

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 21, 2018

1:03 p.m.

MEMBERS PRESENT

Representative Andy Josephson, Co-Chair
Representative Geran Tarr, Co-Chair
Representative John Lincoln, Vice Chair
Representative Justin Parish
Representative Chris Birch
Representative DeLena Johnson
Representative George Rauscher
Representative David Talerico

MEMBERS ABSENT

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

COMMITTEE CALENDAR

HOUSE BILL NO. 354

"An Act relating to dive fishery management assessment procedures."

- HEARD & HELD

HOUSE CONCURRENT RESOLUTION NO. 23

Supporting enhanced efforts to protect wildlife and domestic animals in the state from infectious diseases, foreign pathogens, and nonendemic parasites.

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 315

"An Act relating to the confidentiality of certain records on animals and crops; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 260

"An Act relating to electronic possession of certain licenses, tags, and identification cards issued by the Department of Fish and Game; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: HB 354

SHORT TITLE: DIVE FISHERY ASSESSMENTS

SPONSOR(S): REPRESENTATIVE(S) ORTIZ

02/16/18	(H)	READ THE FIRST TIME - REFERRALS
02/16/18	(H)	FSH, RES
03/08/18	(H)	FSH AT 10:00 AM GRUENBERG 120
03/08/18	(H)	Moved HB 354 Out of Committee
03/08/18	(H)	MINUTE(FSH)
03/09/18	(H)	FSH RPT 3DP 1NR
03/09/18	(H)	DP: TARR, KREISS-TOMKINS, STUTES
03/09/18	(H)	NR: NEUMAN
03/21/18	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE DAN ORTIZ
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking as the sponsor, introduced HB 354.

LIZ HARPOLD, Staff
Representative Dan Ortiz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Ortiz, sponsor, further introduced HB 354 and answered questions.

PHIL DOHERTY, Co-Executive Director
Southeast Alaska Regional Dive Fisheries Association (SARDFA)
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 354.

JERRY MCCUNE, President
United Fishermen of Alaska (UFA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 354.

ACTION NARRATIVE

[1:03:11 PM](#)

CO-CHAIR GERAN TARR called the House Resources Standing Committee meeting to order at 1:03 p.m. Representatives Tarr, Josephson, Parish, Talerico, Rauscher, and Lincoln were present at the call to order. Representatives Birch and Johnson arrived as the meeting was in progress.

HB 354-DIVE FISHERY ASSESSMENTS

[1:05:01 PM](#)

CO-CHAIR TARR announced that the only order of business would be HOUSE BILL NO. 354, "An Act relating to dive fishery management assessment procedures."

[1:05:26 PM](#)

REPRESENTATIVE DAN ORTIZ, Alaska State Legislature, speaking as the sponsor introduced HB 354. He said the bill is necessary for the Southeast Alaska Regional Dive Fisheries Association (SARDFA), the only dive fishery association in the state regulated by AS 43.76.150-210, to amend the process undertaken to modify the tax assessed on the geoduck, sea cucumber, and sea urchin fisheries that the association represents. Each fishery can tax itself at a different rate.

REPRESENTATIVE ORTIZ explained that under current policy a majority of the permit holders is required to change an assessment tax. This is problematic, he said, because many of the permits are nontransferable and less than half of the Commercial Fisheries Entry Commission (CFEC) permit holders in these fisheries are actively participating in the said fisheries. Due to the low involvement of permit holders, a majority participation of permit holders is unrealistic. He said HB 354 would allow for a change in assessment tax to be initiated by a three-quarter vote from the board of directors and the vote to accept the change pass with a majority vote of permit holders participating in the vote.

REPRESENTATIVE ORTIZ further explained why this proposed change in self-assessment is needed. These permits are nontransferable and a larger percentage of permit holders were participating [at the start of] the fishery. Now, 20-30 years later, some of the folks owning these nontransferable permits have transitioned out of the fishery and so are not participating in the regular activities of the fishery, including the voting process. Therefore, he said, under the current rules it is hard to get the vote threshold required to do any change in assessments.

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REPRESENTATIVE RAUSCHER inquired whether there are other [dive] fisheries not regulated by AS 43.76.150-210.

1:09:08 PM

LIZ HARPOLD, Staff, Representative Dan Ortiz, Alaska State Legislature, replied that the Southeast Alaska Regional Dive Fisheries Association is the only regional dive fisheries association in the state and it oversees all of the permit holders within Southeast Alaska. There may be a small sea cucumber fishery, say in Kodiak, but it would not fall underneath the jurisdiction of this regional dive association.

MS. HARPOLD, on behalf of Representative Ortiz, continued introducing HB 354. She explained SARDFFA is a private nonprofit economic development organization representing the harvest divers, processors, and communities of Southeast Alaska. The number of permit holders is just shy of 400, she noted. This was established in 1998 after the legislature fashioned the framework to create a dive fisheries association. The association is governed by a board of directors that makes up a good collection of different people within the industry. The association works cooperatively with the Alaska Department of Fish and Game (ADF&G) to develop an annual operating plan, which determines how the dive assessment, this self-imposed tax being talked about, will be spent. Without these taxes going into ADF&G, she continued, ADF&G doesn't have the money to do the assessments to manage these fisheries. The assessment is collected by the Department of Revenue (DOR) and then passed along to ADF&G.

MS. HARPOLD pointed out that anyone who is a dive fishery permit holder in Southeast Alaska belongs to SARDFFA. She elaborated on the difficulties of having permit holders participate, explaining that the permit holders are the only ones who can be fishing. The permit holder must physically get into the water and harvest the sea cucumbers or geoducks with their own hands. Permit holders cannot be standing on the boat letting someone else do the diving for them, she said. As people get older or less interested in diving they cannot pass on their nontransferable permits. She noted that there are transferable permits within this industry that are being actively fished. She reiterated that HB 354 only affects SARDFFA and it is SARDFFA that is encouraging the sponsor to move forward with the bill.

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REPRESENTATIVE RAUSCHER asked whether a permit is owned by a family or by an individual. For example, he asked whether a son could use the permit to vote or harvest the products.

MS. HARPOLD answered it is only the individual who is the permit holder. In the case of a nontransferable permit, the individual is unable to pass it along to a family member or to sell it.

[1:12:50 PM](#)

REPRESENTATIVE JOHNSON inquired whether there is any opposition to HB 354.

REPRESENTATIVE ORTIZ replied he has received no complaints or concerns about the bill. He added that it seems unlikely there would be concern given it deals only with an internal issue within SARDFA itself. The issue, he said, is that as these nontransferable permit holders have aged out of the fishery they are participating less in the fishery and the votes.

[1:13:59 PM](#)

REPRESENTATIVE PARISH asked about the number of people on the SARDFA board of directors and how they are selected.

REPRESENTATIVE ORTIZ deferred to Mr. Phil Doherty for an answer.

[1:14:25 PM](#)

REPRESENTATIVE BIRCH inquired whether dive fishing is permitted for crab and scallops and whether HB 354 addresses these.

MS. HARPOLD responded that the Southeast Alaska Regional Dive Fisheries Association represents permit holders for sea cucumber, geoduck, and urchin divers only.

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CO-CHAIR TARR opened invited testimony.

[1:15:43 PM](#)

PHIL DOHERTY, Co-Executive Director, Southeast Alaska Regional Dive Fisheries Association (SARDFA), testified in support of HB

354. He noted he has been the co-executive director of SARDFa for the past 11 years. He thanked Representative Ortiz and Ms. Harpold for their time on HB 354 and stated the bill was under SARDFa's request.

MR. DOHERTY said SARDFa has a nine-member board that represents several regions within Southeast Alaska - the Ketchikan area, the Petersburg-Wrangell area, the Prince of Wales area, the Sitka area, Southeast Alaska at-large, and Washington state at-large since a number of members are from out of state. Also on the board are a processor and a representative for Southeast Alaska municipalities, who are voted in via a majority vote of the permit holders. The board is active and meets six or seven times a year, he continued. Underneath the board are committees that help the board in directing the association's fisheries as well as the association's direction. The fisheries are sea urchin, geoduck clam, and sea cucumber, with the geoduck clam and sea cucumber committees being the most active. About 20 divers on the committees, he continued, so there is good representation throughout the suite of dive fisheries and the number of divers involved in the committees.

MR. DOHERTY pointed out that SARDFa proposed this change in its regulatory laws. It was voted on at the committee levels and involved the geoduck and sea cucumber committees, he said. The committee votes as well as the board votes were 100 percent in favor of working with Representative Ortiz to get this change passed. There is no opposition within the association's committees or divers who are not on the committees, he noted.

MR. DOHERTY explained SARDFa is seeking to make it easier to vote on the assessment imposed upon its members. The current assessment is 7 percent on geoduck clams, 5 percent on sea cucumbers, and 5 percent on red sea urchins. This is an internal tax, he said, but it is collected by the state. This tax is above and beyond the 3 percent fisheries assessment tax that is imposed upon on all the fisheries in Alaska. [These self-imposed assessments], he continued, are based on the ex-vessel value of the product as it comes off the fishing boats and over the dock and are collected just like the state fisheries taxes on the fish ticket. The money goes to the Department of Revenue (DOR) and at the end of the fiscal year DOR sends that money back to SARDFa. The assessment tax is usually around \$250,000-\$300,000 a year per fishery. He explained the association has an annual operating plan with ADF&G that identifies what needs to get done for the future year for assessment work, for management work, and for research work,

and then the association gives the assessment money to ADF&G for both fisheries.

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MR. DOHERTY further noted that SARDFa pays \$150,000-\$200,000 a year to the Department of Environmental Conservation (DEC) to do testing for paralytic shellfish poisoning, water quality, and arsenic for the geoduck clams. The geoduck assessment money for the department is about \$80,000 a year, he said, and SARDFa gives the department about \$80,000-\$90,000 a year out of its sea cucumber funds. The association is also involved in a sea cucumber enhancement project with the Alutiig Pride Shellfish Hatchery, he continued, which is where some of the other monies go. Lastly, some of the monies come back to the association to pay for the association's costs.

MR. DOHERTY related that the association tried to lower its sea cucumber fishery assessment from 5 percent to 3 percent a couple years ago because of having quite a bit of money in that fund. A vote of 50 percent plus one was needed to pass that change, but the association was unable to get enough votes to lower the tax and put more money into the fishermen's pockets. A number of permits are not active these days, he explained, but they are renewed each year and so are in the CFEC database. There are about 326 permits in the sea cucumber fishery so, by regulation, a vote of a little over 150 was needed. This bill, he stressed, would drastically change that and make it much easier for the tax structure within the association to be changed.

MR. DOHERTY pointed out that the proposed change in the regulation would not affect anyone else in Alaska because there are no other dive associations in the state. He said the association would always meet its financial obligations to the State of Alaska, ADF&G, and DEC because if it doesn't pay, its divers don't fish. He added that SARDFa has enough money built up in its sea cucumber fund that it can lower its tax assessment there, but not in the geoduck fishery. He reiterated SARDFa's support for HB 354 and said it shouldn't cost the state a penny.

1:23:24 PM

REPRESENTATIVE LINCOLN offered his understanding that currently there are 326 outstanding permits.

MR. DOHERTY replied there are over 400 within the association. He explained that as soon as someone buys a CFEC card he or she

technically becomes a part of SARDFa. There are 110 geoduck permits, he continued, and currently about 70 geoduck divers actually fish. Of the 326 sea cucumber permits, about 180 of them are actively fished.

REPRESENTATIVE LINCOLN asked what the cost is to renew. He further asked whether people are sitting on them and not using the permits or coming in and out in different years.

MR. DOHERTY responded that the cost through CFEC to renew a sea cucumber permit is \$75. The cost to renew a geoduck clam permit is [\$225]. A sea cucumber permit today sells for about \$32,000 and a geoduck clam permit sells for around \$60,000-\$65,000, depending on the year. When these fisheries first started, he explained, a lot of people got in the water because they knew it was going to go limited entry. One problem with the limited entry fishery is that at the beginning a lot of people tried to get a permit and if they didn't get enough points within the CFEC structure they got a nontransferable permit. This is not an easy fishery to stay in, he continued. The permit holder is the diver and as they get older some of these guys don't want to get in the water anymore. However, they do maintain their permit, which has made it difficult for the association to reach the majority vote, especially for the assessment tax, and that is why SARDFa is trying to lower the standard a little bit.

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REPRESENTATIVE RAUSCHER inquired why people hang on to these permits if they aren't going to utilize them anymore.

MR. DOHERTY replied that the answer to the question would be on an individual fisherman's basis. He said if someone had a nontransferable permit and wasn't going to fish again and it cannot be sold, there would seem to be little reason behind holding on to the permit. But, he noted, who knows what will happen. A medical transfer can be done on a nontransferable permit and there are permits that are used each year on a medical transfer. So, he posited, perhaps some of the permit holders feel that if they get the opportunity to give their permit to someone in a medical transfer, maybe they feel that somewhere down the road these nontransferable permits may be worth something.

REPRESENTATIVE RAUSCHER asked whether there is a cost to transfer a nontransferable permit for a medical reason.

MR. DOHERTY answered he is pretty familiar with CFEC regulations and he doesn't believe there is a cost to medically transfer a permit on an emergency basis. He offered his belief that the paperwork is done with the state. He said he knows that in Ketchikan a person can go to the local ADF&G office and fill out the emergency transfer paperwork, get it to the CFEC, and if it is approved the permit is transferred for at least that season.

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REPRESENTATIVE RAUSCHER inquired whether there is anything in the bill that speaks to nontransferable permits that aren't being used. He further inquired whether there is anything in the bill that would end the nontransferable program.

REPRESENTATIVE ORTIZ replied no.

MR. DOHERTY responded no, there is nothing in this regulation - unfortunately from his point of view - that addresses the nontransferable permits. He said it 100 percent addresses the standards in which the association can conduct an election to change its assessment taxes.

REPRESENTATIVE RAUSCHER surmised the aforementioned is basically a quorum.

MR. DOHERTY answered it is not a quorum but 50 percent plus one of the permit holders; it is not a quorum of the board or a quorum of the committees. The association would like to lower the bar a little bit, he continued. The association wants to get good participation in an assessment tax change and so doesn't want to make it very, very easy to do. That is why the association said it needs at least 75 percent of the board to approve a changing of the assessment and also at least 25 percent of the permit holders.

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CO-CHAIR TARR asked whether it is going to become an issue at some point in terms of managing the fishery if people hang on to these permits and don't use them. She further asked whether it is limiting people who would like to get into these fisheries.

MR. DOHERTY replied it used to be if a permit holder didn't pay for his/her permit for, he believed, every 2 or 5 years, then that permit would be retired, but the permit holder could go back and renew. The association has worked with CFEC to get

some latent permits retired out of this fishery, he said, and was pretty successful. When these fisheries first became limited entry fisheries in the 1990's there were well over 450 permits, now it is down to about 350. He said SARDFa is also actively seeking an internal buyback program, especially in the sea cucumber fishery. The association has some money in its fund, he continued, and would like to see the number of permits reduced in the fisheries and is looking at different ways. One way is a private CFEC buyback program and SARDFa is trying to work out the details with CFEC. However, HB 354 would not affect the number of permits in the fisheries.

CO-CHAIR TARR inquired whether the number was set too high when the fishery was created and so that is why an imbalance is now being seen between the number of permits and the number of people actually using them.

MR. DOHERTY offered his opinion that limited entry has done very well for the state of Alaska. But, he continued, when people knew that [unlimited] fisheries were going to be limited, they made an effort to get out and harvest something so they could at least get a nontransferable permit, and he believes that this happened in the dive fisheries. He offered his opinion that most divers would agree that when it did go limited entry there were too many permits in the fisheries to begin with.

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REPRESENTATIVE PARISH offered his understanding that when a fish ticket is issued a dive fisherman pays the 3 percent tax, plus the fisherman pays the 5 or 7 percent tax depending on the fishery, which results in \$250,000-\$300,000 a year. He asked whether he is correct on the annual monetary figure.

MR. DOHERTY responded correct, but noted it changes year to year because the guideline harvest level changes year to year as ADF&G does its assessments and sets the quota. Also, the ex-vessel value changes each year based on market. The \$250,000-\$300,000 is about what the association gets from each of the two fisheries. He demonstrated the importance of these late fall and winter fisheries by pointing out that the geoduck and sea cucumber fisheries combined generate between \$10 million and \$12 million in ex-vessel value in Southeast Alaska. Except for the Dungeness crab fishery in some years, he continued, these are probably the two most important wintertime fisheries in Southeast Alaska.

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REPRESENTATIVE PARISH recalled Mr. Doherty stating that SARDFPA pays for paralytic shellfish poisoning (PSP) and arsenic testing for geoducks, as well as the cost of operating the association. He inquired as to the overall cost.

MR. DOHERTY requested clarification of the question.

REPRESENTATIVE PARISH said his question is whether there is a level to which the association could cut its taxes that would interfere with its ability to adequately fund the operation of the board and important testing like PSP and arsenic.

MR. DOHERTY answered that the association's board members do not receive any compensation for being on the board. Money coming into the association pays the cost of administration, he said, such as staff salaries and travel, building rent, phone, web, and so forth, which is usually about \$200,000 a year. Most of the association's expenses are for the geoduck clam fishery, which costs between \$150,000 and \$200,000 for PSP, arsenic, and water quality testing. Plus, he continued, the association pays the department about \$80,000 a year to conduct the sea cucumber fisheries. If the association did not have enough assessment money to pay DEC or ADF&G then there would not be any fisheries or there would be reduced fisheries the following year.

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REPRESENTATIVE PARISH asked whether his understanding is correct in that if there were not adequate money to remit to ADF&G, then the following year the fishery would be limited by ADF&G.

MR. DOHERTY replied correct. He related that when these dive fisheries first started in the early 1990's people were mostly from the Lower 48 because these fisheries already existed in Washington state and California. They knew there was a resource in Alaska so they started diving here and were getting permits through the department and CFEC, but there were no regulations or assessments of the populations in place. As the harvest grew over the years the department became nervous that maybe the fisheries were getting out in front of the resource, so the department put the brakes on the fisheries. The department told the divers and processors that it didn't have the money to look at big fisheries like this because it takes a boat and many divers. The department told the divers to figure out how to pay for these fisheries and that is what the divers did - they went

to Juneau and got this [statute] in place and assessed themselves a tax and that tax has turned into fisheries now worth \$10 million to \$12 million a year.

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CO-CHAIR TARR opened public testimony on HB 354.

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JERRY MCCUNE, President, United Fishermen of Alaska (UFA), testified in support of HB 354. He noted SARDFa is a member of UFA and said the association has built a good record of funds that cover everything. Making the proposed change would be a good change, he said. The association could lower its assessment and the fishers and processors in the state could make a bit more money in the process.

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REPRESENTATIVE LINCOLN remarked that HB 354 seems to be a decent solution to the problem. He inquired whether this solution is preferable to addressing the root cause of the issue, which is that there are lots of permits that aren't being used.

MR. MCCUNE responded that getting into CFEC laws is totally different than what HB 354 is addressing. He said the bill would address the current permit holders that are taking part in the fishery and would help the association. Regarding latent permits, he noted that Alaska has a few fisheries with latent permits and those people are like in this dive fishery case - some divers are now too old to participate because diving is dangerous. Latent permits is a whole different issue than working with CFEC laws, he reiterated.

MR. MCCUNE, regarding CFEC laws, pointed out that a threshold of permits needs to remain in a fishery to make it limited entry. Too low a number could be too exclusive, he explained. Limited entry must have enough permits in a fishery to turn over every year so there can be new entry. But, he continued, when some fisheries were created there was more available resource than there is today. An optimum numbers study can always be done to see what a fishery is producing and how many participants should be in it, he advised. This gives the state a good number so that if someone challenges whether there are enough permits in the fishery - like was done in the Sitka herring fishery - the court can say that an optimum numbers study was done.

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REPRESENTATIVE LINCOLN asked whether there is ever a case where an active permit user benefits from having latent permit holders who don't use them, because it inflates the numbers so that the fishing remains limited and the people who are using their permits benefit from a restrained competition.

MR. MCCUNE answered that having lots of latent permits is either due to the price or to not having enough of that particular fishery's species, in which case the remaining people actually fishing do benefit a lot. He noted Bristol Bay is a fully utilized fishery and also noted that there are no latent permits in the Copper River fishery in which he fishes because it is a very lucrative fishery so everyone is fishing his or her permit. But, he continued, in many of the little fisheries like the dive fisheries, there are people who go do other things or it doesn't look good for diving so they put it off for a year. In any particular fishery, he explained, a permit holder who is not fishing must renew that permit every two years or the permit goes away. A permit holder can get one year off because he or she isn't taking part in the fishery. The latent permits, he reiterated, help the remaining fishermen in the fishery make a little bit more money.

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CO-CHAIR TARR closed public testimony after ascertaining no one else wished to testify.

CO-CHAIR TARR held over HB 354.

[1:46:20 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 1:46 p.m.