a budget cut of slightly more than 10 percent this year, and the governor stated the department will be seeing a 25 percent budget cut over the next three years. These numbers go beyond budget cuts, this is a restructuring of how the government, including the Department of Fish & Game, functions. All of the members present here put hard work into the operating budget and you've seen the reductions already. In order for the department to provide necessary services to fishermen, the legislature needs to look at some hard cuts and/or tradeoffs. House Bill 112 is one way to ensure fishermen continue to enjoy the use of a fragile resource and see continued service in limited entry permit and vessel license issuance.

[11:21:04 AM](#)

REPRESENTATIVE MILLETT commented that this is not the death of the Commercial Fisheries Entry Commission, but rather an opportunity to streamline under a new design. She expressed that the caring of fishermen and services are expected to continue and [the transfer] will not diminish commercial fisheries. She reiterated Representative Johnson's comments that this is conversation the legislature will have on every division in every department of Alaska.

[11:21:58 AM](#)

REPRESENTATIVE MILLETT moved to report CSHB 112, labeled 29-LS0485\W, Kirsh/Bullard, 3/19/15, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 112(FSH) moved from the House Special Committee on Fisheries.

[11:22:39 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:22 a.m.