

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 20, 2017

7:02 p.m.

MEMBERS PRESENT

Representative Andy Josephson, Co-Chair
Representative Geran Tarr, Co-Chair
Representative Dean Westlake, Vice Chair
Representative Harriet Drummond
Representative Justin Parish
Representative Chris Birch
Representative DeLena Johnson
Representative George Rauscher
Representative David Talerico

MEMBERS ABSENT

Representative Mike Chenault (alternate)
Representative Chris Tuck (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 87

"An Act relating to participation in matters before the Board of Fisheries and the Board of Game by the members of the respective boards; and providing for an effective date."

- MOVED CSHB 87(FSH) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 12

Opposing the United States Food and Drug Administration's approval of AquaBounty AquAdvantage genetically engineered salmon; and urging the United States Congress to enact legislation that requires prominently labeling genetically engineered salmon and salmon products with the words "Genetically Modified" on the product's packaging.

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 32

"An Act relating to the labeling of food; relating to the misbranding of food; requiring labeling of food produced with genetic engineering; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 172

"An Act relating to the regulation and production of industrial hemp; relating to industrial hemp pilot programs; providing that industrial hemp is not included in the definition of 'marijuana'; and clarifying that adding industrial hemp to food does not create an adulterated food product."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 46

"An Act relating to the state and municipal procurement preferences for agricultural products harvested in the state and fisheries products harvested or processed in the state; relating to merchandise sold and certain fees charged or collected by the Department of Natural Resources; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 87

SHORT TITLE: CONFLICT OF INTEREST: BD FISHERIES/GAME

SPONSOR(S): REPRESENTATIVE(S) STUTES

01/30/17	(H)	READ THE FIRST TIME - REFERRALS
01/30/17	(H)	FSH, RES
02/09/17	(H)	FSH AT 10:00 AM GRUENBERG 120
02/09/17	(H)	Heard & Held
02/09/17	(H)	MINUTE(FSH)
02/14/17	(H)	FSH AT 10:00 AM GRUENBERG 120
02/14/17	(H)	Moved CSHB 87(FSH) Out of Committee
02/14/17	(H)	MINUTE(FSH)
02/15/17	(H)	FSH RPT CS(FSH) NT 2DP 1NR 3AM
02/15/17	(H)	DP: TARR, STUTES
02/15/17	(H)	NR: FANSLER
02/15/17	(H)	AM: EASTMAN, KREISS-TOMKINS, CHENAULT
03/13/17	(H)	RES AT 1:00 PM BARNES 124
03/13/17	(H)	-- Public Testimony --
03/14/17	(H)	RES AT 3:00 PM BARNES 124
03/14/17	(H)	-- Continued from 3/13/17 Meeting at 1:00 PM --
03/15/17	(H)	RES AT 1:00 PM BARNES 124
03/15/17	(H)	<Bill Hearing Canceled>
03/20/17	(H)	RES AT 7:00 PM BARNES 124

WITNESS REGISTER

MARK RICHARDS, Executive Director
Resident Hunters of Alaska (RHAK)
Fairbanks, Alaska

POSITION STATEMENT: Testified regarding CSHB 87(FSH).

GLENN HAIGHT, Executive Director
Board of Fisheries
Boards Support Section
Alaska Department of Fish & Game
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding CSHB 87(FSH).

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

POSITION STATEMENT: On behalf of Representative Stutes, prime sponsor, answered questions regarding CSHB 87(FSH).

AL BARRETTE
Fairbanks, Alaska

POSITION STATEMENT: Testified regarding CSHB 87(FSH).

JERRY MACKIE
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 87.

THOR STACEY, Lobbyist
Alaska Professional Hunters Association (APHA)
Anchorage, Alaska

POSITION STATEMENT: Testified regarding CSHB 87(FSH).

REPRESENTATIVE LOUISE STUTES
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking as the prime sponsor, answered questions regarding CSHB 87(FSH).

JERRY MCCUNE, Lobbyist
United Fishermen of Alaska
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding CSHB 87(FSH).

KRISTY TIBBLES, Executive Director
Board of Game

Boards Support Section
Alaska Department of Fish & Game
Juneau, Alaska

POSITION STATEMENT: Answered a question regarding CSHB 87(FSH).

ACTION NARRATIVE

[7:02:34 PM](#)

CO-CHAIR GERAN TARR called the House Resources Standing Committee meeting to order at 7:02 p.m. Representatives Tarr, Josephson, Drummond, Rauscher, Johnson, Talerico, and Westlake were present at the call to order. Representatives Parish and Birch arrived as the meeting was in progress.

HB 87-CONFLICT OF INTEREST: BD FISHERIES/GAME

[7:03:14 PM](#)

CO-CHAIR TARR announced that the only order of business would be HOUSE BILL NO. 87, "An Act relating to participation in matters before the Board of Fisheries and the Board of Game by the members of the respective boards; and providing for an effective date." [Before the committee was CSHB 87(FSH).]

CO-CHAIR TARR opened public testimony on CSHB 87(FSH).

[7:04:56 PM](#)

MARK RICHARDS, Executive Director, Resident Hunters of Alaska (RHAK), recommended that the Board of Game (BOG) not be included in this legislation. He explained that RHAK's concern is that the bill would mandate the addition of a new subsection to Alaska Statute (AS) 39.52.120 that begins with the language, "Notwithstanding any other provision of this chapter," which means it would supersede the requirements in AS 39.52.120(c) and 39.52.220 of the Alaska Executive Branch Ethics Act ("Ethics Act"). This would open the door to allow someone to serve on the Board of Game or Board of Fisheries while potentially having a range of conflicts of interest that would not serve the boards well and would be a detriment to a fair public process. Mr. Richards said his organization also finds it odd that both boards are aware of the bill, yet neither board has weighed in on the bill and said whether the conflict of interest is an issue that concerns them. While RHAK understands the rationale for redefining an immediate family member within the Ethics Act for Board of Fisheries members, he continued, therein perhaps

lays the entire crux of this bill that the sponsor has recognized causes issues with the Board of Fisheries members. The bottom line, he concluded, is that this bill goes too far trying to fix an issue that is far and away only with the Board of Fisheries.

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CO-CHAIR JOSEPHSON said he questions whether it would be true that the bill would trump existing AS 39.52.120(c) and 39.52.220 because the new subsection (g) that would be created by the bill, still says, "Before deliberating the member shall disclose the interest on the record." So, it would not be relaxed, he continued, conflicts of interest would still have to be disclosed. He requested Mr. Richards to provide clarification.

MR. RICHARDS replied that a memorandum from the Division of Legal and Research Services [dated 2/9/17 to Representative Stutes from Linda M. Bruce, Legislative Council] states that including the language, "Notwithstanding any other provision of this chapter," would cause the other provisions in AS 39.52.120(c) and 39.52.220 to be superseded and canceled.

CO-CHAIR JOSEPHSON said his understanding is that the first sentence within the proposed new Subsection (g) of the bill says that the person notwithstanding a conflict can still deliberate and that is the only thing that is new there. Responding to Mr. Richards, Co-Chair Josephson confirmed that Version R [30-LS0376\R] is the version of the bill before the committee.

MR. RICHARDS responded that if the aforementioned were true, then there would be no reason whatsoever to have the language, "Notwithstanding any other provision of this chapter," because that would negate having that language in this bill.

CO-CHAIR JOSEPHSON said he does not read it that way.

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REPRESENTATIVE PARISH offered his understanding that Mr. Richards would like for the Board of Game to be excluded from the bill.

MR. RICHARDS answered yes.

REPRESENTATIVE PARISH inquired whether someone is available to interpret the [proposed] statute.

GLENN HAIGHT, Executive Director, Board of Fisheries, Boards Support Section, Alaska Department of Fish & Game, responded that he is not an attorney and therefore may not be the best one to provide an answer, but that he reads the bill the same way as does Co-Chair Josephson.

REPRESENTATIVE PARISH said his concern is that the conflict of interest is redefined in this section because the definition of immediate family member is changed. He inquired whether his concern is misplaced given the interpretations of Co-Chair Josephson and Mr. Haight. Continuing, he clarified that his question is whether the bill represents a substantive departure from the status quo for purposes of determining whether a conflict of interest exists.

MR. HAIGHT replied yes, it would narrow what an immediate family member is; redefining that is the main thing the bill does. He said he reads the language such that if a conflict is determined, the board member is not fully recused - the member is allowed to be involved in the deliberation but not to vote.

[7:13:32 PM](#)

REPRESENTATIVE DRUMMOND inquired about the organization that Mr. Richards' represents.

MR. RICHARDS answered that Resident Hunters of Alaska (RHAK) was formed in March 2016 because of concerns with the Board of Game and the decisions it was making about wildlife resources and allocations to resident hunters. The organization is fast growing, he said, representing over 1,000 Alaskan families in advocating for resident hunter priority according to the state's constitution.

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REPRESENTATIVE JOHNSON said she is confused because the House of Representatives is contemplating making conflict of interest more stringent while this bill is asking to go in the other direction. She inquired whether a legal opinion is available.

MR. RICHARDS replied that the [2/9/17] legal opinion from the Division of Legislative Research and Legal Services should be included in the committee's packet. He said the Board of Fisheries and Board of Game operate differently in that during meetings the Board of Fisheries has "breakout sessions" where

members separate into subcommittees in which the public representatives and board members can be heard. In these breakout sessions, board members with a conflict are still able to speak to the issue openly and debate them with everybody. This is a Board of Fisheries issue, he said, there is no need to include the Board of Game.

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REPRESENTATIVE WESTLAKE thanked Mr. Richards for his testimony and stated that this bill is about liberating those people who have an expertise and can contribute to a policy discussion. What is trying to be addressed in both boards, he said, is not who someone is related to but what the [board member] can bring to the table. It is being heard from people that the expertise brought in [by the board member] is valued and yet [the board member] is excluded; so even when there is a perceived conflict people still want the board member's opinion. He asked whether he is missing something here.

MR. RICHARDS responded that he doesn't think Representative Westlake is missing anything, but said that the members of both the Board of Game and the Board of Fisheries have the opportunity prior to deliberations to discuss these issues with the committees, members of the public when they testify, and in the Board of Fisheries' breakout sessions which the Board of Game does not have. The main issue with this bill, he said, is that for the Board of Fisheries it is hard to find members who do not have a conflict. For example, in certain communities the people that would be good to serve on the board may be setnetters, dipnetters, or commercial fishermen and [the bill sponsor] wants those people to be able to apply for the board, sit on the board, and not be conflicted out when these issues come up. The main issue deals with changing what is an immediate family member. He said he has spoken with members of the Board of Fisheries and the example given [to legislators] is untrue - it was not somebody's "ex" but somebody's stepson. He urged the committee to get more information on the issue prior to passing the bill.

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CO-CHAIR JOSEPHSON said that regardless of whether it was a past marital issue or something else in a conflict case, the compelling testimony was that in 55 of 100-plus proposals a board member had to sit out and could only testify as a member of the public. It seems excessive, he continued, that the

system is requiring someone to sit down and not participate for half the meeting. He asked Mr. Richards whether this doesn't seem to be out of control.

MR. RICHARDS answered that Mr. Haight is available and has already given the data on how many times this has happened. This really only occurs with the Board of Fisheries, he said, and RHAK's main point is that the Board of Game should not be included in the legislation. The way the Board of Fisheries operates, there is ample time during the breakout sessions for members to discuss with the public and representatives of organizations and to give their viewpoint. The only thing board members are not allowed to do when they disclose a conflict is deliberate and vote on the proposal. He said RHAK does not see any reason why any board member should be allowed to deliberate when that member has already basically been doing that during the entire meeting.

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CO-CHAIR JOSEPHSON related that at least one hunters group believes that it should stay connected to the Board of Fisheries' conflicts legislation or it will be deemed an institution that has a more strict standard. He asked for Mr. Richards' comment in this regard.

MR. RICHARDS replied he has read the aforementioned group's letter and concerns, and said it is a difficult situation. He said the part of this bill that RHAK supports is changing the definition of immediate family member and RHAK would support that for both boards. However, RHAK cannot support the other aspects of this bill that would go the other direction and allow people to serve on the Board of Game and Board of Fisheries when they have a conflict and to be allowed to deliberate on these proposals and influence these decisions when they are clearly conflicted out.

[7:22:49 PM](#)

REPRESENTATIVE RAUSCHER stated he needs clarification regarding a board member [with a conflict] not being allowed to vote but being allowed to take part in breakout session discussion. He offered his understanding that the bill would broaden the types of relatives that are excluded.

REID HARRIS, Staff, Representative Louise Stutes, Alaska State Legislature, on behalf of Representative Stutes, prime sponsor

of HB 87, addressed Representative Rauscher's questions. He explained that CSHB 87(FSH) would do two things. First, it would allow a member who has a declared conflict to deliberate, but that member still could not vote. Currently, once a board member declares a conflict, which must be done before the meeting begins, that member cannot deliberate or vote. He said the bill is before the committee because the sponsor has heard that a lot of expertise is being lost on both the Board of Game and the Board of Fisheries. The sponsor has further heard that people with the expertise are unwilling to put forth their name to sit on the boards because they will be spending half their time recused and unable to participate and so there is no reason for them to be on the board. Second, he continued, the bill would narrow the scope of what is considered an immediate family member of members of the Board of Game and the Board of Fisheries. Currently, under AS 39.52.220 of the Ethics Act, an immediate family member includes aunts, uncles, grandparents, and a couple of other extended relatives.

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REPRESENTATIVE RAUSCHER inquired whether he is correct in concluding that, in someone's opinion, this situation is unlike any other boards in the state.

MR. HARRIS replied that the state has a large number of boards and commissions. This bill does not apply to all boards, he explained, it is tailored at an issue that the sponsor sees specifically with the Board of Fisheries and the Board of Game.

REPRESENTATIVE RAUSCHER asked whether the problem is seen to exist only in this particular arena and never the other boards, and that is why there is the need to only call out these two boards specifically.

MR. HARRIS answered that he cannot speak to all the boards, but that these two specific boards were the ones brought before the sponsor by interested parties.

CO-CHAIR TARR added that the Board of Fisheries and the Board of Game are in the same section of statute, so what is done for one is done for the other.

MR. HARRIS reminded members that at the bill's last hearing, Kristy Tibbles, Executive Director of the Board of Game, stated that the Board of Game is neutral on the bill and does not have an opinion for or against it.

[7:27:57 PM](#)

AL BARRETTE stated he is representing himself today. He said he is a former member of the Board of Game and has attended and participated in Board of Game and Board of Fisheries meetings for the last 17 years. He said he disagrees with the portion of the bill regarding allowing a recused board member to still participate in deliberations. At every meeting he has attended, he has seen nonvoting people, including individuals and attorneys from various divisions of the Alaska Department of Fish & Game (ADF&G), at the deliberation tables influencing board members on how to make their votes. Well-prepared board members, he said, who know they will have to recuse themselves from proposals, are aware of the avenues for how to get their expertise in front of the board, such as by written comments, public testifying, submitting copies, and during breaks and after hours. When expertise is wanted on proposals for a certain region or area the local [fish and game] advisory committee (AC) can be invited to be part of those deliberations.

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CO-CHAIR JOSEPHSON stated that what Mr. Barrette is describing is a comprehensive reform of this part of Title 39 or maybe some parts of Title 16. He understood Mr. Barrette to be saying that the committee doesn't know the half of it because it is not just these [board] members who cannot vote or deliberate, but also all this other influence that is going on. However, Co-Chair Josephson said, that bill is not before [the committee].

MR. BARRETTE replied he was using the aforementioned as an analogy of having a board member who has been recused and currently is disallowed from participating in deliberations. If someone is recused, yet allowed to participate in deliberations, he or she still can profit from influencing less knowledgeable board members or less seasoned board members in the region. This is because [other board members] will pay attention to the guy from the area and vote the way he is voting instead of being well prepared as a board member and making their own decisions. This is something he has seen from attending as many board meetings as he has, he explained.

[7:31:50 PM](#)

REPRESENTATIVE BIRCH asked what level of administrative support is available to Board of Game and Board of Fisheries members.

MR. BARRETTE responded that board members have the full staffing of the Alaska Department of Fish & Game, including the Division of Subsistence, the "rules people" who help write the regulations, and the personnel for wildlife enforcement from the Department of Law. Further, he said, ADF&G and the [Department of Public Safety's] Division of Wildlife Troopers actually submit proposals to the Board of Game and the Board of Fisheries and then they deliberate on their own proposals that they have submitted, and that is an issue.

[7:33:41 PM](#)

JERRY MACKIE stated that he is a lobbyist but is before the committee today as a private citizen because this issue is so important to him. He noted that he served in the Alaska State Legislature for 10 years representing the same district as the bill's sponsor. This issue has been around forever, he noted, and is something he wishes he could have fixed, so he applauds the sponsor. It is hard for a resident of Alaska to serve on the Board of Fisheries or Board of Game, he said. First is the politics of getting confirmed and then there is the amount of time a board member must leave his or her family and job, which can be many weeks. He said it is beyond him as to why an Alaskan would be asked to serve in this position because he or she brings some expertise to the table and then have that member sit in the crowd not participating in the conversation. This is not just with the fishermen, he noted. As a former seiner and lodge owner who still fishes and hunts, he said it has always bothered him that people are not allowed to bring their expertise to the discussion table. He pointed out that the legislature is an example of each person bringing his or her expertise and declaring conflict when there is one, but he has never seen where someone was not allowed to vote. Whether it is a commercial fisherman, sport fishing representative, or a scientist on the Board of Fisheries, that person was originally appointed for his or her expertise that would be brought to the process. Whether it is someone with a subsistence background or representing hunting lodges on the Board of Game, everyone has an inherent conflict one way or another, he said. Therefore, a person [with a conflict] should be able to participate in the discussion to bring that expertise to the table; the bill does not allow that person to vote. The state would be well served by passing this bill, he proffered, and allowing people to do the job they were asked to do and making great sacrifice to do.

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REPRESENTATIVE BIRCH estimated that 250,000 out of 750,000 Alaskans probably have a fishing license. He therefore surmised that there must be a large enough pool in the realm of fishing that a handful of people could be found who are interested in serving on these boards who aren't related to each other or have a financial interest with each other and are independent of each other. He said he is struggling with the concept that the bill broadens the scope of potential conflicts that will be excluded from the violations under the Ethics Act while at the same time the House of Representatives is heightening the amount of disclosure. He recalled previous testimony about someone on the board who was getting a check every year from her husband and couldn't participate and said he does not know that that is all bad. He requested Mr. Mackie's opinion on whether there is a large enough pool of people in which to find willing participants in the betterment of the state's fisheries.

MR. MACKIE answered that an indication of how strongly he feels about this issue is that this is the first time in his 15 years of being a lobbyist that he has actually testified before a committee. It must be narrowed down to a board member's children, immediate family, adopted children, or some financial dependency, he urged. For example, he is an Alaska Native who grew up in a village and there can be an individual from a small community who is the right person to serve and represent that region or area or particular fishery, but technically that individual could be related to the whole town if all the aunts, cousins, and in-laws are included. Realistically, how far does a financial conflict extend, he asked. He said he sees no problem whatsoever with a board member disclosing a conflict and the board member being able to offer his or her expertise in the deliberation. So, while it could be said that 7 people could be drawn from the 750,000 people in the state, if it is truly being opened up to the whole state in every aspect, there must be some boundaries and some realistic limitations. Using the Alaska legislature as an example, he said he has never been a fan of disallowing a legislator from participating in a conversation because that person knows something about the issue. The Alaska legislature is a citizen legislature and legislators come together to have an open debate, disclose the conflict, tell it like it is, and then vote. He said the bill is a reasonable approach and a well thought out policy.

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REPRESENTATIVE RAUSCHER posited that this is about more than just relatives because financial gain is also involved and there are a lot of things to weed people out other than that they happen to be fishermen. He said it is really hard to find someone who is involved in the game and who does not have relatives involved in the game who cannot take part in the discussion. There are a lot of things thrown out, whether it is financial gain and the amount of financial gain. He surmised that it would have to be a combination of things rather than just one thing.

CO-CHAIR TARR drew attention to page 2 of the bill and pointed out that it includes specific things of who the person is and more clearly defines that the person would have to reside with the board member, be financially dependent on the board member, or share a substantial financial interest. So, yes, there is more than one, she concurred.

[7:42:19 PM](#)

REPRESENTATIVE PARISH said he hears what Mr. Mackie is saying about being related to everyone in a town. For example, his great-grandmother and another woman were cousins and so he called the other woman's granddaughter "auntie" because she was family. Addressing the earlier comments about the House of Representatives currently moving to tighten rules about conflict of interest, he noted that right now there are functionally no rules of conflict of interest because a representative with a conflict declares, then one person objects, and then that legislator participates in the discussion and the body moves on. So, he continued, in his opinion it would be okay if there could be a meeting in the middle it would be okay. He inquired as to where Mr. Mackie thinks the ideal balance falls between the legislature where a member with a conflict still votes at the end of the day and the Board of Fisheries and the Board of Game where a member with even a distant conflict of interest is prevented from voting or even talking.

MR. MACKIE replied that this issue has been around for a long time and he is unsure where that line would be drawn. For example, a person from King Cove could be related to half the community with cousins and if one distant cousin has a setnet permit, one has a gillnet permit, and another has a seine permit there is the possibility - if this extends far enough - that that board member could not even deliberate on any of the issues of importance to that region, yet people supported that person's appointment as a way to give them some representation. It is

ridiculous and needs to be fixed, he said. There is a certain trust and responsibility on elected and appointed persons to provide disclosure, he continued. There is an honor system that when a person knows he or she has a conflict it is incumbent upon that person to disclose that conflict and there are ramifications if this is not done. Given the many people he knows who have served on the boards, and those who haven't wanted to serve because of these things, he added, the bill's sponsor has done a nice job in finding a balance on this particular issue. However, he said, the issue about the legislature is a little broader and his intuition tells him not to comment on that.

[7:46:37 PM](#)

THOR STACEY, Lobbyist, Alaska Professional Hunters Association (APHA), first noted that he holds a registered guide license. He related that APHA discussed this legislation at a meeting last week and APHA's concern is that the Board of Game not be stripped out of the bill. The two boards were treated similarly to begin with, he pointed out, and APHA supports that policy moving forward. Treating the boards differently at this time on an issue as important as conflict of interest could have unintended down-range effects in the courts that would disadvantage the Board of Game unfairly in the discussion. He then spoke to the points of conservation, allocation, and the appointment process. Addressing the point of conservation, he said that knowledgeable persons with a financial conflict in an area also have information to add to discussions on conservation of a resource. Addressing the point of allocation, he said it comes down to an issue of trust. When the general public, the legislature, and the governor trust someone, it allows for feeling good about the votes that are made for divvying up the resource. The APHA would be concerned if there were anything in this bill perceived to undercut the public's trust in the board. In the long run, stable allocation decisions based on a trusting public is in the interest of hunting guides. Addressing the appointment process, he said conflict of interest has become increasingly used as a weapon during the confirmation of board members. For example, last year in regard to the Board of Game a group filed a conflict of interest complaint with the attorney general. Then, during the confirmation process before that complaint had run its course and been decided upon, the group used the conflict of interest complaint as justification for turning votes in the legislature.

MR. STACEY stated that when it comes to divvying up the resource, the legislature takes conflict of interest and persons trying to enrich themselves or their family members very seriously. Legislators, he continued, might ask the question of how to ascertain whether somebody is really using their position on the board to enrich themselves and their family members. Allowing a board member to go on the record and deliberate a proposal would give legislators evidence of that board member's thoughts or motives and how the board member may or may not be influencing the process, he said. Currently, because a board member is excluded from debating, there is no hard evidence to support or refute accusations of conflict of interest. He reiterated that APHA's specific interest is the Board of Game.

[7:50:46 PM](#)

REPRESENTATIVE PARISH recalled testimony by the Resident Hunters of Alaska that supported the bill's redefinition of an immediate family member but not the [inclusion of the Board of Game in the bill]. He requested Mr. Stacey's response to this concern.

MR. STACEY replied that APHA supports the bill's clarification of family members and therefore would agree with RHAK in that regard, but APHA does not support removing the Board of Game from the bill. While the legislation is designed to fix an issue with the Board of Fisheries, he said, this issue obviously occurs on the Board of Game. A problem identified on the Board of Fisheries should be fixed on both boards at the same time versus stripping one board from the bill and seeing what happens later. Hunting guides are not the only group that can have conflict of interest, he said. Credible argument could be made for wildlife viewing and transporter issues because they could have larger conflict of interest or much broader implications where board members may have to recuse themselves. While he speaks from the perspective of hunting guides, he continued, there are many other potential commercial users who could be appointed to the Board of Game who would be excluded from deliberating and voting if the former testifier's suggestions were taken up by this committee in the form of an amendment.

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CO-CHAIR TARR closed public testimony on CSHB 87(FSH).

[7:52:55 PM](#)

CO-CHAIR JOSEPHSON said he disagrees with the [2/9/17] legal memorandum from the Division of Legislative Research and Legal Services. The bill talks about disclosing something on the record, he explained, and when he looks at the legal memorandum and section 39.52.220(a) he sees that there is a very involved process that he presumes must occur prior to the meeting because it involves contacting a supervisor, the attorney general, and so forth. He inquired whether the bill's aim is to trump this entire process or to merely say that, for the purposes of a potential conflict, one may deliberate.

MR. HARRIS answered that what is seen in the legal memo is still maintained. Qualifying that he can speak to the Board of Fisheries more than he can speak to the Board of Game, he described the current process: before the meeting happens, proposals are brought to the board and a list is compiled of the things that will be considered; board members who know they have conflicts are requested to make a note so it can be spoken about before the meeting; at that point the chair will say, "Yes, you have a conflict, you will not deliberate or vote on this." He advised that that process would remain in statute under this bill and would not be changed at all. Mr. Harris offered his belief that it is generally up to the chair of the board and that the attorney general's office is usually not notified unless it is questionable. That process would still be left in place under CSHB 87(FSH), he continued, and the person who filled out the form for having a conflict of interest would be allowed to deliberate, but as is the case under current law, would not be allowed to vote.

[7:55:26 PM](#)

REPRESENTATIVE RAUSCHER noted that there are many boards in the state, as well as many boards in municipal government and said that all of these boards seem to use the same protocol as far as what they do and don't allow. The only thing he has heard so far, he said, is that [the Board of Fisheries] has breakout sessions, which are important. The Matanuska-Susitna Borough has executive session, he continued, which to him are breakout sessions. He requested Mr. Harris to provide clarification about the importance to this particular committee, which is completely different than every other committee in the eyes of this legislation.

MR. HARRIS replied that for example he would assume the "Board of Hairdressers" is mostly made up of hairdressers because they know the most about that profession. The Board of Fisheries

tends to consist of fishermen, he continued, whether they are personal use, subsistence, commercial, sport fish, or other. The Board of Game tends to be guides, transporters, and other people involved in that industry. The sponsor has this bill before this committee, he explained, because expertise is being lost from these boards. Addressing Representative Rauscher's earlier question about why the boards of game and fisheries are being treated differently, he said that the problem brought to the sponsor was that these two boards are having this issue. No other boards or commissions have brought forward any issues. This bill is specifically tailored towards these two boards, which sit under the same statute, he added.

[7:57:35 PM](#)

REPRESENTATIVE RAUSCHER said he sees the "Board of Hairdressers" members all working together for the benefit of the business. To the particular boards in this bill he sees them working together for the benefit of fish or game. However, there are many facets to it, he continued. There are guides, sports, subsistence users, people of all different types of interests and all different types of personal gain, and they compete in this arena. There are billions of dollars on different facets of this industry where these people are saying wait a minute. One facet in which a person is involved may gain very heavily from what he or she is doing and his or her input and exposure to the conversation, and the exposure of others to the conversation, is the difference that he is seeing. He said he is trying to understand how that would be different than other agencies that are involved in government where industries compete with each other and which is why some of these ethical standards were put into place.

MR. HARRIS said it is in statute that members on both these boards be appointed for their knowledge of public affairs, good judgment, and ability in the field of action. They are supposed to be upstanding people who are vetted by the legislative body. Sometimes things go exceedingly awry for these appointees, he continued, and it can be rather hard to watch in the public forum because sometimes an issue comes out and the question is why this issue wasn't made known since these people are supposed to be upstanding individuals. Second, as discussed by Mr. Barrette about undue influence, the board process is that all members sit at a dais, as does this committee. However, once a board member is recused, that board member sits in the audience and is then immediately asked questions by people in the audience and now that board member is not on the record but is

having an influence on the process at that point. Under this bill, he said, that board member would still sit at the dais and that would actually limit the amount of influence because everything said by that board member would now be on the record.

8:01:16 PM

REPRESENTATIVE BIRCH noted that he is a registered engineer who for 35 years has dealt with the Board of Registration for Architects, Engineers, and Land Surveyors, which is a board that has mapped out how the profession works in Alaska. Given that 250,000 people in Alaska have a fishing license and given that someone doesn't have to be of any particular type of fishing discipline to participate in the Board of Fisheries, he said, it would seem that seven people could be found who are not tied at the shoelaces with somebody else and who could do good work, particularly since board members have access to the abundant resources existing in advisory committees and ADF&G. So, he continued, he is still struggling with how broadening, eliminating, and basically covering over the conflicts is good for the public as it is basically getting past the Ethics Act.

MR. HARRIS answered that the engineer and the architect on the Board of Registration for Architects, Engineers, and Land Surveyors are professionals who have studied their topics. He said that while he could make a drawing he doesn't think that that would qualify him as a professional who should be sitting on that board. It is much the same thing that someone who owns a fishing license may not be qualified to sit on the Board of Fisheries. It would be hoped to have people who are high caliber professionals, not that they are professional fishers, but that they are very well learned in the industry, have a great depth of knowledge, and are able to lend their expertise to the board. That is why those people are on the board, not because they are able to fish.

8:03:52 PM

REPRESENTATIVE BIRCH read from statute, noting it says that members are appointed on the basis of their interest in public affairs, good judgment, knowledge and ability in the field of action of the board, and a view of providing a diversity of interest and point of view in the membership. While he is unfamiliar with the Board of Fisheries or the Board of Game, it seems that there is no compelling reason that someone must have been a seiner for 10 years. While the person filling the architectural slot on the Board of Registration for Architects,

Engineers, and Land Surveyors must be an architect, he said he does not see that kind of demand for the Board of Fisheries.

REPRESENTATIVE LOUISE STUTES, Alaska State Legislature, replied that someone applying for a board seat is usually a fisherperson of some sort. If, for example, a commercial fisherperson fishes a setnet site three months of the year and is on the board, this person would currently be excluded from board discussions about salmon fisheries in that area. When this person cannot participate in the conversation, this person's knowledge goes by the wayside. Whereas under this bill, the person involved in this particular fishery would be able to participate in the discussion and impart his or her knowledge to the board regardless of whether he or she is allowed to vote on it. If this person is conflicted out then he or she certainly would not vote, but it would not preclude the person from allowing the board to have his or her information and knowledge of that particular fishery.

[8:05:59 PM](#)

REPRESENTATIVE BIRCH gave an example of 40,000 people wanting to use a personal use dipnet fishery on the Kenai River and said it would obviously be of some benefit to them to haul home a big pile of fish. He asked whether that would take away from their ability to participate in this case.

REPRESENTATIVE STUTES replied yes, currently they would most certainly be conflicted out if the board was discussing the dipnet fishery.

[8:06:49 PM](#)

REPRESENTATIVE RAUSCHER inquired whether only board members are allowed at the breakout sessions.

MR. HARRIS deferred to Thor Stacey to answer the question.

MR. STACEY replied that the breakout session in the subcommittee work is a Board of Fisheries function. Proposals before the Board of Fisheries have a lot of complexity, plus there is the number and the duration of the meetings. That same complexity does not exist at the Board of Game, so the Board of Game does not do the breakout session in the work group like the Board of Fisheries. The Board of Game is different in that regard and is based on a little bit simpler process and a little bit simpler suite of proposals.

JERRY MCCUNE, lobbyist, United Fishermen of Alaska, at Co-Chair Tarr's request explained that the Board of Fisheries has a process where it takes so many proposals and puts them in a committee. Two members are assigned to each committee; this is because there may be three committees meeting at the same time and a member couldn't attend both. This process lets people go to the committee meetings handling the proposals that they are interested in. Sometimes the board will hold a "committee of the whole" where everybody can sit in the audience and testimony is taken. The committees take up the proposals and hear from everybody and the board member that is the chair reports to the full committee. While it is called a breakout committee, it doesn't mean that [a conflicted member] will still get to take part - board members with a financial conflict will still be conflicted out. So, these conflicted members have the same chance as he does to sit in the audience, put up their hands, and maybe say something. What is trying to be achieved [with the bill] is that a conflicted board member could sit around the table and answer board members' questions during deliberations on that one particular proposal that he or she may have the expertise on. Currently, that person cannot do that, he or she must sit in the audience and not say anything except for the 2-5 minutes in which a regular person is allowed to testify.

[8:11:03 PM](#)

REPRESENTATIVE RAUSCHER reiterated that he is still at a loss as to how no one else is able to supply this information that [a conflicted board member has] and cannot talk about.

MR. MCCUNE answered that he is an expert in the fisheries of Prince William Sound because he has fished there for over 50 years. He knows a little bit about Southeast fishing, a little bit about Kodiak fishing, and a little bit about Bristol Bay, but he is not an expert in Bristol Bay and may call a friend in Bristol Bay or King Cove to ask questions. He posed a scenario in which he is sitting on the board as a permitted gillnetter and is conflicted out, and since he also has a son who is a gillnetter he would probably be conflicted out and not able to vote because of a financial conflict. The current chairman comes from Southeast, he continued, and doesn't have expertise in Prince William Sound, so the chairman would have to rely on him to tell his thoughts, but that wouldn't mean the chairman would believe everything he said or agree with him. However, at least he would have had the chance [to speak to the chairman] as an expert in that area.

8:12:13 PM

REPRESENTATIVE RAUSCHER asked whether Mr. McCune would be the only one who could provide information for Prince William Sound.

MR. MCCUNE replied that if he were sitting on the board there would be other people in the audience who would speak to the proposals for two minutes; but he would probably be the only board member. For example, he continued, Mr. Huntington on the board is from up north, Mr. Jensen is from Southeast, and Mr. Payton is from Wasilla and doesn't know much about commercial fishing but knows a little bit about dipnetting.

8:13:09 PM

REPRESENTATIVE RAUSCHER noted that he asks witnesses questions when they are testifying because they can provide information based on their expertise and therefore he is able to gather information from all of the witnesses and there could be 20 witnesses. He said he thinks this provides the same information as being able to sit directly in a conversation.

MR. MCCUNE concurred that questions can be asked of the people who are testifying. But, he explained, different things come up as the board is deliberating on a proposal and those questions that come up during deliberations may not have come up during testimony. For example, he sitting here [at the witness table], Jerry Mackie and Richie Davis [in the audience] know a lot about Southeast fisheries, but they do not know that much about Prince William Sound fisheries; they may know what type they are but they don't know about the issues. Regarding 750,000 people, he quipped that anybody wanting to sit on the Board of Fisheries is crazy. Once upon a time he wanted to do it, he said, but he has lost his enthusiasm for it. It must be a certain kind of person to start with and the person must have the time and the money because members do not get paid very much for sitting on the board - and that is where the pool gets cut down.

8:15:49 PM

REPRESENTATIVE DRUMMOND allowed she has never been to a Board of Fisheries or Board of Game meeting, but said legislative bodies and boards have differences in the way they operate. She asked whether the rules require that members of the Board of Fisheries be chosen based on region or whether it is left up to the selection process to get an even spread around the state.

MR. MCCUNE responded that the statute doesn't say a whole lot, only that it should be qualified people. There are some people who think it should be designated seats, he said, and some who think it should be one member from each area, but [the statute] doesn't really say that. It is totally up to that governor as to how he or she puts his or her boards together.

8:18:40 PM

REPRESENTATIVE DRUMMOND recalled the earlier testimony about the Board of Fisheries having breakout sessions and that there are advisory committees (ACs). She asked whether the AC's are only a Board of Fisheries process or also a Board of Game process.

MR. MCCUNE explained that each region has an AC; for example, Prince William Sound has one and Anchorage has one. The AC's are made up of different gear types, they take up all of the proposals, and an AC may get a little more time, five minutes, to have its representative testify before the boards. The idea is that local people will be able to get a little bit more say through their advisory committee for their area.

REPRESENTATIVE DRUMMOND asked whether an advisory committee does or does not include a board member of the Board of Fisheries.

MR. MCCUNE replied no, not usually, but the Board of Fisheries will sometimes send a panel somewhere, such as to Fairbanks, to take testimony. The AC's are funded through the Board of Fisheries and the AC's hold elections for the members.

8:20:46 PM

REPRESENTATIVE TALERICO pointed out that it is heard from people in the industry and from sport fishermen that there is the unwritten rule to have balance on that work. While that will not be said in public, everybody knows that there is going to be X amount of sport fishermen and X amount of commercial fishermen. Given that conflicts are always about financial interest, he asked whether there is ever a situation where a sport fisherman would declare a conflict.

MR. MCCUNE recalled there was a situation where a board member had a lodge but that he couldn't remember exactly what it was. Another time a recreational sport fisherman was conflicted out because his aunt had a permit in the setnet fishery and while this member did not have any financial gain from that he was

conflicted out. He added that there may have been other situations but he does not remember them.

8:22:13 PM

REPRESENTATIVE TALERICO stated he has no problem with the actual close affiliations here. He related that he has had to declare a conflict before because he has a 38-year-old son who has been on his own for 18 years, owns two homes, raises his own family, and happens to work for the Department of Transportation & Public Facilities. He and his son do not share any financial interest. The hard part here is the public perception, he said. While he understands the deliberation provision, the hurdle he has to get over is putting a bigger target on board members by letting them deliberate. It is not the expertise side but rather the public's perception of what is happening there. Reality and facts don't matter, occasionally perception can be reality and that is probably the toughest thing that committee members are looking at. There is no question that if someone's expertise can be used it should be used, but it is likely that each of this committee's members has been attacked for his or her expertise when the committee utilized it and then the public said there must be some gain for that committee member. So, he continued, while he thinks that a board member's expertise is incredibly valuable, the public may think differently on that. The close family association has gone way too far for way too long, he added, given that there can be family members with whom someone has not spoken to in a decade and yet they would be considered a close association and that would not be fair. But, he reiterated, the hurdle here for him is the deliberation part.

MR. MCCUNE offered a different way to look at it. He noted that the Board of Fisheries and the Board of Game have a yellow line that cannot be crossed. He presented a scenario in which he is serving as a board member [with a conflict] and two other members call him over and ask him some questions, so he answers those questions on the side and the audience doesn't get to hear the conversation. He said he would rather have the [conflicted board member] up at the table answering those questions where the answers can be heard [by everyone]. He presented another scenario in which he is a board member who owns a \$2 million lodge and he decides to take fish away from the commercial guys and allocate them to the sport guys. That would be a direct financial gain for his lodge, he said, and so he assumes that someone would call that.

8:26:35 PM

REPRESENTATIVE RAUSCHER reported that there were 4 conflicts of interest out of 34 cases for the Board of Fisheries and that for the Board of Game there have been none over the last two years.

8:27:21 PM

CO-CHAIR TARR requested that the staff for the Board of Game and Board of Fisheries address the differences between the statutes for the two boards, which are very general in description, versus the much more specific descriptions for other boards like the "Board of Hairdressers" or "Board of Engineers." She further requested that the staff address, should the bill pass, whether there would still be a process through the Ethics Act to challenge any decisions or behavior.

8:28:11 PM

MR. HAIGHT confirmed that the statute is very general; it states that a board member be qualified, have good judgment, and have some understanding of the area of the Board of Game or Board of Fisheries. The statute also specifically states that it is not based on geography. Regarding inappropriate behavior or not providing disclosure, he advised that board members who have been recused to vote would need to work a fine line between advocating too much and providing good information; it is a personal challenge that individuals must deal with. He said he doesn't see anything that would come back to eliminate them further - they would be up in front of people deliberating on a proposal but not voting on it, but allowed he does not know what would happen in that situation.

MR. HAIGHT addressed the discussion about the Board of Fisheries process as opposed to the Board of Game. He explained that first of all there is the ethics disclosure where the board members provide the disclosure and that happens in meetings. From there it goes into staff reports and then public testimony. After public testimony is when the Board of Game and Board of Fisheries have a departure. The Board of Game will generally go into deliberations right there and deliberations are where a board member shares his or her thinking and works to sway other board members to his or her position. The Board of Fisheries will break out into committees and just by public testimony in committee board members don't deliberate, don't state their positions, and don't tell people what they are thinking - they ask questions of people. Therefore, a board member who has been recused from a particular proposal will still engage in those

committees because they are asking questions, although not sharing their opinions.

MR. HAIGHT explained that a proposal is basically a regulatory petition. Under the Administrative Procedures Act the Board of Fisheries and the Board of Game are allowed to accept petitions of the department for regulatory changes. The boards open up regions and species every year on a three-year basis for whatever petitions/proposals that people want to send to them.

[8:32:37 PM](#)

REPRESENTATIVE DRUMMOND inquired whether the Board of Fisheries or Board of Game engage in executive session and whether the parameters of change proposed in the bill would apply to the rules for an executive session in which the public does not have access to the members.

MR. HAIGHT replied that both boards can and do go into executive session, but not for purposes of deliberating a proposal.

[8:33:45 PM](#)

REPRESENTATIVE BIRCH requested clarification of the proposal process.

MR. HAIGHT explained that the Board of Fisheries and Board of Game each receive hundreds of proposal requests every year, which is too much to handle. Therefore, currently, on a three-year cycle each board will make a call for proposals on specific topics that goes out in November or December each year and the proposals are due in April or May depending on which board. Those proposals are put into a proposal book that is made available to the public every summer. The advisory committees go through the proposals and provide recommendations to each board about those proposals. Then at their regulatory meetings the boards will take up each proposal, listen to the public, deliberate, and make decisions.

[8:35:32 PM](#)

REPRESENTATIVE BIRCH requested an example of how a proposal is actually configured.

MR. HAIGHT replied that there is a proposal form that people fill out where they are asked to cite a specific regulation that

they would like to change or a brand new regulation that they would like to suggest. For example, it could be to change the bag limit in a particular fishery from three fish to five fish, or to close a fishery entirely because of conservation concerns. For example, the Board of Fisheries is currently in Anchorage taking up statewide King Crab and Tanner Crab proposals - there are proposals for the Bering Sea for Tanner Crab, a proposal for Prince William Sound to create a Tanner Crab season, and a proposal for Cook Inlet. It is very specific for certain areas in the big ocean.

CO-CHAIR JOSEPHSON recalled that four or five years ago the Alaska Dispatch News, then called the [Anchorage] Daily News, ran a story about a 12- or 13-year-old kid from Chugiak who had filed a proposal on some game issue. This boy was literally trying to write a law no different than a law that would be written by the legislature. Those proposals are the ultimate in democracy in that respect, he said.

REPRESENTATIVE BIRCH asked whether the boards get any guidance from the professionals at ADF&G regarding the proposals.

MR. HAIGHT replied that in their calls for proposals the boards specifically list which regions and which species that they will accept proposals on. Staff within the divisions of ADF&G will provide very detailed comments and will prepare very detailed management reports that provide years and years of context. The department staff provides statements of positions on the proposals and staff is at the board meetings to provide assistance to the board members.

[8:38:53 PM](#)

KRISTY TIBBLES, Executive Director, Board of Game, Boards Support Section, Alaska Department of Fish & Game, addressed the aforementioned questions on proposals as they relate to the Board of Game. She said Mr. Haight covered the various topics very well. Both boards have pretty similar processes, although the one that is a little bit different is the breakout sessions. Otherwise, the appointment of members is very similar and the language in statute is nearly identical. Regarding the Ethics Act, conflicts of interest, and executive sessions she said she doesn't have any more to add.

[8:40:21 PM](#)

CO-CHAIR JOSEPHSON stated that this bill is about deliberating. While the team at the Division of Legislative Research and Legal Services is very skilled, he said he thinks there is more caution in the [2/9/17] memorandum than needs to be. The reason he thinks this, he explained, is because for the definition of immediate family member CSHB 87(FSH) states on page 1, line 12, "In this subsection". So the bill is not changing the world, it only says that for purposes of whether a board member can deliberate it is just in subsection (g), not anywhere else. Additionally, the legislative history from Mr. Harris says that AS 39.52.220 would not be repealed, so the hugely complicated vetting process would remain. According to this, the attorney general must be written to, so this is extensive. This is a narrow thing; this bill is about deliberating, nothing is repealed. The memorandum states that if this bill became law there would be this subsection (a) of AS 39.52.220 that says a member cannot deliberate in certain circumstances and this would sort of trump that single word and so he thinks that this word "deliberate" might have to go away, but this looks like a revisers note kind of thing. Regarding the discussions about influencing others, he said that all of these things are human institutions just like in this building. People respond to kindness and honesty in communication, and he does not know that that ought to be changed. The case was made and not rebutted that there is excessive situations where Board of Fisheries members are recused and cannot contribute anything. Therefore, it would be fantastic if [conflicted] board members could deliberate in these committees and they would ask questions that no one else would ask. He said he likes the bill.

[8:43:13 PM](#)

REPRESENTATIVE WESTLAKE related that he comes from a long line of miners and many of his family members are currently miners. Miners know it is a finite resource and when it is played out it is played out, he said, but [these two boards] deal with something that is volatile and illusive. He can see where the angst comes from and commends the sponsor for bringing this bill forward. He pointed out that there is no mine in Alaska where he wouldn't have family relatives. His family owns Native allotments together, as well as family camps together, and these things are financial interests. In looking at what the sponsor is trying to do with [fish and wildlife] resources and trying to find best practices to bring it forward, he offered his agreement that it really does need revamping. He thanked the sponsor for bringing it to legislators' attention.

8:44:48 PM

REPRESENTATIVE DRUMMOND recalled a film called "Six Degrees of Separation" and remarked that she is going to start calling this the "six degrees of separation bill becomes half a degree of separation" because in Alaska it is one degree or half a degree of separation. She said Mr. Stacey clarified it best when he described the three areas of concern as being conservation, allocation, and conflict and he laid it out clearly for how these boards need to operate. She said she sees no reason to make people with a great deal of knowledge sit on the sidelines when they've been sent by their community to contribute and she therefore supports this bill.

8:46:31 PM

REPRESENTATIVE BIRCH stated he is not a fan of this and still struggles with the availability of people. Modifications could perhaps be made to make the bill acceptable, he said, but in its current form he doesn't support it.

8:46:58 PM

REPRESENTATIVE TALERICO said he still has the high hurdle that he mentioned earlier, but because he thinks it is the role of the committee to move the bill he will not try to stop it. He noted that he thinks about these people when they are put in that situation and if it came down to a decision where there was a vote and either the chairman or the committee decided that someone had a conflict of interest, he would recommend to that person to go get a cup of coffee instead of staying in the room and have someone send a text when the deliberation is over. Even though the boards could really use the expertise, he said he is concerned about the public's perception and doesn't want to put a bull's eye on anyone as a target. It takes very special people to serve on these boards because there are fish wars as well as game wars and he has never been to a meeting where everyone in the room is satisfied. This is probably because these fish and game resources are incredibly precious to Alaskans, whether for consumption or making a living. While he has not gotten over the aforementioned hurdle to be a supporter, he said he appreciates that the reigning in of how far out the conflict of interest extends probably helps substantially.

8:49:14 PM

REPRESENTATIVE RAUSCHER shared that the e-mails he has received and the testimony are almost dead even. He said he is not a big fan of what is trying to be done here. Making special cases for a group or several groups of people is not a good way to write legislation and he questions writing law for certain isolated cases. He said he will have a hard time voting yes for the bill, but he will not stand in the way.

[8:50:52 PM](#)

CO-CHAIR TARR noted that confirmation hearings are forthcoming, so committee members will be provided with the statutory language for the various boards. This will highlight where there is a difference, she noted, because the statute related to the Board of Game and the Board of Fisheries is very general versus for other boards. For example, statute for the Big Game Services Board specifically states that it shall be people within the industry and they are expected to vote.

[8:51:40 PM](#)

CO-CHAIR JOSEPHSON moved to report CSHB 87(FSH) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 87(FSH) was reported from the House Resources Standing Committee.

[8:52:24 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 8:52 p.m.