

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 23, 2005

8:37 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 70

"An Act relating to controlled substances regarding the crimes of manslaughter, endangering the welfare of a child, and misconduct involving a controlled substance; and providing for an effective date."

MOVED CSSB 70(JUD) OUT OF COMMITTEE

SENATE BILL NO. 129

"An Act relating to the wrongful recording of a notice of pendency of an action relating to title to or right to possession of real property."

MOVED CSSB 129(JUD) OUT OF COMMITTEE

SENATE BILL NO. 126

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

MOVED SB 126 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 70

SHORT TITLE: CRIMES INVOLVING CONTROLLED SUBSTANCES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/21/05 (S) READ THE FIRST TIME - REFERRALS

01/21/05 (S) HES, JUD
 02/23/05 (S) HES AT 1:30 PM BUTROVICH 205
 02/23/05 (S) Heard & Held
 02/23/05 (S) MINUTE (HES)
 02/25/05 (S) HES AT 1:30 PM BUTROVICH 205
 02/25/05 (S) Moved CSSB 70(HES) Out of Committee
 02/25/05 (S) MINUTE (HES)
 02/28/05 (S) HES RPT CS 1DP 2NR NEW TITLE
 02/28/05 (S) DP: DYSON
 02/28/05 (S) NR: GREEN, ELTON
 02/28/05 (S) FIN REFERRAL ADDED AFTER JUD
 03/22/05 (S) JUD AT 8:30 AM BUTROVICH 205
 03/22/05 (S) Heard & Held
 03/22/05 (S) MINUTE (JUD)

BILL: SB 126

SHORT TITLE: AQUATIC FARMING
 SPONSOR(S): SENATOR(S) STEDMAN

03/02/05 (S) READ THE FIRST TIME - REFERRALS
 03/02/05 (S) JUD, RES
 03/23/05 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: SB 129

SHORT TITLE: WRONGFUL FILING OF LIS PENDENS
 SPONSOR(S): SENATOR(S) HUGGINS

03/03/05 (S) READ THE FIRST TIME - REFERRALS
 03/03/05 (S) JUD
 03/23/05 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Mr. Dean Guaneli, Criminal Division
 Department of Law
 PO Box 110300
 Juneau, AK 99811-0300

POSITION STATEMENT: Testified in support of SB 70

Sergeant Timothy Birt, Detective
 Division of Alaska State Troopers
 Department of Public Safety
 3700 East Tudor Road
 Anchorage, Alaska 99507

POSITION STATEMENT: Testified in support of SB 70

Mr. Duncan Shackelfold, Coach

Chugiak High School
Eagle River, AK

POSITION STATEMENT: Testified in support of SB 70

Ms. Barbara Brink, Director
Alaska Public Defenders
Anchorage, AK

POSITION STATEMENT: Commented on SB 70

Ms. Debbie Grundmann, Legislative Aide
Senator Huggins' office
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 129

Ms. Ruth Hamilton-Hesse, Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Testified in support of SB 129

Mr. Tim Barry, Legislative Aide
Senator Stedman's office
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 126

Mr. David Bedford, Deputy Commissioner
Department of Fish & Game
PO Box 25526
Juneau, AK 99802-5226

POSITION STATEMENT: Commented on SB 126

Mr. Roger Painter
Alaska Shellfish Growers Association
No address provided

POSITION STATEMENT: Testified in support of SB 126

Mr. Lance Nelson, Assistant Attorney General
Division of Natural Resources
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Commented on SB 126

Ms. Julie Decker
Southeast Alaska Dive Fisheries Association

No address provided

POSITION STATEMENT: Testified in support of SB 126

Mr. Paul Fuhs, lobbyist

PAC Alaska, LLC

519 Pittinger

Ketchikan, AK 99901

POSITION STATEMENT: Testified in support of SB 126

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:37:54 AM](#). Present were Senators Hollis French, Charlie Huggins, and Chair Ralph Seekins.

SB 70-CRIMES INVOLVING CONTROLLED SUBSTANCES

[8:38:36 AM](#)

DEAN GUANELI, criminal division, Department of Law (DOL) proposed Amendment 1 to address the definition of the word "ingestion".

[8:39:42 AM](#)

A m e n d m e n t

Senate Judiciary Committee

March 23, 2005

Amendment to CSSB 70(HES)

Page 1, line 13:

Delete "ingestion of"

Insert in its place "ingesting"

Page 2, line 1: After the period following the word "state" add:

"As used in this paragraph, "ingesting" means voluntarily or involuntarily taking a substance into the body in any manner. "

[8:40:33 AM](#)

SENATOR GENE THERRIAULT joined the committee.

[8:41:54 AM](#)

SENATOR THERRIAULT moved to adopt Amendment 1. There being no objection, the motion carried.

CHAIR SEEKINS asked Mr. Guaneli to define affirmative defense.

MR. GUANELI explained the difference between affirmative defense and regular defense:

A regular defense is one that the state as prosecutor has to disprove beyond a reasonable doubt. An affirmative defense is one that the Legislature generally felt the information to establish that defense ordinarily is something that the defendant has. The state may not have information to establish that defense and it's unfair to put the state to the burden of proving or disproving beyond a reasonable doubt. An affirmative defense is one that the burden is on the defendant to come forward, not beyond reasonable doubt, but to establish that defense by a preponderance of the evidence.

[8:44:15 AM](#)

CHAIR SEEKINS asked Mr. Guaneli if an affirmative defense makes a person guilty until proven innocent.

MR. GUANELI responded the state always bears the burden of proving the essential elements of the offense beyond a reasonable doubt.

CHAIR SEEKINS commented that statutes are trending toward putting the burden of proof on someone else rather than the state.

MR. GUANELI agreed and said affirmative defense should not be routinely enacted in statutes. He added in any case involving drugs where someone dies; the burden of proof will be impossible for the state to meet.

[8:47:56 AM](#)

SENATOR HOLLIS FRENCH agreed with Mr. Guaneli and added the state should not have to prove beyond a reasonable doubt in the case of a drug manufacturer causing death to a person.

CHAIR SEEKINS interjected the discussion was important.

[8:49:26 AM](#)

SENATOR THERRIAULT moved to adopt Amendment 2 on behalf of the Department of Law.

A m e n d m e n t

Senate Judiciary Committee

March 23, 2005

Page 1 of 2

Amendment to CSSB 70(HES)

Page 2, line 10, through page 3, line 13:

Delete sections 3, 4 and 5 entirely, and replace with

***Sec. 3.** AS 12.55.125(c), as amended by section CCS SB 56, is amended to read:

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five to eight years;

(2) if the offense is a first felony conviction

(A) and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven to 11 years;

(B) and the conviction is for manufacturing related to methamphetamine under AS

11.171.020(a)(2)(A) or (B), seven to 11 years, if

(i) the manufacturing occurred in a building with reckless disregard that the building was used as a permanent or temporary home or place of lodging for one or more children under 18 or the building was a place frequented by children; or

(ii) in the course of manufacturing or in preparation for manufacturing the defendant obtained the assistance of one or more children under 18 or one or more children were present;

- (3) if the offense is a second felony conviction, 10 to 14 years;
- (4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (1) of this section, 15 to 20 years.

***Sec. 4.** AS 12.55.125(d), as amended by section CCS SB 56, is amended to read:

(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, one to three years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085 if, as a condition of probation under AS 12.55.086, the defendant is required to serve an active term of imprisonment within the range specified in this paragraph, unless the court finds that a factor in mitigation under AS 12.55.155 applies;

(2) if the offense is a first felony conviction,
(A) the defendant violated AS 11.41.130, and the victim was a child under 16 years of age, two to four years;

(B) two to four years if the conviction is for an attempt, solicitation or conspiracy to manufacture related to methamphetamine under AS 11.31 and AS 11.171.020(a)(2)(A) or (B), and

(i) the attempted manufacturing occurred, or the solicited or conspired offense was to have occurred, in a building with reckless disregard that the building was used as a permanent or temporary home or place of lodging for one or more children under 18 or the building was a place frequented by children; or

(ii) in the course of an attempt to manufacture the defendant obtained the assistance of one or more children under 18 or one or more children were present;

(3) if the offense is a second felony conviction, four to seven years;

(4) if the offense is a third felony conviction, six to ten years.

***Sec. 5.** AS 12.55.185 is amended to add a new definition, to read:

(18) "building," in addition to its usual meaning, includes any propelled vehicle or structure adopted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a part of the same building.

SENATOR FRENCH objected for the purpose of discussion.

MR. GUANELI explained the provisions in the current version of SB 70. Sections 3,4, and 5 were a result of Alaska State Troopers experiences with mobile methamphetamine laboratories (meth labs). The main concern is the close proximity of children to mobile meth labs. Convicting a person of two separate crimes for the same conduct introduces the concept of merger where courts will take two convictions and merge them for the purpose of sentencing.

SENATOR FRENCH clarified the separate crime is when a person manufactures in a building knowing that children are near.

[8:53:44 AM](#)

MR. GUANELI referred to a sentencing chart and offered an explanation of the adjusted sentences. There would be an additional penalty for manufacturing methamphetamines near children.

[8:56:45 AM](#)

MR. GUANELI advised the committee that manufacturers have been known to use children to assist them in the production of methamphetamines.

[8:58:09 AM](#)

SENATOR THERRIAULT asked Mr. Guaneli if SB 70 addresses the situation where the manufacturer's friend brings children into the house.

MR. GUANELI said the intent of SB 70 addresses an overnight situation. There was no thought as to children visiting.

[8:59:45 AM](#)

SENATOR THERRIAULT asked whether the committee could modify the language.

CHAIR SEEKINS agreed.

SENATOR FRENCH said children do not spend the night in daycare centers.

CHAIR SEEKINS suggested including the words "frequently present".

[9:00:58 AM](#)

MR GUANELI admitted he is not bothered by the notion of "frequently present" as language. He suggested it was ambiguous and if necessary, a jury could decide.

CHAIR SEEKINS asked how long it takes to cause harm to a child in the presence of the manufacturing of methamphetamines.

MR. GUANELI deferred the question to Sergeant Tim Birt.

[9:02:38 AM](#)

SERGEANT TIMOTHY BIRT, detective, Alaska State Troopers, advised there are no studies to indicate a specific time frame. Variables include the size of the operation, how the chemicals are stored, stages of operation, and location. Meth lab fumes are extremely toxic.

[9:05:02 AM](#)

SENATOR THERRIAULT commented there is an explosive nature as well.

SENATOR FRENCH suggested adding language regarding children frequenting the area.

SENATOR GRETCHEN GUESS asked if SB 70 included children present during manufacturing.

[9:07:38 AM](#)

MR. GUANELI suggested under Section 3, subparagraph (B) sub subparagraph (i) after 18, add the phrase "place frequented by children", and under Section 3, subparagraph (B) sub subparagraph (ii) after 18, add "or one or more children were present".

SENATOR FRENCH asked Mr. Guaneli if SB 70 covers using children to purchase ingredients.

[9:10:08 AM](#)

MR. GUANELI advised the intent of the language was broad enough to include that scenario.

[9:12:13 AM](#)

SENATOR THERRIAULT moved the conceptual amendment to Amendment 2. Hearing no objections, it was so ordered.

[9:13:14 AM](#)

MR. GUANELI informed the committee SB 70 contained a separate sentencing provision to address attempted manufacturing, solicitation to manufacturing and conspiracy to manufacture.

[9:14:27 AM](#)

SENATOR GUESS asked Mr. Guaneli whether there were any other places in the Alaska statutes where they discuss using children in the manufacturing or preparing of illicit drugs.

[9:15:41 AM](#)

MR. GUANELI responded this is the only place where children are reflected because it is the current problem.

[9:17:18 AM](#)

SENATOR GUESS asked how the DOL would handle a case where a person under 18 was forced to deliver illicit drugs.

SENATOR FRENCH offered it would be a defense of coercion or duress.

MR. GUANELI agreed with Senator French. When an act is committed under duress, the law takes that into account. However, there is a certain level of responsibility even children have to bear when they are involved in selling drugs.

SENATOR GUESS commented the legislation would protect children if they are being used to manufacture illegal drugs but not if they are being used to deliver the drugs.

[9:19:32 AM](#)

MR. GUANELI responded if a child is knowingly and willingly participating in the manufacturing of a controlled substance, it is a prosecutable offense. SB 70 provides a measure of protection for children but depending on their culpability, there could be consequences.

CHAIR SEEKINS asked Mr. Guaneli if he could conceive someone prosecuting an eight year old for involvement in illegal drugs.

MR. GUANELI answered it would be dealt with in the juvenile justice system. The law doesn't feel children that age have a culpable mental thought process.

[9:21:59 AM](#)

CHAIR SEEKINS asked Sergeant Birt if he has seen situations where little children have knowingly and willingly assisted in the manufacturing and selling of illicit drugs.

SGT. BIRT answered no.

CHAIR SEEKINS asked Sgt. Birt if he has seen the same situation with teenagers.

SGT. BIRT answered yes.

CHAIR SEEKINS remarked his constituents were concerned with the ease at which drug manufacturers meet bail.

[9:24:13 AM](#)

MR. GUANELI replied judges take into account a number of circumstances including previous offenses and flight risks when setting bail. The Legislature can set guidelines and help judges consider other requirements.

[9:26:57 AM](#)

SENATOR FRENCH asked Mr. Guaneli about a controlled substance schedule bill that the Legislature passed 5 years ago.

MR. GUANELI said the DOL would like to impose tougher sentencing when methamphetamines are involved.

CHAIR SEEKINS commented some states allow no bail for methamphetamine offenses. If it does not create a constitutional problem, he would support an amendment to SB 70 that would require an extremely high cash bail.

[9:28:19 AM](#)

SENATOR FRENCH offered a judge would balance the strength of the case. In a strong case the judge could set the bail high. In a weak case the suspect could walk.

[9:29:46 AM](#)

CHAIR SEEKINS asked Mr. Guaneli if he had any objection to the Legislature instituting a high cash bail for the second offense.

MR. GUANELI replied he sees merit in the suggestion.

CHAIR SEEKINS announced the chair would entertain a conceptual motion to add for a second arrest a minimum of \$250,000 cash bail.

SENATOR HUGGINS moved to adopt the second conceptual amendment to Amendment 2. There being no objection, the motion carried.

[9:32:01 AM](#)

MR. GUANELI commented some people could meet the high cash bail and he would like the court to be able to impose the other restrictions that accompany the offense.

CHAIR SEEKINS answered it was not the intent of the Legislature to impair the courts ability to impose other restrictions.

[9:33:27 AM](#)

MR. DUNCAN SHACKELFOLD, head football coach, Chugiak High School, testified in support of SB 70. He expressed concern about the easy access youths have to steroids.

[9:40:14 AM](#)

CHAIR SEEKINS asked Mr. Guaneli if the list of anabolic steroids on Page 4 is limiting.

MR. GUANELI replied the courts have always said a list includes but is not limited to. A list always helps due to pharmacologic language. Legally it is not necessary to add the additional language, "includes but is not limited to."

[9:42:10 AM](#)

SENATOR FRENCH proposed an amendment on Page 4; line 21 after the word "includes" insert "but is not limited to the following." Hearing no objections, Amendment 3 was adopted.

[9:42:59 AM](#)

MS. BARBARA BRINK, director, Alaska Public Defenders, commented on the first section of SB 70. She took issue with the phrase on Page 1; line 14:

"...the death is a result that does not require a culpable mental state."

She suggested SB 70 would seek to punish people who do not have mental culpability. She said:

The people did not intentionally, knowingly, recklessly, or negligently cause death. This is a huge difference from the vast majority of crimes that we punish. Usually a crime has to have three things: An act that is illegal, a result, and a mental state about that result. In this instance we're dramatically changing what we usually do and who we usually hold responsible. A person may have had reason to believe that any death would occur. It was clearly not intended or expected and may not have even been able to foresee such an outcome. Oftentimes they've merely shared a small amount of a substance that they themselves believed is used without any harm and just for a social purpose.

She said the Alaska Supreme Court has looked unfavorably on punishing people who don't have a criminal mind.

[9:45:17 AM](#)

MS. BRINK asserted to change a homicide offense to a strict liability offense may not pass constitutional muster under the Alaska Supreme Court. In the United States, tobacco kills approximately 450,000 people annually. Alcohol kills approximately 80,000 people and cocaine, heroin and aspirin each kill about 2,000 people a year. Holding somebody accountable for a death somewhere down the drug line does not prove to be a societal benefit. New Jersey has imposed strict liability for drug deaths based on the fact that 50 percent of all crimes were drug related. It is a lucrative, organized crime issue in that state. The Legislature attempted to use strict liability to attack the drug trade and hold kingpins responsible. However a study ten years after showed that most people who were arrested for strict liability deaths were minors with no priors, family member, or small time users.

[9:48:09 AM](#)

MS. BRINK said SB 70 will not address a huge problem in Alaska and it may not be constitutional.

[9:49:16 AM](#)

MS. BRINK added there is no proof that jail is effective in helping people overcome drug addictions. She said therapeutic courts are a valuable alternative to putting non-violent drug offenders into treatment.

[9:50:22 AM](#)

CHAIR SEEKINS closed public testimony.

SENATOR THERRIAULT moved CSSB 70(JUD) from committee with individual recommendations and accompanying fiscal notes.
CHAIR SEEKINS announced a short recess at [9:51:19 AM](#).
CHAIR SEEKINS reconvened the meeting at [10:00:02 AM](#).

SB 129-WRONGFUL FILING OF LIS PENDENS

[10:00:32 AM](#)

CHAIR SEEKINS announced SB 129 to be up for consideration.

MS. DEBORAH GRUNDMANN, staff to Senator Huggins, introduced SB 129. She explained SB 129 is an act relating to the wrongful recording of a notice of pendency of an action relating to title to or right to possession of real property. SB 129 seeks to discourage abusive filings of illegal lis pendens notices. The recorder's office has no way to prevent people from filing improper lis pendens.

[10:02:04 AM](#)

SENATOR GUESS asked Ms. Hamilton-Hesse why the state doesn't require proof before people can place a lien on a property.

MS. RUTH HAMILTON-HESSE, assistant attorney general, Department of Law (DOL) advised the DOL is attempting to amend an existing law that already provides criminal class A misdemeanor sanctions for abusive process of recorder office filings.

SENATOR THERRIAULT asked if it would be better to have more generic language.

MS. HAMILTON-HESSE answered the basis of SB 129 is that things are being filed against property while the owner is not aware.

[10:04:41 AM](#)

CHAIR SEEKINS brought attention to Page 2; lines 11-12 and asked if the consent should be in writing.

MS. HAMILTON-HESSE acknowledged it was a reasonable suggestion.

SENATOR HUGGINS moved to adopt Amendment 1. On Page 2, line 12, after the word "consent" insert "in writing." There being no objection, the motion carried.

SENATOR FRENCH asked Ms. Hamilton-Hesse to recite the proper usage of a lis pendens.

MS. HAMILTON-HESSE explained lis pendens is a notice filed with a recorder's office, which notifies the public there is a valid pending action against a piece of real property.

SENATOR FRENCH asked why the notice is not served on the owner of the property.

MS. HAMILTON-HESSE answered that is a recorder's issue and the DOL is not involved with their processes.

[10:06:54 AM](#)

SENATOR THERRIAULT moved CSSB 129(JUD) from committee with individual recommendations and attached fiscal notes. There being no objection, the motion carried.

[10:07:35 AM](#)

SB 126-AQUATIC FARMING

[10:08:23 AM](#)

CHAIR SEEKINS announced SB 126 to be up for consideration.

MR. TIM BARRY, staff to Senator Stedman, introduced SB 126. Senator Stedman sponsored SB 126 as a result of a coalition between the Alaska Department of Fish and Game (ADF&G), the Southeast Alaska Regional Dive Fisheries Association (SARDFA) and the Alaska Shellfish Growers Association (ASGA). SB 126 is a result of a compromise agreement between the groups who have been working together for years to resolve legal and management issues. SB 126 amends the Aquatic Farming Act (AS 16.40.100-199) to allow aquatic farms to continue to operate in compliance with a recent Supreme Court decision.

[10:10:10 AM](#)

Section 1 amends the Aquatic Farming Act to allow shellfish farmers to own, harvest and sell insignificant populations of wild shellfish stocks on their aquatic farm sites. ADF&G is conducting a commercial dive fishery on designated mariculture sites to remove commercially significant population of wild geoducks.

[10:11:24 AM](#)

SENATOR HUGGINS asked Mr. Barry if there are a significant number of geoducks in Alaska.

MR. BARRY answered there is a thriving commercial dive fishery in Southeast Alaska. The farms are on a specific spot on the bottom of the ocean. The farming act gives farmers the right to

grown and harvest shellfish on a specific spot of underwater land.

[10:13:38 AM](#)

CHAIR SEEKINS commented wild free roaming animals, including shellfish, belong to all the people of Alaska. Under established law, title normally transfers at the point of harvest. SB 126 transfers ownership once people are granted agricultural rights. He asked Mr. Barry if that was an accurate summary.

MR. BARRY agreed.

[10:14:56 AM](#)

MR. DAVID BEDFORD, deputy commissioner, ADF&G, also agreed with Chair Seekins' comments.

SENATOR THERRIAULT said SB 126 cleans up a past problem that has been pestering the state for seven years.

[10:16:21 AM](#)

CHAIR SEEKINS commented only the Legislature can transfer a title prior to harvest.

SENATOR THERRIAULT advised there have been audits and litigation. SB 126 will clear up any confusion of farming rights.

SENATOR FRENCH asked if the farms or plots are visibly marked for the general public.

[10:17:26 AM](#)

MR. ROGER PAINTER, vice president, Alaska Shellfish Growers Association (ASGA), answered Senator French's question. The sites are required to be marked with visible buoys. The buoys have the permit-holders name and permit identification.

SENATOR FRENCH inquired on the size of a typical farm.

MR. PAINTER responded approximately 3-4 acres.

SENATOR THERRIAULT asked Mr. Painter where the farms reside in relation to the shoreline.

MR. PAINTER disclosed they were generally located with some protection from the weather, which could mean along a shore or in a cove.

[10:18:39 AM](#)

SENATOR THERRIAULT asked if farms have onsite caretakers.

MR.PAINTER responded the farms are in the starting phase. They will not have caretakers on-site at all times.

SENATOR FRENCH asked whether the plots would cover a shore where the public might suddenly be restricted from clam digging.

MR.PAINTER intimated there are inter-tidal geoduck farms under development. Leases that farmers get from the state require public access that would allow the public to harvest other resources or to recreate so long as they are not disturbing the geoduck crop or the farm equipment.

[10:21:19 AM](#)

SENATOR FRENCH expressed concern about public notification of a farm on the beach. He asked Mr. Painter whether there is any opposition to SB 126.

MR.PAINTER claimed there was no negative testimony so far. ASGA, the United Fisherman of Alaska, and SARDFa support SB 126.

SENATOR THERRIAULT asked Mr. Painter who the two parties were in the lawsuit.

MR.PAINTER answered the Department of Fish and Game and four or five farmers.

[10:22:59 AM](#)

SENATOR HUGGINS inquired as to the region in which geoducks are found.

MR.PAINTER answered primarily Southeast Alaska.

[10:23:23 AM](#)

MR. LANCE NELSON, assistant attorney general, testified in support of SB 126. The division of natural resources section of the AGs office in Anchorage believes SB 126 establishes a framework for a fair permitting system. SB 126 is an attempt to address the issues raised in both the Superior Court and the Alaska Supreme Court decisions in the Alaska Trademark Shellfish case.

[10:25:39 AM](#)

CHAIR SEEKINS asked Mr. Nelson if he believes the Legislature is operating in the best of public interest if they were to pass SB 126.

MR. NELSON said it was a good approach to solving the issues.

SENATOR THERRIAULT asked what would happen in a case where a permit is issued to a location where it is later determined to be a significant population of wild stock.

MR. BEDFORD advised ADF&G has rescinded sections of permits before. The ADF&G has also denied permits due to significant populations of wild shellfish stocks. ADF&G has not yet adopted regulations that clearly define what a significant population is. Should SB 126 pass, ADF&G will put into place regulations that give clear definition so that the industry will know their limitations and so the department will have standards by which to judge applications.

SENATOR THERRIAULT asked Mr. Bedford if they are prepared to write the regulations.

MR. BEDFORD advised a group including representatives from both sides of the industry have been working on the regulations for some time. The approach is to place a maximum limit on the amount of pounds of wild stock geoducks on a farm site. The group will also take into account the density of geoduck population and the location of other geoduck commercial fisheries.

CHAIR SEEKINS asked Mr. Bedford if the intent is to get farmers to farm on non-productive land.

[10:29:28 AM](#)

MR. BEDFORD responded not exactly. The court clearly informed ADF&G to focus on farming areas that had some geoduck presence but not significant amounts.

[10:29:53 AM](#)

CHAIR SEEKINS commented the Legislature has yet to give ADF&G the authority to do that.

MR. BEDFORD mentioned the court said ADF&G is the expert agency that would be best suited to define significant populations. Presently ADF&G has no ability to transfer titles to farmers.

[10:30:21 AM](#)

SENATOR HUGGINS asked whether a recreational diver would have access to a commercial fishery area of geoducks.

MR. PAINTER responded commercial fishing areas are open to sport fishing.

SENATOR HUGGINS asked Mr. Painter whether commercial fishermen and recreational divers would come to a dispute over a fishing area.

MR. PAINTER answered he could not envision that situation. Most recreationally harvested geoducks are taken by commercial divers.

10:32:20 AM

SENATOR THERRIAULT pointed to Section 5 of SB 126 and asked Mr. Bedford why ADF&G would want to keep fishery records confidential.

MR. BEDFORD explained for reasons of private business practices. ADF&G will produce an annual report for the public. Private enterprises should have confidentiality for their business records.

SENATOR THERRIAULT asked Mr. Bedford how long it takes for a geoduck to reach harvestable size.

MR. BEDFORD answered 5-7 years. The industry has not been growing long enough to establish an exact number.

10:34:12 AM

SENATOR FRENCH pointed out a technicality in Section 6 on line 24. The word mean should be means.

CHAIR SEEKINS clarified ADF&G would protect individual aquatic farm sites records but not the accumulative area record.

MR. BEDFORD agreed.

CHAIR SEEKINS suggested the language in Section 5 is unclear.

MR. BEDFORD responded the drafters should be queried regarding Section 5. He believes the language is parallel to the language they have for confidentiality of other records.

MR. NELSON detailed Section 5; Paragraph (4) refers to wild stocks. It would not apply to accumulative harvest of farmed

stocks. Section 5 would not make confidential accumulated reports prepared from individual submissions by ADF&G.

[10:37:51 AM](#)

MS. JULIE DECKER, member, SARDFFA, testified in support of SB 126.

MR. PAUL FUHS, lobbyist, testified in support of SB 126.

[10:39:20 AM](#)

SENATOR THERRIAULT moved SB 126 from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:42:01 AM](#).