

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

March 4, 2002

3:38 p.m.

MEMBERS PRESENT

Representative Gary Stevens, Co-Chair
Representative Drew Scalzi
Representative John Coghill
Representative Mary Kapsner
Representative Beth Kerttula

MEMBERS ABSENT

Representative Peggy Wilson, Co-Chair
Representative Fred Dyson

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 45
Relating to the labeling of salmon food products.

- MOVED HJR 45 OUT OF COMMITTEE

HOUSE BILL NO. 462

"An Act relating to the release of certain confidential records and reports concerning fishing, fish buying, or fish processing; and providing for an effective date."

- MOVED HB 462 OUT OF COMMITTEE

HOUSE BILL NO. 208

"An Act relating to aquatic farming of shellfish; and providing for an effective date."

- MOVED CSHB 208(FSH) OUT OF COMMITTEE

HOUSE BILL NO. 287

"An Act relating to the exemption of commercial fishing entry permits from claims of creditors, to loans to satisfy past due federal tax obligations of commercial fishing entry permit holders, and to loan origination charges for loans made by the commercial fishing loan program to refinance a debt obligation; and providing for an effective date."

- MOVED CSHB 287(FSH) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 46
Relating to the moratorium on fish farming in British Columbia.

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HJR 45
SHORT TITLE: SALMON LABELING
SPONSOR(S): REPRESENTATIVE(S) KERTTULA

Jrn-Date	Jrn-Page		Action
02/19/02	2307	(H)	READ THE FIRST TIME - REFERRALS
02/19/02	2307	(H)	FSH, L&C
03/04/02		(H)	FSH AT 3:30 PM CAPITOL 124

BILL: HB 462
SHORT TITLE: CONFIDENTIALITY OF FISHING RECORDS
SPONSOR(S): REPRESENTATIVE(S) STEVENS

Jrn-Date	Jrn-Page		Action
02/19/02	2312	(H)	READ THE FIRST TIME - REFERRALS
02/19/02	2312	(H)	FSH, RES
03/04/02		(H)	FSH AT 3:30 PM CAPITOL 124

BILL: HB 208
SHORT TITLE: AQUATIC FARMS FOR SHELLFISH
SPONSOR(S): REPRESENTATIVE(S) SCALZI

Jrn-Date	Jrn-Page		Action
03/23/01	0705	(H)	READ THE FIRST TIME - REFERRALS
03/23/01	0705	(H)	FSH, RES, FIN
03/04/02		(H)	FSH AT 3:30 PM CAPITOL 124

BILL: HB 287
SHORT TITLE: EXEMPT ENTRY PERMITS FROM CREDITOR CLAIMS
SPONSOR(S): REPRESENTATIVE(S) SCALZI

Jrn-Date	Jrn-Page		Action
01/04/02	1950	(H)	PREFILE RELEASED 1/4/02
01/14/02	1950	(H)	READ THE FIRST TIME - REFERRALS

01/14/02	1950	(H)	FSH, RES, FIN
01/18/02	2014	(H)	COSPONSOR(S): HUDSON
01/30/02	2101	(H)	COSPONSOR(S): FATE
03/04/02		(H)	FSH AT 3:30 PM CAPITOL 124

WITNESS REGISTER

SARAH BRYNER, Intern
to Representative Beth Kerttula
Alaska State Legislature
Capitol Building, Room 430
Juneau, Alaska 99801
POSITION STATEMENT: Testified on behalf of Representative Beth
Kerttula, sponsor of HJR 45.

JERRY MADDEN, Executive Director
United Southeast Alaska Gillnetters Association
P.O. Box 21826
Juneau, Alaska 99802
POSITION STATEMENT: Testified in favor of HJR 45.

DANI BROWN
Alaska Conservation Voters
5501 Thane Road
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HJR 45.

GERALD (JERRY) McCUNE, Lobbyist
for United Fishermen of Alaska (UFA)
211 4th Street, Suite 110
Juneau, Alaska 99801-1172
POSITION STATEMENT: Testified in support of HJR 45 and HB 287
on behalf of the UFA.

SUE ASPELUND
Cordova District Fisherman United (CDFU)
P.O. Box 939
Cordova, Alaska 99574
POSITION STATEMENT: Testified in support of HJR 45 and HB 287
on behalf of CDFU.

KATHY HANSEN, Executive Director
Southeast Alaska Fisherman's Alliance
9369 North Douglas Highway
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HJR 45.

GORDY WILLIAMS, Legislative Liaison
Office of the Commissioner
Alaska Department of Fish & Game (ADF&G)
P.O. Box 25526
Juneau, Alaska 99802-5526

POSITION STATEMENT: Testified in favor of HB 462 on behalf of the department.

ALAN CAIN, Captain
Division of Fish & Wildlife Protection
Department of Public Safety
5700 East Tudor Road
Anchorage, Alaska 99507-1225

POSITION STATEMENT: Testified in favor of HB 462 on behalf of the department.

DOUG MECUM, Director
Division of Commercial Fisheries
Alaska Department of Fish & Game
P.O. Box 25526
Juneau, Alaska 99802

POSITION STATEMENT: Testified in favor of HB 208 on behalf of the department.

BOB LOEFFLER, Director
Division of Mining, Land and Water
Department of Natural Resources
550 West 7th Avenue, Suite 1070
Anchorage, Alaska 99501-3579

POSITION STATEMENT: Testified in favor of HB 208 on behalf of the department, but said that the timetable was too short.

ROBERT HARTLEY
Alaska Shellfish Growers Association (ASGA)
P.O. Box 2284
Homer, Alaska 99603

POSITION STATEMENT: Testified in support of HB 208.

RODGER PAINTER
Alaska Shellfish Growers Association (ASGA)
P.O. BOX 20704
Juneau, Alaska 99802

POSITION STATEMENT: Testified in favor of the proposed committee substitute for HB 208.

PAUL FUHS, Lobbyist
for Alaska Trademark Shellfish

1635 Sitka, Number 301
Anchorage, Alaska 99501
POSITION STATEMENT: Testified on behalf of Alaska Trademark
Shellfish in support of an amendment to HB 208.

GREG FAVRETTO
Favco
P.O. Box 190968
Anchorage, AK 99519-0968
POSITION STATEMENT: Testified in favor of HB 208 and said the
farmed shellfish industry would be a great benefit to Alaska.

JOHN AGOSTI
Qutekcak Shellfish Hatchery
P.O. Box 3475
Seward, Alaska 99664
POSITION STATEMENT: Testified in favor of HB 208.

SCOTT JANKE, Manager
City of Seward
P.O. Box 167
Seward, Alaska 99664
POSITION STATEMENT: Testified in support of HB 208 on behalf of
the City of Seward.

MARY McDOWELL, Commissioner
Commercial Fisheries Entry Commission (CFEC)
Alaska Department of Fish and Game
8800 Glacier Highway, Suite 109
Juneau, Alaska 99801-8079
POSITION STATEMENT: Testified on behalf of CFEC on HB 287.

GREG WINEGAR, Director
Division of Investments
Department of Community & Economic Development
P.O. Box 34159
Juneau Alaska 99803-4159
POSITION STATEMENT: Testified on how the loan program would
work with HB 287.

BRUCE HENDRICKSON, Commercial Fisherman
P.O. Box 1439
Homer, Alaska 99603
POSITION STATEMENT: Testified on HB 287 and gave specific
suggestions on how to amend it.

ACTION NARRATIVE

TAPE 02-6, SIDE A
Number 0001

CO-CHAIR GARY STEVENS called the House Special Committee on Fisheries meeting to order at 3:38 p.m. Members present at the call to order were Representatives Scalzi, Coghill, Kerttula, and Stevens. Representative Kapsner joined the meeting as it was in progress.

HJR 45-SALMON LABELING

CO-CHAIR STEVENS said that the first matter before the committee was HOUSE JOINT RESOLUTION NO. 45, Relating to the labeling of salmon food products.

Number 0111

REPRESENTATIVE KERTTULA, speaking as the sponsor of HJR 45, referred to U.S. Senator Murkowski's address to the Alaska State Legislature and his mention of pending federal legislation that would require the labeling of farmed fish. She said she prepared the resolution in response to Senator Murkowski's statement that a resolution might help in the passage of that federal legislation. Representative Kerttula said she would like to turn over the testimony to Sarah Bryner, an intern in her office. Representative Kerttula told the committee Ms. Bryner had done a great job helping with the resolution.

Number 0191

SARAH BRYNER, Intern to Representative Beth Kerttula, Alaska State Legislature, testified before the committee. She said the issue of farmed salmon has entered the spotlight this legislative session. She stated that foreign fish farms are causing economic and ecological harm to Alaska's fishing industry. She told the committee that Alaska's U.S. Senators have highlighted the need to require seafood labeling to give Alaskan salmon a "fair footing," and to let Americans know what is in their food and where it came from.

MS. BRYNER said HJR 45 supports the actions of Alaska's congressional delegation to require labeling. She told the committee that a recent amendment to the "farm bill" requires

such labeling. She said that it is the aim of this resolution to help that bill become law.

Number 0376

JERRY MADDEN, Executive Director, United Southeast Alaska Gillnetters Association, testified before the committee. He said his association believes that an important part of the marketing and harvesting of salmon is consumer education. He thanked Representative Kerttula and the Alaska congressional delegation for bringing the issue forward. He said when ordering salmon "down south," people don't seem to know where it comes from. Nevertheless, the price of salmon does not seem to go down much. He stated his belief in the importance of the consumer's knowing where the salmon comes from and what the quality is.

Number 0578

DANI BROWN, Alaska Conservation Voters, testified before the committee. She said Alaska Conservation Voters is a not-for-profit organization dedicated to protecting Alaska's environment through public education and advocacy. She said it represents over 3,500 registered Alaskan voters through 34 member organizations. Many of the members support the harvesting, processing, and marketing of Alaskan salmon. She stated that wild salmon bring critical economic benefits to Alaskan communities. She said the commercial fishing industry is the largest private employer in the state, and that to keep the wild Alaskan salmon market viable in a time when it is being threatened by farmed salmon from abroad, the unique features of Alaskan wild salmon must be taken into account [by consumers].

MS. BROWN announced that labeling Alaskan salmon food products will provide consumers with information to make informed decisions about the food they eat. She expressed her organization's belief that consumers have a right to know where their food comes from. She said Alaska Conservation Voters recognizes the value of promoting the unique features of Alaskan wild salmon while also providing consumers the information needed to make informed decisions about the food they eat. She urged all legislators to support HJR 45.

Number 0722

GERALD (JERRY) McCUNE, Lobbyist for United Fishermen of Alaska (UFA), testified before the committee. He said U.S. Senator

Murkowski has already put forward the farm bill to help make a distinction between farmed fish and wild salmon. This is already the case for most other foods. He stated that it would be a big boost for consumers to know what they are buying.

Number 0787

SUE ASPELUND, Cordova District Fisherman United (CDFU), testified before the committee. She said CDFU is pleased with Representative Kerttula for bringing forward HJR 45, which is a great example of state government working with the federal government in the same direction. She said that it will help those who market their own Alaskan wild salmon, and it will educate consumers. She conveyed CDFU's full support of the resolution.

Number 0865

KATHY HANSEN, Executive Director, Southeast Alaska Fisherman's Alliance, testified before the committee. She said that her group supports the bill. She characterized it as a fairly simple [resolution] and as something long needed.

Number 0905

REPRESENTATIVE SCALZI moved to report HJR 45 out of committee with individual recommendations and zero fiscal notes. There being no objection, HJR 45 was moved out of the House Special Committee on Fisheries.

HB 462-CONFIDENTIALITY OF FISHING RECORDS

Number 0960

CO-CHAIR STEVENS announced that the next matter before the committee was HOUSE BILL NO. 462, "An Act relating to the release of certain confidential records and reports concerning fishing, fish buying, or fish processing; and providing for an effective date."

CO-CHAIR STEVENS, sponsor of HB 462, said the bill clarifies that when there is a request, reports of certain information submitted by a fisherman, buyer, or processor can be provided back to the person that submitted that information or someone the submitter has designated. It also provides for the release of certain information to the Department of Public Safety, certain law enforcement personnel, the National Marine Fisheries

Service (NMFS), and the National Oceanic and Atmospheric Administration (NOAA) to help them in their enforcement of fisheries laws.

Number 1064

GORDY WILLIAMS, Legislative Liaison, Office of the Commissioner, Alaska Department of Fish & Game (ADF&G), testified before the committee. He referred to page 2, line 19, [paragraph] (6); saying it adds provisions that would enable [submitters] to have information sent to another entity. He gave an example of the Small Business Administration's requiring a fishing history in order to give out a loan under the "disaster loan programs." Currently, this requires the granting of power of attorney, but the bill would give "clearer statutory direction."

MR. WILLIAMS then referred to the addition of a new [paragraph] (7). It references annual statistical reports of a buyer or processor. He said that is concerned with the COAR (Commercial Operator's Annual Report) report. Currently, processors submit the COAR reports to the department, where the report becomes confidential information that cannot be submitted back to the submitter, nor a designee. Mr. Williams gave an example that took place concerning processors in Glacier Bay.

MR. WILLIAMS then referred to [paragraph] (8). There would be an addition requiring saltwater charters to keep daily logbooks and submit them weekly to the department. Once received by ADF&G, the information would be made available to the Department of Public Safety for enforcement actions it may be looking into. Also, COAR reports would be given to the Department of Public Safety.

Number 1360

MR. WILLIAMS said paragraph (9) is changed to add a reference to the requirement that COAR reports submitted by offshore catcher-processors to the state be accessible to federal law enforcement entities.

CO-CHAIR STEVENS asked if the bill was a "cleanup" of problems that happened in the past.

MR. WILLIAMS answered affirmatively and said that the bill would give clarity to the issue of people not being able to retrieve information they had submitted to the state themselves.

Number 1455

REPRESENTATIVE SCALZI asked if there were any threats to the confidentiality of fishing subdistricts. He asked if there would be possibility of privileged information being made "open to everybody else."

MR. WILLIAMS said the changes in HB 462 would not alter the way fish tickets are processed. He added that no additional privileged information would be made public by the bill.

Number 1600

REPRESENTATIVE COGHILL asked about the designee in [paragraph] (6), and said he did not know "what that designee might look like."

MR. WILLIAMS again referenced the Small Business Administration's requiring a history for a loan or something similar. He told the committee that an individual would request that the department submit the information to a designee by means of a notarized application.

Number 1686

REPRESENTATIVE KERTTULA asked Mr. Williams why the Division of Fish and Wildlife Protection was taken out of the bill [on page 2, lines 27-28] as one of the entities that the department can give the information to.

MR. WILLIAMS said that it was at [the Department of Public Safety's] request. The department would prefer to get away from delineating between fish and wildlife protection, and public safety in statute.

Number 1742

ALAN CAIN, Captain, Division of Fish & Wildlife Protection, Department of Public Safety, testified via teleconference. He said his department's main concern was the adding of the requirements for saltwater charter logbooks and processor information in [paragraph] (8). He said his department currently needs to obtain a search warrant to view the logbooks when there is suspicion of misconduct. He said the bill gives the department access to the information much in the same fashion as for fish tickets. He stated that his department supported the bill.

Number 1821

REPRESENTATIVE COGHILL asked Captain Cain if the penalty for "not having the information correct" would be different. He clarified by asking if this changes the level of penalty if the information is wrong.

CAPTAIN CAIN said the bill does not change the level of penalty. Fines change based upon the gravity of the violation. He said all HB 462 does is make obtaining the information easier. He explained that it would result in more widespread investigations of violations, as well as better compliance.

REPRESENTATIVE COGHILL expressed his concerns about due process.

Number 1939

REPRESENTATIVE SCALZI asked Captain Cain what species was being specifically considered in the saltwater charter logbook provision of the bill. He asked if concerned mainly salmon, or halibut charters.

CAPTAIN CAIN said most of the concern was with the salmon fishery in general, such as in Cook Inlet and Southeast Alaska. He said it is fully utilized, and there are some concerns about underreporting and overtaking of the salmon stocks. He mentioned that there were no biological concerns about the halibut fisheries.

REPRESENTATIVE SCALZI asked if the problem was mainly in Southeast Alaska.

CAPTAIN CAIN said he was not very familiar with the field aspect of the issue, but Cook Inlet and Southeast Alaska are the main areas where his department has had complaints.

REPRESENTATIVE SCALZI said that if there are suspicions about the validity of the logbooks, the North Pacific Fishery Management Council may have some concerns as they review the idea of a halibut charter IFQ [Individual Fish Quota]

Number 2060

CO-CHAIR STEVENS asked if the bill would obviate the department's need for search warrants to obtain access to logbooks.

CAPTAIN CAIN said that was correct. It would be much the same as the access permitted to the department for fish tickets.

Number 2076

REPRESENTATIVE KERTTULA asked if currently there must be some sort of probable cause for the department to obtain a search warrant and look at the records.

CAPTAIN CAIN said Representative Kerttula was correct. The current requirements for obtaining access to the logbooks are very time-consuming. But he added that the type of information contained therein is very much on a par with the fish ticket information - the records of the taking of a fishery resource in a commercial manner for profit by the operator. Captain Cain said the information is very similar; it is treated the same and held to the same level of confidentiality.

REPRESENTATIVE KERTTULA asked how this information would be gathered.

CAPTAIN CAIN said there are several methods used to gather the information. The simplest method is a telephone call [to the Alaska Department of Fish & Game] to ask for substantiation of a complaint. If there is evidence that the records would be of benefit, the Department of Public Safety requests a certified copy and then conducts an investigation - almost identical to the process used for fish ticket information.

Number 2235

REPRESENTATIVE KERTTULA asked if she was correct in assuming that the Department of Public Safety would not be "wholesale going in and getting all the records and creating a database or anything like that," and that it would be specific, on a - case-by-case basis.

CAPTAIN CAIN said Representative Kerttula was correct. He said his department was not going to do anything that it was not doing presently with fish tickets. He said he felt it necessary to have some sort of probable cause to begin looking at something. He stated that his department does not have the resources to deal with all of the information that is contained in all of the logbooks, "even if we wanted to." The bill would give his department a "response type situation" that would streamline its ability to look at reported violations and move

forward with the investigation, or call it off, as the evidence dictates.

Number 2319

REPRESENTATIVE SCALZI moved to report HB 462 out of committee with individual recommendations and a zero fiscal note. There being no objection, HB 462 was moved out of the House Special Committee on Fisheries.

HB 208-AQUATIC FARMS FOR SHELLFISH

CO-CHAIR STEVENS announced that the next matter before the committee was HOUSE BILL NO. 208, "An Act relating to aquatic farming of shellfish; and providing for an effective date."

Number 2370

REPRESENTATIVE SCALZI moved to adopt the proposed committee substitute (CS), version 22-LS0763\L, Utermohle, 2/26/02, as the working document. There being no objection, Version L was before the committee.

REPRESENTATIVE SCALZI, sponsor of HB 208 informed the committee that the bill was the result of a cumulative effort and several years of hard work between the Alaska Department of Fish & Game (ADF&G) and the Department of Natural Resources (DNR). The effort had been to solve problems in the area of shellfish farm permitting.

REPRESENTATIVE SCALZI said the bill would allow the Department of Natural Resources to auction and lease 90 sites. In accordance with the ADF&G criteria, 60 of these sites would be "suspended-culture" sites, 20 would be "on-bottom" sites, [and 10 would be for farming geoducks]. The sites would be available for lease annually until [all sites are leased], and they would require ten-year leases. He said the bill calls for farmers to abide by "the sustained-yield principle" when harvesting.

REPRESENTATIVE SCALZI told the committee that the market demand cannot be met with the small number of shellfish farms in Alaska. He said there is a great deal of interest in expanding farms throughout the state, and that there is a large amount of support for the bill.

Number 2470

DOUG MECUM, Director, Division of Commercial Fisheries, Alaska Department of Fish & Game, testified before the committee. He said the bill was moving in the right direction, and that some of the constitutionality problems had been removed. Some concerns remain with regard to the timeframe. He said the department had been in correspondence with the Alaska Shellfish Growers Association on the issue of the timeframe. He made it known that it would not be impossible to meet the current timeframe, but it would be very difficult to do so. He told the committee that the bill was moving in the right direction, and that it would be a reasonable way to jump-start the aquatic farming industry in the state.

Number 2535

BOB LOEFFLER, Director, Division of Mining, Land and Water, Department of Natural Resources, testified via teleconference. He supported the comments of Mr. Mecum. He said he was pleased with ADF&G, the Alaska Shellfish Growers Association, and legislative staff. He expressed his doubt that everything could be accomplished within the one-year timetable.

Number 2577

ROBERT HARTLEY, Alaska Shellfish Growers Association (ASGA), testified via teleconference. He said he was a past president of the association and had been working on the bill for a year or two. The bill would address concerns of departmental approval, and people would be able to "know what [they] are getting into." It would also provide for proper site evaluations. He said the bill also provides a continuing source of sites. Once initial surveys are done, year after year, sites will be available because there will not be a great abundance of people getting into shellfish farming. He stated that the most important aspect of the bill is that it provides a "good steady source of sites for aquatic farming."

Number 2709

REPRESENTATIVE SCALZI made reference to departmental claims that the timetable was not easily satisfied. He asked if February 2004 would be more easily incorporated.

MR. HARTLEY answered that it would be better to allow more time.

Number 2773

RODGER PAINTER, Alaska Shellfish Growers Association (ASGA), testified before the committee. He expressed his support of the bill in the form of the proposed CS. He cited his extensive work with Representative Scalzi and Senator Torgerson through the previous year, as well as with the agency to resolve concerns about the legislation. Mr. Painter made note of the difficult financial times [for state government] and said the fiscal note is "very high," but he added that it is a good investment into one of the largest natural resources in the state. He expressed his belief that shellfish farming is an investment that would repay its cost many times over. He gave several examples of how the farms could pay for the investments made by the state.

TAPE 02-6, SIDE B

MR. PAINTER said the ASGA would like to see "something that works for everyone."

Number 2954

REPRESENTATIVE SCALZI asked Mr. Painter if [ASGA] had a problem with changing the implementation date from July 2003, to February 2004.

MR. PAINTER said February 2004 could work if the agencies respond in the timeframes that had been discussed.

Number 2910

REPRESENTATIVE COGHILL pointed out that the number of sites has an effect on the fiscal note. He asked if it would be "workable in the industry" to reduce the minimum number of sites.

MR. PAINTER said that in reality, there would not be 90 different locations. He explained that with the wording in the bill, the 90 sites could be made available in 30 different areas, for example. The industry might select an area such as a bay, where multiple farms could be located. This concentration of farms would make the agencies' jobs much easier. He added that the industry is working actively to identify sites for nominations. He said he had personally been working closely with state, local, and federal agencies on a concept he termed an "aquaculture development zone." He said if the bill passed, there were a number of areas near Prince of Wales Island that would be easily nominated because some sites had already been surveyed there.

Number 2793

REPRESENTATIVE COGHILL said that the issues of identification, paperwork, and legal research costs were what he was concerned about. He said he was "trying to get a handle on" whether it was "a site issue" or a "timing issue."

MR. PAINTER said DNR would undergo a land use planning process that requires much public transparency. The process would seek out conflicts, and if one were being found that could not be mitigated, the site would be "taken off the table." He characterized the process as "complex," and warned it would take some time. He explained that the fiscal notes are high because planners would have to be hired to work on the sites. He said ADF&G's costs would come from site surveys and the [Division of Habitat and Restoration's] reviews of impacts on fish and wildlife resources.

Number 2690

PAUL FUHS, Lobbyist for Alaska Trademark Shellfish, testified before the committee. He characterized the bill as "good legislation" and a boon to the economies of the rural areas in particular. He brought forth the problem of obtaining brood stock for standing stocks, specifically in the case of geoducks. He gave the example of a group he represents and said that the sites that are the best to farm already have native stocks.

MR. FUHS said the issue of limited-entry dive fisheries brings a conflict between commercial divers and shellfish farmers. He said the constitutional amendment that enabled limited entry said, "Common property shall not be abridged except for limited entry and aquaculture." He said limited entry has already been litigated, but "aquaculture" has never been defined. Mr. Fuhs said the court told his clients that:

The ADF&G couldn't say, "We're not going to let you do it because it's a potential future fishery." We're not diving on the site now; no one is using it. They said that was wrong, but then they said, "You also have this common property issue out there that you have to resolve." So they said, "If there is a substantial amount...." Well, [ADF&G] has never come out and said what's a substantial amount; there is no regulation, so we're caught in a complete Catch-22 on this. The department is in a difficult situation

because of having no resolution of this common property resource issue. So the thing is, can the legislature do something with this? And throughout the findings in the court case, they were crying out for more definition of what really is the policy here. So the essence of this proposed amendment is ... that if you got a place where no one has ever fished before, that could become an aquaculture site, but what the department would have to do is post a public notice to say, "This is going to become an aquaculture site; commercial divers, get your act together because you're going to be able to go in there and harvest that site." And then the requirement on the farmer is, at the end of that time, they have to restore it to the population it was before. So you have no net loss of the population there, and at the end of the lease, the divers could go back in. You haven't really removed it from the public domain, but it's a practical way to let the divers go get an economic value of the standing stock, then let the farm go forward. That's the essence of this amendment.

MR. FUHS said that the amendment was before various entities and that if he and his clients could resolve the issue through compromise, "we'll drop the lawsuit."

Number 2498

REPRESENTATIVE SCALZI said he was under the impression "that the venue was to have that language go through in regulation, not in statute." He asked Mr. Fuhs if that would be the case if the bill were to be amended.

MR. FUHS said he did not think "this has really been considered in regulation." He said:

It's interesting that for a fishery that is a common property fishery with no limited entry, what the department does now, they let the public go in - like for littleneck clams, they'll publish a period; anybody can go harvest the area; after that harvest period, the farmer gets it; and if the site is under their control, ... then nobody can go harvest it anymore. It's their property for the lease period.

For limited entry, which is a restricted access fishery, they are saying that that imbues some

property title to those people who have it, even in areas that they are not fishing. So, can you see the difference? I mean, to me it's kind of backwards. You'd think that the public that had access to it would have more rights than a limited group. We've got 104 divers in limited entry - 80 of them aren't even from Alaska - so 24 divers up here that you could say have claim to every single animal out there, just because it's limited entry. Well, that doesn't make any sense to me, but how do we protect our rights - that's ... the solution we're looking for here.

MR. FUHS said he could understand ADF&G's quandary over being "stuck right in the middle of this thing." He said the department needs some direction from the legislature or the courts.

Number 2415

REPRESENTATIVE SCALZI said limited entry fisheries are to regulate the management of the fishery. He said it is no different for the management of the geoduck fishery. For common property, people can go out and dive in any area that is open, they just cannot sell what they harvest. Representative Scalzi said, "You can't sell a sport fish."

MR. FUHS said he was agreeing with Representative Scalzi. He added:

They should be treated equally, but they're not right now because of this legal argument concerning property rights under limited entry fisheries. That's where we're stuck right now. It's a big Catch-22. [It must] be resolved one way or another.

Number 2369

GREG FAVRETTO, Favco, testified via teleconference. He said the ASGA members grow a high-quality product with an excellent marketplace reputation. He told the committee that increasing market demand and gradually increasing market value per pound or per dozen has been the hallmark of mariculture shellfish, unlike the market for salmon. His company had forecast a 15 percent growth in sales in the present year over the previous one. He said his company is looking forward to a long, steady future in the year-round mariculture shellfish industry.

Number 2248

JOHN AGOSTI, Qutekcak Shellfish Hatchery, testified via teleconference. He said he was in favor of the bill because the state invested three and a half million dollars into building the hatchery. The [Qutekcak hatchery] is working hard to grow the industry in Alaska; because the ADF&G built the hatchery so large, the present industry is not big enough to support it financially. He said the hatchery is "ramping up" its sales income every year, but presently most of its income is from grant monies. Mr. Agosti said the hatchery's break-even time is being stretched into the future, as agencies gradually become less willing to deliver funds.

MR. AGOSTI told the committee that the hatchery has introduced four new species to help the industry diversify. He said [Qutekcak Shellfish Hatchery] is counting on the bill to help jump-start the industry by creating more customers for its products.

Number 2089

SCOTT JANKE, Manager, City of Seward, testified via teleconference. He said the City of Seward is the leaseholder for the hatchery, and that they sublease it to Qutekcak. He stated that the city has an interest in seeing the hatchery succeed on the local economic development level as well as that of the state. He gave the example of Cedar Key, Florida where an aquaculture venture went from nothing to a \$60 million industry in ten years. He expressed that he would not want to see shellfish farmers in Alaska miss an opportunity to take market share in such an attractive industry. He said the City of Seward was in support of the legislation.

Number 2002

REPRESENTATIVE SCALZI said he thought it a good idea for the City of Seward to take over the hatchery. He conceded that there was some work to do on some of the language concerning the sites. He said the fiscal note would be reduced if the deadline were carried "a little further out."

Number 1904

REPRESENTATIVE SCALZI moved to report CSHB 208, version 22-LS0763\L, Utermohle, 2/26/02, out of committee with individual recommendations and the accompanying fiscal notes. There being

no objection, CSHB 208(FSH) was moved out of the House Special Committee on Fisheries.

HB 287-EXEMPT ENTRY PERMITS FROM CREDITOR CLAIMS

CO-CHAIR STEVENS announced that the next matter before the committee was HOUSE BILL NO. 287, "An Act relating to the exemption of commercial fishing entry permits from claims of creditors, to loans to satisfy past due federal tax obligations of commercial fishing entry permit holders, and to loan origination charges for loans made by the commercial fishing loan program to refinance a debt obligation; and providing for an effective date."

Number 1859

REPRESENTATIVE SCALZI moved to adopt the proposed committee substitute (CS), version, 22-LS1106\J, Utermohle, 2/27/02, as the working document. [No objections were stated, and Version J was treated as the working document.]

REPRESENTATIVE SCALZI said the bill is very important to the state and the commercial fishing industry in general. It will make clear and consistent the point that "commercial fishing entry permits are not property, but instead they constitute a use privilege." Commercial fishing entry permits should be viewed as occupational licenses. The bill also eliminates the loan-origination charge for refinancing loans. He said the bill also removes the "sunset" clause that is a part of the provision. He explained that the particular loan is for federal tax obligations of up to \$30,000. Under the bill, the loan would be available once a year instead of the current once-in-a-lifetime provision.

Number 1651

REPRESENTATIVE KERTTULA asked how many times the [tax obligation] loan would be made available.

REPRESENTATIVE SCALZI said the "once-in-a-lifetime" provision would change to a "once a year" basis.

Number 1585

MARY McDOWELL, Commissioner, Commercial Fisheries Entry Commission, Alaska Department of Fish and Game, testified before the committee. She said she would speak to Sections 1, 5, 6,

and 7. She characterized those as the ones that would clarify and firm up the legal status of limited entry permits under Alaska law. She said, "The State of Alaska has always held the position that limited entry permits are not property and cannot be seized by creditors." She said the state has fought any attempt by the Internal Revenue Service (IRS) or other creditors to seize permits. She said that some statutes are not as clear and concise on that point as they could be. Leaving the legal status of permits open in any way to varying interpretations could be detrimental to the state, to fishermen in the limited entry system, and to fisheries management in that system.

MS. McDOWELL cited AS 16.43.150(e) as stating:

An entry permit constitutes a use privilege that may be modified or revoked by the legislature without compensation.

She characterized this legal status as an important part of the fisheries management system. It ensures the state maintains control of fishing privileges. Ms. McDowell said HB 287 [Section 5] adds the flat statement, "They are not property."

Number 1465

MS. McDOWELL pointed out that if anyone could argue that permits could be construed as property, it might very well destabilize the whole system. Under these circumstances, fisheries allocations could be subject to challenges under takings, permit market values could be subject to harmful fluctuations, and the state could lose control of fishing privileges to the courts. She went on to say that with many fisheries struggling at the present time, it is important to make sure statutes are as clear and consistent as possible.

Number 1420

MS. McDOWELL referred to Section 1 of [Version J]. She said in Title 9 of the current law, entry permits are included in the list of types of property individuals are entitled to exempt from civil procedure. She said this exemption could imply that permits are property. The bill removes the permits from the section in Title 9, and inserts precise language in the Limited Entry Act itself. She pointed out that page 7, line 26 [Section 5] of Version J spells out that permits are not property.

MS. McDOWELL directed the committee to Section 6. On page 7, lines 30-31, the bill inserts language into statute that makes it clear that the only time a person may request the transfer of an entry permit due to an execution on the permit is when that execution is for the purpose of enforcing a lien recorded with the commission under the statute for the Child Support Enforcement Division.

MS. McDOWELL then referred to Section 7. She said in Version J, page 8, lines 19-24 spell out that permits are exempt from all claims of all creditors. Exceptions are made only for fishing loans taken out under the Division of Investments or the Commercial Fishing and Agriculture Bank (CFAB), and for Child Support Enforcement Division authority to place a lien on a permit.

MS. McDOWELL said the bill goes a long way toward clarifying the state's long-held position on the legal status of limited entry permits. She said the entry commission fully supports [Version J] and urges passage of the bill.

Number 1281

REPRESENTATIVE SCALZI asked Ms. McDowell to qualify why there is an exemption for child support.

Number 1248

MS. McDOWELL said there is some concern that leaving child support in could undermine the state's position, but she characterized child support as a special circumstance. She said the state has always looked at child support as a high priority. Therefore, it is clear in the bill that permits are not property, but there are references to a "lien against permits" that is left in the bill.

Number 1179

REPRESENTATIVE KAPSNER asked how divorce proceedings would affect entry permits.

MS. McDOWELL said that permits can only be in the name of one person. She said she knew of instances of divorce where a value was assigned to a permit and it was split as marital property, but the permit itself cannot be split.

Number 1118

REPRESENTATIVE COGHILL asked if the exemption for federal tax-relief had been used regularly.

MS. McDOWELL said it is not used heavily but it does protect permits. She said if the Internal Revenue Service were to take permits and auction them off, it would sell them for pennies on the dollar. The result of that would be a weakening of the whole limited entry system.

MS. MCDOWELL said that the limited entry system is important to the way fisheries are managed in the state. She added that it is important that the state maintain control of the system.

Number 0963

GREG WINEGAR, Director, Division of Investments, Department of Community & Economic Development, testified before the committee. He said the bill would change his program slightly. The tax obligation program would be extended by the bill. He characterized the program as not one of large volume, but said it is very important as "another tool" to protect someone from losing a limited entry permit. He said that the bill would also eliminate the half-percent fee for refinancing. The low interest rates have made the refinancing program very popular in recent years.

MR. WINEGAR said the refinancing program would have a small impact on the loan fund, but added that it would not affect the general fund. He said the impact would not undermine the financial integrity of the loan fund. The revolving fund is totally self-sufficient and has not received any general fund money since 1985. He pointed out that the application process is streamlined, so there is not a large administrative burden. He explained that there is a provision that if the bill passes, but is not signed into law before the sunset date, the refinancing portion would still go into effect.

REPRESENTATIVE COGHILL asked about Section 3 and whether it was a half-percent charge.

MR. WINEGAR told Representative Coghill that was correct.

REPRESENTATIVE COGHILL asked if the half percent would help carry some of the administrative costs and why we're giving that up.

Number 0717

MR. WINEGAR said that the largest chunk of the division's portfolio has already been refinanced, or is in the process, as a result of the low interest rates.

REPRESENTATIVE COGHILL said the cost of labor is not going to go down. He expressed his belief that the fee should be maintained, and that there are other things getting relief in the bill. He asked if changing [Section 3] from a once-in-a-lifetime federal-tax-relief opportunity, to one that may be invoked once a year, would "change the criteria at all for this."

MR. WINEGAR said the purpose would be the same, but it would give people the opportunity to receive help once a year.

Number 0504

REPRESENTATIVE COGHILL said he could appreciate why the change was made, but he said he was worried about unintended consequences under mismanagement. He asked Mr. Winegar what he would say as a lender if somebody is the fourth time around on this?

MR. WINEGAR told Representative Coghill that he raised a good point and said, "It still is a loan." He said the division would determine if a loan should be made to an individual from a financial standpoint. He made clear that "four times in a row" would be something closely scrutinized along with credit, capacity for repayment, collateral, and other issues.

REPRESENTATIVE COGHILL said a situation of legal precedence might be set whereby a court trial might allow individuals to use the tax-relief provision many times.

Number 0446

REPRESENTATIVE SCALZI said Representative Coghill had good points and asked Mr. Winegar if there had been a great problem of people defaulting on the loans. He asked if it would be more appropriate to offer the tax-relief opportunity every five years instead of once a year.

MR. WINEGAR said the delinquency rate for the particular portfolio was "a little bit higher than the normal portfolio, but not much higher." He said as far as looking at a "once a

year" or a "once in every five year" tax-relief provision, the division would be looking at the applications as loans, and year-after-year applications by an individual would cause concern.

CO-CHAIR STEVENS asked how many total loans there are outstanding.

Number 0310

MR. WINEGAR said in the life of the program - going back to fiscal year 1995 - there had been 306 loans. He said that there were 241 on the books presently.

REPRESENTATIVE COGHILL asked, if there were a continuous federal tax default situation, what the protocol would be to "close that loan down."

Number 0251

MR. WINEGAR said that if a prospective borrower is not in good standing with the Internal Revenue Service, a loan is not granted.

REPRESENTATIVE COGHILL asked, "That has to be a reauthorization?"

MR. WINEGAR said, "They would have to come in and reapply for a loan."

Number 0188

REPRESENTATIVE KERTTULA asked where the "once a year" language came from.

REPRESENTATIVE SCALZI said, "More than once, you had to have something. Your IRS bill comes through once a year."

Number 0075

REPRESENTATIVE COGHILL asked what the typical loan "size" and "length" are. He asked, "How many times could they do a federal default on that loan?"

MR. WINEGAR said the average loan size is in the \$15,000 range, and the average term is from five to ten years. He said

collateral for the loan is a limited entry permit, and that puts the division in a superior lien position to the IRS.

TAPE 02-7, SIDE A
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[A question by Representative Coghill was cut short by the changing of tapes.]

MR. WINEGAR said the division would have the recourse of foreclosing on the loan.

REPRESENTATIVE COGHILL said once there was a foreclosure on the federal level, "foreclosing, at that point, would just be pulling the permit."

MR. WINEGAR agreed that would be the most likely outcome, but not all loans are secured by permits. He said [pulling the permit] would be the option if nothing else could be worked out with the borrower.

Number 0080

REPRESENTATIVE KAPSNER said she believed the loan goes up to \$25,000 and must be paid off within 15 years. She said the beauty of the loan is that the IRS is not allowed to seize the permit; it stays within the state and is then preferably sold to an Alaska resident. She mentioned the benefit of the state's being able to sell it at market value - thereby ensuring the integrity of the value of permits in a fishery.

Number 0233

GERALD (JERRY) McCUNE, Lobbyist for United Fishermen of Alaska (UFA), testified before the committee. He said the UFA supports the bill. He characterized the removal of the half-percent fee to refinance as especially helpful. He said the UFA smiles upon the way the bill protects people's livelihood by shielding permits from creditors and the IRS. He pointed out that in many areas of the state, commercial fishing entry permits are the only means of making a living.

MR. McCUNE, returning to Representative Kapsner's earlier question, said that a permit owned before marriage belongs to the same person after a divorce. If a permit is purchased during a marriage and a divorce ensues, the permit becomes

common property and must either be sold and the money divided, or payment for half the value must be paid to the other party.

Number 0427

SUE ASPELUND, Cordova District Fishermen United, testified before the committee. She characterized the bill as "yet another tool in the box" for fishermen facing a hard set of circumstances in the industry. The program is not a huge one, but for many people it will make the difference between feeding their families or not. She said the bill gives the industry a "buffer" of time to help it rebuild.

Number 0528

BRUCE HENDRICKSON, Commercial Fisherman, testified via teleconference. He told the committee of an idea he had while looking at [the bill]. He made reference to AS 16.10.333. He pointed out that permits are worth a fraction of their former values. He suggested adding:

In the event that the value of the permit declines to less than one third of the purchase price at the time ... the loan foreclosure may come due, the state or CFAB may write down the value of the permit to reflect the average of the two most recent sales in order to renegotiate a basis for the obligor that would give that person a chance to refinance their loan at the same level that a new buyer would be able to finance the purchase of that same permit.

MR. HENDRICKSON said before a permit is foreclosed on, a person should have a chance to refinance the loan at the same level at which a new buyer would be able to finance the same permit. He said he did not want to see the state's resources given away.

REPRESENTATIVE SCALZI asked the committee if there were any questions or problems with the bill.

REPRESENTATIVE COGHILL said he had some individual concerns about the removal of the half-percent fee for refinancing and said he would do some homework on that, as well as the "once a year" provision.

Number 0793

REPRESENTATIVE SCALZI moved to report CSHB 287, version 22-LS1106\J, Utermohle, 2/27/02, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 287(FSH) was moved out of the House Special Committee on Fisheries.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 5:25 p.m.