

ALASKA STATE LEGISLATURE
SENATE RESOURCES COMMITTEE

February 25, 2002
3:37 p.m.

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Gary Wilken, Vice Chair
Senator Rick Halford
Senator Robin Taylor
Senator Ben Stevens
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 141

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

MOVED CSSB 141(RES) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 266(L&C)

"An Act authorizing the commissioner of community and economic development to refinance and extend the term of a fishery enhancement loan."

MOVED CSSB 266(RES) OUT OF COMMITTEE

SENATE BILL NO. 277

"An Act relating to the definitions of 'floating fisheries business' and 'shore-based fisheries business' for the purposes of the fishery business tax; and providing for an effective date."

MOVED CSSB 277(RES) OUT OF COMMITTEE

PREVIOUS SENATE COMMITTEE ACTION

SB 141 - See Resources minutes dated 4/2/01.

SB 266 - See Labor and Commerce minutes dated 2/14/02.

SB 277 - No previous action to record.

WITNESS REGISTER

Mr. Darwin Peterson
Staff to Senator Torgerson
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 141 for sponsor.

Mr. Roger Painter
Alaska Shellfish Growers Association
Juneau, AK

POSITION STATEMENT: Supported CSSB 141(RES).

Mr. Paul Fuhs
Alaska Trademark Shellfish
No address provided

POSITION STATEMENT: Supported CSSB 141(RES).

Mr. Jon Agosti
Alaska Shellfish Growers Association
P.O. Box 3475
Seward AK 99664

POSITION STATEMENT: Supported SB 141.

Mr. Ron Long
Qutekcak Shellfish Hatchery
P.O. Box 2464
Seward AK 99664

POSITION STATEMENT: Supported SB 141.

Ms. Julie Decker, Executive Director
Regional Dive Association
Wrangell AK

POSITION STATEMENT: Supported SB 141.

Ms. Janice Adair, Director
Division of Environmental Health
Department of Environmental Conservation
555 Cordova Street
Anchorage AK 99501

POSITION STATEMENT: Commented on SB 141.

Mr. Bob Loeffler, Director
Division of Mining, Land and Water
Department of Natural Resources
550 W 7th Ave., Ste 1070
Anchorage AK 99501

POSITION STATEMENT: Commented on SB 141.

Mr. Doug Meekum, Director
Division of Commercial Fisheries
Department of Fish & Game
PO Box 25526
Juneau, AK 99802-5226
POSITION STATEMENT: Supported SB 141.

Mr. Greg Winegar, Director
Division of Investments
Department of Community and Economic Development
P.O. Box 34159
Juneau AK 99803
POSITION STATEMENT: Commented on SB 266.

Mr. Dave Cobb, Business Manager
Valdez Fisheries Development Association, Inc.
P.O. Box 125
Valdez AK 99686
POSITION STATEMENT: Supported SB 266.

Ms. Sue Aspelund, Executive Director
Cordova District Fishermen United (CDFU)
P.O. Box 939
Cordova AK 99574
POSITION STATEMENT: Supported SB 266.

Mr. Carl Rosier
Alaska Outdoor Council
P.O. 73902
Fairbanks AK 99707
POSITION STATEMENT: Supported CSSB 266(RES).

Mr. John Carter, Director
Douglas Island Pink and Chum
2697 Channel Dr.
Juneau AK 99801
POSITION STATEMENT: Supported CSSB 266(RES).

Mr. Chuck Harlamert
Juneau Section Chief
Tax Division
Department of Revenue
P.O. Box 110420
Juneau AK 99811-0420
POSITION STATEMENT: Commented on SB 277.

ACTION NARRATIVE

TAPE 02-2, SIDE A
Number 001

SB 141-AQUATIC FARMS FOR SHELLFISH

CHAIRMAN JOHN TORGERSON called the Senate Resources Committee meeting to order at 3:37 p.m. All members were present. Chairman Torgerson announced SB 141 to be up for consideration and said he thought that with the proposed committee substitute, the bill was ready to go forward.

MR. DARWIN PETERSON, staff to Senator Torgerson, sponsor, said last year the Alaska Department of Fish and Game (ADF&G) proposed new mariculture regulations that were met with sharp criticism from the aquatic farming industry, which felt the regs were too restrictive and would constitute a regulatory ban on shellfish farming in Alaska. SB 141 was introduced as an effort to preserve an industry that has proven to be successful in the diversification of Alaska's economy. The committee substitute requires the Department of Natural Resources (DNR) to offer public leases for 60 suspended shellfish sites, 20-clam sites and 10 geoduck sites. These leases are in addition to permits that are already issued. Before offering the leases, the commissioner must solicit nominations for sites from the aquatic farming industry and the public and select sites that don't interfere with established commercial, subsistence or personal use. That requirement is intended to maintain the existence and prosperity of a valuable Alaskan industry without interfering with other user groups.

MR. PETERSON explained the changes made in the proposed committee substitute (CS). Section 1 on page 1 was deleted in the CS because in the original version, aquatic farmers would pay a fisheries business tax of 3%, plus the price of the lease, which is \$250 for the first acre and \$150 for each remaining acre and, on top of that, at a predetermined value of the resource on the site and the potential productivity of the site of shellfish. That made sense because it skirted the public domain problem. DNR has a policy that says before a lease is issued, aquatic farm sites must be commercially fished out before the farmer can go in and plant seed. With the new language, this is a moot point.

The second change is on page 1, line 12, where the date the leases must be made available to the public is changed from July 1, 2002 to July 1, 2003 since this is the new year.

The third change is on page 1, line 15, and page 2, line 2, where language is added requiring DNR to offer leases that were not purchased at the public auction to be made available to the public over the counter.

SENATOR WILKEN moved to adopt the proposed committee substitute to SB 141, (Version L) as the working document before the committee. There were no objections and it was so ordered.

SENATOR TAYLOR asked if the bill contains a definition of the word "site."

CHAIRMAN TORGERSON said it doesn't, but he understood that it was determined by DNR and depended on which area DNR was considering.

MR. ROGER PAINTER, Alaska Shellfish Growers Association, supported CSSB 141(RES). He stated, "We think this version takes care of all the problems and concerns we had with the original legislation and it is a very good bill to be moving forward with..."

He said he had a small concern in Section 1. The Shellfish Growers have no problem in restoring sites to the original population levels, which is part of existing regulations and conditions on their permit right now, but sometimes the leases are offered much in advance of when ADF&G makes the operational permits effective. For instance, he received the lease on his sites under the 1999 opening in early 2000, but he still doesn't have control of all of them. He noted, "They are open for common property harvest right now and my permits with ADF&G don't become effective until those common property harvests are complete. So, I don't know if any tinkering needs to be done with that language..."

MR. PAINTER said the committee also might hear today that this bill directs DNR to identify and offer for lease 90 sites. He explained that DNR and ADF&G work together in making sites available. He explained:

DNR needs to issue a lease and ADF&G offers a permit. These go through the Coastal Zone Management [CZM] process simultaneously. That process only responds to a specific proposal. In offering these sites for lease, the DNR will be just making some areas available. People will come in and apply and propose a specific farm plan, which will then go through the CZM process and Fish and Game can respond to that specific plan. I think the agencies really need to work together in this process. Fish and Game needs to work with DNR in identifying these sites and I don't think that Fish and Game needs to go out to each site and do detailed site assessment work. However, they should be involved to

the extent that they flag for DNR potential problems. If they believe there is going to be some major conflicts on those sites, those should be identified before they are offered to the public and the public gets caught in a catch-22. You can come in and put your money down for a site, but you can't get your permit. I think by directing Fish and Game to work with DNR in identification of the sites, those problems can be taken care of.

MR. PAINTER noted that the Alaska Trademark Shellfish Association proposed another amendment, but his board hadn't had time to discuss it.

SENATOR TORGERSON asked him if he knew the population level before signing the lease, but didn't know how much common use would be taken between the time the lease is signed and the time it is turned over to him.

MR. PAINTER replied that when they apply for a site, they are required to provide the agencies with some estimates of the standing stocks that are available at those sites. Then ADF&G, after it goes through the process, will open those sites for a common property harvest. After that harvest, the lessee does an assessment of the standing stocks according to ADF&G protocols for site assessments. At this point they determine the amount of standing stocks that have to be restored when the lease is terminated. He wants to make sure the restoration is to the levels that exist when the lessees get control of that site and those stocks, which is after the common property harvest.

CHAIRMAN TORGERSON asked if they could add, "...when the common property harvest rights were satisfied."

MR. PAINTER suggested, "...when Fish and Game operating permits become effective."

SENATOR ELTON said he had assumed that DNR would work with the aquaculture community to try and identify sites, but it sounds like Mr. Painter is suggesting instead a dynamic between DNR and ADF&G.

MR. PAINTER replied that he hoped that local communities and industry would send nominations to DNR and then DNR and ADF&G would respond to those. He would like to see the agencies work together to identify at least major problems within an area before they are offered for lease to the public.

3:52 p.m.

SENATOR ELTON asked if it is realistic to expect that 90 sites would be ready for lease by July 1, 2003.

MR. PAINTER responded that this gets back to Senator Taylor's question of site definition. Currently, farms are 1 - 10 acres and each farmer has different requirements for their specific operation. He is working on an aquaculture development plan for Prince of Wales Island and has done some reconnaissance work and would be prepared to offer a number of locations in this area that range in size from 50 - 100 acres to 10 acres. In each of the developable locations, it might be possible for DNR to offer five sites. He believed Sea Otter Sound could support as many as 40 or 50 farms.

The identification of sites may be a large number, but it might not be as difficult to find them as one would imagine - geoducks for example. A number of sites were applied for in 1999, some of which had no geoducks and some had a few. There might not be very many geoducks, but the site might still meet the department's present criteria. It's their intention to work real hard if this legislation is adopted to identify sites and do site assessment work and provide the department a considerable amount of information on those sites.

SENATOR TAYLOR asked if the lessee is held to the second assessment after the common property harvest for restocking to a sustained yield level.

MR. PAINTER replied yes, they are held to numbers identified in the second assessment.

SENATOR TAYLOR asked if that was after the harvest had already occurred.

MR. PAINTER indicated that I
s correct.

SENATOR TAYLOR asked why they would restock to the original level.

MR. PAINTER clarified:

The standing stocks that are there before the common property harvest - let's take a geoduck site as an example. If there was a site leased out and they did a common property harvest, all the divers would show up or as many that were interested and harvest those stocks. The applicant may not be taking part in those harvests at all; it would be the commercial fishing fleet. And the farmers shouldn't be held liable to

restore them to the original level before the common property harvest, because they are open to all citizens of the state, unless it's a limited entry fishery...

CHAIRMAN TORGERSON reiterated that the bill currently does that. He asked Mr. Painter to focus on the bill.

MR. PAINTER responded that when he got his leases from the 1999 openings for clam sites, they were made effective immediately, but DNR did not understand that ADF&G was not issuing the operating permit until the common property harvest had been completed. DNR discovered that when he started complaining about having to pay lease fees when he didn't have access to the sites to conduct aquatic farming. Now they are in the process of revising their leases so they become effective when the operating permit becomes effective, which would be after the common property harvest.

4:02 p.m.

MR. PAUL FUHS, Alaska Trademark Shellfish Assoc. (ATSA), said ATSA is the subject of the lawsuit. The issues are that ATSA went through CZM and was consistent with that process. ATSA then got a best interest finding from DNR and people participated all along. That took a year and a half. When it came time to get the permits from ADF&G, ATSA was rejected because there were substantial amounts of standing stock on some of the sites. Although, the department's policy now is to let a fishery occur there and then open it to aquaculture, that's only true in the case of those fisheries that are not limited entry. He added:

Although I hate to disagree with my good friend, Roger Painter, this is not a new idea. This is exactly what we do in the common property fishery. This would extend the same practice to limited entry fisheries. The issue is there when the constitutional amendment went into our Constitution, it says, 'No exclusive right or special privilege of fishery shall be created in the natural waters of the state except for limited entry and to promote the efficient development of aquaculture in the state.'

He said that's never been tested or defined and that's before the Supreme Court right now. They hope to resolve the problem with their amendment, which reads, "In an area where there is no existing fishery." He stated:

And that is the case with all the sites that have been applied for. No one else is using the resource now. If there's a standing stock there, there will be an open

period for the divers to come in and take the resource and even take beyond what would be normal sustainable yield. I mean it's going to be an aquaculture site. Usually you take 2% per year, but they could go in and harvest at even a higher level, which is also what's done at the clam sites now with the proviso in the end the stock will be restored to the original level.

For us, in the limited entry fisheries, we are willing to restore to the original level so this is not a violation of either the sustained yield concept in our Constitution or of the common property law provisions of our Constitution. That's why it's written that way. We make it a little bit different for intertidal species, which are like clams. You have to dig those at low tide and sometimes there's only a couple of days a month you can do that.

For the dive fisheries, you can get right in and take care of it. This would make that clear. I do also want to make it clear that what ADF&G said - that you can have a permit if there aren't substantial stocks there. They have never defined what substantial is and a farm is looking for an area that has a lot of animals, because obviously that's a good place for them to grow. That's why they are there. These are broadcast spawners; they broadcast their eggs in the water. They float around everywhere and they settle in the places where you can make a living. So, it's a little bit of a disconnect of the science, common sense and our Constitution - is the solution that we're looking for here. My clients have said if we can resolve this, they'll drop the lawsuit and we can all forget about suing each other and the cost to the State of Alaska and we can all go to work.

MR. FUHS said that he has discussed this with ADF&G, the Attorney General's Office and the Dive Association and, while he didn't think any of them were ready to take an official position now, everyone liked the general concept but wanted to see the details of the periods of public notice and harvest and how it would be set up. He felt that everyone wanted to resolve this issue.

SENATOR TAYLOR asked if his group is willing to restore to the original level.

MR. FUHS replied:

The difference is that when you harvest like the little neck clams, you only harvest to a size of maybe an inch and a half and everything smaller than that is still left there. That's why you're just making up that difference. When you harvest geoducks, it's much more digging up the ground to get them and it's more disruptive. That's why I think it's more realistic for us to say we'd replace it to 100%, plus we're trying to deal with the constitutional issues of sustainable yield and common property access.

SENATOR ELTON said it seems that his proposed language makes it almost impossible to do 90 different leases by July 1, 2003.

MR. FUHS replied:

This is really separate. What Roger is talking about is pre-identifying sites. There's a lot of sites out there. Private industry is out and they're doing the research to find the sites they think they can make a farm at.

He thought the intent of this bill is to make the two departments pre-identify sites so it's easier to get the leasing.

SENATOR ELTON said he might misunderstand, but he thought a lot of the sites Mr. Fuhs is interested in would be sites that a potential leaseholder would be interested in because of the already existing stocks. Given that, it seems that he wants to create an additional five-month period for a lot of potential sites that could be made available to a leaseholder.

MR. FUHS replied that he didn't know how long the common property had to stay open to fish clams. His amendment calls for a three-month period for intertidal species - two months for notice and a three-month harvest period. He thought the period might be even longer now before one can have positive control of a site. His amendment just extends it to limited entry fisheries.

SENATOR STEVENS asked if the common property fishery only allows a 2% annual harvest rate that could go on forever.

MR. FUHS replied:

You would allow them to go in and fish above what would normally be a sustainable level. In fact, they could potentially come in and take 100%, because the farmer is going to replace 100%.

SENATOR STEVENS asked if under his recommendation, the lessee would replace back to the original assessment.

MR. FUHS said that was correct even if 100% of the animals were taken. He added:

So the divers could possibly fish 50 years worth of diving in a month, because you know this is going to be replanted. The hatcheries can do this. They've got the geoduck spat right now. We just can't get the permits to farm."

He said that DNR requires bonding from the hatchery in Seward to make sure the resource is replaced. That is what the lawsuit is about.

SENATOR STEVENS asked who makes the determination of when the common property is harvested.

MR. FUHS replied under this proposal ADF&G would give them 60 days notice that this site is going to be open for 30 days to take all they can and then after that it's going to be an aquaculture site. At the end of the 10-year lease for aquaculture, it will be restored to the full population.

SENATOR STEVENS asked him to contrast that to Mr. Painter's proposal.

MR. FUHS replied that Mr. Painter wants to modify it a little bit for clams to say they will restore it to the point after the common property harvest.

SENATOR STEVENS said he wanted to know who made that determination.

CHAIRMAN TORGERSON said ADF&G does.

SENATOR LINCOLN asked how long the lawsuit would continue.

MR. FUHS replied that the appeal has been filed and he didn't know when the Supreme Court would issue a determination. It took the Superior Court eight months to issue the court ruling on July 19, 2001.

CHAIRMAN TORGERSON asked what the verdict of the lawsuit was.

MR. FUHS replied that the court said ADF&G's regulations were completely wrong and that an open dive fishery and aquaculture was unworkable. They said the proponents had violated the common property clause because there were substantial amounts of stock there, which was subject to a limited entry fishery. Trademark

Fisheries is the appellant.

MR. JOHN AGOSTI said he was representing a shellfish hatchery and the Alaska Shellfish Growers today and thanked Senator Torgerson for introducing this bill.

SENATOR TAYLOR asked if he felt confident that his facility would have enough spat for the replanting.

MR. AGOSTI replied yes. His organization didn't envision an avalanche of companies failing and requiring a mass amount of seed. The most likely scenario is a few failures over time and they could accommodate that.

MR. RON LONG, Qutekcak Shellfish Hatchery, supported SB 141. He thought the industry had to do its own research to identify sites that are reasonably free of conflicting uses and offer those as their nominations. He liked the concept of a prefarming fishery. On the conceptual language for a substitute he needed a little more time to think about it, but if the sponsor and the dive fishery supported it, he would go for it. On reseeding to the initial biomass levels and the prefarming harvest, he liked it from a purely economic point of view because it provided more seed for him to sell.

MS. JULIE DECKER, Executive Director, Regional Dive Association, supported SB 141, but requested that they hold the bill until her board can see it and give its support on March 8. She also would like to provide the board's comments on Mr. Fuhs' proposal.

CHAIRMAN TORGERSON replied that he hadn't planned on passing the bill out today because it needed more work. He said the fiscal note was for \$800,000, but that a new one would be needed.

MS. JANICE ADAIR, Director, Division of Environmental Health, Department of Environmental Conservation (DEC), said she was available to answer questions.

SENATOR TAYLOR said it was shocking to him that DEC submitted a \$354,000 fiscal note to go out and look at 10 different sites to test the water.

MS. ADAIR responded that they have to follow a National Shellfish Sanitation Program in order to classify areas for shellfish harvesting. Some presumptions about locations are made and a set number of samples have to be taken over a set number of times. DEC doesn't have options. If the areas are more remote than urban, their fiscal note would go down; if there are more urban areas than remote, the amount would go up. DEC estimated at 50/50 since they didn't know.

SENATOR ELTON said she was assuming that 10 new growing areas will need to be certified and asked if she didn't need to certify unless a lease is actually offered and accepted by someone in the aquaculture industry.

MS. ADAIR said that is right and added that they have many sites within a growing area. They certify the growing area and this helps reduce the cost.

MR. BOB LOEFFLER, Director, Division of Mining, Land and Water, DNR, said that his division does the leasing under this bill. He had two areas of concern. He respected Mr. Painter's comments, but this is really a DNR/ADF&G proposal. Without ADF&G's preapproval of the sites, they run the risk of offering sites that can't be permitted. His division does not manage the resource and there are two places in the bill that put resource issues in DNR's purview - on page 2, lines 12 and 16. He explained:

The consequence of putting Section 1 in DNR statutes rather than Fish and Games' is that Fish and Game has regulations, which address this question and, in fact, are parallel to this... A law under Title 38 and a regulation under ADF&G's Title 16 can both be valid. This means that a site would have to go through two hoops to address a single situation. If someone didn't like their determination, they would appeal it to DNR, but it really has to go to ADF&G because it's their issue.

TAPE 02-2, SIDE B

CHAIRMAN TORGERSON asked if other agencies didn't have to deal with cross-jurisdictions.

MR. LOEFFLER replied if the legal jurisdiction is confused, that confusion always works against the applicant.

CHAIRMAN TORGERSON said he didn't think so and asked if there were any other comments.

MR. LOEFFLER added that it would be very difficult for them to complete this process by July 1, 2003. They have written their fiscal note for a two-year process with the dives occurring in the summer. That would mean July 1, 2004. Also, if they reduce the number of sites to offer, they would not run the likelihood of overwhelming the industry and they could reduce the fiscal note.

CHAIRMAN TORGERSON replied that's why he made it over-the-counter

sales.

MR. DOUG MEEKUM, Director, Division of Commercial Fisheries, ADF&G, supported Ms. Decker's testimony in support of SB 141. The CS removes the section identifying the sites for auction and their common property concern. He thought that Mr. Painter was on the right track and that this regulation is more restrictive than current statute.

CHAIRMAN TORGERSON asked if it would help to delete "lease" and add "operating permit".

MR. MEEKUM replied that is one possibility and another would be to refer to the authority of the department to issue a permit, whichever comes first.

CHAIRMAN TORGERSON asked if he had a chance to review the Trademark Shellfish language.

MR. MEEKUM said he hadn't had a chance to.

SENATOR ELTON asked if ADF&G could realistically have leases for 90 different sites done by July 1, 2003.

MR. MEEKUM replied that would be difficult. He thought the suspended culture sites would be easier, but there are only 20 sites identified for clams and 10 for geoducks, which would be the primary thing they would be looking at in their site surveys. Last year they suggested that ADF&G's costs would be about \$200,000 in the first year. He noted, "I guess we'd try and do our best to get it done. It's going to be difficult. I wouldn't say it's necessarily impossible."

CHAIRMAN TORGERSON asked what happened to the \$250,000 that the legislature gave them a couple of years ago.

MR. MEEKUM replied that two or three years ago the department requested a CIT project that's very similar in terms of its intent to what they are trying to do here. They actually received only \$100,000 from the legislature, but that particular set of CITs was funded out of CFEC receipt services, which went down by \$1 million that year. He stated, "So, that money doesn't exist because the receipts never came in."

CHAIRMAN TORGERSON said:

I want these to pick up fiscal notes, because I believe the state should pay for this. This is a good industry. It's a clean industry and we've been messing around with it so long that it's the only way that I see we're going to turn it around. I wasn't expecting \$800,000

fiscal notes, but I guess that's life in the fast lane. It was my hope today to do our work and amend it so that it is functionally okay and then send it up to Finance and let them argue with you up there.

SENATOR TAYLOR said:

My frustration is we know that we've got a salmon industry that's in trouble and I can't find a faster way to put the dive fishery in trouble than to have ongoing litigation up to the Supreme Court and we all sit around holding our hands and wringing them waiting and hoping something will happen out of the Supreme...

MR. MEEKUM reiterated that he supports the bill.

CHAIRMAN TORGERSON instructed the participants to read the suggestions.

SENATOR WILKEN moved on page 1, line 8 to delete "lease" and insert "operating permits" and on page 1, line 12, to delete "2003" and insert "2004" [Amendment 1].

SENATOR TAYLOR said he didn't object to the first part of the amendment, but wanted to know more about the second part. He added, "I understand their reluctance and concerns, but I guarantee if their jobs depended on it, those permits would be out in a couple of months."

SENATOR ELTON said his concern is if the date is too soon, the pressure may be on to identify sites to meet the time deadline and not the requirements of the industry.

SENATOR TAYLOR said he had been involved in this for 17 years and he thought that someone in ADF&G could start moving on this program.

SENATOR TAYLOR moved to divide the question.

CHAIRMAN TORGERSON explained that they would call the first part Amendment 1(a) to delete "lease" and insert "operating permit". He asked if there was any objection. There were no objections and it was adopted.

CHAIRMAN TORGERSON explained that Amendment 1(b) deletes "2003" and inserts "2004". He agreed with Senator Taylor that if ADF&G didn't have the backlog, all the work that's been done on sites, permits almost issued and work that's been done by the growers, one year would be pretty tough. But that's not the case. There are 50 - 60 sites in Sitka that will probably be nominated for

this. He noted would not support this amendment.

SENATOR LINCOLN said the committee heard testimony saying that 2003 might be a stretch, but the language says it should be offered to the public "before," and she hoped that if they could do it earlier, they should do everything possible to get it done. She supported 2004 and hoped that the department expedites it.

SENATOR ELTON said he assumed if this amendment failed, work would have to be done on the fiscal notes since they are predicated on a two-year process.

CHAIRMAN TORGERSON asked for the roll to be called. SENATORS ELTON, LINCOLN, and HALFORD voted yea; SENATORS TAYLOR, WILKEN, STEVENS and TORGERSON voted nay. By a 3 to 4 vote, Amendment 1(b) failed.

SENATOR TAYLOR moved to pass CSSB 141(RES) to pass from committee with individual recommendations and accompanying fiscal notes. There were no objections and it was so ordered.

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#SB266

SB 266-FISHERY ENHANCEMENT LOANS

MS. DEBORAH GRUNDMAN, staff to Senator Stevens, sponsor, said:

SB 266 authorizes the Commissioner of the Department of Community and Economic Development to refinance loans made by the Fisheries Enhancement Revolving Loan Fund. It also gives the commissioner the ability to extend the term of the loan when justified. A majority of the loans made under this program carry the maximum allowable interest rate of 9.5%. Alaska statutes allow for interest rates of 1% over prime not to exceed 9.5%. New loans, if received today, would be at 6%.

Hatcheries would like to take advantage of a lower interest rate to bring down their debt service, just as other businesses and homeowners are currently doing throughout Alaska and the nation.

SENATOR HALFORD noted that one provision was for interest rates and the other allows for refinancing in excess of 30 years. He asked when that would be necessary.

CHAIRMAN TORGERSON noted he had drafted a committee substitute that has new language on page 3, line 1, that reads: "the commissioner shall submit annually a report to the legislature summarizing the commissioner's decisions during the prior

calendar year to approve or deny requests to extend loans under this paragraph and the reasons for the decisions;".

SENATOR WILKEN moved to adopt the proposed committee substitute (CS), labeled Utermohle 2/19, Version T. There were no objections and it was so ordered.

MR. GREG WINEGAR, Director, Division of Investments, answered Senator Halford's question by saying it was similar to refinancing a home. He explained:

The way the department has interpreted the statute is under this program is you get 30 years total. So, this would give us the ability if someone had paid in to the loan for five or six years that we would be able to, like refinancing your home, go ahead and give them a 30-year loan.

SENATOR HALFORD asked if there is another section of statute that clearly says that the collateral has to be considered also. He stated: "All this says is the term of the loan would be extended if it meets financial hardship." He assumed that somewhere in statute, the division must follow some kind of a standard that says it has to follow good financial practices relating to the life of the collateral.

MR. WINEGAR said that is correct, but he didn't have it with him. He responded, "It is something we look at when we look at a refinancing request."

SENATOR HALFORD asked what the status of the loans are right now with regard to collateral to face value.

MR. WINEGAR replied that is difficult to answer. In regional associations they have an assignment of the tax, for example. They also make an assignment of the fish that are out in the ocean, as well as the physical plant, etc.

SENATOR HALFORD asked if they do an annual report that weighs that out.

MR. WINEGAR replied they don't.

SENATOR HALFORD asked if there was a database as to hard assets on the loans.

MR. WINEGAR replied that they do that analysis when making the loan, but they don't review it on an annual basis.

SENATOR HALFORD said he would like to know what happens when the

product comes down to \$.05 per lb., and if that's part of the collateral.

CHAIRMAN TORGERSON said they must have some idea between fixed assets and loans.

MR. WINEGAR said they look at that at the time they make the loans. He stated:

Normally we have a whole series of types of collateral to secure the loan including, sometimes, EVOS assignments on loans that were affected by the oil spill. We do evaluate that at the time we make the loan. It's just we don't do that on an annual basis for the whole portfolio.

SENATOR ELTON pointed out the collateral would be reviewed at the time of refinancing and this would provide a system for one update that wouldn't be there if they didn't refinance.

MR. WINEGAR said that is correct.

SENATOR HALFORD requested a status report of the loans in terms of their current assessment based on current collateral values.

MR. WINEGAR said the division would work on that.

SENATOR STEVENS said he thought they could address Senator Halford's concern with a synopsis of the total number of loans to each hatchery and their amortization schedule.

MR. WINEGAR replied the division could.

SENATOR HALFORD said the collateral value was something else.

SENATOR STEVENS pointed out that each hatchery that receives loans has a series of loans. So, each time they do a loan, the division has to do that analysis.

MR. WINEGAR replied:

What we have in this portfolio is about a dozen borrowers that have multiple loans and so we're looking at them periodically as they request new loans or if they need assistance... For example, if they need to ask for an extension of some sort, we evaluate them at that time as well.

MR. DAVE COBB, business manager, Valdez Fisheries Development Association, Inc., supported SB 266 and said:

This bill sponsored by Senator Stevens and others is one of the tools needed by the commercial fishing industry and the hatchery system to remain competitive in today's global fisheries environment. The refinancing of hatchery loans at the prevailing interest rate will allow most hatcheries to reduce their annual loan payment significantly and reduce their operating costs. Any reduction in the overall operation budget of Valdez Fisheries Development Association will mean more fish to the commercial fishermen of the area because their cost [indisc.].

While this bill is a very important step to the state hatchery system, it is only one of the many changes that must occur to the commercial fishing industry in Alaska to survive. [This program] started by the legislature in 1974 has met or exceeded the expectations placed on the program. However, the competitive playing field has changed from a position of strong market presence to one of massive world competition and dumping of fisheries products on the market at less than the cost of production.

We, the State of Alaska, and all of the interested players, must change in order for us to survive in a competitive market place. This bill begins the process of change. Thank you.

MS. SUE ASPELUND, Executive Director, Cordova District Fishermen United, gave them some specifics of what their aquaculture association provides to their region. She stated:

In 2,000, estimated economic impacts resulting from the production and harvest of Prince William Sound Aquaculture Corporation [PWSAC] were \$109 million in total output, including \$34 million in labor income and more than 1,280 jobs. Within the commercial harvesting sector, Alaska resident permit holders see most of the economic benefits of PWSAC production. In 2000, Alaska permit holders harvested about 75% or \$15 million of the PWSAC ex-vessel value with the remaining 25% going to non-residents. Commercial fishing residents from 30 Alaskan communities earn an income from PWSAC families, not only from coastal communities, but including those from urban areas such as Anchorage, Palmer, Wasilla, Juneau and Fairbanks. Between 1990 and 2000, the total wholesale value of commercial and cost recovery harvest

of PWSAC salmon was worth over half a billion to over 20 Alaskan seafood processors with an average annual value of more than \$45 million.

Processing of PWSAC fish generated an estimated \$70 million in total output in 2000, including \$19 million in payroll and 700 jobs. The PWSAC salmon also counted the following percentages of sport fish harvest in the Prince William Sound region from 1996 to 2000 - 80 percent of the chum salmon, 70% of Chinook, 35% of sockeye, 20% of coho and 10% of the pinks. The economic impacts from the 2000 sport fish harvest were an estimated \$2 million in total output, including \$800,000 in payroll and 64 jobs.

Since 1995, Alaskans from 140 towns across the state harvested nearly 150,000 PWSAC sockeye salmon during the Copper River personal use and subsistence fisheries. PWSAC contributes about 70 annual average jobs to their economy with an annual payroll of more than \$2.6 million.

The economic impact from PWSAC employment and expenditures to the regional [indisc.] of 2000 for \$10.1 million in total output including \$4.6 million in payroll and 154 jobs. These facts provide a graphic demonstration...of PWSAC's importance as a regional and statewide economic engine....

She said that the changing global marketplace and the faltering Japanese economy have resulted in a lower ex-vessel value that require our hatcheries to take greater percentages of production as cost recovery in an effort to make their loan payments. They need the ability to refinance hatchery debt to take advantage of decreased interest rates provided for in SB 266. This would result in hatcheries being able to immediately supply more fish to the common property harvest.

MR. CARL ROSIER, Alaska Outdoor Council, said the hatchery program has been a real boon all over Alaska as far as the recreation fishery is concerned. He supported CSSB 266(RES). Their early concerns were taken care of.

MR. JOHN CARTER, Director, Douglas Island Pink and Chum (DIPAC), supported CSSB 266(RES) and said:

The private non-profit (PNP) hatchery program was created by the legislature to replace the hatchery program operated by the state's Fish and Game FRED

Division. The FRED hatcheries were operated through annual appropriations to the State Department of Fish and Game. The PNP hatchery program was created as a user pay entity. To get the program started, the state gifted some existing hatcheries to regional corporations, but primarily created the fishery enhancement revolving loan fund. This fund, along with a tax on commercial fishermen, was to provide for construction and operational funds as the enhancement program developed.

Twenty-five plus years later and over \$1 billion in fish, the PNP hatchery programs are described even by some of its detractors as "some of the best in North America." They have made dramatic financial contributions to many areas of the state. When asked by others who don't understand the concept of private non-profit, I usually fall back on the phrase "public trust." I really believe that that's the best description of the way most of us view the job.

That being said, we are still a business and are responsible for budgets and payroll and of course debt service. What we are asking for here is the ability to refinance our debt at a lower interest rate. This is obviously going on in many businesses across the state and across the country. Taking advantage of the current low interest environment just makes good business sense. Simply put, refinancing will strengthen our financial position, make us better able to pay our debt and more able to continue doing the job of providing fish to the commercial and sport fishers across the state. This will mean principal and interest are paid into the fund at a slower rate, but loan demand on the fund is slowed dramatically so the fund will still be financially sound. I thank you for any support you can give and I'm available for questions.

SENATOR TAYLOR moved to pass CSSB 266(RES) with individual recommendations and the accompanying zero fiscal note. There were no objections and it was so ordered.

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#SB277

SB 277-DEFINITIONS OF FISHERIES BUSINESSES

CHAIRMAN TORGERSON announced SB 277 to be up for consideration.

MR. IAN FISK, staff to Senator Austerman, sponsor, said that both

the original and the committee substitute address an inequity in state taxation for the Bering Sea pollock fishery. He said:

This bill seeks to ensure that all pollock processors are assessed at the same rate. The American Fisheries Act (AFA), which was passed by Congress in 1998 to rationalize the Bering Sea pollock industry, divided the industry into three sectors, those being the factory trawlers, which both harvest and process their catch at sea, mother ships, which process catches harvested by other vessels at sea and the inshore sector. The AFA limits participation in the pollock industry to these sectors and specifically leaves out entities, which are allowed to process pollock.

The tax inequity that we have here in the industry is that floating processors were included with the inshore sector in AFA, but [is] the only sector of the industry to be taxed at 5% by the state, whereas the other sectors are taxed at 3%.

The first draft of this bill intended to accomplish tax equity by changing the definition of 'shore based processor' in order to accommodate pollock floating processors. This approach created a fiscal note that was somewhat larger than anticipated and it also raised some concern that floating processors and other fisheries could be affected and that is certainly not the intent of the sponsor.

MR. FISK said that the committee substitute reduces the fiscal note and focuses the bill specifically on the pollock fishery by specifying a 3% rate for floating processors, which would level the tax situation, thus providing equity for all sectors of the Bering Sea pollock industry. He explained that the fiscal note before the committee actually applies to the first version of the bill. The estimated fiscal note for the committee substitute will be even less. He said:

It is important to note that the general fund impact in this case will actually be half of the fiscal note that the department presents to you, because half of the income is shared back with municipalities.

CHAIRMAN TORGERSON asked which municipalities.

MR. FISK replied a number of municipalities in the Aleutian's east borough and southwestern Alaska. Unalaska would be affected.

SENATOR TAYLOR moved to adopt the proposed committee substitute to SB 277, labeled Version F, as the working document of the committee. There were no objections and it was so ordered.

SENATOR LINCOLN referred to a letter from the City of Unalaska saying they were concerned about the language in the bill, "due to the loss of business, fish tax, and revenues" and asked him how much that amounts to. She said, "The fiscal note that you allude to suggests that the communities could lose approximately 50% of their share of the state revenue loss, which they are saying is \$217,000."

She wanted to know if he was cutting the \$217,000 in half again and asked him to comment on the loss of revenue to the communities.

MR. FISK replied that in terms of revenue sharing, the Department of Revenue said that data is confidential. He explained:

As far as loss of income to the communities, on a community by community basis, it will not be a very large number, especially in light of the revenue that's already generated by this industry and is shared back to these communities...As far as the \$217,000, it will actually be slightly less than that, because as I indicated we had some confusion with the department over the fiscal note [which will be less].

SENATOR HALFORD asked what level factory trawlers are presently taxed at.

MR. FISK replied that they are taxed at 3% under the Fisheries Resource Landing Tax; but, under AFA, the pollock industry is taxed at 5%.

SENATOR HALFORD asked about mother ships.

MR. FISK replied that they are taxed at 3%.

SENATOR HALFORD asked, "Why, if we're going to take floating processors down to 3% from 5%, why don't we put factory trawlers and mother ships up to the 5% and regain the revenue?"

MR. FISK replied that the industry is already paying a significant amount of tax, and because of the general state of the industry, higher taxes would not be warranted.

SENATOR HALFORD commented, "Factory trawlers' total contribution to the state is 3% and the mother ships are the same thing?"

MR. FISK said that is correct.

SENATOR HALFORD explained that the principal was to try and help on-shore and Alaska-based operations.

And yet you have those two categories that have the most preferential of any tax treatment available, the same as if they were essentially based onshore in Alaska. I wonder why you don't make both adjustments at the same time and [indisc] your goal with a positive fiscal note instead of a negative one?

MR. FISK replied that he thought taxation through the AFA is another issue that would have to be addressed through modification to the American Fisheries Act, which is a much more complicated process than what is before them today.

SENATOR HALFORD said he thought that was set at the state level.

MR. FISK replied that he was less familiar with the American Fisheries Act.

MR. KRIS NORRIS, Manager, Icicle Seafood, said Icicle is a U.S. corporation started in Petersburg in 1965. She supported CSSB 277 (RES) because the intention of this bill is to seek a level playing field. She reminded the committee that twice in the last eight years the State of Alaska has argued that both the onshore and offshore sectors should be treated the same with regard to taxation. She maintained:

When the Fisheries Resource Landing Tax was originally enacted in 1994 and contested by the offshore sector, it was settled in '96 and the argument that the state used was that those two sectors should be treated the same. That reasoning was used again in 1998, when the state was negotiating in Washington D.C. with the passage of the American Fisheries Act. It was our U.S. Senator Stevens' desire to help the State of Alaska and ensure that everyone that's doing business with the resources in our water and near them would contribute to the state's economy. That's why the mother ships were also brought under the Fishery Resource Landing Tax. The argument made was that the offshore and the onshore sectors needed to be treated the same.

What's happened under state statute enacted several decades ago is that the floating processors were assessed at a different rate and I don't have a problem with that when it comes to species like salmon and

herring and some of our traditional species, because anyone can get into the processing end of that business. But what the American Fisheries Act did when it was passed in 1998, is it limited who was qualified to process pollock. Under current state statute coupled with the American Fisheries Act, we're in a situation where not everyone is treated equal, yet we're all competing with each other in the same market place. So, what we have is a situation where we have two qualified floating processors that are assessed at a rate of 5% while all their competitors, regardless of what sector they're in or how they operate, are assessed at a 3% rate.[END OF TAPE]

TAPE 02-3, SIDE A

MS. NORRIS continued:

The only thing they do on board is to process the fish. They don't catch it. They have other boats bring the fish to them and then they process it. The difference is where they operate. One is considered part of the onshore sector, which operates within three miles in state waters. The mother ship sector operates outside of that three miles. But operationally speaking they're the same. I think because of that, all the sectors need to be treated the same when it comes to taxation.

SENATOR HALFORD said Ms. Norris wants to change the system that was the rule until now, but she is not willing to change the rule to go in reverse. He asked if this bill passed, would anyone be left paying the 5% rate.

MS. NORRIS replied that this would equalize the rate paid on pollock only. For other species, floating processors would still pay the 5% rate and she didn't have a problem with that.

SENATOR HALFORD noted that the differentials would still be there.

MS. NORRIS replied yes.

SENATOR HALFORD asked if they had the authority to apply the differential in reverse under the American Fisheries Act.

MS. NORRIS replied, "The American Fisheries Act isn't tying the hands of the State of Alaska in how they can apply a taxation rate. What it's doing is determining who is included to be subject to a tax."

MR. CHUCK HARLAMERT, Department of Revenue, said he would answer questions.

CHAIRMAN TORGERSON asked what the committee substitute did to the fiscal note.

MR. HARLAMERT replied that they did a fiscal note on the same law last year based on 2000 data. They had to estimate a range because the taxpayer population is so low, they had to guard confidentiality. He remembered that the fiscal note said they would lose \$333,000 to \$400,000 to bring pollock down from 5% to 3% for floaters.

SENATOR ELTON explained that loss would be shared equally between local communities and the State of Alaska. Mr. Harlamert agreed.

SENATOR HALFORD asked him if they reverse the tax with regard to mother ships and factory trawlers, what income that would generate.

MR. HARLAMERT responded with some background on the Fisheries Land Tax:

When we adopted it, we had a choice between assessing it at 5% or 3% and that's within the state's prerogative. The Department of Revenue recommended using 3% because 5% would put them too much at risk of discriminating against interstate commerce. Essentially we have free reign to tax any activity that occurs within Alaska within our waters and we have no ability to tax on our own activities that occurs outside our waters. If we were to impose a discriminatory tax rate on fishing agencies who merely landed fish in the state, there's a possibility that it might not stand. It is our recommendation at the time to not move to 5% as we do with instate floating processors, but to stay with the base 3%. The 5% rate is in part aimed at drawing a form of equity between floating processors and onshore processors based upon local taxation...

MR. HARLAMERT said if they were to move ahead and tax the offshore pollock fleet at 5% on their landings, the entire tax base would need to change to tax everybody at 5%, even shore based processors, and allow a credit against the state tax for local taxes paid.

SENATOR HALFORD said that would achieve the same differential.

MR. HARLAMERT agreed with that.

SENATOR LINCOLN said the City of Unalaska was concerned about the loss of the fish tax and revenue to their community. She asked if he knew how many communities would be affected by this and what the range of the impact would be to a given community.

MR. HARLAMERT said he couldn't do that because the population of taxpayers they are talking about is so small that if they were to go further into detail and talk about the communities, their department's confidentiality requirements would be violated.

SENATOR LINCOLN said she didn't have any idea if they were talking about \$10,000 or \$100,000 and that makes it hard for her to know what the impacts would be.

CHAIRMAN TORGERSON said he thought since they only got one letter and the area was so small that it couldn't be disclosed, so Unalaska is taking the brunt of this.

SENATOR WILKEN asked if he understood correctly that the proximity of the processor to the municipality was the determinant as to whether the tax is 3% or 5%.

MR. HARLAMERT said that outside of three miles the state doesn't have taxing jurisdiction. The state can only tax the offshore fleet when it lands fish in the state or, under the American Fisheries Act, the "feds" do it for us.

SENATOR WILKEN asked if he had a floating offshore ship he would pay 5% but if he brought it in and hooked it up to the dock, he would pay 3%.

MR. HARLAMERT replied yes, if it is hooked up permanently.

SENATOR WILKEN said this bill takes the ship that's three miles offshore and can move from fishery to fishery and makes it a 3%.

MR. HARLAMERT said it does that for one species - pollock.

SENATOR ELTON asked if he could tell them the total revenues that would be lost for pollock.

MR. HARLAMERT replied that he wasn't prepared for the committee substitute, but he could get that data.

SENATOR HALFORD asked how much the 3% tax generates annually on the factory trawlers and mother ships.

MR. HARLAMERT replied about \$7 million and this figure is published under the fisheries landing tax in their annual report.

SENATOR TAYLOR moved to pass CSSB 277(RES) from committee with

individual recommendations. There were no objections and it was so ordered.

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CHAIRMAN TOGERSON adjourned the meeting at 5:27 p.m.