

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

February 11, 2016

10:03 a.m.

MEMBERS PRESENT

Representative Louise Stutes, Chair
Representative Neal Foster
Representative Charisse Millett
Representative Dan Ortiz

MEMBERS ABSENT

Representative Bob Herron
Representative Craig Johnson
Representative Jonathan Kreiss-Tomkins

COMMITTEE CALENDAR

HOUSE BILL NO. 251

"An Act requiring the electronic submission of a tax return or report with the Department of Revenue; relating to fisheries business tax and fishery resource landing tax; relating to refunds to local governments; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 251

SHORT TITLE: ELECTRONIC TAX RETURNS & FISHERIES TAXES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/19/16	(H)	READ THE FIRST TIME - REFERRALS
01/19/16	(H)	FSH, FIN
02/02/16	(H)	FSH AT 10:00 AM CAPITOL 120
02/02/16	(H)	Heard & Held
02/02/16	(H)	MINUTE (FSH)
02/11/16	(H)	FSH AT 10:00 AM CAPITOL 120

WITNESS REGISTER

KEN ALPER, Director
Tax Division
Department of Revenue (DOR)

Juneau, Alaska

POSITION STATEMENT: Responded to questions during the hearing on HB 251.

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

POSITION STATEMENT: Responded to questions during the hearing on HB 251.

SAM COTTEN, Commissioner
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during the hearing on HB 251.

OLIVER HOLM
Commercial Fisherman
Kodiak, Alaska

POSITION STATEMENT: Testified with concern for HB 251.

RHONDA HUBBARD
Seward, Alaska

POSITION STATEMENT: Testified during the hearing on HB 251 and offered suggestions.

ACTION NARRATIVE

[10:03:06 AM](#)

CHAIR LOUISE STUTES called the House Special Committee on Fisheries meeting to order at 10:03 a.m. Representatives Stutes, Millett, and Ortiz were present at the call to order. Representative Foster arrived as the meeting was in progress.

HB 251-ELECTRONIC TAX RETURNS & FISHERIES TAXES

[10:03:18 AM](#)

CHAIR STUTES announced that the only order of business would be HOUSE BILL NO. 251, "An Act requiring the electronic submission of a tax return or report with the Department of Revenue; relating to fisheries business tax and fishery resource landing tax; relating to refunds to local governments; and providing for an effective date."

10:04:10 AM

KEN ALPER, Director, Tax Division, Department of Revenue (DOR), directed attention to the committee packet and a three page letter, from DOR to Representative Stutes, dated 2/10/16, with enumerated questions from the committee, followed by departmental response.

10:04:47 AM

CHAIR STUTES paraphrased the first question, which read [original punctuation provided]:

1. Who is defined as a processor? Can we see a list of taxpayers for the Fisheries Business Tax [(FBT)] and Resource Landing Tax [(RLT)], and get a better understanding of exactly who is paying the tax and who isn't?

MR. ALPER responded that, due to federal regulations pertaining to confidentiality, it is not possible to disclose the names of the licensed processors; however, definitions exist for who pays taxes under the statute which may provide the information being sought. Anything beyond basic heading, gutting, and icing is considered processing. He paraphrased from the prepared response, which read [original punctuation provided]:

If a fish business operator has intentions to process any fishery resource other than what they caught or their activities are limited to roe recovery from salmon caught from a vessel greater than 65 feet in length, then the activities are defined as processing. The following activities further define the undertakings of a processor:

- Prepares, processes or stores a fishery resource;
- Recovers salmon roe;
- Custom processes fishery resources from others;
- A fish business that has a fishery resource custom processed; or
- Exports an unprocessed fishery resource outside of Alaska.

Processing is defined as any activity that modifies the physical condition of the fishery resource. It should also be noted what isn't considered processing: heading, gutting, gilling or icing seafood products or decapitating fish. Processors include traditional shore-based facilities as well as at-sea processors such as catcher-processors and floating processors. Direct marketers are considered processors, but catcher-sellers are not because they sell only their own unprocessed fish. Businesses or individuals that have fish custom processed, that recover salmon roe, or that export unprocessed fish outside of Alaska are considered processors.

Only processors pay the Fisheries Business Tax and Resource Landing Tax. However, in cases where processors buy their fish from independent commercial fishermen, it is possible that some or all of the tax burden to be passed on to the fishermen, since they have little control over what price the processors will pay.

Unfortunately, DOR cannot provide a full list of taxpayers, as this would violate confidentiality.

MR. ALPER explained that the non-disclosure restriction is not unique to the fishing industry.

[10:06:54 AM](#)

REPRESENTATIVE ORTIZ noted the five bullet points defining/describing processor activities, and asked how many of the points an operator would need to meet to be considered a processor.

MR. ALPER answered one.

REPRESENTATIVE ORTIZ revisited the confidentiality consideration for the taxpayers and ascertained that aggregated data can be accessed, but not individual return information.

[10:09:06 AM](#)

CHAIR STUTES paraphrased the second question, which read [original punctuation provided]:

2. What is the origin of the separate FBT rate for salmon canneries?

MR. ALPER responded that there is a long history of fish taxes for the varying aspects of the industry. He suggested checking committee records to understand the rationale that resulted in the different taxes. Pointing out the lengthy period, 1967-2004, when the tax remained at 3 percent, and he speculated that it may have been increased to 4.5 percent during another time of budget shortfall. He paraphrased from the prepared response, which read [original punctuation provided]:

According to a report from the Alaska History and Cultural Studies organization, called Alaska's Heritage, chapter 4-16: Fishing and Sea Hunting: "As early as 1899, Alaska Natives appealed to the government to protect the salmon for those who relied on it for food. They also asked for the return of some of their fishing sites that cannery operators had occupied. In 1900, Congress responded to the appeals by requiring that anyone engaged in commercial salmon fishing in Alaska establish a hatchery for sockeye salmon. Most cannery operators waited to see if the regulation would be enforced before investing money in a fish hatchery. Congress failed to provide adequate funds for enforcement. In 1906, Congress tried a different tactic to force fish conservation. It levied a tax of four cents on each case of salmon canned."

From the very beginning of Alaska's history there has been a separate rate for salmon canneries. From the beginning, non-residents have dominated the canning industry in Alaska. The changing tax rates over the years may have resulted from a shift from a mindset of resentment of non-residents exploiting fishery resources to a mindset of trying to help small Alaskan fishing operators.

Examples of different state salmon cannery tax rates in Alaska's history include:

1913: the First Territorial Legislature adopted the initial "salmon pack tax" of \$0.07 per case and a separate "cold storage tax" for other fisheries

1951: the territorial legislature set the fisheries business tax on floating processors to 4% of value and salmon canneries to 6%

1967: the tax rate for salmon canneries was lowered to 3%

2004: the tax rate for salmon canneries rose to 4.5%

10:10:33 AM

CHAIR STUTES paraphrased the third question, which read [original punctuation provided]:

3. How does the Department of Fish & Game determine what is a developing or established fishery? Can we get a list of them?

MR. ALPER paraphrased the governing statute providing interdepartmental cooperation for taxing purposes, which read:

Sec. 16.05.050. Powers and duties of commissioner.

(10) not later than January 31 of each year, to provide to the commissioner of revenue the names of those fish and shellfish species that the commissioner of fish and game designates as developing commercial fish species for that calendar year; a fish or shellfish species is a developing commercial fish species if, within a specified geographical region,

(A) the optimum yield from the harvest of the species has not been reached;

(B) a substantial portion of the allowable harvest of the species has been allocated to fishing vessels of a foreign nation; or

(C) a commercial harvest of the fish species has recently developed;

MR. ALPER speculated that the list is compiled by ADF&G based on scientific information and determinations. He directed attention to the committee packet and the six page interdepartmental memo, dated 1/27/16, to Commissioner Randall Hoffbeck, from Commissioner Sam Cotten, containing the developing fisheries list. He added that the developing fisheries comprise a relatively small portion of the overall FBT portfolio, perhaps \$200,000 of the \$25,000,000 received.

10:12:29 AM

CHAIR STUTES continued, with the fourth question, which read [original punctuation provided]:

4. Why are charter boats not subject to the tax?

MR. ALPER responded that charter boat activities could be taxed, but the precision of harvest would be lacking. The statute has been written around the commercial industry and would require amendment or new legislation to address charter activities. He paraphrased from the prepared response, which read [original punctuation provided]:

There is no reason that charter sport fishing operations couldn't be taxed if the legislature chose to tax them. Since sport fishery landings are not accounted for in the same rigorous manner as commercial catch there would need to be a new sport charter catch accounting system developed for tax assessment purposes. If the committee would like to develop legislation that would tax charter boats and similar commercial sport fish operators, DOR would be happy to provide technical assistance as needed.

[10:13:26 AM](#)

REPRESENTATIVE ORTIZ asked why existing statute could not be applied to tax the processing of charter caught fish.

MR. ALPER explained that the commercial fisheries represent an excise tax on an item being sold. However, the charter industry provides a service of access and prohibits the sale of the catch.

CHAIR STUTES noted that a charter's catch is typically cleaned and packaged for shipment, which seems to lend itself to a processing tax.

MR. ALPER speculated that the product would need to be valued for sale purposes to meet tax requirements. He deferred further comment.

[10:16:10 AM](#)

CHAIR STUTES continued, with the fifth question, which read [original punctuation provided]:

5. What is the distribution of the \$18 million in new fish tax revenue under HB 251?

MR. ALPER paraphrased from the prepared response, which read [original punctuation provided]:

The fiscal note for HB 251 projects \$18.4 million in new revenue from the fish tax increases in FY 2017. The Department of Revenue estimates this new revenue will be broken down by species category as follows:

Category	New revenue (\$ millions)
Groundfish: Pollock	5.4
Groundfish: Non-Pollock	3.2
Black Cod	1.1
Halibut	1.1
Herring	0.1
Salmon	4.9
Shellfish	2.6
Total	18.4

This analysis is based on projections of the distribution of taxable fish value by species, which are used in DOR's annual fish tax forecasts. For more information on the current distribution by species, please see the attached Fish Values & Poundage Report.

[10:17:07 AM](#)

CHAIR STUTES continued, with the sixth question, which read [original punctuation provided]:

6. What is the distribution of the \$140 million in budget cuts under the governor's proposal?

MR. ALPER deferred.

[10:18:31 AM](#)

KEVIN BROOKS, Deputy Commissioner, Alaska Department of Fish & Game, directed attention to the committee packet and the columned page titled, "FY2015-FY2017 Budget Review Summary by Category, Unrestricted General Funds Only," and the fourth numerical column headed as "1 Year Change F&2017 from FY16 \$," and the line labeled, "Agency Operating Subtotal," showing a reduction figure of \$140,571.1. The fourth line entry of the same column, he pointed out, labeled "Fish and Game," lists a

reduction of \$7,454.9, as the cut to the department; among the other agency totals. He directed attention to the following page titled, "Department of Fish and Game, FY2015 Management Plan to FY 2016 Management Plan to FY2017 Governor, General Funds Only - UGF, January 20, 2016," listing where the cuts will be made throughout the department. He indicated the fifth numerical column total, \$7,454.9, which coincides with the agency figure on the previously mentioned chart. He pointed out the third column total, headed "Difference FY15 to FY16 MP," to report the total cuts already proposed, equaling \$14,292.4.

REPRESENTATIVE ORTIZ surmised that the two figures, if the governor's budget is adopted, would represent a departmental budget cut of roughly \$21,747,000, and noted from the totals shown that the department will have an overall cut of about 25 percent.

MR. BROOKS said, that is correct.

[10:21:31 AM](#)

REPRESENTATIVE MILLETT inquired about the cost of test fisheries, could the activity be privatized, and do these fisheries generate money for the department. She expanded her inquiry to include: how many boats are owned by ADF&G; the number of test fisheries ADF&G boats participate in; and the rationale for not using ADF&G boats in Bristol Bay test fisheries.

MR. BROOKS answered that the department operates several test fisheries using a combination of state boats and chartered vessels. The stock assessment projects are used to make determinations for fishery openings, such as herring roe. That type of project results in dead fish, which are sold under a fish ticket. The department also conducts revenue fisheries, and tension with the fishing fleet can result. In Bristol Bay, ADF&G operates a revenue fishery, which provides about \$3.5 million for its budget. The department is proposing an increase in test fishing in the FY 17 budget, with an expectation of generating an additional \$800,000; spread across all regions. He offered to provide the committee with a list of the proposed test fisheries. The revenue is used to pay for the management of the commercial harvest, and the fishermen of each area are consulted and worked with in order to maintain relations and have minimal impact to the fleet.

[10:24:29 AM](#)

REPRESENTATIVE MILLETT asked for a breakdown of costs, including capital outlay for gear, which the test fishery represents to the department.

MR. BROOKS said ADF&G owns six research vessels, with a primary purpose of fishery assessment and other work, and he agreed to provide a list of vessel value and equipment.

CHAIR STUTES questioned if these are the only vessels owned by the department or are there separate vessels that do the test fishing for revenue purposes.

MR. BROOKS answered that these are the only boats owned by the department, and the primary purpose is not test fishing. The agency contracts with commercial fishing vessels to generate revenue.

CHAIR STUTES asked when the test fishing occurs.

MR. BROOKS answered that the fishing occurs prior to opening an area for fleet access; perhaps a few days or a week. He added that a significant portion of the test fishery revenue is derived from crab harvest. He offered to provide a list of the test fisheries conducted.

CHAIR STUTES surmised that the revenue generated from the crab represents less fishing effort and higher sale returns.

[10:27:10 AM](#)

REPRESENTATIVE MILLETT suggested that, rather than the state owning and maintaining vessels, it may be cost effective to lease boats as needed.

MR. BROOKS said the large, state owned, research vessels are generally otherwise engaged and not available for revenue test fishing purposes, often deployed to open sea for 120 days at a time. The department charters boats and aircraft, when necessary, at a cost of about \$4 million per year. He said the department has investigated using charter vessels only, but it hasn't proven to be feasible.

REPRESENTATIVE MILLETT asked for cost and timeline comparisons for use of state owned versus contract vessels.

[10:29:02 AM](#)

SAM COTTEN, Commissioner, Alaska Department of Fish & Game, explained a typical, and harmonious, scenario of a test fishery in Bristol Bay, where the fleet fished the designated open areas, and the department fished in an otherwise closed locale. The test fisheries for revenue also provide important management information, along with the opportunity for receipts. These actions allow the department to meet legislative mandates. Further, revenue generated is used to manage fisheries in the same area as the fishery tested, and he provided an example regarding crab management. The department continually monitors cost analysis of the state fleet, he assured members, and said charter vessels would solely be used, if it were a less expensive and feasible approach to the situation. The MV Kestrel, which ADF&G operates out of Petersburg, is used to monitor herring runs, dive fisheries, and other deployments, making it a cost effective approach.

[10:31:16 AM](#)

CHAIR STUTES asked about the agencies maintenance of fish tickets for the test fisheries, and requested a five year account be provided to the committee.

[10:32:26 AM](#)

REPRESENTATIVE MILLETT conjectured that the additional test fisheries proposed to generate revenue for the department, may take away opportunities for commercial fishermen.

MR. BROOKS responded that the FY 17 budget includes \$800,000 comprised of receipts from test fisheries; in addition to the existing receipts. These test fisheries are done because of necessity to generate funding, he stressed.

[10:33:38 AM](#)

CHAIR STUTES asked where the \$800,000 fits into the department's budget, on the financial page previously reviewed.

MR. BROOKS answered that the \$7.4 million cut would become a \$6.6 million reduction instead.

[10:34:17 AM](#)

REPRESENTATIVE ORTIZ said fishermen in his district tout the world class reputation of the fisheries, as managed by ADF&G,

and cautioned that the proposed cuts will jeopardize the agency's ability to maintain that standard. The test fisheries are based on the department's need to gather data and to offset the cuts being made to the general fund.

MR. BROOKS concurred.

[10:35:47 AM](#)

REPRESENTATIVE MILLETT inquired about the information that the test fisheries provide, and expressed concern that conducting the fisheries removes \$800,000 from the pockets of commercial fishermen.

COMMISSIONER COTTEN said the department will provide the committee with an account of what is being done and the number of fish/shellfish being caught. It is a combination of science and revenue collection, conducted throughout all regions of the state.

[10:38:37 AM](#)

REPRESENTATIVE ORTIZ conjectured that, due to lack of funding, the agency may not be able to collect necessary data, particularly on low priority systems, which would play out as fewer opportunities for fisherman, due to ADF&G's policy for conservative management practices.

COMMISSIONER COTTEN voiced that the mission statement requires the department to protect fish and maintain a sustainable yield. He agreed that lack of data does compromise the precision required to manage a fishery for optimal harvest.

CHAIR STUTES opened public testimony.

[10:40:51 AM](#)

OLIVER HOLM, Commercial Fisherman, recapped the various taxes that he is responsible for, as a commercial fisherman; assessments which include: vessel registration, permit renewal, borough landing taxes, enhancement taxes paid to the state, individual fishery quota tax for halibut, vessel observer tax, and state fuel taxes. The price received for salmon in 2015 was less than what was being paid in 1974, the year he began seining. If the tax were being directed to ADF&G for continued management and fishing opportunities, he said he could possibly support the governor's bill. However, he stressed, expecting

the commercial fishing industry to solve gapping budget deficits is not feasible.

[10:43:51 AM](#)

RHONDA HUBBARD voiced her understanding of the incompatibility for charter versus commercial catch taxation, pointing out that each belongs in a different tax category. She recommended consolidating, or co-locating, entities that collect fisheries data, such as ADF&G, DOR, Commercial Fisheries Entry Commission (CFEC), and the Alaska Seafood Marketing Institute (ASMI), to facilitate information sharing and save costs. Further, the business and landing taxes are in need of review, comparison, and streamlining, she opined, and suggested that a taxation floor could be helpful.

[10:47:38 AM](#)

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

[HB 251 was held over.]

CHAIR STUTES thanked the meeting participants and announced the next meeting.

[10:47:51 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 10:47 a.m.