

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 4, 2004

3:34 p.m.

TAPE(S) 04-6

MEMBERS PRESENT

Senator Scott Ogan, Chair
Senator Thomas Wagoner, Vice Chair
Senator Fred Dyson
Senator Ralph Seekins
Senator Ben Stevens
Senator Kim Elton

MEMBERS ABSENT

Senator Georgianna Lincoln

COMMITTEE CALENDAR

SENATE BILL NO. 265

"An Act relating to the schedule of proposed oil and gas lease sales and to a related report to the legislature; and providing for an effective date."

MOVED CSSB 265(RES) OUT OF COMMITTEE

SENATE BILL NO. 266

"An Act approving an interim classification by the commissioner of natural resources closing certain land within the area of the proposed Bristol Bay (Alaska Peninsula) competitive oil and gas areawide lease sale to oil and gas exploration licensing and shallow natural gas leasing; and providing for an effective date."

MOVED SB 266 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: SB 265

SHORT TITLE: OIL&GAS LEASE SALE SCHEDULE/NOTIFICATION

SENATOR(S): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

01/14/04 (S) READ THE FIRST TIME - REFERRALS

01/14/04 (S) RES

BILL: SB 266

SHORT TITLE: BRISTOL BAY OIL & GAS LEASE SALE CLOSURE
SENATOR(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

01/14/04 (S) READ THE FIRST TIME - REFERRALS
01/14/04 (S) CRA, RES
02/02/04 (S) CRA AT 1:30 PM FAHRENKAMP 203
02/02/04 (S) Moved SB 266 Out of Committee
02/02/04 (S) MINUTES (CRA)

WITNESS REGISTER

Mr. Mark Myers, Director
Division of Oil and Gas
Department of Natural Resources
550 W. 7th Ave. Ste 800
Anchorage AK 99501-3560

POSITION STATEMENT: Presented SB 265 and SB 266 to the committee and supported amendment to include deadline for legislative notification

Mr. Tom Hawkins
Senior Vice President
Bristol Bay Native Corporation
800 Cordova Street Suite 200
Anchorage, AK

POSITION STATEMENT: Supports SB 265 and SB 266

Mr. Terry Hoefflerle
Chief Executive Officer
Bristol Bay Native Association
PO Box 310
Dillingham, AK 99576

POSITION STATEMENT: Supports SB 265 and SB 266

Mr. Bryce Edgmon
Chief Operating Officer
Bristol Bay Economic Development Corporation
104 Main Street, Suite 305
P.O. Box 1464
Dillingham, Alaska 99576

POSITION STATEMENT: Supports SB 265 and SB 266

Mr. Nels Anderson Jr.
Dillingham, AK

POSITION STATEMENT: Supports SB 265 and SB 266

Mr. Hjalmar Olson

Bristol Bay Native Corporation
800 Cordova Street Suite 200
Anchorage, AK

POSITION STATEMENT: Supports SB 265 and SB 266

Ms. Marie Crosley
Division of Oil and Gas
Department of Natural Resources
550 W. 7th Ave. Ste 800
Anchorage AK 99501-3560

POSITION STATEMENT: Answered questions about SB 265 and SB 266 and supported amendment to include deadline for legislative notification

ACTION NARRATIVE

TAPE 04-6, SIDE A

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:34 p.m. All members were present except Senator Lincoln. The first order of business before the committee was SB 266. Chair Ogan asked Mr. Myers to testify.

^#SB265

^#SB266

SB 266-BRISTOL BAY OIL & GAS LEASE SALE CLOSURE

CHAIR OGAN asked Mr. Myers to explain why the state would want to close lease sales.

MR. MARK MYERS, Director of the Division of Oil and Gas, Department of Natural Resources (DNR), told members the reason to close the Bristol Bay area is that DNR currently has multiple leasing programs. In the areawide-leasing program, an upfront best interest finding is done, and the lease is competitively bid and provides grass-roots surface to grass-roots oil and gas mineral rights. A second program, the exploration licensing program, is competitive in nature and allows a single licensee to bid on a work commitment on up to 500,000 acres. Once the work commitment is completed, the licensee can lease all or part of the acreage. A third program is shallow gas leasing: an over-the-counter, non-competitive program with limited depth rights. The first filing cost is \$5,000; it is designed for areas typically without competitive sales or exploration licensing.

MR. MYERS said the intent of SB 266 is to do an oil and gas mineral closing order for the area of the proposed Bristol Bay

competitive sale. He cautioned that if that area is not closed to mineral entry, the area would either be open for exploration licensing or shallow gas leases. If shallow gas leases were filed, the mineral rights would be split into parts. DNR does not believe that would bring as much value to the lessee and creates correlative rights problems. He pointed out that any gas discovered to a depth of 3,000 feet, if leased with shallow gas leasing, would go to the shallow gas lessee but gas below that depth might go to a different lessee. He said that is not an efficient way to lease and DNR believes it would get more economic value out of the overall competitive sale. To prepare for the sale and provide maximum value to lessees should the proposed sale go forward, DNR would like to close this area now to shallow gas leasing and exploration license proposals.

MR. MYERS said DNR is doing the opposite in the area to the north and is not recommending it for mineral closure. DNR has received an exploration-licensing proposal from Bristol Shores for that area. In conclusion, he stated in the area with competitive sales, DNR doesn't believe segregating the mineral estate is in the state's best interest. He noted the commissioner established a temporary closing order but to withstand, it has to be verified and approved by the legislature.

CHAIR OGAN asked if the conflict over correlative rights would occur if Company A had a lease for the area below 3,000 feet but its structure reached into the 3,000-foot level where shallow gas was found. Company A might produce the gas owned by a different lessee or DNR might have to prorate the gas.

MR. MYERS said that is correct. He noted that part of a field for a shallow gas lease must be above a depth of 3,000 feet. Some of the geologic structures in that area may continue down to deeper depths, in which case there would be arguments about whether the deeper lessee owned it or the shallow gas lessee owned it. In general, DNR tends to not put areas with shallow gas leases in license areas because of the correlative rights fight that would ensue. Also, in early negotiations, if a top file shallow gas lease exists, the state would ultimately get less in the competitive bid process because a shallow gas lease devalues the competitive lease and sets up the correlative rights issue. He noted in addition, a company could arguably try to block a sale by artificially buying shallow gas leases with no intention of developing them, thereby significantly decreasing the value of the [lower] lease.

CHAIR OGAN asked if anyone has applied for a shallow gas lease in the [Bristol Bay] area.

MR. MYERS said not to the best of his knowledge.

CHAIR OGAN noted that when the original legislation passed, there was talk of shallow gas that had been identified from previous onshore drilling in the Bristol Bay area. He asked if that area has wells that were drilled in the 1950s.

MR. MYERS replied that about 26 wells were drilled in the entire region from 1903 to 1985. Some were drilled outside of the proposed lease area but about 12 wells were drilled within the area proposed for licensing. Those wells penetrated into the prospective section; many of them encountered gas but at the time, gas wasn't economic. Some of the wells have fairly good shows of oil but they were never commercially tested so DNR does not know the quantity. DNR knows that both oil and gas are present in the basin, particularly in the southern part of the basin where it is deeper. To the north, the oil thins and DNR expects it is dominated by gas potential, similar to the gas in Cook Inlet. Much of that gas is shallow.

MR. MYERS told members that DNR and the U.S. Department of Energy did some test work for coal bed methane in the Chignik Lagoon area; they believe coal bed methane potential is there. He added that an areawide lessee is entitled to produce coal bed methane as well as deep gas so a lessee may look at both. He believes a lessee would look at conventional gas first because it is more economical.

CHAIR OGAN said it looks like some of the offshore area is included in the exploration license area in the northern part of Bristol Bay. He asked if that was done intentionally and whether there is a current moratorium on offshore drilling in Bristol Bay.

MR. MYERS said the current policy is not to include offshore areas on licenses in [box 5-4]; that policy could change. The current standard that DNR is proposing for the Bristol Bay lease sale would be onshore siting of facilities only. Therefore, if license rights or lease rights are later offered in the offshore to the 3-mile limit state waters, they would have to access those potential resources by drilling directionally from onshore. He believes it is DNR's intention to restrict facility placement to onshore only.

SENATOR SEEKINS referred to a map of the area to be reserved provided by Mr. Myers, and asked if the red line represents the 3-mile limit.

MR. MYERS said that is correct.

SENATOR SEEKINS asked, regarding the state's authority, if the bays are classified as historic bays. He questioned if the bays are agreed to or claimed as, regarding state jurisdiction.

MR. MYERS said one of the things DNR has to clarify is the 3-mile limit. It has never been surveyed. He advised that legislators will probably see a capital funding request so that DNR can accelerate that process. DNR believes that historical bays are pretty well established by precedence but that must be clarified as well. Part of the process of putting the lease sale together is to help determine, in conjunction with the federal government, where those actual lines are. Right now they are only lines on a map.

CHAIR OGAN asked Mr. Myers to provide committee members with the background of the plans for the Bristol Bay area and when he expects the lease sale to occur and how he views the prospects.

MR. MYERS referred to a chart showing the proposed timelines of the process and noted the targeting time would be the fall of 2004 for the license area and the fall of 2005 for the lease sale. He pointed out the fall of 2005 is dependent upon DNR's ability to notify the legislature at any time [SB 265], rather than during the legislative session. He said if that is not possible, the date would be 2007 because DNR would have to notify the legislature next year and provide two years notice of the upcoming sale. He said the process is long and detailed, and the primary document is a best interest finding document. In the case of the lease sale, DNR would request information from agencies and public comment, which DNR has done. DNR has met with all three borough governments in the Bristol Bay area, as well as the Bristol Bay Native Association, and other interested folks, and it has started the request for public comment.

That will eventually lead to a preliminary best interest finding, similar to an EIS document, that will list all concerns, potential stipulation and litigation measures, and the balancing test of the economics and environmental effects. That preliminary findings report will be widely distributed throughout the same area for comment. MR. MYERS said that DNR has memoranda of understandings with the Bristol Bay Native

Corporation and the Aleut Corporation to customize and maximize benefits to the local communities and Native corporations to the extent possible.

MR. MYERS pointed to the towns on the map where public informational meetings have occurred. He indicated, at Governor Murkowski's direction, the exploration license areas are on a faster track with the goal of finding a local source of energy, followed by the competitive sale. He repeated that the exploration license areas are somewhat driven by the applicant.

CHAIR OGAN asked if the license area in the north is primarily for shallow gas.

MR. MYERS said the basin thickness is less than 5,000 feet in the license area. By definition, that area is geologically shallow, so the best potential there is for gas.

CHAIR OGAN asked, "So would that be under the shallow gas rules then - so it would be a non-conventional type - air drilled or do you have any idea yet?"

MR. MYERS said DNR doesn't know yet but there would be the opportunity to drill conventional gas plays in the sense that they are shallow. He said a lot depends on the type of production technique.

SENATOR SEEKINS asked whether data, regarding exploration licensing, will be made public if it becomes available.

MR. MYERS said drilling well data will be confidential for 25 months from the date of completion, according to Alaska statute and AOGCC standards. Seismic data will not become public. The data acquired falls under the same rules as the well data on a conventional lease. He added if economic incentive credits are used, there is a requirement to release the data early to DNR. In 10 years, the seismic data becomes public.

SENATOR SEEKINS asked if an entity obtains data, that entity is also allowed to get involved in the competitive bid process for harvest of what is there.

MR. MYERS said that is the full intent of the program. In a non-competitive bid, an entity negotiates with DNR, as a term of the license, what the terms would be to convert to a lease.

SENATOR SEEKINS commented, "So it kind of gives them a leg up. You say if you guys do this, you're first in line to pick the fruit from what you find."

MR. MYERS agreed and said the entity is exclusively allowed to do that under the license program.

SENATOR BEN STEVENS asked if the SB 185 credit (the seismic incentive credit) will apply to this region.

MR. MYERS said it does; the requirements are that it has to be 3 miles from an existing well drilled before 1976. It will allow the 40 percent credit up to 2007.

SENATOR BEN STEVENS questioned whether that legislation only applied to the North Slope.

MR. MYERS said it was not restricted to the North Slope. The credits were statewide and applied to federal and private lands as well.

SENATOR ELTON asked how DNR deals with the critical habitat areas in a lease sale.

MR. MYERS said a lot more discussion takes place with the Alaska Department of Fish and Game (ADF&G) on the critical habitat areas. A process of elevation exists should ADF&G not like the standards. However, a lot of information gathering goes on and there is recognition of the importance of those areas, so stipulation and mitigation measures are adapted as appropriate to those areas. Local community involvement becomes critical. He hopes that by working with the local communities and Native organizations, DNR can work through those issues without difficulty.

SENATOR ELTON thanked the department for providing that information

4:00 p.m.

CHAIR OGAN asked if the Hammond Administration placed a moratorium on leasing in that area because it felt oil development was not compatible with fishing, the economic mainstay of the region. He asked if the decline of the Bristol Bay fishing industry has motivated the change in attitude about oil and gas development.

MR. MYERS said many of the letters of support recognize the economic situation and the need for a long-term economic fix and the value of a local tax base from oil and gas development. Even the fishing industry recognizes that the value-added part of the industry is dependent on a local energy source. He noted this process started locally.

CHAIR OGAN said in his opinion, that area is one of the great wonders of the world, regarding the wildlife and ecological systems. He said the people who live in the area are very culturally and spiritually tied to the land so he finds it interesting that there has been a shift in attitude. He noted that deep well oil and gas is riskier [from an environmental standpoint] than shallow gas.

MR. MYERS said he believes one reason the potential for an oil and gas sale is more appealing to residents now is because of changes in technology. Since the earlier wells were drilled in that area, environmental safety records have improved dramatically. The footprint of the development facilities is much smaller, perhaps 20 percent of the size they were in the 1980s. The combination of superior technology, good stipulation and mitigation measures, good spill response, the need for a locally trained workforce, and directional drilling present a good case to minimize environmental effects. He said one of the key issues is the location of a port or tanker facility. He noted the best interest finding does not assume there will be a sale - it is a balancing test, and state will have to be convinced that the benefits outweigh the environmental risks.

CHAIR OGAN asked if Bristol Bay is the largest contiguous area available for onshore oil and gas leasing.

MR. MYERS said the basin is 500 miles long and he is not aware of any other place in onshore North America, other than ANWR, like that. He cautioned that although the area has good oil and gas shoals, reservoir rocks and traps, commercial hydrocarbons have not yet been demonstrated. The division would love to see some modern data to help quantify the resource in the area.

CHAIR OGAN announced that Representative Moses had joined the committee. He then asked if the oil that will be drilled from onshore is offshore.

MR. MYERS referred to the map of the geologic cross-section and described the area.

CHAIR OGAN asked about the potential for hydrates.

MR. MYERS said he is not aware of any onshore.

CHAIR OGAN took public testimony.

MR. TOM HAWKINS, Senior Vice President of the Bristol Bay Native Corporation (BBNC), noted that BBNC has about 7,000 shareholders, of which more than half live in the region. The BBNC board of directors adopted a resolution about a year ago that encourages the Governor and DNR to consider oil and gas leasing in Bristol Bay - both were very responsive. They held a lot of hearings and have been easy to work with. The BBNC wants the record to reflect that the local support for these activities is good. BBNC supports both SB 265 and SB 266.

CHAIR OGAN asked Mr. Hawkins if he believes the public notice has been adequate and whether BBNC's position is representative of the general public.

MR. HAWKINS said he believes the BBNC board of directors is more bullish than the general population, but the board has traveled around the region and talked to the boroughs and non-profit organizations and village corporations, and found an amazing level of support for oil and gas exploration. He said the support thinned a bit as the Outer Continental Shelf (OCS) was discussed. A sale was held out there in 1992 and later canceled. People are still wary of activity in the bay but DNR has been very open about explaining access to offshore acreage from onshore and the various groups that the BBNA has conversed with have routinely supported that. BBNC believes DNR has done an excellent job. The region is huge with multiple boroughs.

CHAIR OGAN cautioned that he strongly believed that the people of his area supported an activity but people from outside, with outside agendas, had other opinions. He said he can't emphasize enough how important it is that people understand the facts.

MR. HAWKINS acknowledged that the region is habitat sensitive and that residents are shrewd about protecting those values. He said that fish, wildlife, and waterfowl play a big part in the economy of the region - both the traditional economy and the true economy. He believes the people will hold DNR to high standards to make sure that development is done in the right way.

MR. TERRY HOEFFERLE, Chief Executive Officer of the Bristol Bay Native Association, a tribal organization, told members that the BBNA has a 38-member board that supports both SB 265 and SB 266. He noted the BBNA unanimously opposed Lease Sale 92 back in the days when the price of a barrel of oil was \$13 and the price of a sockeye salmon was \$12. The current price is \$33 per barrel for oil and \$2 for a sockeye. He said people's attitudes have changed with the times. He indicated the communities of Bristol Bay also support both bills.

MR. BRYCE EDGMON, Chief Operating Officer for the Bristol Bay Economic Development Corporation, stated support for both SB 265 and SB 266.

MR. NELS ANDERSON JR., representing himself, said that he has been a subsistence hunter and fisherman who opposed any oil and gas activity in the region for many years. However, Bristol Bay fishermen cannot sell their fish for a decent price that enables them to make a living. As a result, the economy in the area is going downhill and many people are moving out of the area, therefore the residents have no choice except to diversify the economy. He said he is very, very proud of the Bristol Bay Native Corporation for taking the courageous step of shifting away from considering commercial fishing as the sole source of economic activity. He also commends the BBNC for working very closely with the Murkowski Administration. The Governor has made it clear that he would not have taken the initiative on oil and gas development in the area without the full support of the region. He said that diversifying the economy is not possible without low cost energy. He said he is more confident that the oil and gas industry is able to do exploration work without doing any serious harm to the environment. The Native people in the area have been very successful in protecting the resources. He suspects that vigilance will continue throughout any oil and gas development on the Alaska Peninsula. He stated support for SB 265 and SB 266, as they will help expedite and move the calendar up a bit so that licensing can occur earlier than would be the case under current law.

MR. ANDERSON said his only concern is that there is no official oversight capability on what is happening in the region. He believes the Murkowski Administration and regional leaders need to think about that. He believes the only way to ensure that are fish and game resources are adequately is to form a borough. He next stated:

But that's something that we'd have to work out here on a local level. And then another thing that we'd have to do, I believe, to help not only the ... oil and gas industry, but the mining industry with that huge pebble find up in the Iliamna area, is that they really can't build roads and they really can't develop the energy without the full cooperation of all the villages in the Bristol Bay region so I have asked the administration to take a very serious look at a Bristol Bay regional development authority, not unlike the [Knik Arm] Bridge authority that will help expedite the construction of that particular facility. So the two things the region needs is that we may have to have a borough to provide that oversight to protect our fish and game resources, and two, a Bristol Bay regional development authority under the State of Alaska to help the construction of the infrastructure that will provide the access and the power needed to develop our oil and gas industry and our mineral industry out here.

4:25 p.m.

TAPE 04-6, SIDE B

CHAIR OGAN suggested that if the development is successful and a borough is formed, the area would have a tax base to pay for it.

MR. HJALMAR OLSON, Bristol Bay Native Corporation, told members he has fished in the region for 50 years and has been a board member of the BBNC for 30 years, and chair and president for 25 years. He said after seeing the economy change in the area, the BBNC board decided to rethink oil and gas development. He applauded Governor Murkowski for trying to develop natural resources in the rural areas. He said the BBNC board has held about 12 meetings around the region. He stated support for SB 265 and SB 266.

SENATOR DYSON maintained that there are some very significant cultural resources in the area; archeology teams have investigated a number of villages over the years. He asked what protections will be available to make sure they are not disturbed or that a sufficient analysis is done if necessary.

MS. MARIE CROSLEY, Division of Oil and Gas, DNR, told members that federal and state laws are quite protective of the archeological resources. In addition, DNR has three mitigation

measures that are attached to the lease that would also protect them. Prior to a permit being issued, the lessee would investigate known sites for the purpose of steering clear of them.

CHAIR OGAN said from his experience in the private sector, he learned that the mitigation measures require that an archeologist survey the sites where potential work will be done. If any archeological sites are discovered, mitigation measures are used to leave them undisturbed or to preserve the findings appropriately.

SENATOR ELTON asked which bill the committee was considering.

CHAIR OGAN clarified that SB 266 was before the committee. He said he would assume that those people who have testified on both bills do not want to testify again unless he hears differently. He then announced that he would defer to the will of the committee regarding whether to pass the bill from committee today.

SENATOR ELTON said he views the bills as a pair and suggested passing them both with one motion after they have been discussed.

SENATOR WAGONER informed members that the only opposition expressed in the Senate Community and Regional Affairs Committee was the fact that the Murkowski Administration did not supply the letters of support from the Native corporations to the committee. He said those letters are available now so he does not believe the opposition would remain.

CHAIR OGAN announced that the committee would hold SB 266 and take up SB 265.

SB 265-OIL&GAS LEASE SALE SCHEDULE/NOTIFICATION

MR. MARK MYERS, Division of Oil and Gas, Department of Natural Resources (DNR), explained to members that SB 265 is straightforward. The areawide leasing statutes require DNR to notify the legislature at the first part of a session of changes to the areawide lease sale process. SB 265 would change that requirement so that DNR would be required to notify the legislature of those changes, but not during the first part of the legislative session. The original requirement was established pre-areawide leasing, when the competitive sale process was the only mechanism of leasing and competitive sales

were proposed all over the state so the lease sale schedule was constantly changing. Under that scenario, the legislature was given a five-year schedule of the sales and DNR would notify the legislature during the first part of the session of any changes. Under areawide leasing, DNR has traditionally offered the same areas for lease every year so there is a more predictable pattern. Other than North Slope foothills, this is the first time another sale has been added to the areawide process. However, because the local folks are driving the sale, the earliest this sale could be offered is 2007 if DNR is required to provide the legislature with a two-year notice early next session. SB 265 will allow DNR to notify the legislature anytime during the year. He noted the legislature does not vote on the lease sale, it is just notified. Passage of SB 265 will allow the sale to occur in 2005 rather than 2007.

CHAIR OGAN noted that SB 265 is necessary to change the process for one sale only and asked whether Mr. Myers was saying that it would not affect other sales around the state because those are identified and predictable.

MR. MYERS said that is correct. He added that DNR has improved its best interest finding process, which typically takes 18 months, so those sales "do not sneak up on anyone." He repeated that the statutory language does not require the legislature to vote on any of the lease sales so SB 265 will only expand the timeframe for notification. He said he is not sure what the intent behind requiring notification during the early part of the legislative session was in the original legislation. He said realistically, DNR will not be going forward with many examples of additional areawide sales.

4:35 p.m.

CHAIR OGAN suggested that the original legislation required notification between the 1st and 15th day of the session because legislators are so busy at the end of session, the notice may go unnoticed. He asked Mr. Myers if DNR feels it is important to remove that language because technically DNR could provide notification on the legislation when everyone is extremely busy.

SENATOR ELTON said he would go even further. Although he recognizes the current process can be cumbersome, he feels SB 265 is "pretty loopy-goopy." He reads it to say DNR is not even required to present its annual report on the last day of the legislative session; it could present that report in August. His concern is that this fix is being done in such a way that the

legislature will be losing some of its prerogatives. He prefers the requirement that the legislature be notified at the beginning of the session because that report could become part of the "pipeline of information" available to committees to aid in decision-making.

CHAIR OGAN said SB 265 says DNR must notify the legislature but that could entail sending one report to a legislative aide. He asked what kind of modality that notification encompasses.

MR. MYERS said he believes the notification language in SB 265 is the same as the language in the original statute; the only change is to the timing. He said the intent is not to keep the legislature out of the loop; it is to provide the flexibility to hold a sale as quickly as DNR reasonably can. He repeated that DNR was encouraged by local input to get the [Bristol Bay] sale going as quickly and smoothly as possible, especially given the full and complete best interest findings process. He pointed out the original legislation requires notification to occur during the first part of each 2-year session, not each year.

SENATOR ELTON maintained if DNR is going to provide an annual report, the annual report could be due to the legislature by January 15 of each year.

CHAIR OGAN suggested working on the language to specify who in the legislature will receive the report, perhaps the chairs of specific committees or the chair of Legislative Council and majority and minority leaders during the interim.

SENATOR BEN STEVENS said that language does not cause him angst because he reads it to say the commissioner shall annually prepare a 5-year program of proposed lease sales to be offered for leasing during the calendar year of the notification. He said in his mind, it would be dated January 1 for that year. It would be in the best interest of the commissioner to give it to the legislature on January 1 because if it was distributed on December 15, it would only address the changes for the last 15 days of the year. He said if the commissioner is going to propose a change to the 5-year annual program and he is to give the report to the legislature annually, it only makes sense the commissioner would provide it at the beginning of the year.

He then referred to page 2, line 2, and read, "Notification to each legislator, by electronic message or other means, constitutes notification to the legislature under this subsection." He felt the words "or other means" are too

ambiguous and moved to insert the word "written" between "other" and "means" [Amendment 1] and asked for unanimous consent.

CHAIR OGAN announced that without objection, Amendment 1 was adopted.

SENATOR DYSON said his guess is the original notification requirement was included to address scenarios similar to that of the Local Boundary Commission or other entities, where the legislature must intervene to stop the commission from taking action on its decisions. He thought the committee should make sure that all legislators and the relevant committees get notification. If the legislature finds the administration has done an outrageous deed, it can either deal with it through Legislative Council or call a special session, although he does not anticipate that happening.

CHAIR OGAN clarified that the bill already specifies "notification to each legislator."

SENATOR ELTON said he sees nothing in the legislation that precludes an annual report from being issued in January of one year and August of another year. He expressed concern that it might be presented in August intentionally so that DNR does not have to answer any questions. He said this legislation removes the language that requires DNR to submit the report in a timely manner.

CHAIR OGAN asked how the Bristol Bay lease sale would be affected if the bill only changed the requirement for a biennial report to an annual report and retained the existing January deadline.

MR. MYERS said the lease sale must be on the schedule for two years after notification, so if DNR notified the legislature by January 15 of next year, the earliest the sale could occur would be in 2007.

CHAIR OGAN suggested modifying the bill to apply to this sale only since a good public process has been taking place and the legislature was already notified.

MR. MYERS said the driver of the bill is the Bristol Bay sale but it will also allow future flexibility.

SENATOR ELTON said he does not see that as a problem because subsection (b) has two elements. The first is when DNR reports,

but it also provides, beginning on line 13 on page 1, that the commissioner may at any time notify the legislature of revisions. He said since the bill has an immediate effective date, he does not see a problem that would affect the Bristol Bay sale because DNR could revise its program.

MR. MYERS deferred to Ms. Crosley for clarification.

MS. MARIE CROSLY, Division of Oil and Gas, Department of Natural Resources (DNR), agreed with Mr. Myers and said there are two elements to this. When DNR adds a sale to the schedule, it would notify the legislature immediately. The second part is notifying the legislature of availability of the five-year program each year instead of every other year.

SENATOR STEVENS thanked Mr. Crosley for the clarification. He said the two-year reporting requirement will change to an annual requirement and that is to report on the activities of that calendar year and the proposed activities for the next four years. It also gives the commissioner latitude to say at any time, under that plan, it can be changed with notification. Therefore, the commissioner could notify the legislature that DNR wants to change the lease sale from 2007 to 2006. He repeated that provides the commissioner with some latitude and it also provides a better reporting mechanism because DNR will have to notify the legislature of any changes every year and every time it proposes a change.

SENATOR WAGONER moved SB 266 and its attached fiscal note with individual recommendations.

SENATOR DYSON noted, for the record, that he has run research vessels in the [Bristol Bay] lease area related to the basin in years past for oceanographers and marine biologists. No one owes him any money from that work. In addition, he fished Bristol Bay for 25 years but no longer has any financial interests in that area.

CHAIR OGAN asked Senator Dyson, given his experience in the area, whether he supports this legislation.

SENATOR DYSON said he does.

CHAIR OGAN noted that without objection, SB 266 moved from committee.

SENATOR WAGONER moved SB 265 as amended and its attached fiscal note from committee with individual recommendations.

SENATOR ELTON objected for the purpose of a potential amendment [Amendment 2]. He suggested amending page 1, lines 5 and 6, by adding "and prior to February 1 of each calendar year" so that those lines would read:

"The commissioner shall annually prepare, and prior to February 1 of each calendar year, notify the legislature of".

He explained that he believes there is value for the legislature to have the five-year plan before it during session. That would enable legislators to know what DNR projects as a reasonable schedule. He fears if a deadline is not provided for the five-year schedule, the legislature's opportunity to discuss it during session would be precluded.

CHAIR OGAN noted a motion was on the table to move the bill so the amendment is out of order at this time.

SENATOR WAGONER withdrew his motion to move SB 265 from committee.

SENATOR ELTON moved to adopt Amendment 2.

CHAIR OGAN announced a brief at-ease. Upon reconvening, he asked Mr. Myers to comment on Amendment 2.

MR. MYERS said as long as Amendment 2 does not delay the [Bristol Bay] lease sale, DNR would have no objection. He asked Ms. Crosley if she sees any potential delay to the Bristol Bay sale resulting from Amendment 2.

MS. CROSLEY said she is reasonably sure it does not. She said one of the problems was with Section 2, which required the sale to be on the schedule for two calendar years.

SENATOR ELTON reassured DNR and committee members that if Amendment 2 will cause problems for the Bristol Bay lease sale, he would encourage that it be revisited on the Senate floor.

MR. MYERS again stated that DNR is comfortable with Amendment 2.

SENATOR STEVENS repeated that the bill requires an annual report, whereas the existing law requires a biennial report. He

questioned the need to specify a time certain for the report each year. He indicated he would go with individual recommendations but will not support the amendment.

SENATOR ELTON said he does not believe Mr. Myers' intent is to keep information from the legislature, but if the annual report is delivered every October, the legislature will be reviewing four years of the plan when it convenes.

CHAIR OGAN called for the question.

The motion to adopt Amendment 2 carried with Senators Dyson, Wagoner, Elton and Chair Ogan in favor, and Senators Stevens and Seekins opposed.

SENATOR WAGONER moved CSSB 265(RES) and its attached fiscal notes from committee with individual recommendations.

CHAIR OGAN announced that without objection, the motion carried. He then adjourned the meeting at 5:00 p.m.

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