

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

March 6, 2018
10:03 a.m.

MEMBERS PRESENT

Representative Louise Stutes, Chair
Representative Geran Tarr
Representative Mike Chenault
Representative David Eastman
Representative Jonathan Kreiss-Tomkins
Representative Mark Neuman

MEMBERS ABSENT

Representative Zach Fansler
Representative Bryce Edgmon

COMMITTEE CALENDAR

HOUSE BILL NO. 386

"An Act relating to abandoned and derelict vessels; relating to the registration of vessels; relating to certificates of title for vessels; relating to the duties of the Department of Administration; relating to the duties of the Department of Natural Resources; establishing the derelict vessel prevention program; establishing the derelict vessel prevention program fund; and providing for an effective date."

- MOVED HB 386 OUT OF COMMITTEE

HOUSE BILL NO. 231

"An Act relating to the Alaska Commercial Fisheries Entry Commission; and providing for an effective date."

- MOVED CSHB 231(FSH) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 386

SHORT TITLE: VESSELS: REGISTRATION/TITLES; DERELICTS

SPONSOR(S): REPRESENTATIVE(S) SEATON

02/21/18	(H)	READ THE FIRST TIME - REFERRALS
02/21/18	(H)	FSH, FIN
02/27/18	(H)	FSH AT 10:00 AM GRUENBERG 120

02/27/18 (H) Heard & Held
02/27/18 (H) MINUTE(FSH)
03/06/18 (H) FSH AT 10:00 AM GRUENBERG 120

BILL: HB 231

SHORT TITLE: CFEC: BD. SALARY; STAFF CLASSIFIED SERVICE
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

04/15/17 (H) READ THE FIRST TIME - REFERRALS
04/15/17 (H) FSH, FIN
05/02/17 (H) FSH AT 10:00 AM GRUENBERG 120
05/02/17 (H) Heard & Held
05/02/17 (H) MINUTE(FSH)
02/22/18 (H) FSH AT 10:00 AM GRUENBERG 120
02/22/18 (H) <Bill Hearing Postponed to 2/27/18>
02/27/18 (H) FSH AT 10:00 AM GRUENBERG 120
02/27/18 (H) Heard & Held
02/27/18 (H) MINUTE(FSH)
03/06/18 (H) FSH AT 10:00 AM GRUENBERG 120

WITNESS REGISTER

BRYAN HAWKINS, Harbormaster
City of Homer;
Vice President
Alaska Association of Harbormasters and Port Administrators
Homer, Alaska

POSITION STATEMENT: Testified in support of HB 386.

MATT GRUENING, Staff
Representative Louise Stutes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions and explained Amendment 1 to Version D of HB 231.

FATE PUTMAN, Chair
Commercial Fisheries Entry Commission
Alaska Department of Fish & Game (ADFG)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 231.

DALE KELLEY, Member
Commercial Fisheries Entry Commission
Alaska Department of Fish & Game (ADFG)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 231.

ACTION NARRATIVE

[10:02:30 AM](#)

CHAIR LOUISE STUTES called the House Special Committee on Fisheries meeting to order at 10:03 a.m. Representatives Stutes Tarr, Chenault, Eastman, were present at the call to order. Representatives Neuman and Kreiss-Tomkins arrived as the meeting was in progress.

HB 386-VESSELS: REGISTRATION/TITLES; DERELICTS

[10:03:55 AM](#)

CHAIR STUTES announced that the first order of business would be HOUSE BILL NO. 386 "An Act relating to abandoned and derelict vessels; relating to the registration of vessels; relating to certificates of title for vessels; relating to the duties of the Department of Administration; relating to the duties of the Department of Natural Resources; establishing the derelict vessel prevention program; establishing the derelict vessel prevention program fund; and providing for an effective date."

[10:05:40 AM](#)

CHAIR STUTES opened public testimony on HB 386.

[10:06:18 AM](#)

BRYAN HAWKINS, Harbormaster, City of Homer; Vice President, Alaska Association of Harbormasters and Port Administrators, stated that the city of Homer supports HB 386 and its companion in the Senate, SB 92. He said the city demonstrated its support for the bill with a resolution passed this past December. He pointed out that he is also representing the Alaska Association of Harbormasters and Port Administrators, which supports these efforts to bring new legislation for management of derelict vessels.

[10:07:36 AM](#)

CHAIR STUTES, after ascertaining that there was no one else who wished to testify, closed public testimony on HB 386.

[10:07:56 AM](#)

CHAIR STUTES reiterated that HB 386 has a further referral to the House Finance Committee and that she would like to move the bill this day. She pointed out that there are four fiscal notes attached to HB 386: two zero notes, one Department of Administration note that has no fiscal impact, and one fund-capitalization note that reflects the revenue generated from the new fee structure.

[10:08:23 AM](#)

REPRESENTATIVE TARR moved to report HB 386 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 386 was moved from committee.

[10:08:44 AM](#)

The committee took an at-ease from 10:08 a.m. to 10:11 a.m.

HB 231-CFEC: BD. SALARY; STAFF CLASSIFIED SERVICE

[10:11:48 AM](#)

CHAIR STUTES announced that the final order of business would be CS FOR HOUSE BILL NO. 231(FSH), "An Act reducing the membership of the Alaska Commercial Fisheries Entry Commission to two individuals; providing that a single commissioner may exercise all powers and duties of the commission if there is a vacancy on the commission; providing for commissioner compensation; relating to tie votes of the commission; assigning employees of the commission to the classified service; and providing for an effective date." [Before the committee, adopted as a working document on 2/27/18, was the proposed committee substitute (CS) for HB 231, Version 30-GH1053\D, Bullard, 2/14/18, ("Version D").]

[10:12:34 AM](#)

CHAIR STUTES moved to adopt Amendment 1, labeled 30-GH1053\D.1, Bullard, 3/1/18, which read as follows:

Page 1, line 2:

Delete "**member of the commission**"

Insert "**commissioner**"

Page 1, line 3, following "**commission**":

Insert "**if there is a vacancy on the commission**"

Page 1, line 13:

Delete "A"

Insert "**If there is a** [A]"

Delete "does not impair the authority of"

Insert "**, [DOES NOT IMPAIR THE AUTHORITY OF]**"

Page 1, line 14:

Delete "[QUORUM OF COMMISSIONERS] to"

Insert "**may** [QUORUM OF COMMISSIONERS TO]"

Page 2, lines 3 - 4:

Delete "**A single member** [TWO MEMBERS] of the
commission **constitutes** [CONSTITUTE]"

Insert "**Unless there is a vacancy on the
commission, two** [TWO] members of the commission
constitute"

REPRESENTATIVE TARR objected for purposes of discussion.

[10:13:00 AM](#)

MATT GRUENING, Staff, Representative Louise Stutes, Alaska State Legislature, on behalf of Representative Stutes, prime sponsor of HB 231, came forward to explain the change Amendment 1 brings to Version D of HB 231. He directed the committee to page 1, lines 12-14 of Version D, and stated that the effect of replacing the term "quorum of commissioners" with "single commissioner" was fully intended in the drafting of Version D. However, he stated it was not intended that a single commissioner could establish a quorum if the other commissioner was merely out of the office for a short time period, as it is indicated in Version D, on page 2, lines 3 and 4. He stated that the intent is to allow a single commissioner to constitute a quorum and exercise all powers of the commission only if there is a vacancy on the commission. He said it is not considered desirable for a single commissioner to be able to form a quorum and exercise the power of the commission if the other commissioner is temporarily out of the office due to illness or for some other common reason.

[10:14:30 AM](#)

REPRESENTATIVE NEUMAN asked if there would still be an opportunity to have a commissioner's decision reviewed.

MR. GRUENING responded by explaining that a review initially begins with a hearing officer, but it can be elevated to the commissioner if the person requesting the review does not agree with the hearing officer's decision. A further review would be directed to the Alaska Superior Court. He said this is how the process currently works and this structure would remain in place. He added that it is only in the event of a one-to-one tie that the decision of the hearing officer would be the decision of the commission.

[10:15:40 AM](#)

REPRESENTATIVE EASTMAN asked if there might be a grammatical error in the amended language, specifically, with the insertion of the word "may" on page 1, line 14 of Version D.

[10:17:21 AM](#)

MR. GRUENING said that an associated change found on page 1, line 13 of Version D, in conjunction with the change identified by Representative Eastman on line 14, provides for proper grammar in the amended bill.

[10:17:33 AM](#)

CHAIR STUTES, hearing no further questions regarding Amendment 1, asked Representative Tarr if she was maintaining her objection.

REPRESENTATIVE TARR removed her objection.

CHAIR STUTES, announced that there being no further objection, Amendment 1 was adopted. She mentioned that HB 231 has a further referral to the House Finance Committee. She stated her intent to move it from the Fisheries Committee on this day. She noted that there are two letters of support, one from the United Fishermen of Alaska and another from the Southeast Alaska Fishermen's Alliance.

[10:18:04 AM](#)

REPRESENTATIVE CHENAULT referenced the fiscal note from the Commercial Fisheries Entry Commission (CFEC) and said that it shows a savings of \$124,400 but the amount should be about \$83,628. He said he didn't know if the committee would want to change the fiscal note or leave the change to the House Finance Committee to make.

CHAIR STUTES pointed to the attached fiscal note showing a cost savings of \$125,500 annually, starting in fiscal year 2019. She said the Office of the Governor had not updated the fiscal note to Version D because the next stop for the bill is the House Finance Committee. She added that the updated fiscal note will still show a cost savings, but the immediate savings will be less due to the change adopted under Version D, which maintains the chairman position [one of the two commissioners at CFEC,] at a Range 27 pay level. She noted that over the long term the cost savings will be greater because of the reduction in the number of commissioners on the commission from three to two.

10:20:16 AM

REPRESENTATIVE KREISS-TOMKINS pointed out that the committee has discussed in length the matter of the number of permit issuance decisions per year at CFEC, and the fact that there are only a "handful" of cases remaining. He suggested that CFEC might effectively be "working itself out of a job," and it would be reasonable to consider the "notion of a sunset [provision] after three years or however many years" to account for the settling of the remaining cases. He added that CFEC might then transition into an entity solely for ongoing annual permit renewals and authorizations. He asked for CFEC's perspective on this idea.

10:21:24 AM

FATE PUTMAN, Chairman, Commercial Fisheries Entry Commission, Alaska Department of Fish and Game, responded by pointing out that there are two mandates for CFEC. He said that for the last 35-45 years, CFEC has been involved with the issuance of initial limited entry permits. He added that some of these permits are still pending in the Alaska Superior and Supreme Courts. Of 26 cases that were at the commission, 13 remain unresolved, he said.

MR. PUTMAN said the other clear mandate for CFEC is for it to conduct optimum number studies for fisheries, and he offered his understanding that this mandate has not been addressed. He explained that optimum number studies occur after a limited fishery is established and the permits for that fishery have been issued. He said every fisherman who can demonstrate a history of participation in a fishery has the right to apply for a permit if that fishery becomes limited to entry. He said some people appealed [their denial for a permit], and this created

the cases that CFEC has been dealing with in the Alaska Superior and Supreme Courts. He pointed out that CFEC has been working on two of these cases since he began his position there. Those two cases went to the Alaska Superior Court but have been remanded back to CFEC for reconsideration.

MR. PUTMAN explained that the number of limited entry permits initially issued for a fishery is based on the number of fishermen that participated in the fishery; however, he also said that a fishery may eventually receive enough pressure that it must be evaluated to determine the appropriate number of permits it should have for sustained yield management. He said that this evaluation is referred to as an optimum permit number study, and it includes examining the history of the fishery in terms of past management action by ADFG and the Board of Fisheries. He said the aware of only two studies performed by CFEC, and there are 68 fisheries that must be examined. He summarized by saying that there is an ongoing need for CFEC so that these types of decisions can be made independently from ADFG and the Board of Fisheries.

[10:23:45 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked for information on the last two optimum number studies, specifically, when they were performed and the fisheries that were evaluated.

MR. PUTMAN said that his information on this matter comes from the report produced by former Administrative Services Director Tom Lawson and from the legislative audit performed on CFEC. He said the new commissioner [appointee], Dale Kelley, may have better information on these fisheries. He said that one of the two optimum number studies resulted in a reduction in the number of permits through a buyback program. In a later optimum number study, questions about the associated buyback eventually resulted in the buyback being discontinued.

[10:25:22 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked what would happen if an optimum number study conducted by CFEC indicates a number of permits that is different from the current number.

MR. PUTMAN answered the question by saying a buyback program would be initiated and that this is clearly laid out in statute. He gave the example of where a study might recommend 40 permits for an existing 60-permit fishery. In this situation, CFEC

would work toward buying permits from fishermen willing to sell them. He said the cost of such a study is paid by fishermen. The initial funds to purchase the permits would come from a federal loan, but the money to pay off the loan would come from fishermen.

[10:26:20 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked what would happen if an optimum number study recommends a greater number of permits than currently exist in the fishery.

MR. PUTMAN said he assumes more permits would be issued for that fishery. He noted that this is not the direction for most fisheries, because, in his opinion, all fisheries in Alaska will become limited to entry. He indicated that fisheries become limited as fishing pressure builds and biomass declines. He said this outcome is "just a matter of time." However, he stated there are other consequences that must be considered [when limiting a fishery or restricting permits], including the constitutional requirements for sustained yield management and ensuring that fisheries are available to everyone. He added that CFEC must also consider standards established in statute and in regulation.

[10:27:07 AM](#)

REPRESENTATIVE KREISS-TOMKINS commented that he has "caution" over the assumed obligation to conduct future optimum permit studies, given that so few studies have been conducted since the first limited entry fisheries were established over 30 years ago. Further, he expressed concern over the prospect of an optimum number study indicating that new permits might be issued for a fishery that has been limited to entry for 40 years.

[10:27:59 AM](#)

REPRESENTATIVE NEUMAN asked for additional information on the lawsuits that exist at CFEC - specifically, how the plaintiffs are affected by the lengthy duration of their cases.

[10:28:42 AM](#)

MR. PUTMAN responded by saying that CFEC serves as a specialized court. He referred to it as an appellate court for lower trials that occur under a hearing officer. A hearing officer makes an initial recommendation, which may then be appealed to the

commissioners, who in turn make a determination based on whether the law was followed. He stated that decisions are based on facts related to a fisherman's economic situation, history of participation in the fishery, and whether appropriate access to the fishery was provided. The commissioners can agree with the decision, remand it back for a hearing, or take other appropriate actions. The commissioner's final decision can be appealed to the Alaska Superior and Supreme Courts.

MR. PUTMAN pointed out that while a decision is being appealed, CFEC is required to offer an interim use permit that allows the fisherman to continue to fish in the fishery for which he/she has been denied access. He added that this is a concern because it creates a situation where the number of permits may exceed the optimum recommended level for that fishery. In some instances, these interim use permits have been active for 35 years. He said these cases need to be resolved so that they can get back to optimum number studies. He stated that there have been 70 cases that have gone to the Alaska Supreme Court, probably hundreds to the Alaska Superior Court, and thousands that have been dealt with by CFEC. Currently, there are very few remaining cases pertaining to an initial issuance of a limited entry permit, and CFEC is trying to resolve these. He noted that appeals in these cases are expected because of the large sums of money at stake for the fishermen.

[10:31:07 AM](#)

DALE KELLEY, Commissioner, Commercial Fisheries Entry Commission, Alaska Department of Fish and Game, introduced herself with the statement, "As much as I know about limited entry, I know I have a great deal to learn." She acknowledged that while providing information to the committee, she might have to get back to them later to correct her record. She offered her opinion that one advantage of CFEC is that it has always acted in support of commercial fishing, conservation, and "keeping people on the water." Regarding the latter point, she said this is evident because there are people still in the system contesting their denial of a transferrable permit back in the 1970s. Ms. Kelley indicated that some have made a career out of keeping their cases alive in the "quasi-judicial process" at CFEC. She pointed out that some have kept claims alive by choice not because of CFEC "dragging them along." She stated that an advantage of the CFEC system is in its claim process, which consists of several initial layers prior to bringing the case to the courts. She suggested that working with a CFEC attorney is likely much less expensive. She said CFEC leans

toward assisting fishermen during this process, attempting to find any way possible for them to keep fishing if they are worthy of a permit.

[10:32:42 AM](#)

REPRESENTATIVE NEUMAN offered his understanding that there are approximately 1,200 permit applications for Cook Inlet fisheries each year, but only about 750 permits are fished. He said the cost of these permits is roughly \$75 to \$100. He asked if the discrepancy between the number of permit applications and the number of permits fished might be a result of persons submitting applications for the sole purpose of demonstrating participation in a fishery. He indicated that this might be a means of becoming eligible for a limited entry permit and an eventual buyback if the fishery is to become limited to entry.

[10:33:46 AM](#)

MS. KELLEY said that people do hang on to permits and fish them sporadically based on the current market. She stated that the system is very dynamic. When optimum numbers for a buyback are considered, it is important not to issue additional permits, but also not to make the fishery too "super exclusive" [by issuing too few], because the fishing industry is chronically ebbing and flowing. She stated she has seen this in many of the fisheries in which she has participated. She said, "People hold on to them for a lot of different reasons, but sometimes they do come and go from the fishery."

[10:34:33 AM](#)

REPRESENTATIVE EASTMAN asked how the value of a permit is determined during a buyback program and what would happen if no one is interested at selling his/her permits at that price.

[10:34:59 AM](#)

MR. PUTMAN said economists at CFEC follow the sale of permits by fishery to determine their value, and this information is used to calculate an individual's annual fee of 0.4 percent of the permit value. He added that this fee pays for all operations at CFEC. Regarding Representative Eastman's second question, he said motivation for a fisherman to participate in a buyback program could fall into many categories; however, most reasons would be related to the value of the permit. As one example, he cited circumstances where [a fishermen's] valuable upland

leases, through the Department of Natural Resources (DNR), can be part of a permit buyback. He acknowledged, however, that there doesn't seem to be any requirement for fishermen to sell their permits back to CFEC. He said the committee should be aware that the Alaska State Legislature always retains the right to claim all permits without compensation; however, this would not likely happen given the economics of such a situation.

[10:36:27 AM](#)

MS. KELLEY pointed out that fishermen vote on whether they want to implement a buyback program; it is not a "voluntary seizure because somebody thinks it's a great idea." She spoke to the matter of optimal numbers and the question of whether to further limit or issue additional permits, pointing out that every permit is a potential job and therefore a matter of economics as well as resource conservation.

[10:37:11 AM](#)

REPRESENTATIVE EASTMAN provided a hypothetical situation in which CFEC might quickly resolve some of the remaining "dozen or so" outstanding legal cases, and he asked if Mr. Putman would consider shifting CFEC's focus to the work of optimal number studies if that situation developed.

[10:37:42 AM](#)

MR. PUTMAN answered yes. He added that the 13 lawsuits referred to at this hearing have been pending for 35 to 45 years as they are the more complicated cases. He said they can affect fisheries "all the way up the line," such that an error on the part of CFEC could result in the Alaska Supreme Court opening a fishery to all other individuals who were initially denied a permit. He stated that Ms. Kelley and he have a "very daunting task" as they must understand every case already decided by the courts before investigating why the other cases remain pending. He pointed out that these cases remain despite the many good commissioners, lawyers, and retired judges that have served at CFEC. He said he does not have an answer to the question of how long it might take to resolve the remaining cases and stated he has been working at CFEC for 12 weeks. He said there were many other issues identified in the legislative audit and the aforementioned Lawson report that are being addressed. He said these items are intended to streamline and modernize CFEC and to make it operate more efficiently. As one example of changes being considered, he cited new computer systems for issuing

permits and possibly allowing for multi-year permits. He pointed out that fishermen and fish buyers are currently using the old credit card embossing tool, which produces a carbon copy that is sent to CFEC as a record of a transaction. He concluded by that a lot updating is needed at CFEC and he stated his intent to work on this.

[10:39:44 AM](#)

CHAIR STUTES asked if a permit is passed on to an heir when the individual who made the original claim dies.

[10:40:12 AM](#)

MR. PUTMAN said there is a case currently pending before the Alaska Superior Court in which the original plaintiff died. It is now the owners of the original plaintiff's estate that are appealing the case, and they can continue to fish with an interim use permit during the appeal process and until the case is resolved. CFEC is working toward settling two cases by offering a time-certain, interim use permit, for roughly 3 to 5 years. The rights to fish would be extinguished after that period if the individuals agree to not continue the appeal process beyond the Alaska Superior Court.

[10:41:25 AM](#)

REPRESENTATIVE EASTMAN noted CFEC's desire to undertake optimum number studies that have not been conducted in the past, and he asked if there is sufficient funding for this or if it might have to ask the legislature for additional funding.

[10:41:47 AM](#)

MR. PUTMAN said he recognizes Alaska's current budgetary constraints and anticipates CFEC will be able to conduct its studies within its existing budget. He explained that CFEC's existing budget was allocated to fund a staff of 22 employees, including three commissioners; however, the current staff consists of 15 employees, including two commissioners. He noted the staff consisted of 45 persons in the past. He said the loss of one commissioner will, as Representative Chenault pointed out, provide a cost savings. He said CFEC expects to request additional hiring to fill positions, particularly in the research division that would conduct optimum studies. He said that there are only two employees within that research division,

a director and one economist, but additional staffing could be provided under the existing budget.

[10:42:56 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked how many years it would require to resolve the remaining legal cases if, hypothetically, optimum number studies are not undertaken "given that's how the commission has operated in these last few decades." He also asked if it seemed reasonable to establish a sunset on the commissioner positions if optimum number studies are not conducted. He clarified that such a sunset would allow sufficient time for the remaining legal cases to be resolved.

[10:43:35 AM](#)

MR. PUTMAN answered that those are questions asked in the legislative audit and the report by Tom Lawson on CFEC's overall performance. He said that Mr. Lawson concluded that CFEC should continue to exist. He stated that one of the reasons for this recommendation is that CFEC has autonomy to make certain difficult decisions, and another is because all fisheries will eventually be limited to entry. He said that HB 231 is intended to streamline CFEC for this current period in which fishery closures are not anticipated. He suggested there is a possibility CFEC may need to hire a third commissioner in the future if it becomes necessary to close a fishery or limit the number of permits, although this is not currently anticipated. He added that the reduction to two commissioners and the potential for operating under only one of them is intended for the current and foreseeable future. He said it is his understanding that CFEC is very important to commercial fishing because it provides an immediate response to individuals "not having a permit and things of that nature" as well as for the research it performs.

[10:44:52 AM](#)

CHAIR STUTES added that it is important to have CFEC commissioners making these types of decisions as they are impartial and do not have vested interests in the fisheries. She indicated that CFEC, rather than ADFG, is the better agency for making such decisions.

[10:45:08 AM](#)

REPRESENTATIVE KREISS-TOMKINS stated he was not suggesting that CFEC "go anywhere." He said he was specifically referring to the commissioners when he asked if they might not be needed in the future. He added the idea that the hearing officers could maintain objectivity and impartiality in the decisions made at CFEC. He also pointed out that the first part of his question pertained to the number of years CFEC might require to complete the cases that remain unresolved.

[10:45:29 AM](#)

MR. PUTMAN stated that it is his intent to resolve the remaining 13 cases by the next legislative session. He explained the general concern with these legal cases in the manner it was explained to him, with the analogy of removing the wrong piece from a stack of items such that the entire pile of items tumbles over. He said this is something that must be considered when resolving these cases. He added that the easiest way to resolve them is without the use of an interim use permit (IUP); however, he pointed out that these fishermen are in their 70s and may want to continue the appeal process to be able to fish with their families, and CFEC cannot prevent that from happening.

[10:46:12 AM](#)

REPRESENTATIVE EASTMAN asked why there are new commissioners starting now, "from scratch," to resolve these cases. He asked this with the understanding that the administrations have likely been very interested in seeing the cases settled and because CFEC has had so many other lawyers, judges and commissioners with legal experience working on the cases.

MR. PUTMAN answered by first reiterating that he was appointed to a vacant seat on the commission just 12 weeks ago, when one commissioner left in the middle of his term. His position is an interim seat lasting three years. He said that the former chairman of the commission, who served for 37 years retired on March 1, and that four-year seat is being filled by Dale Kelley. He pointed out that people who worked at CFEC before them also struggled with these cases. He noted that there were 26 open cases only three years ago but now only 13 of those are remaining. He reiterated that it is his intent to complete the remaining cases before the next legislative session, through either settlement or resolution.

[10:48:00 AM](#)

REPRESENTATIVE TARR commented that the work done by CFEC is important. She said it is important to have separation between the department [ADFG], the commission [CFEC], and the Board of Fisheries to depoliticize the decision process and keep it science-based. She pointed out that as recently as this year there has been talk of a buyback program in the upper Cook Inlet area because of fishing pressure. She said this CFEC's buyback function, as well as optimum number studies, should be considered because so much has changed in four years. She stated that a broader concern, related to what is happening with the budget right now, is that of attempts to grab any money that is not allocated. She said this does not seem to be appropriate for this organization, as funds should be available for "something" that might need to happen in the future. She said her concern stems from this occurring with the Alaska Performance Scholarship, the Power Cost Equalization program, and any pot of general fund money not otherwise obligated. She stated she appreciates the streamlining and greater efficiency, because "we can always be doing things better." However, given the importance of Alaska's fisheries, she said the mission of CFEC is significant and she wants to see that mission retained.

[10:49:40 AM](#)

REPRESENTATIVE KREISS-TOMKINS said that he is excited to hear about the recent resolution of two of the remaining legal cases. He noted that pending cases dropped from 15 to 13 in the last two weeks. He indicated that it seems CFEC is now "on a tear" to resolve the remaining 13 cases which have haunted CFEC for a long time. He added, "Putting these to bed would be a real accomplishment." He went on to say that his "one question" relates to the optimum permit numbers study. He said he is returning to this matter because "it definitely opens his eyes and ears" to hear that conducting such studies might be a renewed focus of CFEC. He asked if, aside from the very infrequent instances in which there is a buyback and a large amount of stakeholder buy-ins, there are current plans for optimum number studies on specific fisheries. He clarified his question by asking how mature the thinking or planning stages might be for future studies of this nature.

[10:50:44 AM](#)

MR. PUTMAN said the reason he spoke of optimum number studies is because of two mandates from the legislature in 1975 when CFEC was established. The first mandate is for CFEC to annually

recommend legislation that would enable it to regulate fisheries better, and the second mandate is for CFEC to conduct optimum numbers studies. He acknowledged that while only "two or three" studies have been performed, the mandate for CFEC to conduct these studies exists. He said that CFEC has been spending most of its time on permit applications and adjudications, rather than on optimum number studies. He reiterated that it is the legislative mandate that prompted him to raise the issue of optimum number studies. He said there are no specific fisheries scheduled for such studies; however, he pointed out that pressures on all fisheries exist, and a determination of the optimum number of permits is necessary when biomass in a fishery is reduced.

[10:51:45 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked for Ms. Kelley's thoughts on this matter.

MS. KELLEY said that she is new at CFEC, having worked there for only a few days. However, she absolutely understands the mandate of limited entry law and that it includes the matter of optimum numbers. She said that "if we were going to go down that path," then it is important to her to consider which fisheries seem more likely [for an optimum number study]. She added that some fisheries appear to be likely candidates, but final analysis sometimes shows they are not. She said that she is "walking slow" regarding optimum number studies as she has asked a lot of questions about them over the years, favoring them at times and not favoring them at other times. She acknowledged that she would like Mr. Putman's feedback on this matter. She said she does not want optimal number studies to be conducted randomly but instead through a thoughtful selection process, because "some fisheries would be great candidates." She added that the reasons for conducting an optimal number study might be due to pressures on a fishery and not only because of a shortage in the resource. She pointed out that salmon, as well as every other species, are dynamic.

MS. KELLEY recalled Representative Eastman's question regarding the suitability of current funding for optimal numbers studies and responded by saying that they probably have sufficient funding at this time. However, additional funding would be needed if there is to be greater focus placed on those kinds of studies. She reminded the committee that CFEC is completely self-funded by the commercial fishing industry, with no funding from the general fund. She said CFEC gives millions of dollars

to ADFG as a "pass-through" which is totally appropriate for management of our resources. She also pointed out that capability is needed to perform these tasks to expectations and to "broaden and bring into the new age the limited entry commission [CFEC]." She reiterated that optimum number studies are within the original law, however she said she believes the legislature expected implementation of the studies would depend on current circumstances as CFEC evolved.

[10:54:13 AM](#)

REPRESENTATIVE NEUMAN pointed out that CFEC has not conducted many of the optimum number studies, despite its mandate to do so. He asked why this has been the case and whether it is because they receive pressure from fishermen who may not want to cover the cost of the studies through higher fees.

MS KELLEY explained that CFEC has been busy with 70 lawsuits, some of which she described as "big thorny issues" that have been in addition to adjudications and general operation. She cited the example of the Internal Revenue Service (IRS) wanting to seize fishing permits and said this was a very important issue for fishermen. She said it is her guess, based on conversations over the years, that CFEC has been busy with other priorities that had to be addressed immediately. She indicated that the only time they produced optimum number studies was when they were specifically requested, as when the court requested a study for the Johns v. CFEC case.

[10:56:25 AM](#)

REPRESENTATIVE EASTMAN asked if there is a process where the commissioners have final say over the results of an optimum numbers study, such that each commissioner would vote for or against the recommendation set forth in the staff report.

[10:57:09 AM](#)

MR. PUTMAN said that, going forward, he and Commissioner Kelley intend to work on consensus; although, there could be times when they have a different opinion on an issue. He said that in any situation where there are opposing points of view, there is a compromise point to which the parties can negotiate. As an example, he said that Ms. Kelley and he might settle on 28 permits for a fishery after they initially choose 26 and 32 permits, respectively.

MR. PUTMAN added that CFEC brings in approximately \$8 million each year through fees; all fishermen must purchase a license whether they are in a limited or an open fishery. On the "backend" CFEC charge 0.4 percent of the value of the landings in an open fishery or 0.4 percent of the value of a permit in a closed fishery. He said these are the fees that bring in approximately \$8 million each year. He said that about one-third is used by CFEC and two-thirds is used by ADFG for field studies to estimate salmon biomass and return rates.

[10:58:35 AM](#)

MS. KELLEY said that in recent years, on average, approximately \$5 million dollars of CFEC fees have gone to ADFG for various purposes. She reiterated that the research section of CFEC has only two staff members, and therefore, it would be a burden for CFEC to undertake optimum number studies at this time. She indicated that CFEC would need to know in advance if there is intent to "go full bore" on optimum number studies.

[10:59:13 AM](#)

REPRESENTATIVE TARR moved to report CSHB 231, Version GH1053\D, Bullard, 2/14/18, out of committee, as amended, with individual recommendations and the accompanying fiscal notes that will be updated in the House Finance Committee.

[10:59:36 AM](#)

REPRESENTATIVE EASTMAN objected for purposes of discussion and commented that it seemed HB 231 has two opposing aims: one for cost reduction and the other for increasing the work load even though there are now fewer commissioners on staff. Rather, he said that reducing the number of commissioners to an even number of two is what he would do if he wanted to slow the performance at CFEC, as opposed to trying to resolve cases and conduct new optimum number studies. He offered that it may be more efficient in the short term to have two commissioners, but if the job is to "get the work done...quickly and efficiently", then establishing an even number of commissioners would not be his suggested approach. He added that the legislature might want to take another look at what we are asking the commission to do.

[11:00:58 AM](#)

REPRESENTATIVE KREISS-TOMKINS stated that he is excited about the legislation, with its suite of reforms that retain CFEC's independence and save money, which can hopefully be returned to the commercial fishing industry and provide additional support to ADFG's Division of Commercial Fisheries.

[11:01:31 AM](#)

CHAIR STUTES stated that she echoed Representative Kreiss-Tomkins comments as she, too, is excited to see CFEC becoming streamlined, effective, and efficient. She said she understands there have been a lot of hurdles and that some of those problems were overcome through the work of previous commissioners. She added that CFEC now has "fresh eyes taking a fresh look" and that this is always helpful.

[11:01:59 AM](#)

REPRESENTATIVE EASTMAN withdrew his objection.

CHAIR STUTES, hearing no further objections, announced that CSHB 231(FSH) was reported from the committee.

[11:02:57 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Fisheries Committee meeting was adjourned at 11:03 a.m.