

**ALASKA STATE LEGISLATURE**  
**SENATE RESOURCES STANDING COMMITTEE**

April 4, 2005

3:35 p.m.

**MEMBERS PRESENT**

Senator Thomas Wagoner, Chair  
Senator Fred Dyson  
Senator Bert Stedman  
Senator Kim Elton  
Senator Ralph Seekins, Vice Chair  
Senator Ben Stevens  
Senator Gretchen Guess

**MEMBERS ABSENT**

All Members Present

**COMMITTEE CALENDAR**

SENATE BILL NO. 126

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

MOVED CSSB 126(RES) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 16

Supporting legislation before the United States Congress that reaffirms the right of the states to regulate hunting and fishing.

MOVED SJR 16 OUT OF COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 15(RES)

Relating to open ocean aquaculture in the federal exclusive economic zone.

MOVED CSHJR 15(RES) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

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
03/23/05	(S)	Moved SB 126 Out of Committee

03/23/05 (S) MINUTE(JUD)  
03/24/05 (S) JUD RPT 3DP 2NR  
03/24/05 (S) DP: SEEKINS, THERRIAULT, HUGGINS  
03/24/05 (S) NR: FRENCH, GUESS  
04/04/05 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SJR 16

SHORT TITLE: STATES' RIGHT TO REGULATE HUNTING/FISHING  
SPONSOR(s): SENATOR(s) THERRIAULT

03/21/05 (S) READ THE FIRST TIME - REFERRALS  
03/21/05 (S) RES  
04/04/05 (S) RES AT 3:30 PM BUTROVICH 205

BILL: HJR 15

SHORT TITLE: OPEN OCEAN AQUACULTURE  
SPONSOR(s): FISHERIES

03/01/05 (H) READ THE FIRST TIME - REFERRALS  
03/01/05 (H) FSH, RES  
03/09/05 (H) FSH AT 8:30 AM CAPITOL 124  
03/09/05 (H) Moved CSHJR 15(FSH) Out of Committee  
03/09/05 (H) MINUTE(FSH)  
03/10/05 (H) FSH RPT CS(FSH) 4DP  
03/10/05 (H) DP: HARRIS, WILSON, LEDOUX, THOMAS  
03/21/05 (H) RES AT 1:00 PM CAPITOL 124  
03/21/05 (H) Moved CSHJR 15(RES) Out of Committee  
03/21/05 (H) MINUTE(RES)  
03/22/05 (H) RES RPT CS(RES) 9DP  
03/22/05 (H) DP: OLSON, KAPSNER, GATTO, ELKINS,  
LEDoux, CRAWFORD, SEATON, RAMRAS,  
SAMUELS  
03/23/05 (H) TRANSMITTED TO (S)  
03/23/05 (H) VERSION: CSHJR 15(RES)  
03/24/05 (S) READ THE FIRST TIME - REFERRALS  
03/24/05 (S) RES  
04/04/05 (S) RES AT 3:30 PM BUTROVICH 205

**WITNESS REGISTER**

MARY JACKSON  
Staff to Senator Wagoner  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Commented on SB 126 for the sponsor.

TIM BARRY

Staff to Senator Stedman  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Commented on SB 126 for the sponsor.

PAUL FUHS  
PAC Alaska  
Juneau AK

**POSITION STATEMENT:** Supported SB 126.

ROGER PAINTER  
Alaskan Shellfish Growers' Association  
Juneau AK

**POSITION STATEMENT:** Supported SB 126.

DAVID BEDFORD, Deputy Commissioner  
Department of Fish & Game  
PO Box 25526  
Juneau, AK 99802-5226

**POSITION STATEMENT:** Supported SB 126.

JULIE DECKER, Executive Director  
Southeast Regional Dive Fishery Association

**POSITION STATEMENT:** Supported SB 126.

#### **ACTION NARRATIVE**

**CHAIR THOMAS WAGONER** called the Senate Resources Standing Committee meeting to order at [3:35:54 PM](#). Present were Senators Elton, Stedman, Dyson and Chair Wagoner.

#### **SB 126-AQUATIC FARMING**

CHAIR WAGONER announced SB 126 to be up for consideration.

SENATOR STEDMAN moved to adopt CSSB 126(RES), version F. There were no objections and it was so ordered.

MARY JACKSON, staff to Senator Wagoner, said "acquire ownership of" was deleted on page 1, line 1 and page 3, line 6, has revisions of the phrase "on the site". The original version had it at the end of the line and the CS has it in the middle of the sentence.

TIM BARRY, staff to Senator Stedman, sponsor of SB 126, said this legislation was requested by a coalition of the Alaska Department of Fish and Game (ADF&G), Southeast Alaska Regional

Dive Fisheries Association and the Alaska Shellfish Growers Association that have been working for a number of years to resolve a number of legal and management difficulties which have prevented the development of a fledgling shellfish farming industry in Southeast Alaska.

SB 126 amends the state's Aquatic Farming Act to allow aquatic farms to continue to operate in compliance with a Supreme Court decision made last April. The State Supreme Court ruled that the Aquatic Farming Act requires the Department of Fish and Game to deny shellfish farmers exclusive rights to what I refer to as significant populations of wild geoducks on their proposed farm sites.

MR. BARRY said since that decision, the Southeast Alaska Regional Dive Fish Association (SARDFA), the Alaskan Shellfish Growers Association and the Alaska Department of Fish and Game (ADF&G) have negotiated an agreement that would allow these farmers to harvest insignificant populations of the geoduck clams on their sites without having to replace them. It defines an "insignificant population" as one that would not support a commercial fishery. He said it should have a zero fiscal note from the ADF&G.

[3:41:35 PM](#)

SENATORS BEN STEVENS, SEEKINS AND GUESS joined the committee.

[3:42:27 PM](#)

SENATOR ELTON said Amendment 1 addressed a fairly broad title and asked if it was going to be offered.

MR. BARRY explained that the changes in the CS were made to conform the Senate version to the House version. A title change was made in the House an hour ago. This amendment was made in an effort to keep up with what they are doing and there was some concern about a broad title.

[3:43:42 PM](#)

PAUL FUHS said he represents PAC Alaska, one of the pioneer farming operations. He supported the CS and the amendment. He pointed out that language in section (f) on page 2 is very convoluted and needs clarification.

This does not mean that Fish and Game can authorize a commercial fishing operation on a farm after it's planted and has been granted. What this language does

is it allows them to say, 'Okay, we're going to set an insignificant level.' Now if we made a mistake, despite all of our best efforts to make sure there are insignificant stocks on there, and then by chance there's more than that, this allows the state to assess what's essentially a windfall profit tax on that....

[3:46:10 PM](#)

MR. FUHS explained that it is a common-sense solution to say:

The farmers will pay the 3% like everybody else up to 12,000 lbs, or whatever the amount is set. That's what Fish and Game has said they are going to set it at. We'll see what happens in those regulations and then after that, you'll pay a super tax of 10 times or 15 times the amount that would normally be paid and then that money could be used to replant other areas. This is an attempt to address the constitutional issues of the common property resource. It is limited only by the common property resource.

The limited entry when the constitutional amendment went in and then it also said 'and for the efficient development of aquaculture.' It's never real clear what that section means. We know what limited entry means; we have that. So, it's the tension around this constitutional issue - is why that language is in there.

[3:46:25 PM](#)

ROGER PAINTER, Alaskan Shellfish Growers Association, supported CSSB 126(RES) wholeheartedly. He said it is vital to the industry and has been thoroughly gone over by the Department of Law.

[3:47:56 PM](#)

SENATOR DYSON asked why shellfish farming is an insignificant threat to wild stock and the environment and how it differs fundamentally from open ocean finfish farming.

MR. PAINTER replied that the biggest difference is that shellfish are not mobile. Most are kept inside cages. Geoducks burrow and can go up and down, but can't move around. In addition, the state has stringent controls on genetics and diseases. Growers are required to get brood stock from the wild in the area that the shellfish are being grown. All shellfish

are inspected for diseases before going to a farm or transferring to another site.

[3:50:05 PM](#)

DAVID BEDFORD, Deputy Commissioner, Alaska Department of Fish and Game (ADF&G), supported CSSB 126(RES). He said shellfish mariculture has substantial promise for the state and the private sector. It has been prevented from growing to the extent that it can in large measure because of the question of what kind of access a shellfish grower has to common property stock. A Superior Court decision informed the department that the constitution required it to provide access to insignificant amounts of shellfish to shellfish farmers. Then, a Supreme Court decision said the department couldn't do that because it didn't have statutory authority. SB 126 remedies both of those problems. It gives the department authority and defines insignificant stock.

[3:52:28 PM](#)

CHAIR WAGONER asked how long it takes for a geoduck to mature.

MR. BEDFORD replied five to seven years.

SENATOR SEEKINS asked why on page 1, line 9, deletes "acquire ownership of".

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MR. BEDFORD replied that as originally drafted you could have a situation in which a farmer would get a lease for a farm site and acquire ownership of the stock; he would then surrender the lease and still own the stock. He wanted to avoid that type of situation. The department wants the farmer to be able to harvest a small amount of stock in the course of his business, but not to own the farm site.

SENATOR SEEKINS added that he understands that transfer of title to a wild stock of anything under settle law would be at harvest. He asked if they are not precluding the farmer from taking title to the ownership of the stock when he harvests it, but not before it's harvested.

MR. BEDFORD replied that was correct.

[3:55:34 PM](#)

JULIE DECKER, Executive Director, Southeast Regional Dive Fisheries Association, supported CSSB 126(RES). It has helped

resolve a six-year controversy over who gets to harvest the wild standing stocks of geoducks on farm sites.

[3:56:45 PM](#)

SENATOR STEDMAN moved to adopt Amendment 1 to CSSB 126(RES) to delete line 1 on page 2 and to insert, "An Act relating to aquatic plant and shellfish farming; and providing for an effective date." There were no objections and Amendment 1 was adopted.

SENATOR DYSON moved to pass CSSB 126(RES) from committee with individual recommendations and attached fiscal note. There were no objections and it was so ordered.

[3:59:09 PM](#) At ease

**SJR 16-STATES' RIGHT TO REGULATE HUNTING/FISHING**

CHAIR WAGONER announced SJR 16 to be up for consideration.

SENATOR THERRIAULT, sponsor, explained that it puts the legislature on record as being supportive of legislation, HR 731 and S 339, that are pending currently before the US Congress reaffirming state regulation of the Resident and Non-Resident Hunting and Fishing Act of 2005.

[4:04:01 PM](#)

He said Congress has not taken action to preclude states from exercising their own sovereign power with regards to hunting and fish when it comes specifically to residents versus non-residents.

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SENATOR SEEKINS said that sometime court decisions actually confuse things about what powers were transferred to the federal government in the US Constitution and told a story about a pre-1953 Supreme Court decision that said the three-mile limit didn't exist as to state ownership, which had always been assumed to be the case since the beginning of the nation. In order to overcome that adverse decision, the US Congress passed the 1953 Submerged Lands Act to make clear that the states get that land.

[4:09:24 PM](#)

SENATOR DYSON moved to pass SJR 16 from committee with individual recommendations. There were no objections and it was so ordered.

[4:09:54 PM](#) AT EASE [4:11:19 PM](#)

**HJR 15-OPEN OCEAN AQUACULTURE**

CHAIR WAGONER announced HJR 15 to be up for consideration.

IAN FISK, staff to Representative John Harris, sponsor, said that HJR 15 bluntly opposes fish farming in the Exclusive Economic Zone (EEZ) from three miles out to 200 miles. He is concerned about biological problems with fish farming such as the introduction of genetically modified organisms, the transmission of disease, escapes into the natural environment and the effects on human of eating these fish.

There are economic concerns, as well. In 1990 the state passed a ban on fish farming in state waters. While the farmed fish industry has hurt the Alaskan salmon industry, it's also helped identify Alaskan salmon as unique and good. People are concerned what will happen to that reputation if fish farming is allowed in the EEZ. This resolution also asks for the legislature to prepare an environmental impact statement to accompany any proposal before Congress.

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SENATOR SEEKINS didn't agree with the first whereas statement that all of Alaska's wild fish stocks were healthy and sustainable. He said he knows of occasional localized problems.

CHAIR WAGONER agreed with most of what Mr. Fisk said, but took exception to the fact that it's not going to have an economic impact and that there is a zero fiscal note. "In a lot of cases it could have a very negative impact on the State of Alaska and the fish stock that we have protected over the years...."

[4:16:52 PM](#)

SENATOR DYSON moved to pass HJR 15 from committee with individual recommendations and attached fiscal notes. There were no objections and it was so ordered.

There being no further business to come before the committee, Chair Wagoner adjourned the meeting at [4:19:32 PM](#).