

**ALASKA STATE LEGISLATURE  
SENATE RESOURCES STANDING COMMITTEE**

March 14, 2018

3:30 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Vice Chair  
Senator Natasha von Imhof  
Senator Kevin Meyer  
Senator Bill Wielechowski  
Senator Click Bishop

**MEMBERS ABSENT**

Senator Cathy Giessel, Chair  
Senator Bert Stedman

**COMMITTEE CALENDAR**

CONFIRMATION HEARING(S) :

Commercial Fisheries Entry Commission (CFEC)  
Vance Fate Putnam  
Dale Kelley

- CONFIRMATIONS ADVANCED

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

VANCE FATE PUTNAM, Commissioner Designee  
Commercial Fisheries Entry Commission (CFEC)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified as CFEC commissioner designee.

DALE KELLEY, Commissioner Designee  
Commercial Fisheries Entry Commission (CFEC)  
Juneau, Alaska

**POSITION STATEMENT:** Testified as CFEC commissioner designee.

**ACTION NARRATIVE**

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**VICE CHAIR JOHN COGHILL** called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Bishop, Von Imhof, Wielechowski, and Vice Chair Coghill. Senator Meyer joined the committee one minute later.

**CONFIRMATION HEARING(S) :**  
**Commercial Fisheries Entry Commission**

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**VICE CHAIR COGHILL** announced the only order of business would be the Commercial Fisheries Entry Commission (CFEC) confirmation hearings. He said Alaska amended its Constitution in 1972 to open the door to limited participation in its common fisheries for the purposes of resource conservation and Alaska's economy. Due to economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in Alaska, the Alaska Legislature passed a Limited Entry Act to implement the tenets of the Constitutional Amendment. It was managed by the Commercial Fisheries Entry Commission to which the two appointees have been asked to serve as commissioners.

**VICE CHAIR COGHILL** said this commission is a quasi-judicial body, but being an attorney is not required. All its decisions are appealable to the Superior Court. Current law assigns three seats to the commission with a quorum consisting of two members. Over the past three years, the Lawson Report and later the report from the Division of Legislative Audit highlighted the staffing and meeting practices for review.

Once the appointees are confirmed, they can only be removed for cause and the commissioners meet regularly throughout the year. Their compensation is equal to a range 27, the equivalent of \$100,000/year, as a base. The commission operations are derived wholly from fees and taxes assessed through the Limited Entry Program, which will be part of the discussion today.

**VICE CHAIR COGHILL** welcomed the two appointees and asked them to relate their backgrounds and tell the committee why they want to take this position.

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**VANCE FATE PUTNAM**, Commercial Fisheries Entry Commission (CFEC) Commissioner Designee, introduced himself.

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DALE KELLEY, Commercial Fisheries Entry Commission (CFEC) Commissioner Designee, Juneau, Alaska, introduced herself and read a prepared statement. While she wasn't fortunate enough to be born in Alaska, her soul was; she has been here more than half her life. She grew up surfing, riding rodeo, and rock climbing in California. Her academic training ranges from fisheries science to aquaculture to pharmacy to paramedicine. She worked as a pharmacy technician in three states and one of her most unique responsibilities was preparing drug packs for the space shuttle. She worked in surgery and on ambulances in downtown Houston, which probably helped toughen her up for life as a commercial fishing deckhand.

MS. KELLEY said she had lived in the Bush and been a fish culturist in Prince William Sound and Southeast and had helped rebuild steam turbines in Haines and Fairbanks. Whenever time allows, she enjoys fishing on a troller out of Craig. She has no financial interest in a fishing business and holds no permits. For the past three decades she has been executive director of a commercial fishing organization representing fishermen who fish in state and federal waters for salmon, halibut, and other species. As a result, she has acquired extensive knowledge about fisheries and habitat conservation, resource management, and a wide array of state, federal, and international regulatory policies and laws. She supports all forms of fishing and have worked on behalf of all fishermen for her entire career.

She served for 12 years as an Alaska commissioner on the Pacific States Marine Fisheries Commission, a five-state organization whose mission is conservation and sound utilization of West Coast fisheries resources. She is a member of the Pacific Salmon Commission, which implements the U.S. Canada Salmon Treaty, and chairs the U.S. Advisors of the North Pacific Anadromous Fish Commission, a five-country commission working to protect anadromous fish stocks through research and enforcement of high seas illegal fishing.

Over the years, she has helped start and manage a number of blended state and national industry groups and coalitions working on issues of mutual concern. She has been fortunate to serve on various other industry boards and legislative, gubernatorial, and congressional advisory panels. She is familiar with the scope of work that CFEC does and throughout her career she has both consulted and worked with the commissioners and staff at CFEC.

MS. KELLEY said she believes it is important that the commissioners have a solid understanding of the challenges confronting the seafood industry in general and the harvesting sector, in particular. She welcomes the new challenge and the opportunities for learning that a CFEC appointment offers and hopes that her knowledge and experience will be an asset to the commission and the state's fishing communities. Together, she and Mr. Putnam bring a complimentary set of skills to the table and could be a good team for assessing the condition of CFEC as a mature organization heading into the future and implementing any needed change and charting a course for that future. They agree on many of the new objectives and are working to develop a plan to institute more following along the lines of the two reports, the Lawson Report and the legislative audit.

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MR. PUTNAM said he is a designee for the CFEC and was appointed December 1 to replace Ben Brown who resigned to take a different job. He didn't realize that Chairman Twomley was going to retire, too, after 37 years, but he is learning something every day about this commission.

MR. PUTNAM started with his personal history saying he was born in Fairbanks. His mother was a city planner and his dad was a plumber/pipefitter. His mom went off every day with a briefcase and his dad went off wearing a toolbelt. They moved to Anchorage in 1965 after the earthquake. His mom worked for the Alaska State Housing Authority (ASHA) reconditioning communities that had been destroyed in the tsunami after the earthquake including Valdez and Seward and then she became a city planner in Anchorage and worked on bike trails and was known as the Bike Trail Lady of Anchorage. He learned about eminent domain and things like that when he was a little kid because his mom had to go to court to "grab property" to make the contiguous bike trails.

MR. PUTNAM said he was one of the first students to go to Stellar High School in Anchorage and graduated from West High School in 1976. After that, he attended Lynnfield College in McMinnville, Oregon and ended up graduating from Western Washington University. His first legislative job was 39 years ago as an intern. He worked for Senator Pat Rodey, who was Judiciary Chair. In that job he learned about "Christmas treeing," when you find a title broad enough to put something in including the student internship program, which they managed to wedge in. That internship program is still in existence today.

He returned during law school and worked at the Natural Resources Section of the Attorney General's Office in 1983. He worked on natural resources like Dinkum Sands, navigable water ways, Mental Health Trust lands, and salmon hatcheries; CFEC was one of their topics of interest, also.

MR. PUTNAM said he served as a manager of a commission before, on the Future of the Permanent Fund's Staff working for Red Boucher who was chair of the State Affairs Committee then in 1989. He flew all over the state taking testimony about the Permanent Fund with Hugh Malone, former commissioner of the Permanent Fund and former legislator, Steve Frank out of Fairbanks, and Mark Langland of Northrim Bank.

He was appointed to the Anchorage Municipal Planning and Zoning Commission in 1993 by then Mayor Tom Fink and enjoyed his service there (his mother's history in city planning prepared him for that). After that, he worked as the legal counsel/political director/lobbyist/assistant executive director for a large public employee union for about 20 years. He retired from that in 2015 and became a contract lobbyist for a couple of years. He is no longer a lobbyist and has now changed directions to serve on this commission that is a full-time job.

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MR. PUTNAM next related his fishing history and that he started working with his dad as a longliner for halibut in the 70s and 80s and deck handed for halibut in the winter of 1984 out of Homer. In 1979 he was a salmon hand troller. He was a cash buyer for his brother's fish company back in 1981. From there he went on to law school. After law school and since then, he and his family have maintained a fish camp at the mouth of the Kasilof River and for the last 20 years they fish from June 15-25. He encouraged every Alaskan to do that as it is their opportunity to catch 25 fish for their freezer.

He has never held a captain's license or a limited entry permit, although he has been a deck hand. Stopping there, he asked for questions.

VICE CHAIR COGHILL thanked him and said this is one resource they want to do well at. He is surprised at the volume of permit exchanges that happen every year. He asked what commission level duties he has to do that staff can't do.

MR. PUTNAM said the essential function of the commissioners is to act as an appellate court, like a divorce or bankruptcy court, because the people who work for them adjudicate the hearings and questions that licensing staff can't answer or deny because of the strict interpretation of regulations, but those regulations are variable depending on the conditions of the fishermen and their circumstances. Fishermen are always allowed the opportunity to appeal a decision to the judicial officers who then make a recommendation to the commission. The commission reviews the rulings and makes a final determination based on regulations and the recommendations from the adjudication section. From there, these cases can be appealed to the Superior Court. Hundreds of cases have gone from this commission to the Superior Court and 70 cases have gone to the State Supreme Court. A huge body of law is associated with this area of the fishing industry.

He thinks the reason limited entry was so controversial in the beginning was that the commission decided whether you got a permanent transferable permit or a non-transferable permit, because the transferable permit is worth a lot more money. Those controversies have been worked through and about 13 cases are still pending before the commission. Some of them have fact patterns from 1975 that have not been resolved. He and Ms. Kelley have the opportunity to go through those 13 cases over the next years to see if they can be resolved. Their intent is to work them through the system.

Since he has been there, 18 cases have been resolved, two of which were remands from the Superior Court back to the CFEC. Those two cases have been settled and their interim use permits ended. He explained that an interim use permit allows a fisherman to continue fishing while a case is being appealed. Some interim use permits have been fished for years. They are going to do their best to resolve these appeals so that the optimum number of fishers in a fishing area can be resolved.

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MS. KELLEY said that Mr. Putnam gave him an extensive overview of what commissioners do, and she heard his question to include how they interact with staff. She is new, and she wanders around trying to figure out what her job is. So, on a daily basis she has been picking a number staff and finding out what they do and learning it and finding out what they perceive her job to be. She has received a variety of responses to that, but one is that some questions about implementing regulations that need a ruling. As Mr. Putnam has pointed out, the CFEC law is very

intricate and staff could unwittingly unravel it like a thread in a sweater. So, oversight of regulation implementation is an important part of what they do with staff.

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SENATOR VON IMHOF thanked them both for their introductions. She sees three at-large positions on the commission and two are filled. Considering the amount of work they have described, she asked their thoughts on keeping that other seat vacant and if they have anyone in mind for the position.

MR. PUTNAM said they decided to try running the commission with just two commissioners rather than three, because they haven't limited any fishery since 2004. Staff has been downsized so that there is no longer an executive director, leaving the commissioners to act as executive directors.

MS. KELLEY said her perspective is that there was wisdom in setting up the Limited Entry Commission with three commissioners just for the decision-making process. Three significant cases are pending now, and it will be interesting to see how that works over time. One advantage of having the three is just the option for the commissioners not to gridlock on something that protects the public and the state from having to go court, which saves time and money. She considers having two commissioners a "grand experiment" that is too early to tell how it will go.

VICE CHAIR COGHILL remarked that in 2015, staff issued 18,147 permits and 9,646 vessel licenses.

MS. KELLEY responded that they have a great licensing staff.

MR. PUTNAM added that there are open fisheries and limited fisheries in Alaska. Their authority goes out to the 200-mile limit for federal fisheries and three miles for the state. Everyone in a limited fishery receives a permit from the commission. Everyone in an unlimited fishery also receives a permit to fish. Every fisherman who is in the 200 miles offshore fishery is permitted. They also watch optimum numbers to determine where there is stress on a fishery.

He said the Board of Fisheries cycles through different fisheries, fin fish for example, about once every three years. The commissioner of Alaska Department of Fish and Game (ADF&G) can do an emergency closure on a fishery for stress issues - if the biomass isn't there or if the research isn't there to determine the presence of sustainable yields. The commission's

research section watches how those two things interface with each other and tracks the decisions and may at some point determine there is enough stress on an open fishery that it needs to be closed. That will be the point at which the caseload will go up and determinations will be made on who has a history of and a dependency on a fishery. Those are the parameters for deciding who gets a transferable permit or a non-transferable permit. Those decisions are what become controversial and end up in court.

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SENATOR BISHOP thanked them for their service and asked how the appeal process works at the commissioner level.

MR. PUTNAM responded that trials are held by the adjudication section. At one time, this section had seven attorneys and two or three paralegals to do some background work. So, the commission had 46 members. Now it is down to 13 employees. The way it works is if a trial happens, the adjudication officers take evidence, put people under subpoena, and get confidential information, including tax returns and other information. They make a recommendation to the commission; the final decision rests with the commissioners who are trying to handle these things on a consensus basis.

He said the House has a piece of legislation dealing with the point of having just two commissioners; it allows in the absence of one of those two commissioners, for the commission to still function. Right now, there is a two-member quorum requirement and if one commissioner isn't there, the commission doesn't exist anymore.

They are trying to change that to a two-member commission situation and if in the future, if a fishery has to be limited they may come to the legislature and ask to hire an expert, like Mr. Twomley, who knows the subject well. All decisions made by the commissioners can be appealed to the Superior Court and then to the Supreme Court.

SENATOR BISHOP observed that the two commissioners have to be 100 percent together and asked how that will work.

MR. PUTNAM replied that their intent is to agree all the time, but if they don't agree, the ruling of the hearing officer in the adjudication section becomes the ruling of the commission. And that is what the fishermen would appeal to Superior Court.

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VICE CHAIR COGHILL said he is reluctant to agree with a two-member commission. But he will watch closely how it plays out. He noticed two things the commission had done: first, he didn't know this was a significant part of the Fishermen's Fund. What proportion is that?

MR. PUTNAM replied that the Fishermen's Fund was started pre-statehood and was designed as a type of worker's compensation for injured fishermen, because a lot of fishermen couldn't afford insurance and got injured on the job. Ms. Kelley has the exact figures as she has been involved with the CFEC for a long time on the Governor's task force to restructure it, he said. The Fishermen's Fund receives an average of \$400,000 annually that all comes from fishermen. A fishing captain's license is needed at the beginning of the fishing season as well as a vessel license. Those all come from CFEC, for which they charge a small fee. At the end of a fishery, they charge four-tenths of 1 percent of whatever money one makes based on fish tickets, which are confidential and held by CFEC for 45 years. That is for an open fishery. For a closed fishery, it's four-tenths of 1 percent of the value of one's permits. Their economists watch the values of permits that go up and down based on sale prices and that is how the fees are based at the back end. Of this pot of money, about \$8 million, 40 percent by law, goes into the Fishermen's Fund and about \$5 million goes to the ADF&G, and about \$3.5 million is used by the commission to function.

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VICE CHAIR COGHILL said it is a pleasant surprise to see how much money has been returned to ADF&G.

MS. KELLEY said she just got an update today. Since FY 2012, about \$23 million went to ADF&G; last year it was about \$5.6 million. She has noticed over the years, sometimes to the detriment of the commission, whenever times are tough, that the ADF&G budget is restricted, but she stated that the department needs enough money to be dynamic to be able to ebb and flow with whatever work is in front of it.

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MR. PUTNAM highlighted the Carlson case for which the state paid \$37 million plus interest to out-of-state fishermen who sued the state of Alaska because of the 3:1 margin that was being charged to out-of-state permit holders versus in-state permit holders. The Carlson case went to the Supreme Court that said the state couldn't charge 3:1, but they could charge a little bit more.

So, every three years, they calculated the Carlson number, which is over and above what in-state fishermen are charged for their permits, and that money is used to support fisheries enhancement. Because when there are no in-field biomass studies on a fishery resource, the ADF&G commissioner will err on the side of caution for sustainable yield and not open a fishery because the science isn't there to back up the opening. So, they need funds from both the CFEC collection and out-of-state fishermen to pay for that science.

VICE CHAIR COGHILL asked if CFEC has a research arm within the commission plus whatever they can help ADF&G or is it one and the same.

MR. PUTNAM replied that ADF&G has field researchers. CFEC doesn't go out in the field; it uses information it collects to tell them what is going on in a fishery.

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MS. KELLEY added that one of their statutory charges is optimum numbers. When limited entry first occurred, the number of permits was maximized to make sure that folks who were truly dependent weren't left out and the initial legislation wanted that number reeled back in so that resources weren't harmed down the road. Whether optimum numbers are needed on everything remains to be seen, but if they are to start clicking through the fisheries and doing optimum number studies, legislators should be aware that research has only two people. One optimum study that was done on a Bristol Bay fishery took three researches four years and cost thousands and thousands of dollars. So, if those studies are needed, enough of both money and personnel resources will be needed to do the job properly.

VICE CHAIR COGHILL said something else he did not know was that there are 68 unique fisheries.

MS. KELLEY said those are just the limited fisheries, not the ones that may ultimately be limited.

MS. PUTNAM explained that when a fishery is an open fishery, anyone can fish it from Alaska or out of state. Equal protection applies to all Americans. So, anybody can be in any fishery they want if it's open. When the commission decides a fishery needs to be closed, they are trying to award permits to people who have a history in that fishery. That may not be the optimum number of permits; that study comes later. But everyone gets a permit in that fishery, so they can continue to make a

livelihood in that fishery. As a fishery becomes more stressed and there is less fish for the fishermen, the season has to be closed more. It is a very difficult business and they have to make enough money in order to stay out there. If there are too many fishermen in the fishery, then all the fishermen suffer. An optimum number study may bring the number of permits down that allow for each fisherman to make a living, so they can stay out there.

He explained that an optimum study would create a buyback program. For the last one, Alaska got a \$65 million loan from the federal government that fishermen taxed themselves to pay back and voluntarily decided to get out of the fishery and sell their permit back to the CFEC. Then they just extinguished the permits down to the optimum numbers.

SENATOR MEYER asked if most permit holders are Alaska residents. What would be the ratio?

MR. PUTNAM replied the current ratio is about 77 percent Alaskan. When you have transferable permits that are saleable on the open market, there is no limitation on who that person can sell it to. There is no way to stop that from happening. But at the initial outset their goal was to design the permit system to benefit the people who depend on the fishery the most and don't have outside sources of income, like a teacher. People who live in a small town in Alaska where fishing is the main source of income are the people who get the valuable transferable permits. The intent of the legislature at that time was that those permits would be retained in the village, and about 50 percent of permits are actually transferred without cost to other people through gifting. About 50 percent are sold and often that is how the out-migration can happen to Lower 48 people.

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SENATOR MEYER asked how much permits go for.

MR. PUTNAM replied that their economists calculate this regularly, because their fees are based on the price of permits. They know how much each permit is worth in each fishery; it's all posted on their website. Just for an idea, a Bristol Bay drift permit is worth about \$220,000 and about 1,600 exist. A set net permit on the east side of Cook Inlet, which is also in a piece of legislation, is worth around \$25,000.

MS. KELLEY added that there are so many permits in the state and every month the permit value changes.

VICE CHAIR COGHILL asked Ms. Kelley if she is on the United Fishermen of Alaska (UFA) board and asked if she has to let that go.

MS. KELLEY replied that she was the longest-seated UFA board member until March 1. She has told them she would only deal with policies before the commission but has asked for an ethics determination on whether she can stay on the North Pacific Anadromous Fish Commission. It is light duty work and has a lot of personal meaning to her. However, if they say it's a problem, she will resign.

VICE CHAIR COGHILL said there is no doubt that she has had her hand in many fisheries and Alaskan fisheries have unique challenges but also a good reputation. He would like to keep that going.

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MS. KELLEY said she also cares a lot about it and is proud of Alaska's system.

VICE CHAIR COGHILL asked if their rulings set precedent or are they for just one time, because they are so unique.

MR. PUTNAM replied that all 70 cases that have gone to the Supreme Court and the hundreds that have gone to Superior Court set precedent for the commission. The 13 cases still pending before the commission - for 20, 30, and 40 years - are the most difficult that if they don't get exactly right may bring the whole system down, like a sweater coming apart by pulling a thread.

The two remanded cases were appealed to Superior Court by a fisherman who convinced the court that a mistake was made. Those two got a second review by the CFEC and the same decisions were sent back to the court where they were settled based on negotiations.

The Attorney General's office is who their real lawyers are; they know all the cases. You don't have to be an attorney to serve on this commission, he said, although it helps, and before he and Ms. Kelley make their decisions they want to know all the cases, too.

He noted that the annual report will be very different than any reports in the past. It's only 5 pages long and compared to up

to 70 pages in the past. The backside of the report will have appendixes. He offered to come back and give them an overview of that annual report in the future.

MR. PUTNAM said there are two things to think about; the legislature gave them two mandates back in 1975 in enabling statute. One of them is to regulate fisheries and to determine how many permits are in a fishery, but also what the optimum number is. The other is to make recommendations to the legislature for future legislation to improve the regulation of commercial fishing in Alaska. That is something they are studying right now and will have some recommendations when they finish their annual report.

VICE CHAIR COGHILL thanked him and said he would look forward to the report. Finding no further questions and no one signed up for public testimony, he stated that in accordance with AS 39.05.080, the Resources Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration: Dale Kelley and Vance Fate Putnam. This does not reflect an intent by any of the members to vote for or against the confirmation of the individuals during any further sessions.

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VICE CHAIR COGHILL called the meeting back to order and adjourned the Senate Resources Standing Committee meeting at 4:18 p.m.