

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

March 16, 2016

3:30 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Mia Costello, Vice Chair
Senator John Coghill
Senator Peter Micciche
Senator Bert Stedman
Senator Bill Stoltze
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 172

"An Act relating to management of enhanced stocks of fish; authorizing the operation of nonprofit shellfish hatcheries; relating to application fees for salmon and shellfish hatchery permits; and providing for an effective date."

- MOVED CSSB 172(RES) OUT OF COMMITTEE

SENATE BILL NO. 163

"An Act relating to the nomination and designation of state water as outstanding national resource water; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 172

SHORT TITLE: FISH/SHELLFISH HATCHERY/ENHANCE. PROJECTS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

| | | |
|----------|-----|---------------------------------|
| 02/05/16 | (S) | READ THE FIRST TIME - REFERRALS |
| 02/05/16 | (S) | RES, FIN |
| 02/22/16 | (S) | RES AT 3:30 PM BUTROVICH 205 |
| 02/22/16 | (S) | Scheduled but Not Heard |

03/04/16 (S) RES AT 3:30 PM BUTROVICH 205
03/04/16 (S) Heard & Held
03/04/16 (S) MINUTE(RES)
03/11/16 (S) RES AT 3:30 PM BUTROVICH 205
03/11/16 (S) -- MEETING CANCELED --
03/16/16 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 163

SHORT TITLE: NATL. RES. WATER NOMINATION/DESIGNATION

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/29/16 (S) READ THE FIRST TIME - REFERRALS
01/29/16 (S) RES, FIN
02/15/16 (S) RES AT 3:30 PM BUTROVICH 205
02/15/16 (S) Heard & Held
02/15/16 (S) MINUTE(RES)
03/07/16 (S) RES AT 4:30 PM BUTROVICH 205
03/07/16 (S) Heard & Held
03/07/16 (S) MINUTE(RES)
03/14/16 (S) RES AT 3:30 PM BUTROVICH 205
03/14/16 (S) Heard & Held
03/14/16 (S) MINUTE(RES)
03/16/16 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

AKIS GIALOPSOS, staff to Senator Giessel and the Senate
Resources Committee
Juneau, Alaska

POSITION STATEMENT: Explained the changes in CSSB 172, version
\E and CSSB 163, version \H.

FORREST BOWERS, Deputy Director
Division of Commercial Fisheries
Alaska Department of Fish and Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Expressed appreciation for the changes in
CSSB 172.

CHRIS MIERZEJEK
Aleutian Pribilof Island Community Development Association
(APICDA)
Anchorage, Alaska

POSITION STATEMENT: Supported CSSB 172, version \E.

HEATHER MCCARTY, Lobbyist
Central Bering Sea Fishermen's Association (CBSFA),

Co-chair, Steering Committee
Alaska King Crab Research, Rehabilitation and Biology (AKCRRAB)
Kodiak, Alaska

POSITION STATEMENT: Supported CSSB 172, version \E.

JEFF STEPHAN, United Fishermen's Marketing Association (UFMA)
Kodiak, Alaska

POSITION STATEMENT: Supported CSSB 172, version \E.

GINNY ECKERT, Professor of Fisheries
University of Alaska Fairbanks at Lena Point
Juneau, Alaska

POSITION STATEMENT: Supported CSSB 172, version \E.

JEFF HETRICK, Director
Alutiiq Pride Shellfish Hatchery, Seward, Alaska

POSITION STATEMENT: Supported CSSB 172, version \E.

JAMES AGULAR, owner
Eagle Shellfish Farm
Cordova, Alaska

POSITION STATEMENT: Supported CSSB 172, version \E.

JULIE DECKER, Executive Director
Alaska Fisheries Development Foundation
Juneau, Alaska

POSITION STATEMENT: Supported CSSB 172, version \E.

ANGEL DROBNICA, Aleutian Pribilof Island Community Development
Association (APICDA)
Kodiak, Alaska

POSITION STATEMENT: Supported CSSB 172, version \E.

SAM RAYBUNG, Aquatic Director
Alaska Department of Fish and Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Explained concerns related to PSP in CSSB
172.

LARRY HARTIG, Commissioner
Department of Environmental Conservation (DEC)
Anchorage, Alaska

POSITION STATEMENT: Commented on CSSB 172, version \E and CSSB
163.

PENNY VADLA, representing herself
Soldotna, Alaska

POSITION STATEMENT: Opposed SB 163.

RANDY JACKSON, representing himself
Haines, Alaska

POSITION STATEMENT: Opposed SB 163.

GEORGE CAMPBELL, representing himself
Haines, Alaska

POSITION STATEMENT: Enumerated problems with SB 163.

VERNER WILSON, Director
Natural Resources
Bristol Bay Native Association (BBNA)
Dillingham, Alaska

POSITION STATEMENT: Opposed SB 163.

KIM WILLIAMS, Executive Director
Nunamta Aulukestai
Dillingham, Alaska

POSITION STATEMENT: Suggested changes to SB 163.

SAM SNYDER, Trout Unlimited
Anchorage, Alaska

POSITION STATEMENT: Opposed SB 163.

BRITTANY HOGAN, representing herself
Anchorage, Alaska

POSITION STATEMENT: Opposed SB 163.

ERIC BOOTON, representing himself
Anchorage, Alaska

POSITION STATEMENT: Opposed SB 163.

JED WHITTAKER, representing himself
Anchorage, Alaska

POSITION STATEMENT: Opposed SB 163.

HEIDI KRITZ
United Tribes of Bristol Bay
Juneau, Alaska

POSITION STATEMENT: Opposed SB 163 and its CS.

JAMES SULLIVAN, representing himself
Douglas, Alaska

POSITION STATEMENT: Tacitly supported SB 163, but urged continued work on it.

DENNIS WATSON, Mayor
City of Craig
Juneau, Alaska

POSITION STATEMENT: Tentatively supported SB 163, but said it needs more work.

MELANIE BROWN, representing herself
Naknek Native Council
Juneau, Alaska

POSITION STATEMENT: Testified on SB 163.

VICTORIA DEMMERT, President
Yakutat Tlingit Tribe, Yakutat, Alaska

POSITION STATEMENT: Opposed SB 163.

GUY ARCHIBALD, Director
Southeast Alaska Conservation Council (SEACC)
Juneau, Alaska

POSITION STATEMENT: Opposed SB 163.

ACTION NARRATIVE

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CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Stedman, Costello, Stoltze, Coghill, and Chair Giessel.

SB 172-FISH/SHELLFISH HATCHERY/ENHANCE. PROJECTS

[3:31:31 PM](#)

CHAIR GIESSEL announced consideration of SB 172 [version 29-GS2653\A was before the committee].

SENATOR COSTELLO moved to adopt CSSB 172, version 29-GS2653\E.

CHAIR GIESSEL objected for discussion purposes and invited her staff to explain the changes.

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SENATOR MICCICHE joined the committee.

[3:32:37 PM](#)

SENATOR WIELECHOWSKI joined the committee.

AKIS GIALOPSOS, staff to Senator Giessel and the Senate Resources Committee, Juneau, Alaska, explained the changes in

the E version. Aside from four changes at the request of one member of the committee, the remainder of the changes were at the request of the department, he said.

The first change is a title change that reflects:

1. The title is changed to reflect the following changes:

"An Act relating to management of stocks of shellfish; authorizing certain nonprofit organizations to engage in shellfish stock rehabilitation efforts, carry out shellfish enhancement projects, and operate shellfish hatcheries; relating to application fees for salmon hatchery permits; and providing for an effective date."

2. Page 2, Lines 13-14, inserts a new title for the new chapter 12: "Shellfish Stock Rehabilitation Efforts, Enhancement Projects, and Hatcheries."

3. Page 2, Lines 15-19, reflect language changes to include shellfish stock rehabilitation and enhancement projects in the section; along with existing language that included hatcheries.

4. Page 2, Lines 22-24, changes the language by removing "hatchery permit" and replacing it with "a permit issued under this section." Also removes "a hatchery" and replaces it with "a facility."

5. Page 2, Lines 28-30, restructures the wording of the paragraph without substantive changes.

6. Page 3, Lines 6-10, restructures the wording of the paragraph. Adds the terms proposed stock rehabilitation effort and enhancement project (line 7) to the paragraph. Adds the words "the capacity of the facility" (line 9) to the paragraph.

7. Page 3, Lines 15-16, removes the words "a hatchery operator" and replaces them with "a permit issued under this chapter."

8. Page 3, Lines 17-20, restructures the wording of the paragraphs without substantive changes.

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9. Page 3, Lines 21-22, adds a new paragraph prohibiting a permit holder from procuring or placing genetically modified shellfish into the water of the state. (From a committee member)

10. Page 3, Lines 23-31, restructures the wording of the paragraphs without substantive changes.

11. Page 4, Lines 1-3, restructures the wording of the paragraph. Removes the words "operators of other hatcheries," replacing them with "other permit holder."

12. Page 4, Lines 4-8, restructures the wording of the paragraphs without substantive changes.

13. Page 4, Lines 21-22, removes the word "hatchery," replacing it with "permit holder." Also replaces "AS 16.12.010-16.12.199" with "this chapter." (Allegedly a bill drafting conformity.)

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SENATOR STOLTZE asked if there is another potential motive out there.

MR. GIALOPSOS answered that he meant nothing by "allegedly."

14. Page 4, Line 25, removes the words "hatchery operator," replacing it with "permit holder."

15. Page 4, Line 29, replaces the words "hatchery operators" with "permit holders."

16. Page 4, Line 31, replaces "AS 16.12.010-16.12.199" with "this chapter."

17. Page 5, Lines 4-5, replaces "in the planning, construction, or operation of shellfish hatcheries" with "as to stock rehabilitation efforts, enhancement projects, or the planning, construction, and operation of facilities."

18. Page 5, Line 7/Page 5, Line 8 replaces "AS 16.12.010-16.12.199" with "this chapter."

19. Page 5, Lines 12-13, restructures the wording of the paragraph. Removes the words "and then, upon department approval, from other areas, as necessary." (From a committee member)

20. Page 5, Line 15, replaces "shellfish hatchery operator" with "permit holder."

21. Page 5, Line 16, replaces "another hatchery operating under a permit issued under AS 16.12.010-16.12.199" with "another permit holder under this chapter."

22. Page 5, Line 18-19, restructures the wording of the paragraph without substantive changes.

23. Page 5, Lines 20-22, restructures the wording of the paragraph without substantive changes.

24. Page 5, Lines 23-23, replaces "a hatchery permit holder may harvest shellfish for a facility" with "a permit holder may harvest shellfish for a stock rehabilitation effort, an enhancement project, or a hatchery."

25. Page 5, Lines 30-31/Page 6, Lines 1-2 replaces "a hatchery permit holder" with "a permit holder;" replaces "membership of the hatchery permit holder's board" with "permit holders board;" replaces "established for that facility through the common property fishery" with "established for stock rehabilitation, an enhancement project, or a hatchery through the common property fishery."

26. Page 6, Line 11, replaces "hatchery" with "permit holder."

27. Page 6, Line 13, replaces "hatchery" with "permit holder."

28. Page 7, Line 4, replaces "hatchery permit holder" with "permit holder."

29. Page 7, Line 8, replaces "shellfish hatchery" with "permit holder's stock rehabilitation effort, enhancement project, or hatchery."

30. Page 7, Lines 19-20, replaces "hatchery permit holder who operates a facility" with "permit holder who is rehabilitating stock, carrying out an enhancement project, or operating a facility."

31. Page 7, Lines 30-31/Page 8, Line 1, removes the definition of "facility" from subsection (g)."

32. Page 8, Line 3, replaces the title "Inspection of hatchery" with "Inspection by the department."

33. Page 8, Lines 3-7, includes the terms stock rehabilitation facility and enhancement project facility to be inspected along with hatcheries by the Department of Fish and Game.

34. Page 8, Lines 8-9, restructures the wording of the paragraph without substantive changes.

35. Page 8, Lines 10-19, reformats the paragraph to be enumerated.

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36. Page 8, Line 19, removes the word "hatchery," inserts the words "by the permit holder."

37. Page 8, Lines 25-26, inserts a definition of "facility."
NOTE: This definition is different than the one removed in change 31.

38. Page 8, Lines 27-31, inserts a definition of "genetically modified shellfish." (by a committee member)

39. Page 9, Line 4, the definition of "shellfish" is modified to remove the words "or that is authorized to be imported into the state under a permit issued by the commissioner." (From a committee member)

40. Page 9, Lines 5-6, inserts a definition of "stock rehabilitation."

41. Page 9, Lines 8-14, reformats Section 4(a) to constitute two new paragraphs. Replaces "AS 16.12.010-16.12.199 for shellfish," with "(2) nonprofit organizations holding a permit under AS 16.12 for a shellfish stock rehabilitation effort, a shellfish enhancement project, or a shellfish hatchery."

42. Page 10, Line 1, inserts the words "or other facility."

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43. Page 10, Lines 19-30, inserts a new Section 9 to comport with the repeal and reenactment language of sec. 2, ch.55, SLA 2013, related to Section 8 (Page 10, Lines 4-18).

44. Page 11, Line 10, removes the words "may proceed to."

45. Page 11, Lines 15-16, inserts a new Section 14, instituting an effective date for the new Section 9 (Page 10, Lines 19-30).

CHAIR GIESSEL asked Senator Wielechowski if he wished to speak to any changes he had offered. He indicated no. She invited department forward to give them their rationale.

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FORREST BOWERS, Deputy Director, Division of Commercial Fisheries, Alaska Department of Fish and Game (ADF&G), Juneau, Alaska, said they appreciate the changes the committee made to SB 172. The public seemed to be confused about the bill's focus. The first draft focused on hatcheries, and these changes add a definition of "stock rehabilitation and enhancement projects," which could be a component of an enhancement project, because that is what the bill is supposed to be about, not hatcheries exclusively.

SENATOR WIELECHOWSKI asked if they checked to see if there were any differing written opinions within the department about the appropriateness of this legislation.

MR. BOWERS answered yes; they checked, but they didn't find any written documentation of objections to SB 172. Some department staff may not feel that hatcheries are an appropriate tool to use in fisheries management, but it is statutorily authorized and directed to use them. The department owns and operates two hatcheries through the Division of Sport Fish and owns more.

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SENATOR WIELECHOWSKI asked if the department's concerns were over cost or invasive species.

MR. BOWERS answered he hadn't heard any concerns related to this bill directly, but as discussions about shellfish enhancement and rehabilitation have developed over the years, they were primarily related to how to manage enhanced shellfish stocks under the current fisheries structure.

He explained that shellfish, crab specifically, can't be marked the way salmon are marked, because of the biology of crab they would mix with wild stocks in many cases.

CHAIR GIESSEL removed her objection and finding no further objections, announced that work draft E was adopted. She continued public testimony.

CHRIS MIERZEJEK, Aleutian Pribilof Island Community Development Association (APICDA), Anchorage, Alaska, supported SB 172. He has been a resident of rural Alaska for 20 years and that APICDA

is one of the community development quota (CDQ) groups. SB 172 is a good start in creating a regulatory framework that will provide communities with economic benefits to explore mariculture activities.

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HEATHER MCCARTY, Lobbyist, Central Bering Sea Fishermen's Association (CBSFA), Kodiak, Alaska, said she is also co-chair of the Steering Committee for Alaska King Crab Research, Rehabilitation and Biology (AKCRRAB). They support SB 172 as well as the CS. The other AKCRRAB co-chair is Dr. Ginny Eckert, who is a biologist at the University of Alaska Fairbanks in Juneau. She said that ABSFA has been involved with AKCRRAB for seven or eight years as a coalition of industry and scientists and agencies to develop techniques to raise king crab in hatcheries for the purpose of rehabilitating Red King Crab in the Kodiak area and Pribilof Island Blue King Crab in the Bering Sea. They are doing it because other efforts to bring back those stocks have not been successful.

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JEFF STEPHAN, United Fishermen's Marketing Association (UFMA), Kodiak, Alaska, said he is also on the AKCRRAB Steering Committee. He supported the changes in CSSB 172. He said the original intention in forming this organization was to try to add some money to ADF&G's effort to better understand and promote research on crab and bring the University in a little bit more. One objective was to develop some local graduate students and try to keep them in Alaska that would be knowledgeable about king crab biology. They have worked very closely with the National Marine Fisheries Service and the Alaska Department of Fish and Game (ADF&G) for many years.

This initiative began back in 1996 with an international symposium in Kodiak that included the countries of Norway, Chile, Eastern Canada, Japan, and Argentina, that laid out how to proceed with their research and enhancement activities. They followed up about 10 years later with another international conference that brought people in from Russia along with the other countries he mentioned.

MR. STEPHAN said they absolutely support the standards, customary genetic practices, and protective measures required by the ADF&G. They do a very good job, and this bill allows these studies to move forward in a little bit more of a formal manner.

[3:56:46 PM](#)

GINNY ECKERT, Professor of Fisheries, University of Alaska Fairbanks at Lena Point, Juneau, Alaska, supported SB 172. She is also the science director for the AKCRRAB program and is an expert in shellfish ecology. She has been working in Alaska since 2000 and on king crab rehabilitation since 2007. She thanked the department and the committee for their efforts with this bill.

Responding to the questions about the rationale for this work at the last hearing, she said seven out of 10 red king crab stocks are closed to fishing in Alaska and many have been closed since the 1980s. There has been a clear lack of recovery for many decades. Their evidence and research indicates that recruitment is limited and these enhancement efforts may be successful. These efforts could be very important to small coastal communities, not only to rehabilitate commercial fisheries, but also for sport and subsistence purposes.

MS. ECKERT said other shellfish species have explored enhancement, but there is also need in the areas of sea cucumbers and other mollusks. She was available to answer questions about those as she is familiar with the efforts.

SENATOR WIELECHOWSKI said he is generally supportive of the bill, but his only concern is about unintended impacts to the ecosystem by placing new species with different genetic compositions in it. He asked if she shared that concern.

MS. ECKERT replied yes. The bill states that the stocks to be rehabilitated are ones that should be native stocks to the area, and they definitely support that. It's very clear about not bringing anything in from outside the state and definitely nothing genetically modified. The work she has done to date has only been conducted in areas where there are no natural stocks. It is reasonable to be concerned about natural stocks.

She explained that they have also been working closely to ensure that there is genetic diversity among the released animals. The department regulates this activity.

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From a scientific perspective, she said king crabs, and shellfish in general, are very different from salmon. It's very likely that there is the idea that a certain number of animals are going to thrive and a certain number aren't. They will do their best to replicate that in hatchery environments and not modify the genetic composition, but the reality is that through

overfishing and other processes the genetic composition is changing anyhow. So there is an impact from recovering from overfishing.

SENATOR WIELECHOWSKI asked her to what she attributes the crash in red and blue king crab stocks.

MS. ECKERT answered that king crab are vulnerable to overfishing and the historical fishing rates were really high. Also, quite a few foreign fleets participated. A lot more is known now about fishing rates. There are theories about trawling catching king crab as bycatch, so it wasn't necessarily directed fisheries that were leading to the crash. King crab aggregate together and that makes them particularly vulnerable to overfishing - through directed and undirected fishing, she added.

SENATOR MICCICHE asked if the bill ties the department's hands from using adjacent stock where there was a complete regional failure of a species that essentially has no stock remaining for rehabilitation.

MS. ECKERT answered that the bill has language on "Brood stock sources" on page 5, line 9 that says "(a) The department shall approve the source and number of shellfish taken for use as brood stock... (b) Where feasible, a permit holder shall first take shellfish from stocks native to the area in which the shellfish will be released."

She thought that language left the department open to be able to look to the closest possible source and allows rehabilitation of the stocks of the kind crab she is familiar with.

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JEFF HETRICK, Director, Alutiiq Pride Shellfish Hatchery, Seward, Alaska, supported SB 172. He said the hatchery is operated by the Chugach Regional Resources Commission. He said he is also a member of AKCRRAB that is largely responsible for this legislation. It is needed because for the last 15 years they have been doing strictly experimental work under the Fisheries Resource Permit and the Commission's permit. The department has been very cooperative in allowing them to do some of these projects. They have worked with developing the technology for raising razor clams, cockles, butter clams, and little neck clams, and do some small out-stocking experiments to see how they grow - trying to figure out what the bottleneck is for production.

He added that a lot of shellfish stocks are decimated as well as the crab stocks and there is no commercial fishery on hard clams. Most subsistence and personal use fisheries are declining to the point where people don't bother doing it. These efforts are not guaranteed to work, but this bill allows enhancement projects on a larger scale that could make a difference. They would go from stocking numbers of 5 or 10 thousand to a half million.

MR. HETRICK said AKCRRAB has worked hand in hand with ADF&G for years. It has very strict pathology and genetic requirements and "provides more than adequate oversight." If this bill is passed it will reduce the department's costs for managing these projects. He has a notebook full of permits for last year, which is four inches thick, because of the way the current Fisheries Resource Permit Program is administered.

4:07:50 PM

JAMES AGULAR, owner, Eagle Shellfish Farm, Cordova, Alaska, supported CSSB 172, version \E. It's a good starting point for economic development in the coastal communities, he said, but he has one problem with it: Section 7(c) the donations to food banks. Mollusks are shellfish and sometimes have paralytic shellfish poisoning (PSP), and this section allows giving shellfish to anybody without it being tested by the DEC for any toxin.

4:09:39 PM

JULIE DECKER, Executive Director, Alaska Fisheries Development Foundation, Juneau, Alaska, supported CSSB 172. She said their non-profit membership is comprised of fishermen, processors, and support sector businesses, and it has been around since 1978. Their mission is to identify common problems and opportunities across the state in the seafood industry and help develop solutions primarily using research and development. Their aim is to balance economic opportunities with sustainability principles.

She said that CSSB 172 plays a role in the development of Mariculture in Alaska. Her organization has been spearheading a project called the "Alaska Mariculture Initiative" to expedite the development of mariculture in the state with the vision of growing a billion dollar industry in 30 years.

This also reinforces the Governor's recent Administrative Order (AO) that establishes the Alaska Mariculture Task Force with the

intent to recommend a comprehensive plan for going about this development.

[4:11:49 PM](#)

MS. DECKER stated the SB 172 creates the regulatory framework that will allow for this type of shellfish enhancement. She pointed out that her organization is a client for different sustainability certifications, both MSC and Alaska's RFM program. In that role she very clearly understands the importance of ADF&G's strict rules about hatcheries and their management. It comes into play in the sustainability certification process, and it's one of the things that actually really protects the mariculture industry.

[4:12:53 PM](#)

ANGEL DROBNICA, Aleutian Pribilof Island Community Development Association (APICDA), Kodiak, Alaska, supported SB 172 and the CS. Under the program the association is charged with increasing fishing related economic development opportunities for their members. Mariculture is a tremendous opportunity for western Alaska, not only for business and revenue generation, but for potentially increasing access to subsistence fisheries, workforce development and training, and research to better understand the impacts of climatic-related ocean changes, and building resiliency in adapting to those changes.

She said APICDA is a member of Alaska Fisheries Development Foundation, which spearheaded the Alaska Mariculture initiative, and they have also been involved in the AKCRRAB program. The coalition has achieved great success in achieving a better understanding of the life history and ecology of red and blue king crab. They hope this research will eventually lead to the rehabilitation of depressed king crab stocks in Alaska and result in restored commercial and subsistence harvest for the fisheries-dependent communities in the Pribilof Islands.

MS. DROBNICA said SB 172 will fill a current gap that exists for permitting and regulating restoration efforts and will provide a very important framework for future mariculture development. SB 172 is consistent with the initiative and the governor's task force.

CHAIR GIESSEL thanked her and finding no further comments, closed public testimony on SB 172. She mentioned a suggested amendment in Section 7 to address paralytic shellfish poison (PSP).

[4:16:04 PM](#)

SAM RAYBUNG, Aquatic Director, Alaska Department of Fish and Game (ADF&G), Juneau, Alaska, explained that the concern related to PSP is new. This bill does not have a provision for testing for PSP as all commercially-sold organisms are tested. It is an oversight and he had no objection to putting it in.

SENATOR STOLTZE said he wanted to hear from the Department of Environmental Conservation (DEC) on that regulation.

[4:17:40 PM](#)

LARRY HARTIG, Commissioner, Department of Environmental Conservation (DEC), Anchorage, Alaska, said he needed to talk to his food and safety people, but he thought they would want to make sure the product is tested, because of the safety of the people that would be consuming, but also the reputation of the product. This comes up from time to time when people want to donate food. He preferred to strike the language and work it out.

SENATOR WIELECHOWSKI said the statute provides immunity from liability if the shellfish is "apparently fit for human consumption." He understands there is no way to tell whether PSP is present in shellfish or not without testing.

COMMISSIONER HARTIG replied that it sounds like the suggested language may be broader than PSP concerns. Testing takes time to accomplish; he didn't know a way of determining it in the field.

CHAIR GIESSEL commented that "fit for human consumption" is the language before them, and they are exempt from having a DEC permit. She asked if it was detrimental to remove the absolution from liability.

COMMISSIONER HARTIG said he would have to talk to his people and get a full answer for her. His job is to protect the public, and PSP is a high concern.

SENATOR MICCICHE said Section 7's only function is for providing immunity. If they wanted to donate, they could first have a sample tested and then donate afterwards. He supported removing Section 7.

[4:21:29 PM](#)

SENATOR COSTELLO remarked that this section contemplates removing the language that is underlined. But they could instead remove the word "apparently" so that it would read "fit for

human consumption." That would then require anyone donating shellfish to have it tested. Later in the bill it says the department would be allowed to promulgate regulations. Her suggestion does not affect the first part of the section, because those individuals who are donating the salmon have a permit.

CHAIR GIESSEL said if they removed Section 7 it only removes the shellfish language. It leaves the statute in place for salmon.

SENATOR STOLTZE stated that the food banks requested the general immunities provision decades ago, and not having that would stifle the willingness to participate.

CHAIR GIESSEL reiterate that removing Section 7 only removes shellfish.

SENATOR WIELECHOWSKI asked which types of shellfish they are worried about. Are they worried about crab?

COMMISSIONER HARTIG responded that he would have to talk with experts. More than one particular species can get PSP.

CHAIR GIESSEL recapped that a conceptual amendment was suggested of striking Section 7, and ADF&G had no concern. DEC is equivocal at this point simply because the experts aren't in the room. Removing is not detrimental to the bill in terms of hatcheries.

SENATOR MICCICHE added that it also returns the original language. He moved Conceptual Amendment 1 to strike Section 7.

CHAIR GIESSEL added an additional conceptual amendment to correct a drafting error on page 2, line 17, that would delete "or a designee", because that phrase appears nowhere else in this piece of legislation. All of the authority rests with the commissioner.

CHAIR GIESSEL announce that without objection conceptual Amendment 1, as amended, was adopted.

[4:26:48 PM](#)

SENATOR COSTELLO moved to report CSSB 172, version 29-GS2653\E, as amended, from committee with individual recommendations and attached zero fiscal note. There were no objections and CSSB 172(RES) was reported from committee.

[4:27:11 PM](#)

At ease

SB 163-NATL. RES. WATER NOMINATION/DESIGNATION

[4:28:43 PM](#)

CHAIR GIESSEL announced consideration of SB 163.

SENATOR COSTELLO moved to adopt proposed CSSB 163, version 29-GS2916\H, as the working document.

CHAIR GIESSEL objected for an explanation and invited her staff to explain the changes.

[4:30:10 PM](#)

AKIS GIALOPSOS, staff to Senator Giessel and the Senate Resources Committee, Alaska State Legislature, Juneau, Alaska, explained the changes in the CS. There are seven changes in version \H as follows:

1. Page 1, Lines 7-9: Amends Section 1(a) by prohibiting the Department of Environmental Conservation from managing a water of the state as an outstanding national resource water unless it has been designated as an outstanding national resource water by an act of the legislature.
2. Page 1, Lines 10-13: Amends Section 1(b) by requiring a nomination to specifically and geographically identify a water body, or portion of a waterbody, for designation as an outstanding national resource water.
3. Page 2, Lines 1-8: Amends Section 1(d) by requiring the Department of Environmental Conservation to adopt regulations establishing a process for submitting a nomination for an outstanding national resources water by providing public notice for all nominations, providing notice to all property affected by the designation, and creating a means for any resident of the state to provide additional information about the nomination.
4. Page 2, Lines 9-31/Page 3, Lines 1-2: Creates a new Section 1(e), requiring the Department of Environmental Conservation to transmit a nomination of an outstanding national resource water to the

legislature if the department determined the nominated water to be unique, important, or ecologically sensitive; that the designation is necessary to protect the water due to insufficient federal and state protections; determined there is no other available/effective method of protection. The Department would need to determine whether the nominated water had either been designated a wild or scenic river; whether the water is either an ecosystem or habitat for an endangered or threatened species; whether the water is an ecosystem or habitat for an outstanding recreational fishery; or whether the water serves as the sole source of water for the use of people. The Department would describe the potential effects of a designation on endangered or threatened species; recreational fisheries; and the water supplies for the use of people.

5. Page 3, Lines 3-8: Amends the previous bill version's Section 1(e) by reordering it to subsection 1(f), and adding a provision prohibiting the Department of Environmental Conservation from transmitting a substantially similar nomination to one already transmitted within two years of the existing nomination's original transmission.

6. Page 3, Lines 9-14: Adds a new Section 1(f), requiring the Departments of Environmental Conservation and Natural Resources to submit a report to each body of the legislature every ten years, beginning in 2017. The reports would describe each body of water designated as an outstanding national resource water and provide a recommendation regarding the continuation of that designation.

7. Page 3, Line 21: Amends Section 3 by replacing the word "may" with "shall," requiring the Department of Environmental Conservation to adopt regulations necessary for the implementation of the bill.

CHAIR GIESSEL removed her objection and said since Senators Coghill and Stedman had suggested some of these changes she would offer them the opportunity to comment.

SENATOR COGHILL commented that a 10-year review is totally appropriate (referencing language on page 3, lines 9-14, Section

(g)). A lot of places in Alaska that have not been occupied will change.

4:35:01 PM

SENATOR STEDMAN said language on page 2, line 5, provides a provision to require individual notification to property owner(s), the reason being they are always taking away peoples' property rights away and very rarely adding to them. When you purchase property, you buy those rights, and he didn't think it appropriate to take them away without proper notification and due process.

SENATOR WIELECHOWSKI asked if the notice to known property owners will include people who have ownership of rights-of-way along a river or a couple hundred yards in from that, but may take the water.

MR. GIALOPSOS answered that he understands Senator Stedman's intent is to provide notice to each property owner whose interests are affected by the designation that would have their property directly impeded by the waterway. The DEC will promulgate regulations that should clarify that issue.

SENATOR WIELECHOWSKI asked for the DEC commissioner to come back.

4:37:21 PM

SENATOR COSTELLO asked if language on page 3, line 14, of the 10-year report is asking for a recommendation from the two departments on the continuation of the designation, because that implies that there is a process to un-designate. She wanted to know if that is the intent, and if that is included in the lower section of the bill where the department would write the regulations.

MR. GIALOPSOS answered according to Legislative Legal because this would be an act of the legislature, not a constitutional act, and because one legislature cannot bind the hands of future legislatures, it is understood that these departments could recommend to un-designate in extreme circumstances, barring a constitutional prohibition.

CHAIR GIESSEL asked if there is further objection to the committee substitute (CS). Finding none, she announced that Version \H was before the committee. She invited Commissioner Hartig forward and asked him to comment on the CS.

[4:39:09 PM](#)

LARRY HARTIG, Commissioner, Department of Environmental Conservation (DEC), Anchorage, Alaska, said the CS addresses a number of issues and that it represents reaching "some middle ground" to get more consensus. He is still concerned with some ambiguous language that has already been mentioned.

SENATOR WIELECHOWSKI asked if new language on page 1, lines 7-9, means the department may not manage water of the state as specified in 40 CFR (Code of Federal Regulations) 131.12 unless it has been designated as an outstanding national water resource (ONWR) under this section. That is essentially saying the DEC may not manage the water as an ONWR, and there is a lot more to anti-degradation than just the ONWR. Does this mean that DEC can't apply anti-degradation to manage any water unless it is specifically designated as an ONWR? It could be read two ways.

COMMISSIONER HARTIG agreed adding that that that CFR section reference covers more than Tier 3 waters. It appears to also deal with Tier 2 waters and perhaps Tier 1. This also might be contrary to requirements of the Clean Water Act, but he would have to get a legal opinion. He thought there were some unintended consequences that need to be addressed.

CHAIR GIESSEL asked if he would advocate when water is nominated that it would immediately become under the jurisdiction of a Tier 3 water without having any review.

COMMISSIONER HARTIG responded no; it's more subtle than that. It says the department may not manage water of the state as specified in 40 CFR 131.12, and that section also deals with how Tier 2 waters are managed and maybe Tier 1. It's confusing.

CHAIR GIESSEL asked if "tier water" only is designated as ONRW.

COMMISSIONER HARTIG replied only Tier 3 water.

CHAIR GIESSEL said she agreed that that language seemed to make it a bit more specific.

COMMISSIONER HARTIG explained that the problem is with the referral to all of 40 CFR 131.12 that deals with more than just Tier 3 waters.

SENATOR WIELECHOWSKI asked if he had any recommended language.

COMMISSIONER HARTIG answered that he could come up with some other language.

4:43:50 PM

SENATOR WIELECHOWSKI asked what if you had to take the river to get to your property and had to hike in a few hundred yards in reference to language on page 2, lines 5-6. How would it be determined that a property is affected, because clearly someone whose land abutted water would be affected?

COMMISSIONER HARTIG agreed with all the discussion he had heard already about noticing anyone affected before anything happens, but in practice it might not be easy to execute, because of ambiguity and costs. For instance, it says to "each known property owner," for which he thought the intent was "real property owner." Also, "whose interest is affected" would be a tough determination to make, because each person's circumstances would have to be considered. Something definitive would have to be crafted. Perhaps they could provide the same notice the department does to the general public for a rule making broadcast, and a more targeted approach for directly affected owners.

CHAIR GIESSEL asked if he wants that language in statute rather than regulation.

COMMISSIONER HARTIG said he wants some guidance in statute, but the details could be worked out in regulations.

4:47:22 PM

SENATOR COGHILL said he thought the 40 CFR 131.12 reference issue could be fixed by referencing subsections (a)(3), specifically. Then the designation hasn't happen, but the reason to designate is in what is called Tier 3 section.

CHAIR GIESSEL asked if he was on page 1, line 8.

SENATOR COGHILL answered yes.

COMMISSIONER HARTIG said he guessed that would be the direction to go, but he would have to talk to the attorneys about it.

4:49:36 PM

SENATOR WIELECHOWSKI said language on page 2, lines 16-17, talks about the department transmitting an ONRW nomination only if, and a number of things are listed, and asked if number 3 - determines that there is no other available or effective method

of protecting the water - and asked if that is a costly analysis.

COMMISSIONER HARTIG agreed that it would be and added that his concern generally was how to pay for this, because there is no mechanism currently. He is looking at four nominations right now, and if they start acting on those and he to have them ready by the start of next session, he would have "to get real busy." There is the whole Bristol Bay watershed, all of the Yakutat forelands, the Chilkat River, and the Kuktuli River.

The concept about an alternative short of a Tier 3 is a legitimate area of inquiry, he said, but he was a bit concerned with "determines that there is no other available or effective method for protecting the water," because that would never be the case. There is always something else, like declaring a park.

CHAIR GIESSEL said the fiscal issue is a fundamental question. The Governor has asked that the legislature make this determination, but public comment indicates that they are considered a political body and not a scientific one. So, regardless of who is doing this, scientific information would be needed. One member suggested having a fee attached to a nomination.

[4:52:46 PM](#)

COMMISSIONER HARTIG agreed about the science and other relevant facts to the criteria like recreational and ecological values would be needed.

[4:53:18 PM](#)

SENATOR STOLTZE disclosed that his property has a couple hundred feet of river front. He asked what the legislature could do to help him "keep on this high ground that I believe you started on."

COMMISSIONER HARTIG said he believes the legislature should make the ultimate decision; it would take a lot to convince him otherwise. He would want to assure that the legislature has the science and public weigh-in when it gets the package to make a decision efficiently.

[4:59:33 PM](#)

At ease

[5:00:13 PM](#)

CHAIR GIESSEL called the meeting back to order and began taking public comment on the CSSB 163, version 29-GS2916\H.

5:01:02 PM

PENNY VADLA, representing herself, Soldotna, Alaska, opposed SB 163. The legislature should not be making this designation about our waters, but the DEC should do it based on scientific information.

5:03:41 PM

RANDY JACKSON, representing himself, Haines, Alaska, opposed SB 163. The bill is not ready to be moved forward as it doesn't have much local support. He said the bill should have specific language saying the ADF&G advisory committees should have a say in the nominations, maybe through a letter of recommendation. How to pay for this has been brought up a number of times, because the department can't pay for its projects now.

5:07:00 PM

GEORGE CAMPBELL, representing himself, Haines, Alaska, enumerated problems with SB 163. In looking at case law, the Tier 3 designation is important throughout the country, because of its restrictions. What about the people on the tributaries when their lifestyle must change because of this designation? There is already confusion about parks and subsistence and overlapping federal and state regulations.

5:10:01 PM

VERNER WILSON, Director, Natural Resources, Bristol Bay Native Association (BBNA), Dillingham, Alaska, opposed SB 163. He said a decision like this should be based on science. In Bristol Bay the bill would place the burden on them to obtain additional protections on their clean waters that many people in the region depend on. They would have to spend tight resources to convince legislators from other regions in Alaska to place protections on lands and waters in their own region.

He said the BBNA supports additional protections for their waters and have passed numerous resolutions to that effect. Clean waters are the basis for their cultural wellbeing and putting food on the table.

5:12:15 PM

KIM WILLIAMS, Executive Director, Nunamta Aulukestai, Dillingham, Alaska, suggested changes to SB 163. She said they are one of seven petitioners for the nomination of Koktuli River to be an ONRW. She said they are a 502(c)(3) non-profit and

their mission is to protect the land, water, and air that will sustain their way of life for all generations. They advocate on behalf of more than 6,000 tribal and village corporation members in the Bristol Bay region.

She thanked the chair for keeping SB 163 in committee for further work. One of her problems was with "only if" language on page 2, line 10. Their interpretation is that the legislature will never see ONRW because it has to meet the criteria on page 2 (1, 2, 3, 4, and 5). She wanted to know who determines "unique, ecological sensitive or important." She was also concerned that current state and federal protections are not sufficient and DEC will never find that current state and federal protections are not there.

Additionally, on page 3 "recreational fishery" should include the recognition of subsistence fisheries. People in rural Alaska rely on subsistence and it's important to recognize not only recreational, but subsistence. One other problem is on the last page with the intent that it has to come before the legislature within 10 days and what happens if "no action or action is taken" needs to be defined.

She reminded them that Tier 3 is about prohibiting the lowering of water quality and the reason they made their Koktuli submission is to not lower the water quality because of competing uses. Please keep this bill in committee until these issues are worked out.

[5:14:38 PM](#)

SAM SNYDER, Trout Unlimited, Anchorage, Alaska, opposed SB 163. He said clean water is a critical component of the health of our fisheries and subsequently the businesses and interests they work with. Trout Unlimited with other businesses and tribes applied for ONRW status on the Koktuli River in 2012, because it sits at the head waters of Alaska's largest commercial sockeye fishery and home of Alaska's "legendary sport fishing rivers," which draw anglers, hunters and outdoor recreationists from around the world.

This bill raises three concerns:

1. It places ownership of the resources that are to be managed at the best interest of all Alaskan into the hands of politicians.
2. It creates hurdles for securing ONRW designations that favor Alaskans and opening the door for the influence of other companies and lobbying interests.

3. Granting ONRW designation also creates a clear imbalance between managing Alaska's important resource for the benefit of Alaskans. This process should be clean, transparent and based on science.

MR. SNYDER said SB 163 creates a more cumbersome process that discourages public involvement and raises the costs associated with proving the status, he concluded.

[5:17:51 PM](#)

BRITTANY HOGAN, representing herself, Anchorage, Alaska, opposed SB 163. Outdoor recreation is one of the reasons she chooses to live Alaska and she finds great joy in being able to experience excellent trout and salmon fishing basically outside of her front door. It is exciting that Alaska has waters worthy of ONRW designation and it is clear they need to be protected. An ONRW designation is best carried out through the sound science of the DEC, not legislators in Juneau, she said.

ERIC BOOTON, representing himself, Anchorage, Alaska, opposed SB 163. He moved to Alaska from Colorado after graduating from college, because it is such a pristine state and truly a dream come true. Alaska is known world-wide as one of the greatest sportfishing destinations, because of its intact ecosystems that allow salmon and trout to thrive. Water quality is a critical component of the health of our fisheries.

MR. BOOTON said he and many of his fellow anglers have serious concerns about changing the responsibility for ruling making for ONRW from DEC to the legislature. That would put Alaska's resources in a game of political football while lobbyists are guaranteed to win over concerns of Alaska citizens, as amendments from the Alaska Miners' Association clearly demonstrate. He suggested leaving management of these resources and the determination of ONRW to the scientific experts at DEC. DEC is more accountable and consistent with these kinds of decisions.

[5:21:11 PM](#)

JED WHITTAKER, representing himself, Anchorage, Alaska, opposed SB 163. He said, "We share Mother Earth. We share the air we breathe. We share the water." But SB 163 makes him feel like he lives in Flint, Michigan, because of their contaminated water issue.

[5:23:43 PM](#)

HEIDI KRITZ, United Tribes of Bristol Bay, Juneau, Alaska, opposed SB 163 and its CS. She said the tribes in Bristol Bay are over 80 percent of its population. The tribal members still depend on a traditional subsistence way of life and they hope to continue to thrive in this region for years to come.

MS. KRITZ said they have serious concerns about the process in all the versions of the bill. The previous bill lacked any provisions about a process by which the water designations would be made and left those decisions to the legislature. The proposed amendments, however, seem entirely concerned with the outcomes, more specifically avoiding a specific kind of outcome, a Tier 3 water designation. These amendments would put in place criteria so burdensome and cost prohibitive that they would essentially prevent an ONRW designation from ever being applied to any Alaska water body. Further, if DEC had the funds to conduct the review as described in the bill, it could take years, and the ultimate decision on any such designation would still belong to the legislature. The tribes do not support politicizing the determination of an ONRW. The decision should be based on science.

JAMES SULLIVAN, representing himself, Douglas, Alaska, tacitly supported SB 163. He supports any effort that is open and transparent. He urged them to keep working on the bill.

[5:29:22 PM](#)

DENNIS WATSON, Mayor, City of Craig, Juneau, Alaska, tentatively supported SB 163, but said it needs more work. Tier 3 appears to be a wilderness type designation and prohibits a lot of things. It could be an end run by the Environmental Protection Agency (EPA) around Congress.

[5:30:53 PM](#)

MELANIE BROWN, representing herself, Naknek Native Council, Juneau, Alaska, said she is a member of United Fishermen of Alaska (UFA) and is a fourth-generation commercial permit holder in Bristol Bay. She is affiliated with the water body known as the Naknek River through her grandparents and ancestors. She and her children are supported not only economically through the commercial fishery, but she believes they exist because of the water and what it supports.

MS. BROWN said a lot of people are treating the Tier 3 water designation as something that would limit resource use and development, when the water, itself, is a resource.

[5:33:31 PM](#)

VICTORIA DEMMERT, President, Yakutat Tlingit Tribe, Yakutat, Alaska, opposed SB 163. She is a commercial setnet fisherman and a subsistence user and lifelong Yakutat member. Their concern is that there be a Tier 3, because they want clean water that can't be degraded. "There have to be places in this world where these things exist... The water is life to us."

She had concerns about some of the barriers she sees, like who is going to do it, but she didn't want "the whole business of the Tier 3 to be lost....Alaska needs it as a state." She thought the DEC would be best for processing the designations.

[5:36:37 PM](#)

GUY ARCHIBALD, Director, Southeast Alaska Conservation Council (SEACC), Juneau, Alaska, opposed SB 163. He said he is also the director of the Inside Passage Waterkeeper that is affiliated with the National Waterkeeper Alliance. He gets the impression that a Tier 3 designation is a very onerous thing to landowners. But people need to remember that the only thing a Tier 3 designation does is prevent permanent long-term or permanent degradation of water quality. Any activity on that water that does not create permanent degradation is allowed, like boating and fishing. Many states have gone through this process.

If there is an existing permitted waste water discharge into a water body and it is designated a Tier 3, those discharges are grandfathered in. Also, temporary degradation is allowed for construction: there are exemptions for river restoration and flood control. "It's not going to stop industry," he said. But an industry seeking to discharge into a Tier 3 water would have to treat its water to the water quality criteria that exists in the water body. They would no longer be allowed to externalize the cost of doing business onto the public trust, but could seek alternatives to waste water discharge like land application. They could do deep well injection like the oil and gas industry does or recycle the water like the Pogo Mine does very successfully and profitably.

"It is not a red-letter nail in the coffin of industry as it seems to be portrayed," Mr. Archibald concluded. Colorado has over 6,000 miles of Tier 3 waters and New Mexico has 2,000 miles and 29 lakes. Those states have active extractive resource businesses and their economies are doing well. "It needs to be a DEC process," he concluded.

CHAIR GIESSEL, finding no further comments, thanked everyone and closed public testimony and held SB 163 in committee.

5:39:36 PM

CHAIR GIESSEL adjourned the Senate Resources Standing Committee meeting at 5:39 p.m.