

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

April 7, 2016
10:09 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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

HOUSE BILL NO. 283

"An Act relating to the nomination and designation of state water as outstanding national resource water; and providing for an effective date."

- MOVED CSHB 283(FSH) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

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
03/17/16	(H)	Heard & Held
03/17/16	(H)	MINUTE (FSH)
04/05/16	(H)	FSH AT 5:30 PM CAPITOL 106
04/05/16	(H)	Heard & Held
04/05/16	(H)	MINUTE (FSH)
04/07/16	(H)	FSH AT 10:00 AM GRUENBERG 120

BILL: HB 283

SHORT TITLE: NATL. RES. WATER NOMINATION/DESIGNATION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/29/16	(H)	READ THE FIRST TIME - REFERRALS
01/29/16	(H)	RES
02/03/16	(H)	FSH REFERRAL ADDED BEFORE RES
02/03/16	(H)	BILL REPRINTED 2/3/16
03/15/16	(H)	FSH AT 10:00 AM GRUENBERG 120
03/15/16	(H)	Heard & Held
03/15/16	(H)	MINUTE (FSH)
04/05/16	(H)	FSH AT 5:30 PM CAPITOL 106
04/05/16	(H)	Scheduled but Not Heard
04/07/16	(H)	FSH AT 10:00 AM GRUENBERG 120

WITNESS REGISTER

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

POSITION STATEMENT: Presented the proposed committee substitute (CS) for HB 283 and responded to questions.

EMILY NAUMAN, Attorney
 Legislative Legal and Research Services
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Responded to questions during the hearing on the committee substitute (CS) for HB 283.

HILARY MARTIN, Attorney
 Legislative Legal and Research Services
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Responded to questions during the hearing on the committee substitute (CS) for HB 283.

LARRY HARTIG, Commissioner
Department of Environmental Conservation (DEC)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during the hearing on the committee substitute (CS) for HB 283.

ACTION NARRATIVE

[10:09:25 AM](#)

CHAIR LOUISE STUTES called the House Special Committee on Fisheries meeting back to order at 10:09 a.m., after being recessed on 4/5/16. Representatives Stutes, Millett, Johnson, Kreiss-Tomkins, Herron, Foster, and Ortiz were present at the call to order.

^#hb366

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

[10:10:28 AM](#)

CHAIR STUTES announced that the first 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."

[10:11:13 AM](#)

REPRESENTATIVE MILLETT moved to adopt the proposed committee substitute (CS) for HB 366, Version 29-LS0283\L, Bullard, 4/5/16, as the working document. With no objection, Version L was before the committee.

REPRESENTATIVE KREISS-TOMKINS commented that the committee packet information is available for public review on BASIS, including a lengthy legal opinion addressing the constitutionality question.

[HB 366 was held over.]

^#hb283

HB 283-NATL. RES. WATER NOMINATION/DESIGNATION

[10:12:31 AM](#)

CHAIR STUTES announced that the final order of business would be HOUSE BILL NO. 283, "An Act relating to the nomination and designation of state water as outstanding national resource water; and providing for an effective date."

[10:12:36 AM](#)

REPRESENTATIVE MILLETT moved to adopt the proposed committee substitute (CS) for HB 283, Version 29-GH2916\H, Nauman, 4/6/16, as the working document.

CHAIR STUTES objected for discussion.

[10:13:02 AM](#)

REID HARRIS, Staff, Representative Louise Stutes, Alaska State Legislature, described the changes being proposed in the CS. He paraphrased the original bill title, which read as follows:

An act relating to the nomination and designation of water as outstanding national resource water; and providing for an effective date.

MR. HARRIS referred to the CS, page 1, lines 1-2, and paraphrased the proposed title, which read as follows:

An act relating to the nomination and designation of water as outstanding state resource water; and establishing an Advisory Board of Protected Waters.

MR. HARRIS pointed out the removal of "national," the insertion of "state," and the added language to include an Advisory Board of Protected Waters. He said Section 1 retains language for the outstanding state resource waters to be designated by an act of the legislature, and the constitutionality for having the authority for designation be held by the commissioner of DEC, remains in question. A Board of Protected Waters is being proposed, in Sec. 1, as a nine member board. Three permanent members will be the commissioner of the Department of Environmental Conservation (DEC), as chair, a DEC environmental specialist appointed by the commissioner, and a biologist from the Department of Natural Resources (DNR) appointed by the commissioner of DNR. The other six seats will be reserved for

rotating member's, appointed by the commissioner of DEC, representing the region(s) in which the nominated waters are located. Seats will be reserved for two members each of the fishing industry, mining industry, and regional tribal entities. The term regional tribal entity broadens the scope of Native participation versus the term Native Corporation. He pointed out that the board members will be volunteers, receiving no salary, travel or per diem. Five members will constitute a quorum and a majority of the membership is required to approve a final recommendation on a nomination. The board will establish acceptance criteria and provide public notice. He referred to page 3, lines [6]-22, and paraphrased the language, which read as follows:

(A) in relatively pristine condition, largely absent of human sources of degradation, and of exceptional value to the state in its current condition;

(B) of exceptional ecological, economic, or recreational significance;

(C) an exceptional and rare example of its type, regardless of its water quality; or

(D) proximate to, adjacent to, or within existing protected waters;

(3) public notice and public hearings for all nominations meeting qualifications under (2) of this subsection;

(4) a method to provide individual notice to known owners of land adjacent to the nominated water; and

(5) scientific and other requirements that must be met before water can be designated outstanding state resource water;

(6) guidelines and criteria that must be provided in a report to the legislature under (f) of this section.

[10:17:28 AM](#)

MR. HARRIS said that the board will transmit final recommendations to the commissioner, with a prepared report for each nomination received prior to January 1. Within 10 days

after the convening of each regular legislative session, the commissioner shall deliver the reports and final recommendations to the legislative bodies for review and action. Turning to page 4, lines 3-4, he paraphrased the sunset language, which read as follows:

*** Sec. 3.** AS 46.03.085, 46.03.087, and 46.03.900(38) are repealed 11 days after the convening of the Second Regular Session of the Thirtieth Alaska State Legislature.

[10:17:55 AM](#)

CHAIR STUTES commented on the sunset provision and said that the bill provides an 18 month interim period to address the compliance situation with concerned stakeholders.

[10:19:16 AM](#)

CHAIR STUTES removed her objection, and without further objection, Version H was before the committee.

[10:19:26 AM](#)

REPRESENTATIVE MILLETT expressed concern for changes proposed in the CS, and said:

This feels like a hard fought battle over coastal zone management, when you look at the six rotating members that don't have to be scientific in nature. They're regional fishing organizations, regional mining, and regional tribal. My understanding ... [of the original bill was that] this was based solely on data, it was based solely on the value of the waterway and it went through a rigorous designation process.

REPRESENTATIVE MILLETT said there is opportunity for a nomination to become heavily politicized, and for the six rotating members to be lobbied by big money, as has happened in the past to the detriment of Alaska's resource potential. Despite these reservations, she said she would not oppose passage of the bill from committee.

CHAIR STUTES commented that one reason for the sunset date is to insert a measure to depoliticize the designation.

[10:21:59 AM](#)

REPRESENTATIVE FOSTER turned to page 2, line 12, which read:

(C) two representatives from a regional tribal entity.

REPRESENTATIVE FOSTER said the Alaska Native Claims Settlement Act (ANCSA) corporations may not be considered tribal entities. He suggested that it would be appropriate and more inclusive to insert an "or", to read:

two representatives from a regional tribal entity, or
a Native corporation.

REPRESENTATIVE FOSTER opined that the term tribal entity is not inclusive of Native corporations and asked for legal clarity.

[10:22:54 AM](#)

MR. HARRIS deferred.

[10:23:17 AM](#)

EMILY NAUMAN, Attorney, Legislative Legal and Research Services, Alaska State Legislature, deferred.

[10:23:33 AM](#)

HILARY MARTIN, Attorney, Legislative Legal and Research Services, Alaska State Legislature, opined that the term "tribal entity" is a legally broad term and a potential reading could include Native corporations. She suggested that the bill could be amended to include a definition.

[10:24:11 AM](#)

REPRESENTATIVE HERRON concurred, and agreed that the term is appropriate. He offered that the Association of Village Council Presidents, in his district, is comprised of 56 tribes and as such constitutes a regional tribal entity. He then turned to page 2, line 23, which read as follows:

(f) Within 60 days of receipt of a nomination, the commissioner shall...

REPRESENTATIVE HERRON asked how the 60 day period was chosen.

[10:25:11 AM](#)

MR. HARRIS reported that the administration, legal services, and DEC determined this to be ample time to begin the process and assemble the board members.

[10:25:48 AM](#)

REPRESENTATIVE ORTIZ turned to page 2, lines 4-5, which read as follows:

(B) one environmental specialist from the Department of Environmental Conservation, appointed by the commissioner;

REPRESENTATIVE ORTIZ asked why an environmental specialist from DEC is specified over staff from Alaska Department of Fish & Game (ADF&G).

MR. HARRIS responded that ADF&G appears to be overtaxed and would be required to interrupt a field biologist from other duties.

[10:26:45 AM](#)

REPRESENTATIVE ORTIZ questioned whether it's safe to say that DEC is not also pressed, or stressed, or lacking personnel.

[10:27:15 AM](#)

REPRESENTATIVE JOHNSON asked for a definition of a regional mining organization

MR. HARRIS deferred.

[10:27:43 AM](#)

MS. NAUMAN responded that the phrase is broad and inclusive, and allows the commissioner flexibility for interpretation.

REPRESENTATIVE JOHNSON opined that organizations seem to be a specific group of people who are specifically organized, versus being a broad and inclusive term.

MS. NAUMAN clarified that legally it is considered a broad term.

[10:29:42 AM](#)

LARRY HARTIG, Commissioner, Department of Environmental Conservation (DEC), explained that the bill is being proposed to satisfy the U. S. Environmental Protection Agency (EPA) anti-degradation regulations, which require Alaska to have nomination and implementation procedures in place, which work in concert with the federal standards. One aspect of the anti-degradation ruling includes a process for designation of Outstanding National Resource Waters, or Tier 3 waters. The designation allows no further discharges to be emitted and ensures that the existing water standard will be maintained, save temporary discharges that cause no permanent effect. Tier 3 status goes beyond the protections of Tier 2 standard use waters, and enters the realm of preservation. Alaska has an anti-degradation policy and a means for nominating and designating Tier 3 waters via the legislative process. However, the process is not clearly defined, nor are procedures specifically outlined, that allow the public to nominate waters for Tier 3 designation.

[10:32:36 AM](#)

CHAIR STUTES asked whether once designated, the action could be reversed.

MR. HARTIG opined that it may be difficult to unwind the provision, however, it's not clearly understood. The detailed criteria being used under the EPA regulation is still outstanding but, once protected, no additional discharges would be allowed. The intent is to preserve the waters character at the time of designation; barring natural disaster. If a discharge were to be allowed the action would require litigation and a court ruling.

[10:34:46 AM](#)

REPRESENTATIVE MILLETT asked whether the federal government would view the work expended in conjunction with HB 283, as an active demonstration of progress towards compliance.

MR. HARTIG suggested that EPA would rather not override an effort being made by the state. Clearly HB 283 is a vehicle for compliance, and the undertaking, he predicted, will be recognized.

[10:36:23 AM](#)

REPRESENTATIVE FOSTER returned to the tribal/Native corporation question and said in Nome there are several entities, which seem

to intertwine. He referred to an internet, Wikipedia entry and paraphrased the entry, which read as follows [original punctuation provided]:

Note that while the names of Alaska Native tribal entities often include "Village of" or "Native Village of," in most cases the tribal entity cannot be considered as identical to the city, town, or census-designated place in which the tribe is located. ... Nor should Alaska Native tribes be confused with Alaska Native Regional Corporations, which are a class of Alaska for-profit corporations created under the Alaska Native Claims Settlement Act (ANCSA) of 1971.

REPRESENTATIVE FOSTER expressed concern for any exclusion that may unintentionally limit Native participation, and said he remains skeptical.

[10:37:42 AM](#)

REPRESENTATIVE HERRON asked what occurs following the sunset date; what will be left.

MR. HARTIG opined that the intent and effort, as previously discussed, would preclude federal intervention. He deferred comment on what would happen to existing nominations upon sunset.

[10:39:18 AM](#)

REPRESENTATIVE ORTIZ returned to the designation "impact," and asked about the potential impact on activities that don't result in discharge in the water. He asked whether timber sale and supply activities could be impacted if operating in proximity to a Tier 3 river.

MR. HARTIG said it may depend on the type of discharge. However, runoff from a large construction or industrial operation would also constitute a point of discharge, creating a bias that would require scrutiny.

[10:41:40 AM](#)

REPRESENTATIVE ORTIZ returned to the question of seating an ADF&G biologist on the board, versus one from DNR and asked whether an amendment to that effect would be objectionable.

MR. HARTIG said it would not be objectionable, and opined that DNR may not have anyone with that title on staff. He deferred further comment to DNR.

[10:42:46 AM](#)

REPRESENTATIVE KREISS-TOMKINS questioned whether DNR retains biologists on staff. He then suggested that the bill stipulate that the fishing and mining representatives seated be from Alaska and offered to propose a conceptual amendment.

CHAIR STUTES pointed out that the term "regional" serves to specify Alaska.

MS. NAUMAN offered to provide further information.

[10:45:30 AM](#)

REPRESENTATIVE KREISS-TOMKINS offered Conceptual Amendment 1, page 2, lines 10-11, to read:

Delete:

(A) two representatives from a regional fishing organization;

(B) two representatives from a regional mining organization;

Insert:

(A) two representatives from an Alaska based regional fishing organization;

(B) two representatives from an Alaska based regional mining organization;

[10:45:51 AM](#)

The committee took an at-ease from 10:45 a.m. to 10:46 a.m.

[10:46:11 AM](#)

REPRESENTATIVE JOHNSON objected for discussion.

[10:47:16 AM](#)

REPRESENTATIVE JOHNSON commented on the importance for moving the bill to curb additional actions that may be forthcoming from

the current federal administration. Additionally, as a member of the subsequent committee of referral, he offered to carry members concerns and amendments to that committee for inclusion.

REPRESENTATIVE HERRON acknowledged that further work will occur in a subsequent committee and asked to have Native non-profit corporations included with tribal entities, for board membership consideration.

[10:49:35 AM](#)

REPRESENTATIVE KREISS-TOMKINS withdrew Conceptual Amendment 1.

[10:50:17 AM](#)

REPRESENTATIVE ORTIZ agreed on the necessity for moving HB 366, and requested that the subsequent committee consider stipulating the inclusion of an ADF&G biologist.

REPRESENTATIVE FOSTER added that the inclusion of the term Native Corporation will be necessary for ANCSA organizations to be represented in a tribal seat.

[10:52:13 AM](#)

REPRESENTATIVE JOHNSON moved to report the proposed CS for HB 283, Version 29-GH2916\H, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 283 (FSH) was reported from the House Special Committee on Fisheries.

#

CHAIR STUTES thanked the participants and members.

[10:52:50 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 10:52 a.m.