

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

March 17, 2016

10:05 a.m.

MEMBERS PRESENT

Representative Louise Stutes, Chair
Representative Bob Herron
Representative Craig Johnson
Representative Charisse Millett
Representative Jonathan Kreiss-Tomkins
Representative Dan Ortiz

MEMBERS ABSENT

Representative Neal Foster

COMMITTEE CALENDAR

HOUSE BILL NO. 241

"An Act relating to the nonresident surcharge for commercial fishing permits."

- HEARD & HELD

HOUSE BILL NO. 366

"An Act relating to commercial fishing entry permits; establishing regional community permit banks and regions for certain commercial fishing permits; relating to commercial fishing entry permits and regions leased and controlled by a regional community permit bank; relating to the duties of the Commercial Fisheries Entry Commission and the Department of Commerce, Community, and Economic Development; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 241

SHORT TITLE: NONRESIDENT SURCHARGE COMMERCIAL FISHING

SPONSOR(s): REPRESENTATIVE(S) MILLETT

01/19/16	(H)	PREFILE RELEASED 1/15/16
01/19/16	(H)	READ THE FIRST TIME - REFERRALS
01/19/16	(H)	FSH, FIN

03/17/16 (H) FSH AT 10:00 AM GRUENBERG 120

BILL: HB 366

SHORT TITLE: COMM. FISH. ENTRY PERMIT LOANS & BANKS

SPONSOR(S): REPRESENTATIVE(S) KREISS-TOMKINS

02/24/16 (H) READ THE FIRST TIME - REFERRALS
02/24/16 (H) FSH, L&C, FIN
03/17/16 (H) FSH AT 10:00 AM GRUENBERG 120

WITNESS REGISTER

GRACE ABBOTT, Staff
Representative Charisse Millett
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis of HB 241, on behalf of Representative Millett, prime sponsor.

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

POSITION STATEMENT: Testified in support of HB 366.

PAULA CULLENBERG, Director
Alaska Sea Grant Corporation
University of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 366.

LINDA BEHNKEN, Executive Director
Alaska Longline Fisheries Association
Sitka, Alaska

POSITION STATEMENT: Testified in support of HB 366.

JIM BRENNAN, Attorney
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 366.

TYLER EMERSON, Fisherman
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 366.

JOHN STURGEON, Representative
Ouzinkie Native Corporation
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 366.

NICOLE BORROMEO, Representative
Alaska Federation of Natives (AFN)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 366.

BENJAMIN BROWN, Commissioner
Commercial Fisheries Entry Commission (CFEC)
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Testified HB 366.

ACTION NARRATIVE

[10:05:00 AM](#)

CHAIR LOUISE STUTES called the House Special Committee on Fisheries meeting to order at 10:05 a.m. Representatives Stutes, Ortiz, Millett, and Kreiss-Tomkins were present at the call to order. Representatives Herron and Johnson arrived as the meeting was in progress.

HB 241-NONRESIDENT SURCHARGE COMMERCIAL FISHING

[10:05:41 AM](#)

CHAIR STUTES announced that the first order of business would be HOUSE BILL NO. 241 "An Act relating to the nonresident surcharge for commercial fishing permits."

[10:06:16 AM](#)

REPRESENTATIVE MILLETT, prime sponsor of HB 241, explained that the intent is to true-up residency requirements for commercial fishing permits by utilizing the permanent fund dividend (PFD) residency requirements. She reported that at least 2,289 commercial fishing permit holders pay a lower Alaska resident fee but do not meet the residency requirements to be issued a PFD. The non-resident fishermen should be paying the appropriate fee, she stressed. Alaska's statutes hold a variety of residency requirements for different applications, but the PFD stipulations are perhaps the most tried, true, and enforceable.

[10:10:13 AM](#)

GRACE ABBOTT, Staff, Representative Charisse Millett, Alaska State Legislature, provided the sectional analysis, paraphrasing from a prepared statement, which read as follows:

Section One: Defines a "non-resident" as an individual who is not eligible to receive a permanent fund dividend, and that residency may be proved by showing eligibility for a permanent fund dividend.

Section Two: Amends the duties of the Department of Revenue to include confirming for the Alaska Commercial Fisheries Entry Commission that an individual is eligible to receive a permanent fund dividend.

[10:11:44 AM](#)

CHAIR STUTES asked how the bill addresses residents who do not qualify for a PFD, such as a felons or anyone whose dividend is subject to garnishment.

MS. ABBOTT responded that the bill would require amending to include exceptions for residents that qualify for, but cannot benefit from, receipt of a PFD.

[10:12:37 AM](#)

REPRESENTATIVE HERRON acknowledged that some residents may have personal reasons and choose not to apply for a PFD, which should also be addressed.

REPRESENTATIVE MILLETT indicated that other avenues are being explored for proving residency, which may be presented in the form of an amendment will include an exceptions clause.

MS. ABBOTT pointed out that whether or not a person chooses to receive a PFD doesn't affect their eligibility.

[HB 241 was held over.]

HB 366-COMM. FISH. ENTRY PERMIT LOANS & BANKS

10:15:07

CHAIR STUTES announced that the final order of business would be HOUSE BILL NO. 366 "An Act relating to commercial fishing entry

permits; establishing regional community permit banks and regions for certain commercial fishing permits; relating to commercial fishing entry permits and regions leased and controlled by a regional community permit bank; relating to the duties of the Commercial Fisheries Entry Commission and the Department of Commerce, Community, and Economic Development; and providing for an effective date."

[10:15:52 AM](#)

REPRESENTATIVE KREISS-TOMKINS, prime sponsor, presented HB 366, providing a brief overview and history of the abundant, renewable, natural resource that is the Alaskan commercial fishing industry and introduced the invited witnesses speaking to the issues being addressed in the bill. Since the inception of limited entry, many of the traditional, Native, fishing villages that were the pioneers of the commercial industry, have suffered and lost their ability to participate due to the out migration of the required permits. In 2014, an effort was begun to encourage and support young fishermen entering the industry, as well as to address the loss of permits from communities and the state. The proposed bill provides a stepping stone for young fisherman to enter the industry through the formation of regional structures, with community governance, over permit banks. He acquainted the arrangement as similar to renting a house while gaining credit history, experience, and deciding whether or not to invest in a house. Under HB 366, the availability of permits to young fisherman would be assured, while allowing them the possibility to gain experience and confidence prior to deciding to invest in a permit. The legislation creates regional structuring of Commercial Fisheries Entry Commission (CFEC) administrative areas, roughly mirroring what is already established under the Alaska Native Claims Settlement Act (ANCSA). The community governance structure would be similar to existing community development quota (CDQ) groups. The permits would be acquired on the open market through a consolidation cap and made available via the permit bank to first time, as well as young, unestablished fishermen. He said financing would not be made available, as the bill doesn't provide money, but rather creates the vessel and a mechanism for regions to adopt a support framework for assisting start-up fishermen to bootstrap their way into the industry.

[10:24:15 AM](#)

REPRESENTATIVE HERRON stated support for the legislation and asked about the sponsor's motivation for carrying the bill.

REPRESENTATIVE KREISS-TOMKINS described the 17 months of work involved in formulating the bill, which incorporates comments gathered from fisherman across the state. He reported that critical feedback was received from every region. A major concern is that the status quo works for a number of fisherman, who may resist change; however, the necessity to alter the trend lines for economic development in rural Alaska is widely supported.

[10:26:58 AM](#)

REPRESENTATIVE MILLETT acknowledged that the financial barriers for young fishermen entering the industry are substantial, save for generational fisherman who may receive a family perpetuated permit. She emphasized her support for the bill as a good means for addressing the problem, and asked whether there is opposition to the permit banking approach.

REPRESENTATIVE KREISS-TOMKINS responded that two primary questions are thematic. One revolves around legitimate legal and constitutional issues, which the attorneys are addressing. The other concern regards changing the status quo and the effect it would have on established fishermen and the overall system. He also noted that the Division of Investments and the Commercial Fishing and Agriculture Bank (CFAB) has questions regarding the approach. He said the biggest concern may be the legislature itself, as fishing legislation typically presents as a high profile topic and elicits a multitude of opinions from members and their constituents.

[10:32:15 AM](#)

REPRESENTATIVE MILLETT asked whether there's been more push-back or acceptance from communities.

REPRESENTATIVE KREISS-TOMKINS answered that many of the communities have been supportive and see the benefits, particularly in the areas of Bristol Bay, Kodiak, and Southeast Alaska. These three areas may share a common thread regarding the outflow of permits and the effects the loss has dealt to the associated villages and communities. In some locales, such as Cook Inlet, the resident fleet in Homer not been effected and the bill represents a non-issue. Regional partner entities, such as Native associations and the Alaska Regional Development Organizations (ARDORs), have shown a strong interest in the

legislation and the opportunity to participate in establishing permit banks.

REPRESENTATIVE MILLETT asked for a chart what would illustrate the locations and movement of the permits; where they are held in-state, as well as out-of-state.

REPRESENTATIVE KREISS-TOMKINS agreed to produce a chart.

[10:34:59 AM](#)

SAM COMMISSIONER, Commissioner, Alaska Department of Fish & Game (ADF&G), stated support for HB 366, and recalled that improvement of fishing access and opportunities for Alaskan's was one of the five priorities listed by the governor's fisheries transition team. Specifically identified was the need to create a means for increasing Alaskan ownership of commercial fishing licenses, permits, and quotas, while increasing fishery participation among the coastal residents via a policy tying fishing rights to communities. Legislation was recommended that would include the establishment of fisheries trusts, or permit banks, to recapture and retain commercial fishing quotas and licenses for the benefit of coastal Alaskans. Barriers were identified involving state constitutional questions, as well as federal level concerns from the North Pacific Fishery Management Council (NPFMC). The outmigration of fishing permits, particularly Commercial Fisheries Entry Commission (CFEC) permits, has been well documented. He referred to the committee packet to indicate the supporting documents contained therein, and stressed the importance for the committee to pursue due diligence in reviewing the correspondence offering support, as well as the statements of opposition. The opposition, he observed, tends to focus on the constitutional aspects. The legislation being proposed will need to meet the requirements of the state constitution, he acknowledged, and opined that the equal rights provided for in Article 8, Section 15 and Article 1, can be satisfied. The department does not support a person being allowed to lease a permit, without physical participation in the fishery, but facilitating a permit bank is supportable. The bill provides great potential, and the department offers official support for HB 366, he finished.

[10:39:59 AM](#)

PAULA CULLENBERG, Director, Alaska Sea Grant Corporation, University of Alaska Fairbanks (UAF), stated support for HB 366, and said the greying of the fleet and the loss of permits from

the coastal communities, has been a long standing concern of the corporation due to the economic ramifications. The growth in the number of non-Alaskans owning fishing permits and gaining access to the fisheries has grown, she stressed. The coastal residents are economically impacted, as are the variety of infrastructure investments that a community chooses whether or not to support. She recalled the 2012 resolution passed by the House Special Committee on Fisheries encouraging the state to address the greying of the fleet issue. The Alaska Sea Grant Corporation has contributed in a number of ways to bolster the fishing industry, such as: hosting the Young Fisherman's Summit; co-sponsoring the greying of the fleet research project; and hosting a steering committee workshop in January, 2016, titled, "Fisheries Access for Alaskans; Chartering the Future." The workshop participation level indicated a statewide concern for this multi-faceted issue, which may require a variety of approaches to solve. Effective solutions will take into consideration specific requirements including: does it create an inter-generational path to assist young fishermen entering the industry while allowing retirees to sell without financial penalties; is it linked to communities and regions to provide local support; and does it contain opportunities for mentorship. Consensus from the workshop was for coastal Alaska to have a thriving, stable, inter-generation participation in local fisheries so that communities can support fishing businesses with infrastructure and amenities to retain residents and create a diverse local economy. The bill appears to provide many of these tools that will help to reverse the downward trend, she opined, and underscored support her for HB 366.

[10:46:09 AM](#)

LINDA BEHNKEN, Executive Director, Alaska Longline Fisheries Association, stated support for HB 366, paraphrasing from a prepared statement, which read [original punctuation provided]:

The Alaska Longline Fishermen's Association (ALFA) SUPPORTS HB 366: An Act establishing community permit banks.

ALFA is a Sitka-based organization of independent fishermen committed to sustainable fisheries and thriving fishing communities. Our members support science-based fisheries management through collaborative research, advocacy and innovation. We work to safeguard ocean health and improve the economic viability of small boat fishing. Commercial

fishing is the economic driver of Alaska's communities; commercial fishing also provides residents of rural communities with access to important subsistence resources, supporting household economics and community culture.

The dependence of communities on commercial fishing increases in the remote and isolated coastal areas stretching along the Gulf of Alaska and Bering Sea coasts. Fishing permits and quota are leaving Alaska, especially leaving Alaska's rural coastal communities. Between 1975 and 2014, Alaska's rural communities experienced a net loss of over 2,300 limited entry permits. Federal quota has also become concentrated into fewer hands and migrated from rural communities. Because few alternative employment opportunities exist in these communities, losing access means losing livelihood and ultimately losing community.

Six billion dollars' worth of fisheries resources are harvested off Alaska's coast each year. Non-residents have an important role in that harvest, but Alaska community residents depend on access to that valuable resource—and that access is increasingly out of reach.

The cost of access to some of Alaska's fisheries has doubled, quadrupled, and then doubled again since limited access programs were implemented. Young fishermen, especially fishermen from rural areas, lack the necessary capital and collateral to obtain loans. Even when funding is available, the risk new fishermen face is staggering.

Community permit banks are an essential part of addressing these issues. Permit banks anchor access in communities and provide an affordable entry level for new fishermen. As proposed in HB 366, community permit banks would obtain limited entry permits than lease these permits to resident fishermen for a limited amount of time. As a result, new fishermen would initially face only the cost of buying a boat and fishing gear, then tackle the cost of a permit after building equity in their boat, gaining experience, and weathering the first few fishing seasons. During the startup time, permit banks can mentor young fishermen in sound fishing and business practices, further lowering the risks they face and

supporting their eventual success. In short, permit banks anchor access in communities, lower entry costs and reduce risks faced by new fishermen. From ALFA's perspective, community permit banks are an essential step toward reversing the loss of fishery access. ALFA has been actively working since 2009 to address the loss of fishery access through a risk sharing arrangement that supports intergenerational transfer of federal fisheries quota to residents of Alaska's communities.

Although we are making some progress, we recognize the erosion of access far outstrips our current capacity. A sea change is needed, and our members recognize community permit banks are an essential part of that change. Important to ALFA is the concept behind this bill that establishes permit banks as an entry level opportunity designed to launch independent fishermen into permit ownership, rather than permanent lease arrangements. Our members would not be comfortable without that provision. We recognize some changes and improvements will be made to HB 366 as it moves through the process, but highlight that provision as important to our support.

In sum, ALFA members urge the Committee to recognize the economic, social and cultural importance of HB 366 to Alaska in general and Alaska's rural communities in particular. We urge you to support the Bill and to work toward timely implementation.

[10:51: 11 AM](#)

JIM BRENNAN, Attorney, reported that the potential state and federal constitutional issues include a general discrimination against non-Alaskan residents, and the U.S. equal protection clause. Under Article 8 Section 15, of the Alaska constitution, the creation of exclusive right or special privilege of fishery is prohibited. He said these are legitimate concerns, and opined that the constitutionality of the proposed permit bank system would be upheld. Regarding the exclusive right issue, he said the Alaska constitution has a specific clause addressing the limited entry system. He referred, Article 8 Section 15, which read as follows:

SECTION 15. No Exclusive Right of Fishery. 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.

MR. BRENNAN said the amendment was adopted in 1972, which added all of the language following the first sentence. The clause is specific and has been interpreted by the Alaska Supreme Court to authorize limited entry statutes, despite the no exclusive right language and other constitutional clauses pertaining to equal protection and non-discrimination. He directed attention to the committee packet letter from the Alaska Independent Fishermen's Marketing Association (AIFMA), 3/16/16, from David Harsila, President, challenging the constitutionality of the bill, and said that Mr. Harsila cites this section, but not as amended. Also the letter invokes a number of Alaska cases, but those cases did not qualify as beneficiaries to the 1972 amendment. The bill should prevail under any constitutional challenges, and is a sound means for solving the problems for which it was intended, he opined.

[10:58:32 AM](#)

TYLER EMERSON, Fisherman, stated support for HB 366, and said as a third generation fisherman, he looks forward to being able to continue in the industry. He pointed out that two primary business assets, a permit and a boat, need to be acquired at the same time, which is problematic. The Division of Investments, Commercial Fishing and Agriculture Bank (CFAB), was the resource he turned to for assistance and was successful. However, he opined, a means to handle these significant investments separately would be optimal. During the 2016 Young Fisherman's Summit, perhaps 90 percent of the participants entering the industry indicated that they were generational fishermen. He said HB 366 would provide an improvement to what is now available through CFAB.

[11:03:28 AM](#)

JOHN STURGEON, Representative, Ouzinkie Native Corporation, stated support for HB 366, and said the village of Ouzinkie has a tradition of fishing; however, today only two boats remain. Because of the limited entry requirements, the permits have filtered out, leaving Ouzinkie village with no economy. The

bill will help restore what has been lost, he opined, and assist in rebuilding the fishing fleet.

[11:07:11 AM](#)

NICOLE BORROMEO, Representative, Alaska Federation of Natives, stated support for HB 366, and echoed the previous statements of support. The bill has a real potential for making a difference in rural Alaska economies, she said.

CHAIR STUTES asked about problems that may result from the ownership requirements, as proposed in HB 366.

[11:09:06 AM](#)

BENJAMIN BROWN, Commissioner, Commercial Fisheries Entry Commission (CFEC), lauded the intent of HB 366 and said the desired intent will certainly assist Alaskans to participate in the fishing industry. However, he said, with a bill of this magnitude, a devil's advocate perspective is important to hold in order to avoid the pitfalls that could ensue and magnify. The Section 24 causes concern by removing the proscription of who can't own a permit and who is not a person for the purposes of permit ownership. The section requires tightening up, he said, and directed attention to page 7, lines 15-20, which read as follows:

* **Sec. 24.** AS 16.43.990(7) is amended to read:

(7) "person" means a natural person **or a regional community permit bank established under AS 16.44.010** [; "PERSON" DOES NOT INCLUDE A CORPORATION, COMPANY, PARTNERSHIP, FIRM, ASSOCIATION, ORGANIZATION, JOINT VENTURE, TRUST, SOCIETY, OR OTHER LEGAL ENTITY OTHER THAN A NATURAL PERSON];

COMMISSIONER BROWN opined that, in order to later include a regional community permit bank as a second type of person, retaining language that stipulates what a person is not, may prove unhelpful, and may will also effect the ability for leasing permits.

REPRESENTATIVE KREISS-TOMKINS acknowledged the concern and agreed that Sec. 24 requires amending.

[11:12:24 AM](#)

REPRESENTATIVE JOHNSON asked about the requirements that govern the scallop and hair crab fisheries, which did not require the permit holder to be on board the fishing vessel.

COMMISSIONER BROWN answered that two fisheries allowed for vessel based permits, thus, ownership by a corporation versus a person. He detailed the case and recalled that, upon the bills sunset date, no harm came to pass. He opined that it may not provide the best example for the potential opposition that may be directed to HB 366.

REPRESENTATIVE JOHNSON questioned whether any precedent was created by the scallop and hair crab fisheries and whether a nexus exists, although there doesn't appear to be a great deal of similarity.

COMMISSIONER BROWN agreed that legislative records could be reviewed to glean some knowledge, but there isn't a great deal of similarity shared by the two bills.

[11:15:30 AM](#)

REPRESENTATIVE HERRON referred to the committee packet and the letter from the United Southeast Alaska Gillnetters, dated 3/15/16, addressing the members, and asked Mr. Brown to please review the contents and provide an opinion.

COMMISSIONER BROWN agreed to provide the requested opinion.

[11:16:59 AM](#)

REPRESENTATIVE ORTIZ asked about how the passage of HB 366 would impact the current market value of permits.

COMMISSIONER BROWN responded that the effect is not known, but conjectured it would depend on the level of the permit exchange participation.

REPRESENTATIVE ORTIZ asked whether the competitiveness for obtaining permits could cause a downward turn of permit values.

COMMISSIONER BROWN conjectured on fluctuations of value, and added that what might cause the most impact would be if, due to the consolidation and banking of permits, a fleet reduction measure in a fishery occurred, which in turn could lead to a potential situation of excessive exclusivity.

REPRESENTATIVE KREISS-TOMKINS offered that the permit cost question has been discussed, and reported that HB 366 is tailored and intended to reduce market impacts by imposing a four percent ownership cap and limiting access for holding permits. It is expected that these measures will minimize any price distortion on the free market, due to permit bank operations.

[11:23:47 AM](#)

REPRESENTATIVE HERRON asked whether the model is being implemented elsewhere.

COMMISSIONER BROWN said no.

REPRESENTATIVE KREISS-TOMKINS interjected that there is an analogous system in the Gulf of Alaska, pertaining to the halibut fishery, which is under federal management.

[11:24:45 AM](#)

REPRESENTATIVE JOHNSON questioned the primary goal of the policy being considered: maintaining the fiscal value of fishing permits, or to enable people to fish. He opined that the bill may not be an effective vehicle for ensuring the fiscal value of fishing permits; however, it does appear to propose a workable means to assist people who are entering the fishing industry. The fishermen may want both, he conjectured, but that would be the perfect outcome.

[HB 366 was held over.]

CHAIR STUTES thanked the participants.

[11:25:47 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:25 a.m.