

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 5, 2013

1:36 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Lesil McGuire, Vice Chair
Senator Fred Dyson
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Donald Olson

COMMITTEE CALENDAR

CONFIRMATION HEARING

Alaska Judicial Council

David Parker

- CONFIRMATION ADVANCED

SENATE BILL NO. 65

"An Act relating to property exemptions for retirement plans, individual retirement amending Rule 64, Alaska Rules of Civil Procedure, and Rule 301(a), Alaska Rules of accounts, and Roth IRAs; relating to transfers of individual retirement plans; relating to Evidence." the rights of judgment creditors of members of limited liability companies and partners of limited liability partnerships; relating to the Uniform Probate Code, including pleadings, orders, liability, and notices under the Uniform Probate Code and the Alaska Principal and Income Act, the appointment of trust property, the Alaska Uniform Prudent Investor Act, co-trustees, trust protectors, and trust advisors; relating to the Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors Act; relating to the disposition of human remains; relating to the tax on insurers for life insurance policies; relating to insurable interests for certain insurance policies; relating to restrictions on transfers of trust interests; relating to discretionary interests in irrevocable trusts; relating to the community property of married persons; and

- MOVED CSSB 65(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 9

"An Act relating to secured transactions under the Uniform Commercial Code and to the regulation of funds transfers, including remittance transfers, under the Uniform Commercial Code and federal law; and providing for an effective date."

- MOVED HB 9 OUT OF COMMITTEE

SENATE CONCURRENT RESOLUTION NO. 2

Urging the governor to acquire land in the Tongass National Forest from the United States government by purchase or negotiation or by seeking amendment to the Alaska Statehood Act.

- HEARD & HELD

SENATE BILL NO. 60

"An Act relating to sea otter population management."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 9

SHORT TITLE: SECURED TRANSACTIONS AND FUNDS TRANSFERS

SPONSOR(S): REPRESENTATIVE(S) GRUENBERG

01/16/13	(H)	PREFILE RELEASED 1/7/13
01/16/13	(H)	READ THE FIRST TIME - REFERRALS
01/16/13	(H)	L&C, JUD
02/20/13	(H)	L&C AT 3:15 PM BARNES 124
02/20/13	(H)	Moved Out of Committee
02/20/13	(H)	MINUTE(L&C)
02/22/13	(H)	L&C RPT 3DP 3NR
02/22/13	(H)	DP: REINBOLD, JOSEPHSON, OLSON
02/22/13	(H)	NR: CHENAULT, SADDLER, MILLETT
03/13/13	(H)	JUD AT 1:00 PM CAPITOL 120
03/13/13	(H)	Moved Out of Committee
03/13/13	(H)	MINUTE(JUD)
03/14/13	(H)	JUD RPT 4DP 2NR
03/14/13	(H)	DP: GRUENBERG, FOSTER, LEDOUX, LYNN
03/14/13	(H)	NR: PRUITT, KELLER
03/25/13	(H)	TRANSMITTED TO (S)
03/25/13	(H)	VERSION: HB 9
03/27/13	(S)	READ THE FIRST TIME - REFERRALS
03/27/13	(S)	JUD
04/03/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/03/13	(S)	Heard & Held

04/03/13 (S) MINUTE(JUD)
04/05/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 60

SHORT TITLE: BOUNTY ON SEA OTTERS

SPONSOR(s): SENATOR(s) STEDMAN

02/20/13 (S) READ THE FIRST TIME - REFERRALS
02/20/13 (S) RES, JUD, FIN
03/13/13 (S) RES AT 3:30 PM BUTROVICH 205
03/13/13 (S) Heard & Held
03/13/13 (S) MINUTE(RES)
03/15/13 (S) RES AT 3:30 PM BUTROVICH 205
03/15/13 (S) Moved SB 60 Out of Committee
03/15/13 (S) MINUTE(RES)
03/18/13 (S) RES RPT 3NR 3AM
03/18/13 (S) NR: MICCICHE, BISHOP, DYSON
03/18/13 (S) AM: GIESSEL, FAIRCLOUGH, FRENCH
04/05/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SCR 2

SHORT TITLE: ACQUIRE TONGASS NATIONAL FOREST LAND

SPONSOR(s): SENATOR(s) STEDMAN

03/28/13 (S) READ THE FIRST TIME - REFERRALS
03/28/13 (S) JUD
04/05/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 65

SHORT TITLE: RETIREMENT PLANS; ROTH IRAS; PROBATE

SPONSOR(s): SENATOR(s) COGHILL

02/27/13 (S) READ THE FIRST TIME - REFERRALS
02/27/13 (S) L&C, JUD
03/21/13 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/21/13 (S) Heard & Held
03/21/13 (S) MINUTE(L&C)
03/26/13 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/26/13 (S) Moved CSSB 65(L&C) Out of Committee
03/26/13 (S) MINUTE(L&C)
03/27/13 (S) L&C RPT CS 2DP 2NR SAME TITLE
03/27/13 (S) DP: DUNLEAVY, ELLIS
03/27/13 (S) NR: OLSON, MICCICHE
04/01/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/01/13 (S) Heard & Held
04/01/13 (S) MINUTE(JUD)
04/03/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

04/03/13 (S) Heard & Held
04/03/13 (S) MINUTE(JUD)
04/04/13 (S) JUD AT 2:30 PM BELTZ 105 (TSBldg)
04/04/13 (S) Heard & Held
04/04/13 (S) MINUTE(JUD)
04/05/13 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

MILES BROOKES, Staff
Representative Max Gruenberg
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Thanked the committee for its consideration of HB 9.

DAVID LINDEN PARKER, Appointee
Alaska Judicial Council
Anchorage, AK

POSITION STATEMENT: Testified as appointee to the Alaska Judicial Council.

SENATOR BERT STEDMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SJR 2 and SB 60.

CHRISTIE JAMIESON, Staff
Senator Bert Stedman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Read the sponsor statement for SCR 2

OWEN GRAHAM, Director
Alaska Forest Association
Ketchikan, Alaska

POSITION STATEMENT: Provided supporting testimony for SCR 2.

LARRY BELL, Assistant Regional Director
U.S. Fish and Wildlife Service (USFWS)
Anchorage, Alaska

POSITION STATEMENT: Provided information related to SB 60.

CRAIG FLEENER, Deputy Commissioner
Alaska Department of Fish and Game (ADF&G)
Anchorage, Alaska

POSITION STATEMENT: Provided information related to SB 60.

ALPHEUS BULLARD, Legislative Counsel
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Testified that SB 60 was in conflict with the Marine Mammal Protection Act and may be preempted.

ACTION NARRATIVE

[1:36:18 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:36 p.m. Present at the call to order were Senators Dyson, Wielechowski, and Chair Coghill. Senator McGuire arrived soon thereafter.

SB 65-RETIREMENT PLANS; ROTH IRAS; PROBATE

[1:36:43 PM](#)

CHAIR COGHILL announced the consideration of SB 65. "An Act relating to property exemptions for retirement plans, individual retirement accounts, and Roth IRAs; relating to transfers of individual retirement plans; relating to the rights of judgment creditors of members of limited liability companies and partners of limited liability partnerships; relating to the Uniform Probate Code, including pleadings, orders, liability, and notices under the Uniform Probate Code and the Alaska Principal and Income Act, the appointment of trust property, the Alaska Uniform Prudent Investor Act, co-trustees, trust protectors, and trust advisors; relating to the Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors Act; relating to the disposition of human remains; relating to insurable interests for certain insurance policies; relating to restrictions on transfers of trust interests; relating to discretionary interests in irrevocable trusts; relating to the community property of married persons; and amending Rule 64, Alaska Rules of Civil Procedure, and Rule 301(a), Alaska Rules of Evidence."

[1:37:06 PM](#)

SENATOR WIELECHOWSKI moved Amendment 1.

AMENDMENT 1

OFFERED IN THE SENATE

TO: CSSB 65(), Draft Version "O"

Page 38, line 7:
Delete "\$two [FOUR]"
Insert "four"

Page 38, line 8:
Delete "six months ONE YEAR]"
Insert "\$1,000"

Page 38, line 16:
Delete "\$two [FOUR]"
Insert "four"

Page 38, line 19:
Delete "\$two [FOUR]"
Insert "four"

CHAIR COGHILL objected for an explanation.

SENATOR WIELECHOWSKI explained that the amendment relates to fraudulent transfers in Section 40. The bill reduces the statute of limitations regarding fraudulent transfers from four to two years and one year to six months. The amendment keeps the language in current statute.

CHAIR COGHILL explained that the lower statute of limitations was consistent with the nationwide trend, but he supported the amendment as a matter of consumer protection.

[1:38:35 PM](#)

CHAIR COGHILL removed his objection and Amendment 1 was adopted.

[1:38:59 PM](#)

SENATOR DYSON moved to report SB 65, as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR COGHILL found no objection and announced that CSSB 65(JUD) moved from the Senate Judiciary Standing Committee.

[1:39:19 PM](#)

At ease

HB 9-SECURED TRANSACTIONS AND FUNDS TRANSFERS

[1:41:15 PM](#)

CHAIR COGHILL announced the consideration of HB 9. "An Act relating to secured transactions under the Uniform Commercial Code and to the regulation of funds transfers, including

remittance transfers, under the Uniform Commercial Code and federal law; and providing for an effective date."

[1:41:51 PM](#)

MILES BROOKES, Staff, Representative Max Gruenberg, sponsor of HB 9, thanked the committee for its consideration of HB 9.

[1:42:12 PM](#)

SENATOR MCGUIRE moved to report HB 9 from committee with individual recommendations and attached fiscal note(s).

SENATOR COGHILL found no objection and announced that HB 9 moved from the Senate Judiciary Standing Committee.

[1:42:34 PM](#)

At ease

CONFIRMATION HEARING
Alaska Judicial Council

CHAIR COGHILL announced the next order of business would be a confirmation hearing. He asked Mr. Parker to introduce himself and tell the committee about his interest in serving on the Alaska Judicial Council.

[1:44:20 PM](#)

DAVID LINDEN PARKER, appointee, Alaska Judicial Council, Anchorage, Alaska, said he recently retired from the Anchorage Police Department. The council had been an interest for many years and he put his name forward when he learned that there was a vacancy. He enjoyed the 18 years of public service with the police department and would like to continue to serve the people of Alaska on the council.

CHAIR COGHILL asked if he had participated in any council meetings.

MR. PARKER said no, but he discussed the duties with Mr. Cohen and he was familiar with the judicial review process.

CHAIR COGHILL thanked Mr. Parker for his service in public safety and his willingness to serve on the council.

[1:46:29 PM](#)

SENATOR DYSON disclosed that Mr. Parker was a good friend of 30 years. In his opinion, there wasn't a better candidate.

CHAIR COGHILL commented on the workload that council members face.

MR. PARKER acknowledged the job would be time consuming and expressed his commitment to help the governor in his critically important job of appointing judges.

[1:48:56 PM](#)

SENATOR MCGUIRE moved to forward the name of David Linden Parker for a position on the Judicial Council to the full body for consideration. She reminded members that this does not reflect intent by any member to vote for or against the confirmation of the individual during any subsequent sessions.

CHAIR COGHILL found no objection and announced that the name David Linden Parker would be forwarded to the full body for consideration for a position on the Alaska Judicial Council.

[1:49:32 PM](#)

At ease

SCR 2-ACQUIRE TONGASS NATIONAL FOREST LAND

[1:49:38 PM](#)

CHAIR COGHILL announced the consideration of SCR 2, a resolution relating to the state acquiring Tongass National Forest Land.

[1:50:54 PM](#)

SENATOR BERT STEDMAN, Alaska State Legislature, sponsor of SCR 2, said his staff would present the sponsor statement.

[1:51:20 PM](#)

CHRISTIE JAMIESON, Staff, Senator Bert Stedman, sponsor, read the sponsor statement for SCR 2 into the record as follows:
[Original punctuation provided.]

The Tongass National Forest was created in 1907 by President Theodore Roosevelt. Today, it is the largest national forest in the United States with 16.8 million acres. In 1947 Congress enacted the Tongass Timber Act the purpose of which was to clear the way for long term timber sales on the Tongass. From the 1950's through the early 1990's, the commercial harvest of timber from the Tongass National Forest formed a major part of the economy in Southeast Alaska. Unfortunately, that's no longer the case because the timber industry does not have access to an adequate

volume of timber supply that can be economically harvested from the Tongass National Forest. Interestingly, only 400,000 acres of the Tongass have been harvested between its creation in 1907 and today. In addition, there were more sawmills operating on the Tongass in 1900 than there are today.

The reasons behind the lack of timber supply began in 1980 when Congress passed the Alaska National Interest Lands Conservation Act (ANILCA) establishing 4.5 million acres of Wilderness and National Monuments in Southeast Alaska. In order to ensure that these land withdrawals from the available timber base did not harm the existing timber industry, ANILCA mandated that the Forest Service offer 450 million board feet of timber annually. Then in 1990, Congress passed the Tongass Timber Reform Act (TTRA) creating another 1.1 million acres of Wilderness and Roadless Area set-asides, further reducing acreage in the Tongass National Forest that could be used for timber harvest. In 1997 the Forest Service adopted a new land management plan for the Tongass National Forest and switched to "ecosystem management." Under this new philosophy, attention to timber sale economics was abandoned. However, in 2005 the 1997 Tongass Land Management Plan (TLMP) was set aside and nine major timber sale environmental impact statements were enjoined pending preparation of an amended Forest Land and Resource Management Plan. (See the 9th Circuit's Decision in *Natural Resources Defense Council v. United States Forest Service*, 421 F.3d 797 (9th Cir. 2005)). The 1997 Forest Plan was enjoined, not because of an environmental problem, but because of a Forest Service math error in computing the volume of timber needed to meet market demand.

Every significant timber sale the Forest Service has attempted to make since adoption of the 2008 Amended TLMP has been litigated. This litigation has caused annual Forest Service sales to be reduced to 30-40 MMBF, not nearly enough to supply the integrated industry advocated by the Governor's Timber Task Force.

Moreover, the Secretary of Agriculture interfered with implementation of the 2008 Amended TLMP with his 2010 announcement of an "immediate transition from old

growth timber to second growth timber." This announcement was made notwithstanding the fact that there is insufficient second growth timber on the Tongass that meets the definition of cumulative mean annual increment required by the National Forest Management Act (NFMA). Timber sales in old growth were delayed while Forest Service professionals have tried to make it clear to the Secretary that an "immediate" transition to second growth would violate the NFMA.

In March 2011 the Federal District Court for the District of Alaska set aside the Tongass Exemption from the 2001 Roadless Rule, which the State had negotiated with the Federal Government in 2003. This has resulted in 9.6 million acres of non-timber-harvest areas being created on the Tongass in addition to the 5.6 million acres of non-timber-harvest Wilderness areas. In addition, the Roadless Areas create a serious impediment to mining and to hydropower and other renewable energy opportunities on the Tongass.

The Tongass National Forest currently encompasses about 93% of the available timberlands in Southeast Alaska. However, only two percent of the Tongass National Forest is managed for the purpose of providing local communities with the opportunity to harvest timber. Consequently, the Forest Service has monopoly power over the timber supply. In the past four years, several efforts to revitalize the timber industry in Southeast Alaska have failed because a timber industry cannot exist without an adequate timber supply. Since the U.S. Forest Service is no longer able to provide enough timber in the Tongass National Forest to sustain a viable timber industry in Southeast Alaska, it is time for the Governor to intervene.

Under the Alaska Statehood Act, the federal government provided Alaska with a 103,350,000 acre land entitlement. Of that original land entitlement, 5,500,000 acres still remain available for selection. SCR 2 urges the Governor to take steps necessary to select land in the Tongass National Forest as part of Alaska's statehood entitlement.

[1:57:31 PM](#)

SENATOR STEDMAN personalized the history of the Tongass, describing his family history in the timber business and the two 50-year timber contracts in Southeast Alaska that were negotiated following World War II. There were sawmills in Sitka, Wrangell, and Ketchikan, all of which provided a good economic base for the region. The federal government recognized the importance of this for year around jobs and restricted statehood land selections within the Tongass to recreation and community expansion.

Over time, the economics and mood of the country changed and pressure was exerted to terminate those timber contracts. The timber contract in Sitka was prematurely terminated in about 1992 and a few years later the federal government and Louisiana Pacific mutually agreed to terminate the contract in Ketchikan. The Tongass restrictions and termination of these timber contracts left this region in Southeast in a precarious state because it doesn't have the landmass for an industrial base for year around jobs.

SENATOR STEDMAN explained that SCR 2 is an effort to open the discussion about having a land selection in the Tongass if it's not possible to work with the federal government on reasonable access to a timber supply and to open mines. If the federal government is uncomfortable with that, he would like the governor to initiate discussions to purchase land in the Tongass. He opined that there is no reason to penalize today's generation for those contracts that were put in place over 70 years ago. People in Southeast Alaska should have the ability to expand their communities and be self-sustaining.

[2:07:27 PM](#)

CHAIR COGHILL commented on the excellent history lesson and the sobering effect it had on Juneau when the pulp mill closed. He agreed to give the land purchase idea some thought, and inquired about the life span of an old growth forest.

[2:10:42 PM](#)

SENATOR STEDMAN said that when the pulp mills shut down, it affected roughly 30 percent of the economic base south of Juneau. The repercussions are still felt. It was equivalent to Anchorage losing the airport or Fairbanks losing the military bases. Responding to the question about old growth, he said he believes it takes about 300 years for a forest to be classified as old growth. The point is, the forest does come back.

CHAIR COGHILL opened public testimony.

[2:12:34 PM](#)

OWEN GRAHAM, Director, Alaska Forest Association, Ketchikan, Alaska, stated that SCR 2 will help the state implement the recommendation last year by the governor's timber task force recommended to pursue withdrawal of 2 million acres from the Tongass. He said that Congress made about 6 million acres of the Tongass off limits, 2 million of which is commercial timber land. In addition, there is about 3.5 million acres of commercial timber land that is not congressionally set aside, which could support a sustained yield of 2 billion board feet annually. He highlighted that the Forest Service currently plans to offer only 6 percent of that potential sustained yield in the near term and 2 percent in the long term. He said that supply won't sustain the one midsize sawmill that's left in Southeast, much less the handful of small family mills.

MR. GRAHAM maintained that state management of that 2 million acres of commercial timber land would supply the timber required to restore a fully integrated timber manufacturing industry. State management of those lands pursuant to the [Forest Resources Practices Act] will ensure protections, access, and multiple use. Unlike a federal timber sale program, he said a state timber sale program could be funded entirely through timber sale receipts.

CHAIR COGHILL stated his intent to make refinements to the resolution and keep public testimony open. He noted the letters of support.

He held SCR 2 in committee for further work.

SB 60-BOUNTY ON SEA OTTERS

[2:17:18 PM](#)

CHAIR COGHILL announced the consideration of SB 60. "An Act relating to sea otter population management."

[2:18:01 PM](#)

SENATOR BERT STEDMAN, Alaska State Legislature, sponsor of SB 60, described the industrial harvest of sea otters in coastal Alaska in the 18th and 19th century that decimated the sea otter populations. The state attempted to reintroduce the species in 1965-1969 by relocating 402 sea otters to the Southeast region. They became a federally protected species in 1972 when Congress passed the Marine Mammal Protection Act (MMPA) and management was transferred to the U.S. Fish and Wildlife Service. The MMPA

made it illegal to harvest sea otters for everyone but coastal Alaska Natives who could do so for subsistence and purposes of making or selling traditional artisanal crafts.

SENATOR STEDMAN explained that in 1994 the U.S. Fish and Wildlife Service (USFWS) approved the Conservation Plan for Sea Otters in Alaska. In the preface it says the plan will be reviewed annually and revised every three to five years. Contrary to that directive, the USFWS never revised the plan. Over the last 19 years the sea otter population has increased exponentially and is devastating the shellfish industries on the western coast of Southeast Alaska.

[2:21:46 PM](#)

SENATOR STEDMAN informed the committee that there are three population stocks of sea otters in Alaska today. The southwest stock ranges from Kodiak to the end of the Aleutian chain; the central stock includes Cook Inlet and Prince William Sound; and the southeast stock ranges from Dixon Entrance to Yakutat. In Southeast, the population has been growing between 12 percent and 14 percent a year. In 2012, the estimated population of sea otters in Southeast Alaska was 25,000, and 842 were harvested by Alaska Natives. According to the USFWS, the potential biological removal of sea otters from Southeast to sustain the optimum population is 2,180 annually. He emphasized that the intent of SB 60 is to slow the growth rate, not eradicate the population.

He discussed the seafood diet of the sea otter and the fact that that they consume up to 25 percent of their body weight per day. He calculated that the current population of sea otters in Southeast consumes over 148 million pounds of shellfish annually. For perspective, the Dungeness crab harvest last year was 4.8 million pounds. Current estimates indicate that since 1995, about \$22.4 million in wholesale value has been lost from the commercial fisheries due to sea otters. In recent years the Alaska Department of Fish and Game has closed 17 harvest areas due to sea otters. Crab fishermen are trying to get away from sea otters and gear is being concentrated in fewer bays. He also discussed the concerns that arise from trying to follow the complicated MMPA regulations and the stiff penalties.

SENATOR STEDMAN explained that SB 60 is intended to encourage a discussion between the federal government and the state to work out an arrangement so that inhabitants can continue to survive in coastal Southeast as they have for thousands of years.

[2:28:46 PM](#)

CHAIR COGHILL expressed interest in hearing more about the jurisdictional question, U.S. code 16, and the legal challenges associated with no management plans being forwarded under MMPA.

SENATOR STEDMAN said the jurisdictional issues were mentioned at the previous committee, but the consensus appeared to be that it was the purview of this committee.

SENATOR COGHILL asked Mr. Bell to discuss the sea otter conservation plan in Alaska and the updates.

2:30:32 PM

LARRY BELL, Assistant Regional Director, U.S. Fish and Wildlife Service (USFWS), agreed with the sponsor that the management authority comes from the Marine Mammal Protection Act, and the management plan is to preserve and protect. He also confirmed that the strict harvest provisions are limited to qualified, coastal dwelling Alaska Natives for subsistence purposes or for Native crafts and clothing. Other provisions prohibit the sale and take except for the aforementioned exclusionary purposes. He acknowledged that the plan is outdated and highlighted that USFWS has learned a great deal about sea otters since the plan was implemented. Multiple stocks of sea otters have been identified, one of which is listed as threatened under the Endangered Species Act (ESA) and is managed under a recovery plan. The other two stocks are managed through periodic review and stock assessment reports to determine the status of the species throughout their range. Those data are compared to determine growth, stability, or declines in population. Determinations are based on that and whether it comports with the management principles of the MMPA.

2:33:00 PM

CHAIR COGHILL asked him to discuss the requirements to review the plan, including the location in the document.

MR. BELL explained that there is no requirement in law to have a management plan, but the USFWS is required by law to manage under the MMPA. Although the plan hasn't been revised every five years, the stock assessments that provide the needed data to implement management actions are done every three years.

CHAIR COGHILL asked if management is based on area or population and flow.

MR. BELL replied that the three stocks are managed separately and within each stock the management is based on the sea otter's

range, movement throughout the range, habitat availability, and relative numbers compared to the carrying capacity of the range.

CHAIR COGHILL inquired if the MMPA has any management scheme that talks about the decimated resource that the sea otters leave behind as they move from one area to another.

MR. BELL said the MMPA doesn't address issues of managing marine mammal stocks according to their beneficial or detrimental effect on other wildlife species.

CHAIR COGHILL described that as a gap.

MR. BELL pointed out that under the current management regime the qualified user group has no season dates, no license requirements, and no bag limits. The harvest is as liberal as it can be.

CHAIR COGHILL asked Mr. Fleener to discuss management practices.

2:37:02 PM

CRAIG FLEENER, Deputy Commissioner, Alaska Department of Fish and Game (ADF&G), Anchorage, Alaska, described the physical characteristics of sea otters, which are members of the weasel family. Because they don't have an insulating blubber layer, they require about 25 percent of their body weight in food every day. He said that sea otters are linked to declining populations of crab, sea urchins, clams, mussels, octopus, and other marine invertebrates because those make up a large part of the sea otter diet. This has resulted in fisheries restrictions and closures in Southeast. Dive fisheries are being severely affected by sea otters, including Dungeness crab, red sea urchins, California sea cucumbers, and geoduck clams. Those are valued at about \$16 million annually.

To a lesser degree sea otters consume shrimp, tanner crab, red king crab, and abalone. He said that the dive fisheries in Craig, Sitka, and Petersburg are likely losing \$2 million annually due to sea otter depredation. If the current trajectory continues, those fisheries are not sustainable in Southeast.

MR. FLEENER said sea otters are an important element of the Southeast Alaska ecosystem and should be managed under conservation principles, but they should not be protected at the expense of other elements of the ecosystem or the ecosystem itself. Sea otters are having a significant predatory effect on shellfish in Southeast, particularly sea cucumbers and Dungeness

crabs. For a number of years ADF&G has been working with a wide variety of people to develop solutions related to sea otter impacts. A number of options have been considered to return Southeast waters to a holistic and more sensible ecosystem-based management approach that manages for sustainable shellfish and sea otter populations.

These options include: a federal statutory change to ease the restriction on the sale of hides; returning management authority to the state; legislative amendments that exempt states from the MMPA; exempting sea otters in Southeast from the MMPA; assisting coastal Alaska Natives in developing MMPA authorized co-management plans that focus Alaska Native sea otter harvest in important fishing areas; and working with coastal Alaska Natives with funding applications that assist in revitalizing Southeast cottage industries.

ADF&G's long term goals have been to encourage the USFWS to ease federal enforcement on subsistence hunters in Southeast; to work with USFWS to liberalize the federal interpretation of handicraft items to be more responsive to customs and traditions of coastal Alaska Natives; to work with Congress to amend parts of the ESA and MMPA to better reflect the health and abundance of Southeast Alaska sea otter populations; to work closely with Southeast coastal Natives to develop sea otter management plans that are compliant with the MMPA, but encourage increased sea otter harvest; to restore shellfish populations to meet subsistence needs and provide commercial fishing opportunities; to restore the coastal ecosystem; and to seek federal reimbursement to commercial fishermen for lost economic opportunity.

MR. FLEENER discussed an unintended consequence if the bill were to go forward as currently written. The USFWS could consider the taking of sea otters in Southeast as financially motivated and not subsistence hunting and disallow it. The agency may also see the bounty as a commercial purpose and remove Native's ability to export those furs. It's also possible that the USFWS could find increased take due to bounties, and close the hunt. Since there is no differentiation between sea otters in Southeast and the endangered sea otters, the state may be found liable for encouraging the harvest of an endangered species. The [bounty] funds flowing through ADF&G could also be a problem because it isn't a coastal Alaska Native organization.

He highlighted the possible solutions. The funding could be provided directly to a coastal Alaska Native tribe or tribal

entity; exempting the endangered sea otters from the bill to focus only on the Southeast sea otter population; and promote an ongoing close relationship with indigenous co-management entities to implement this program.

With regard to the jurisdictional issues, Mr. Fleener said the primary goal of the MMPA is to protect sea mammals, and it's problematic when an act is put in place to permanently protect a species that doesn't need protection. The state needs to address that in the future, he said.

[2:45:10 PM](#)

CHAIR COGHILL asked how it would work to specify Southeast sea otters.

MR. FLEENER suggested that the best mechanism is to work through the existing tribal entities to avoid making any money available for harvesting endangered sea otters. The focus would be directly on the sea otters that are negatively impacting shellfish.

CHAIR COGHILL asked if the state is managing fisheries in areas that have been negatively impacted by sea otters.

MR. FLEENER said ADF&G manages fisheries in Southeast, but it can't manage the sea otters that are causing the negative impact. It's not the best course of action, but the only management action the department can take on a fishery that is negatively impacted is to close the harvest when numbers are low.

[2:48:41 PM](#)

SENATOR MCGUIRE referenced the 12/6/12 legal memorandum from Legislative Legal Services, and read the second paragraph as follows:

Providing a state bounty for harvested sea otters, even if the sea otters are only taken by those persons permitted to do so under the MMPA, is likely to be interpreted as conflicting with the intention and purposes of the MMPA.

She told Mr. Bullard that she respectfully disagrees with the opinion. The bill makes it very clear that the bounty can only be given by ADF&G to those who can make a lawful taking under the MMPA. The people who can lawfully take sea otters are those Alaska Natives who take for subsistence purposes or artisanal

purposes. She suggested that saying that providing a bounty incentivizes the taking of sea otters is troubling, but saying the bounty is to offset costs would be valid. She further suggested that it was a legitimate argument that the state was incentivizing lawful takings under the MMPA.

ALPHEUS BULLARD, Legislative Counsel, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, acknowledged that all arguments are possible and there may be other opinions. However, the substance of his opinion was that the bill incentivizes taking sea otters, which is inconsistent with protection of sea otters and that is the purpose of the federal act. If the bill becomes law, he believes it will be preempted.

SENATOR MCGUIRE asked if it would be more helpful if the sponsor were to clarify that it was lawful takings and that the fee was a reimbursement to offset costs associated with taking for artisan purposes.

MR. BULLARD said it could be, but his opinion was restricted to the bill before the committee.

SENATOR MCGUIRE suggested that it was consistent with Mr. Fleener's testimony, and that the bill sponsor follow up on that idea at a later time.

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CHAIR COGHILL said the committee would explore several legal avenues and look at ways to bridge the gap on conflicting jurisdictional issues. He asked the sponsor if he had explored any of the avenues that Mr. Fleener listed.

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SENATOR STEDMAN said he touched on them lightly but thought it would be more beneficial to bring the issue to the judiciary committee. Referencing the comment by Senator McGuire about offsetting the costs, he suggested that the costs don't necessarily have to be offset at the harvest level. They could readily be at the tannery level or in the area of marketing. He reiterated that there was room to increase the harvest level to several thousand per year.

CHAIR COGHILL commented that it may be helpful in the overall protection of the sea otter if the state were to try to keep them from destroying the ecosystem they depend on for their survival.

SENATOR MCGUIRE suggested that it may not be possible to take the issue head on in all areas. For example, it may not be possible to convince the federal government that the sea otter is no longer worthy of protection in Southeast Alaska or that the people living in Southeast are worthy of maintaining a livelihood. However, there can be agreement that there is an exception under the MMPA that allows for subsistence hunting by coastal Alaska Natives and the taking of sea otters for artisanal purposes. To that end, she believes it is within the sovereign right of the state to offer the fee. The concern perhaps centers on the use of the term "bounty" because it implies incentive. She suggested the sponsor and committee work with Mr. Fleener to find a win-win solution.

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CHAIR COGHILL stated his commitment to work with the sponsor.

[SB 60 was held in committee.]

[3:00:27 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:00 p.m.