

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

April 7, 2006

3:42 p.m.

MEMBERS PRESENT

Senator Thomas Wagoner, Chair
Senator Ben Stevens
Senator Fred Dyson
Senator Bert Stedman
Senator Kim Elton

MEMBERS ABSENT

Senator Ralph Seekins, Vice Chair
Senator Albert Kookesh

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 218(FIN)

"An Act relating to cost recovery fisheries for private nonprofit hatchery facilities."

MOVED SCS CSHB 218(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 218

SHORT TITLE: PRIVATE HATCHERY COST RECOVERY FISHERIES

SPONSOR(S): REPRESENTATIVE(S) THOMAS

03/15/05	(H)	READ THE FIRST TIME - REFERRALS
03/15/05	(H)	FSH, RES
03/16/05	(H)	FSH AT 8:30 AM CAPITOL 124
03/16/05	(H)	Heard & Held
03/16/05	(H)	MINUTE(FSH)
04/15/05	(H)	FSH AT 8:30 AM CAPITOL 124
04/15/05	(H)	Moved CSHB 218(FSH) Out of Committee
04/15/05	(H)	MINUTE(FSH)
04/18/05	(H)	FSH RPT CS(FSH) 3DP 3NR
04/18/05	(H)	DP: WILSON, ELKINS, THOMAS;
04/18/05	(H)	NR: HARRIS, SALMON, LEDOUX
04/20/05	(H)	RES AT 1:00 PM CAPITOL 124
04/20/05	(H)	-- Meeting Canceled --
04/22/05	(H)	RES AT 1:00 PM CAPITOL 124
04/22/05	(H)	Moved CSHB 218(RES) Out of Committee
04/22/05	(H)	MINUTE(RES)

04/25/05 (H) RES RPT CS(RES) 2DP 3NR
 04/25/05 (H) DP: CRAWFORD, ELKINS;
 04/25/05 (H) NR: LEDOUX, OLSON, SAMUELS
 04/25/05 (H) FIN REFERRAL ADDED AFTER RES
 04/27/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 04/27/05 (H) Heard & Held
 04/27/05 (H) MINUTE(FIN)
 04/28/05 (H) FIN RPT CS(FIN) 3DP 4NR
 04/28/05 (H) DP: HAWKER, FOSTER, CHENAULT;
 04/28/05 (H) NR: JOULE, MOSES, HOLM, KELLY
 04/28/05 (H) FIN AT 8:30 AM HOUSE FINANCE 519
 04/28/05 (H) Moved CSHB 218(FIN) Out of Committee
 04/28/05 (H) MINUTE(FIN)
 04/29/05 (H) TRANSMITTED TO (S)
 04/29/05 (H) VERSION: CSHB 218(FIN)
 05/01/05 (S) READ THE FIRST TIME - REFERRALS
 05/01/05 (S) FIN
 05/06/05 (S) RES REFERRAL ADDED BEFORE FIN
 05/06/05 (S) FIN AT 4:30 PM SENATE FINANCE 532
 05/06/05 (S) Heard & Held
 05/06/05 (S) MINUTE(FIN)
 04/05/06 (S) RES AT 3:30 PM BUTROVICH 205
 04/05/06 (S) Heard & Held
 04/05/06 (S) MINUTE(RES)
 04/07/06 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

Ian Fisk, Legislative Aide
 Staff for Representative Bill Thomas
 Alaska State Capitol
 Juneau, AK 99801-1182
POSITION STATEMENT: Introduced HB 218

Bob Thorstenson, Executive Director
 Southeast Alaska Seiners Association
 Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 218

ACTION NARRATIVE

CHAIR THOMAS WAGONER called the Senate Resources Standing Committee meeting to order at [3:42:49 PM](#). Present were Senators Kim Elton, Fred Dyson, Ben Stevens, and Chair Thomas Wagoner.

CSHB 218(FIN)-PRIVATE HATCHERY COST RECOVERY FISHERIES

[3:43:13 PM](#)

CHAIR THOMAS WAGONER announced CSHB 218(FIN) to be up for consideration.

IAN FISK, Staff to Representative Bill Thomas, offered to explain the committee substitute (CS) version W. The changes are relative to version 24-LS0544\R.

P.1, lines 6-7: "contractees is replaced by the phrase "persons under contract; "under a permit from the department" is added to clarify that the Alaska Department of Fish and Game (ADF&G) issues permits for harvest of salmon by hatcheries in special harvest areas and the Board of Fisheries writes the regulations.

P.1, line 13: "At the request of the hatchery permit holder" is inserted to clarify that only the hatchery may initiate the process of starting a common property cost recovery fishery. This was added at the suggestion of the Northern Southeast Regional Aquaculture Association (NSRAA).

P.2, line 2: "if" is changed to "when." This was added at the suggestion of NSRAA.

P.2, line 8: "as the board considers appropriate" is replaced by "under AS 16.05.251" to be more specific about the board's authority to adopt regulations. This was added at the suggestion of the Department of Law (DOL).

P.2, subsection (c): Fishermen will be required to deliver to a licensed buyer. Lines 24-29 are deleted. This was added at the suggestion of the NSRAA.

P.2, line 26: after "annually", "March 1" is inserted. This was added at the suggestion of the NSRAA.

P.3, line 7: The maximum rate of assessment is changed from 40 percent to 50 percent. This change was made as a compromise between the proponents of the bill and the NSRAA.

P.3, subsection (f) is changed to allow prosecution as either a violation or a misdemeanor. This will provide better flexibility for the state in pursuing any fishermen who violates the new cost recovery system. This was added to address a general NSRAA concern about enforcement.

[3:47:15 PM](#)

SENATOR BERT STEDMAN joined the meeting.

MR. FISK said there were other changes made to the bill along the way at the behest of some of the hatcheries. The original version of the bill contained findings that said the Legislature finds that it is in the best interest of the fishing fleet to minimize the direct sale of salmon by a hatchery and that wherever possible it should be done through a common property fishery. That language was deleted because it coincided with the initial purpose of the hatchery program and therefore was redundant.

The sponsor also agreed that the three percent salmon enhancement tax should apply to the fish, which was another request of the hatcheries, and that was done in a previous committee. The language in the CS is optional and not mandatory.

[3:49:19 PM](#)

CHAIR WAGONER asked for questions.

SENATOR STEDMAN informed the committee he had an amendment to put on the table as a concept. It had a drafting error and so he said he would offer it in the next committee of referral. The amendment would clarify that it takes a two-thirds vote of the board of directors and a two-thirds vote by the hatchery to opt in, after which the entity would be locked in for a year. He offered to work with the sponsor on the details.

[3:51:17 PM](#)

MR. FISK agreed to discuss the proposal.

SENATOR BEN STEVENS asked for clarification and the reason the hatcheries were asking to pay the salmon enhancement tax. He noted that they currently do not pay the tax when their fish is harvested through the cost recovery program.

MR. FISK said the reason the hatcheries asked for that provision was because it would be under a common property cost recovery system and they wanted to make sure they could get the three percent tax.

SENATOR BEN STEVENS asked where the revenue would go.

MR. FISK replied it would go to the hatcheries.

SENATOR BEN STEVENS asked, "The revenue they use to harvest the fish pays the hatchery?"

MR. FISK said yes. "Whatever they get with the regular assessment through this bill would apply but they wanted to make sure that the three percent would apply as well."

[3:53:19 PM](#)

SENATOR BEN STEVENS asked whether that was added from version R.

MR. FISK said he did not remember the version that it was added in. It was during one of the first House committees.

SENATOR BEN STEVENS said the total rate on page 3; lines 7-8 say 'the total rate of assessment may not exceed fifty percent of the value of the salmon.' So that is the assessment that goes back to the cost recovery program.

MR. FISK agreed.

SENATOR BEN STEVENS asked whether the remaining portion would be in addition to the salmon enhancement tax.

MR. FISK responded the hatcheries wanted to make sure that the tax wouldn't be deducted because they wanted the salmon enhancement tax to apply to their fish. They wanted to reiterate that while they don't pay the tax now, in this case they would under the common property combination fishery.

SENATOR BEN STEVENS said, "The harvester pays the tax under AS 43.76.001 and then the harvester in agreement with the cost recovery fish is paying up to fifty percent assessment on the fish that is being harvested and then the fifty percent is going to the hatchery within the special harvest area and the three percent is going to the state, which again reappropriates it back to the hatchery program.

MR. FISK said all of it would go through the state by the same mechanism as the salmon enhancement tax.

SENATOR BEN STEVENS asserted the reason for his confusion is that the bill is a system for harvesters to pay cost recovery in harvesting in a special terminal area. They would be subject to the salmon enhancement tax in addition to the agreement that they are contracting with the operator of the terminal area up to fifty percent. He said he does not understand the logic of why the hatchery operator is asking to pay more into the system than what they currently are.

MR. FISK said he did not understand it either. He thought they wanted to make sure it would not be deducted from the rate applied by the department.

3:56:57 PM

CHAIR WAGONER asked whether the three percent tax gets redistributed the same as all the rest of the three percent assessment throughout Southeast Alaska.

MR. FISK replied all the revenue collected under the bill would go back to the regional aquaculture association to meet their general cost recovery budget. It would not be directed at a particular hatchery.

SENATOR ELTON said as he read page 3; line 7 he assumed that three percent plus forty-seven percent would equal fifty percent and it wouldn't go higher than fifty percent.

MR. FISK agreed with Senator Elton that the total rate of assessment would not exceed fifty percent.

SENATOR STEDMAN referred to page 3; line 1 and asked Mr. Fisk whether there should be a separate asset account on the balance sheet with one hundred percent of the operating costs carried.

MR. FISK informed the committee that the language was inserted as a request of the DOL. Most of the language in subsection (d) was intended to reiterate the taxation authority of the Department of Revenue (DOR) and in order to be more specific; they wanted to list some of the things that the department would use to determine the rate. If a hatchery does not have a reserve fund available it wouldn't be in a position to use the cost recovery program.

4:00:08 PM

SENATOR STEDMAN noted subsection (d) of Section 1 says the rate of assessment shall provide sufficient revenues to cover the development and maintenance of a reserve fund.

MR. FISK said there is similar language in statute that deals with the sale of salmon and salmon eggs and what the proceeds could be used for. That particular language is in recognition that a reserve fund is a good idea for circumstances such as a small run.

SENATOR STEDMAN admitted he was confused whether the language means that the hatchery would have to be in a strong financial position on the day the program is implemented.

MR. FISK said it was merely suggesting a way of doing business and budgeting. The hatcheries keep a big reserve fund and should want to include that as a standard budget item.

[4:02:17 PM](#)

CHAIR WAGONER said he interpreted subsection (d) as a determination factor when setting the rates.

MR. FISK divulged there was a hatchery that expressed concern about it and they wanted to make sure the reserve fund was included because it is part of their regular budget.

SENATOR STEDMAN said he could not ever remember seeing anything on a balance sheet referred to as a reserve fund. It is generally referred to as net equity or sinking funds. He said the language seemed odd and hard to define. He had the impression that the language was trying to say when the hatchery sets the rate it should equal one hundred percent of the operating revenue.

MR. FISK offered to work to clarify that point. His understanding was that the hatcheries keep a reserve fund to cover unforeseen expenses and that it is a normal part of their budget. He said that is the term they used during testimony on the bill.

[4:04:32 PM](#)

SENATOR STEDMAN referred to page 3; line 10 and said under the current system the three percent tax is "washed through the state and back through the industry." He expressed caution that under the bill the revenue to run the hatchery would go to the state and then after a delay the Legislature would appropriate it to the hatchery.

CHAIR WAGONER offered to address that concern. He said historically the original legislation allowed each aquaculture association to establish an assessment and they vary from one to five percent.

SENATOR BEN STEVENS interrupted to say that now they can go up to thirty percent, as allowed by the salmon task force.

CHAIR WAGONER explained further it was then determined that it was illegal for the state to put into statute the ability for a non-profit to levy the tax and then collect it. They made a deal with the state that the state would collect the assessment and the state would give it back. That is the way it has always been done. It is cumbersome but necessary because state law prohibits doing it any other way.

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SENATOR STEDMAN expressed reluctance for the program to have to rely on an appropriation since the majority of the population of Alaska is not along the coast but in the interior.

SENATOR BEN STEVENS said he tracked down where the exemption to the salmon enhancement tax was changed. The original bill said that all salmon harvested under a special harvest area are not subject to the salmon enhancement tax. The House Finance Committee changed the language to read, "salmon harvested in a common property fishery conducted in a terminal harvest area under AS 16.10.455 are subject to a salmon enhancement tax levied under AS 43.76.001-43.76.040."

SENATOR BEN STEVENS said:

We know now that the common property fish harvested in a special area of harvest are taxed a salmon enhancement tax. Now if we go back to the part about up to fifty percent, the up to fifty percent is under AS 16.10.445, which is a new subsection that allows the department to do an assessment by regulation. It is not a tax. It is an additional assessment on top of an existing tax because the tax that is created under Section 2 is the salmon enhancement tax and the regulatory assessment created under Section 1 is on top of it. It's an additional tax. The question that comes down ... is why are we charging double for cost recovery fish in a terminal area. One is caught by common property fishery and the other one is harvested specifically under contract by the hatchery operator.

SENATOR BEN STEVENS said he needs further clarification of the reason for doing that for the common property fish when it's at the terminal area.

MR. FISK agreed and stood corrected.

[4:13:01 PM](#)

Bob Thorstenson, Executive Director of Southeast Alaska Seiners Association, said:

Senator Stevens is correct. We discovered early on in the process that the hatcheries legitimate concern was that twenty-five percent of its fish was extricated under a cost recovery program. Those fish are not subject to the three percent tax. The seventy-five percent that the fleet currently catches are subject to the three percent. If we took this cost recovery system as a whole and placed a twenty-five percent assessment, have the fleet catch one hundred percent of the fish and now there is no more cost recovery fishery by individuals by myself who have done cost recovery in the past, they would be gaining the three percent on the twenty-five percent that now doesn't get taxed on. But if we didn't do any three percent tax, they saw themselves losing on that seventy-five percent, which they normally would be collecting the tax on.

Mr. Thorstenson said it is a little bit confusing but from his position this was very appropriate, the hatcheries asked for it, and so it was added in order to move the legislation on.

SENATOR BEN STEVENS commented the recipient of the cost recovery at the terminal area is the hatchery at the terminal area and not the regional aquaculture association.

Mr. Thorstenson said in this case it is the same but it wouldn't always be the same.

SENATOR BEN STEVENS said even if it wasn't the same, a hatchery knows what its needs are to recoup the financial revenue from the cost recovery program. He questioned the need for the extra three percent. The system is in place for cost recovery and it is still the same amount of money. One is under contract and one is common property and the common property fisherman is paying a higher assessment rate as well as a higher tax rate. He suggested that was not reasonable since the hatchery operator was going to receive the revenue either way.

[4:17:11 PM](#)

CHAIR WAGONER said the only time the three percent would come into play was when the fifty percent maximum was reached.

SENATOR BEN STEVENS said it was an issue of fairness. There would be two mechanisms of harvesting in the special harvest

area. One is a harvester under contract of the cost recovery program and one is a common property fisherman allowed to go in there during an opening. So there are two classes of harvesting mechanisms and one has the salmon enhancement tax and the other one does not. He said the exemption clause should be eliminated.

CHAIR WAGONER said he was not sure he agreed. He posed a hypothetical situation of a hatchery contracting for thirty-eight percent of a contractor's harvest. That thirty-eight percent would include the three percent tax. The common property fisherman pays three percent of everything they catch.

SENATOR BEN STEVENS disagreed. He said the fish harvested under special permit by the hatchery operator are exempt from the three percent tax under current statute. HB 218 would change that but it would only apply to fish harvested under common property. It does not remove the exemption for the cost recovery program. He reiterated that it was an issue of fairness that all harvesters in a special harvest area should be subject to the same amount of tax.

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SENATOR FRED DYSON said he interpreted the bill to allow for fisherman to harvest hatchery fish so that they don't go to waste and the fishermen would see a financial benefit for their efforts.

MR. FISK said that was the basic idea of the bill.

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SENATOR STEDMAN said perhaps he should introduce his amendment at this time.

[4:24:44 PM](#)

SENATOR DYSON voiced a reluctance to vote on it without input from the bill sponsor.

CHAIR WAGONER advised the committee that he and Senator Stedman discussed holding the amendment until the next committee of referral. He suggested the committee move the bill forward without amending it.

SENATOR STEDMAN agreed.

SENATOR DYSON moved SCS CSHB 218(RES) version W from committee with individual recommendations and the attached fiscal notes. Hearing no objections, the motion carried.

There being no further business to come before the committee,
Chair Wagoner adjourned the meeting at [4:27:24 PM](#).