

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

May 7, 2004
9:07 a.m.

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Peggy Wilson, Vice Chair
Representative Ralph Samuels
Representative Les Gara
Representative David Guttenberg

MEMBERS ABSENT

Representative Cheryll Heinze
Representative Dan Ogg

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 282(RES)
"An Act relating to the identification of finfish in food products and to the misbranding of food products consisting of or containing finfish."

- MOVED CSSB 282(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 282

SHORT TITLE: PREPARED FOOD:WILD/FARMED FISH DISCLOSURE

SPONSOR(S): SENATOR(S) ELTON BY REQUEST OF SALMON INDUSTRY TASK FORCE

01/28/04	(S)	READ THE FIRST TIME - REFERRALS
01/28/04	(S)	RES, FIN
03/03/04	(S)	RES AT 3:30 PM BUTROVICH 205
03/03/04	(S)	Scheduled But Not Heard
03/05/04	(S)	RES AT 3:30 PM BUTROVICH 205
03/05/04	(S)	Moved CSSB 282(RES) Out of Committee
03/05/04	(S)	MINUTE(RES)
03/08/04	(S)	RES RPT CS 4DP 1NR SAME TITLE
03/08/04	(S)	NR: OGAN; DP: LINCOLN, STEVENS B,
03/08/04	(S)	ELTON, WAGONER
04/28/04	(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/28/04	(S)	Scheduled But Not Heard
04/29/04	(S)	FIN AT 9:00 AM SENATE FINANCE 532

04/29/04 (S) Heard & Held
04/29/04 (S) MINUTE(FIN)
05/03/04 (S) FIN AT 9:00 AM SENATE FINANCE 532
05/03/04 (S) Moved CSSB 282(RES) Out of Committee
05/03/04 (S) MINUTE(FIN)
05/03/04 (S) FIN RPT CS(RES) 4DP 3NR
05/03/04 (S) DP: WILKEN, DYSON, HOFFMAN, STEVENS B;
05/03/04 (S) NR: GREEN, OLSON, BUNDE
05/05/04 (S) TRANSMITTED TO (H)
05/05/04 (S) VERSION: CSSB 282(RES)
05/06/04 (H) READ THE FIRST TIME - REFERRALS
05/06/04 (H) FSH, L&C
05/07/04 (H) FSH AT 9:00 AM CAPITOL 124

WITNESS REGISTER

SENATOR KIM ELTON

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor by request of the Joint Legislative
Salmon Industry Task Force.

KRISTIN RYAN, Director

Division of Environmental Health
Department of Environmental Conservation (DEC)
Anchorage, Alaska

POSITION STATEMENT: During discussion of SB 282, responded to
questions.

CHERYL SUTTON, Staff

to the Joint Legislative Salmon Industry Task Force
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of SB 282, provided
comments.

ACTION NARRATIVE

TAPE 04-28, SIDE A

Number 0001

CHAIR PAUL SEATON called the House Special Committee on
Fisheries meeting to order at 9:07 a.m. Representatives Seaton,
Wilson, Samuels, Guttenberg, and Gara were present at the call
to order.

SB 282 - PREPARED FOOD:WILD/FARMED FISH DISCLOSURE

Number 0037

CHAIR SEATON announced that the only order of business would be CS FOR SENATE BILL NO. 282(RES), "An Act relating to the identification of finfish in food products and to the misbranding of food products consisting of or containing finfish."

Number 0060

SENATOR KIM ELTON, Alaska State Legislature, sponsor by request of the Joint Legislative Salmon Industry Task Force, said that SB 282 provides for disclosure similar to what now occurs at the grocery-store level to take place in restaurants, that finfish be identified on the restaurant menu as to whether it is farmed or wild. Most fish consumed at the retail level is consumed in restaurants rather than through grocery store purchases. He suggested that the bill addresses a consumer awareness issue, and noted that there have been a lot of stories in the press recently about the toxin loads of farmed fish and the environmental concerns surrounding industrial fish farms.

SENATOR ELTON opined that the proposed change will give consumers the ability to chose what type of fish they consume, and will provide a real boost to Alaska's wild fish industry. He noted that the bill only applies to eating establishments that serve the public; it won't apply to schools, correctional facilities, or employer-provided eating establishments.

REPRESENTATIVE GUTTENBERG referred to page 4, lines 14-16, and noted that the definition of wild fish includes fish harvested from a lake but not fish that has been raised in captivity under control for their entire life. He asked whether a fish raised in a lake could be considered "captive."

SENATOR ELTON said it could but only in the same sense that a fish harvested from the ocean could be considered a "captive" of its ocean environment.

REPRESENTATIVE WILSON suggested that one could think of the language as meaning that a fish raised in "man-made" captivity could not be considered a wild fish.

CHAIR SEATON asked Senator Elton to comment on the [Department of Conservation's] fiscal note.

SENATOR ELTON said he found that fiscal note to be somewhat strange given that there is already a labeling requirement at the grocery-store level, and so agency staffing levels shouldn't be impacted, particularly since most enforcement occurs at the consumer level - that is, consumers questioning where a product comes from. He noted, however, that because of the funding levels provided by the legislature, the Department of Environmental Control (DEC) has had to operate under very constrained budgets. Notwithstanding that point, though, he said that he expects the DEC to comply with the labeling requirement proposed by SB 282 in the same way it already complies with the labeling requirement at the grocery-store level. He acknowledged that the department disagrees with him on this point.

Number 0630

KRISTIN RYAN, Director, Division of Environmental Health, Department of Environmental Conservation (DEC), explained that the DEC's fiscal note is based on the fact that an additional environmental health technician will have to be hired in order to ensure the compliance of the estimated 665 restaurants impacted by the proposed change. These restaurants will need a significant amount of technical assistance. Additionally, the DEC has estimated that approximately 70 establishments will not comply and thereby engender enforcement action by the DEC.

MS. RYAN pointed out that Senator Elton's assumption that instituting the proposed change will be similar to what was done with regard to instituting labeling at the grocery-store level is inaccurate because that change was not mandatory; the existing statute uses the word, "may" - not "shall" - and thus the DEC does not enforce labeling at the grocery-store level nor did it promulgate regulations. The change proposed by SB 282, however, requires the DEC to enforce the labeling requirement and to promulgate regulations.

MS. RYAN, in response to questions, predicted that the restaurants impacted by SB 282 will require assistance in identifying the source of their fish, in relaying that information, and in complying, generally, with the new labeling requirement. She explained that if SB 282 passes, the DEC will inform restaurants of the new requirements, and then, when it is time to draft regulations, will provide public notice to interested parties. She pointed out that interested parties will get an opportunity to comment on proposed regulation changes during the regulation drafting process.

MS. RYAN in response to further questions, said that the "shall" on page 3, line 21, puts the onus on the DEC to ensure that restaurants comply with the change proposed by SB 282. She opined that one of the benefits of the existing legislation regarding labeling at the grocery-store level is that it "established what the definition would be ... [and] gave people the opportunity to use it as a marketing tool."

REPRESENTATIVE WILSON characterized SB 282 as a good bill, and said she wished she'd sponsored it. She opined that the word "shall" should stay in the bill.

CHAIR SEATON agreed.

Number 1074

CHERYL SUTTON, Staff to the Joint Legislative Salmon Industry Task Force, Alaska State Legislature, agreed, adding, "This is a great bill." She relayed, however, that the Joint Legislative Salmon Industry Task Force does not view the DEC's fiscal note as warranted, and went on to say:

I go to restaurants, I always ask ... where this fish comes from. I think it's incumbent on any establishment to know where their seafood comes from - who supplies it, and what species it is, whether it's wild, whether it's farmed - and it's part of their marketing for their own establishment.

REPRESENTATIVE WILSON asked Ms. Ryan whether the DEC has considered simply adding the proposed requirement to the list of all the things it checks on during restaurant inspections.

MS. RYAN said that that has been considered. The problem, however, is that due to significant budgetary cuts, the DEC no longer has the staff to take on additional work without hindering its ability to do what it is actually responsible for, which is ensuring that food is safe to eat. The proposed change is not one that involves a safety issue, and so the DEC doesn't feel it's appropriate to take time out of its existing staff's schedule to ensure compliance with the proposed labeling requirement. That is why the DEC's fiscal note includes additional staff and resources. She concluded: "If the fiscal note is eliminated, I think I would be forced to use enforcement discretion and not implement this legislation."

REPRESENTATIVE GUTTENBERG asked whether the DEC has considered simply contracting out the enforcement aspect of the bill, for example, to the United Fishermen's Association (UFA); then all the DEC would need to do is establish a hotline and follow up with inspections if complaints are received.

MS. RYAN said that regardless of whom the DEC contracts out the enforcement work to, it will still require additional work and funding from the DEC. In response to a question, she said that if she chose to not implement the proposed change, even if the DEC received a call that someone was not complying, she would not enforce the change or follow up on the call. She pointed out that she has the authority to use discretion regarding enforcement, and so if she feels that there are more important issues to investigate and enforce, she will have her staff address those things instead.

Number 1305

CHAIR SEATON said he appreciates Ms. Ryan's points regarding budgetary constraints and enforcement discretion, but suggested that the bill puts the onus on restaurants to comply and will encourage consumers to address labeling issues directly with restaurant owners. He went on to say:

I think that we would fully like you to use your discretion and not incur additional expenses, so I think that we will look at that and your testimony there that you would use your discretion and not go into an enforcement mode on this if it was adopted. And so we'll take that as being the opportunity to consider a zero fiscal note based on your testimony of your discretion not to enforce this. So thank you very much.

MS. RYAN replied:

Unfortunately, even if it goes through with a zero fiscal note, the public will feel that we have a responsibility to enforce that legislation, and it's very difficult to turn people away when they contact us saying "You have the ability to do this, you have the responsibility to do this, why don't you do it?" And to say, "We just don't have the funding to do it," is a difficult situation to put in.

CHAIR SEATON said he appreciates that point, but suggested that she refer such people to the House Special Committee on Fisheries as having told her to allocate her resources where she deems most appropriate.

REPRESENTATIVE GARA suggested that all parties are "right" on the fiscal note issue.

REPRESENTATIVE WILSON, mentioning that she has heard many things about the safety of eating farmed fish, opined that requiring labeling whether fish is wild or farmed is a public safety issue.

CHAIR SEATON, after ascertaining that no one else wished to testify, closed public testimony on SB 282.

Number 1620

REPRESENTATIVE SAMUELS made a motion to "zero" the [DEC's] fiscal note. There being no objection, it was so ordered.

SENATOR ELTON relayed:

I do want to assure the committee and especially [Ms. Ryan], whom I have been able to work with on this, that ... I would hope she would keep track. ... My best guess is that if restaurant owners are notified that this is the law and it must occur, and yet fail to follow the law, ... I would hope that [Ms. Ryan] and [the] DEC would let me know, because I'm committed, in the next budget cycle, if in fact we find it necessary to do enforcement, ... to help them get the money to do it.

SENATOR ELTON added that he would come to the House Special Committee on Fisheries first to ask for help.

CHAIR SEATON remarked:

Well, I think the whole committee here is nodding their heads in agreement that that's what we think. And we think that whenever they're going for inspections it ought to be a flyer or something that they leave with ... each restaurant so that each restaurant knows ... what they're required to do, reminded what it is to do, without incurring a fiscal note on that.

REPRESENTATIVE GUTTENBERG suggested that the DEC "build the calculation of enforcement into ... the restaurant inspection report card."

Number 1744

REPRESENTATIVE WILSON moved to report CSSB 282(RES) out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSSB 282(RES) and the accompanying zero fiscal notes were reported from the House Special Committee on Fisheries.

ADJOURNMENT

Number 1756

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 9:31 a.m.