

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

February 11, 2022

1:06 p.m.

**MEMBERS PRESENT**

Representative Josiah Patkotak, Chair  
Representative Grier Hopkins, Vice Chair  
Representative Zack Fields  
Representative Calvin Schrage  
Representative Sara Hannan  
Representative George Rauscher  
Representative Mike Cronk  
Representative Ronald Gillham  
Representative Tom McKay (via Microsoft Teams)

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 287

"An Act making an appropriation for oil and gas tax credits; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 52

"An Act providing that operation of the Tutka Bay Lagoon Hatchery in Kachemak Bay is compatible with the functions of Kachemak Bay State Park; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 287

SHORT TITLE: A: OIL & GAS TAX CREDIT FUND APPROP.

SPONSOR(S): REPRESENTATIVE(S) RAUSCHER

01/21/22	(H)	READ THE FIRST TIME - REFERRALS
01/21/22	(H)	RES, FIN
02/09/22	(H)	RES AT 1:00 PM BARNES 124
02/09/22	(H)	Heard & Held
02/09/22	(H)	MINUTE(RES)

02/11/22 (H) RES AT 1:00 PM BARNES 124

BILL: HB 52

SHORT TITLE: TUTKA BAY HATCHERY

SPONSOR(S): REPRESENTATIVE(S) VANCE

02/18/21 (H) PREFILE RELEASED 1/8/21  
02/18/21 (H) READ THE FIRST TIME - REFERRALS  
02/18/21 (H) FSH, RES  
04/29/21 (H) FSH AT 10:00 AM GRUENBERG 120  
04/29/21 (H) Heard & Held  
04/29/21 (H) MINUTE(FSH)  
05/06/21 (H) FSH AT 10:00 AM GRUENBERG 120  
05/06/21 (H) Heard & Held  
05/06/21 (H) MINUTE(FSH)  
05/18/21 (H) FSH AT 10:00 AM GRUENBERG 120  
05/18/21 (H) Moved CSHB 52(FSH) Out of Committee  
05/18/21 (H) MINUTE(FSH)  
05/19/21 (H) FSH RPT CS(FSH) NEW TITLE 4DP 1NR  
05/19/21 (H) DP: VANCE, STUTES, ORTIZ, TARR  
05/19/21 (H) NR: STORY  
02/07/22 (H) RES AT 1:00 PM BARNES 124  
02/07/22 (H) Heard & Held  
02/07/22 (H) MINUTE(RES)  
02/11/22 (H) RES AT 1:00 PM BARNES 124

**WITNESS REGISTER**

CONOR BELL, Fiscal Analyst  
Legislative Finance Division  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 287, answered questions.

COLLEEN GLOVER, Director  
Tax Division  
Department of Revenue (DOR)  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on HB 287, answered questions.

MONICA ALVAREZ, Section Chief  
Resource Assessment and Development Section  
Division of Mining, Land and Water (DMLW)  
Department of Natural Resources (DNR)  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on HB 52, answered questions.

SAMUEL RABUNG, Director  
Division of Commercial Fisheries  
Alaska Department of Fish and Game (ADF&G)  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 52, answered questions.

WES HUMBYRD  
Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

JESSIE NELSON  
Homer, Alaska

**POSITION STATEMENT:** Testified in support of HB 52.

BEAVER NELSON  
Homer, Alaska

**POSITION STATEMENT:** Testified in support of HB 52.

CRISTEN SAN ROMAN  
Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

LEN FABICH  
Homer, Alaska

**POSITION STATEMENT:** Testified in support of HB 52.

PENELOPE HAAS  
Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

ROBERT VERNON  
Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

BRUCE FRIEND  
Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

ROBERT ARCHIBALD, Chair  
Kachemak Bay State Park, Citizen Advisory Board  
Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52?

ROBERTA HIGHLAND

Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

STEVE VANEK

Ninilchik, Alaska

**POSITION STATEMENT:** Testified in support of HB 52.

ROD VAN SAUN

Ninilchik, Alaska

**POSITION STATEMENT:** Testified in support of HB 52.

DAVID MARTIN

Clam Gulch, Alaska

**POSITION STATEMENT:** Testified in support of HB 52.

LIZ NERING

Cook Inlet Keeper

Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

MALCOLM MILNE

North Pacific Fisheries Association

Homer, Alaska

**POSITION STATEMENT:** Testified in support of HB 52.

KEVIN WALKER

Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

ALAN PARKS

Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

BRENT JOHNSON

Clam Gulch, Alaska

**POSITION STATEMENT:** Testified in support of HB 52.

NANCY HILLSTRAND

Pioneer Alaskan Fisheries

Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

JEFFREY LEE

Seldovia, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

EARL HOPPER  
Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

ALLEN DAVIS  
Anchor Point, Alaska

**POSITION STATEMENT:** Testified in support of HB 52.

CHRIS BARROWS, President  
Pacific Seafood Processors Association  
Seattle, Washington

**POSITION STATEMENT:** Testified in support of HB 52.

CHRIS PERRY  
Homer, Alaska

**POSITION STATEMENT:** Testified in support of HB 52.

HOLLY NORWOOD  
Nikiski, Alaska

**POSITION STATEMENT:** Testified in support of HB 52.

SUE CHRISTIANSEN  
Homer, Alaska

**POSITION STATEMENT:** Testified regarding HB 52.

DEAN DAY, Executive Director  
Cook Inlet Aquaculture Association (CIAA)  
Kenai, Alaska

**POSITION STATEMENT:** Testified in support of HB 52.

PAUL A. SHADURA II  
Kalifornsky, Alaska

**POSITION STATEMENT:** Testified regarding HB 52.

MAKO HAGGERTY  
Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

KASEY ADERHOLD  
Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

ARON PETERSON  
Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

MARK THOMAS

Anchor Point, Alaska

**POSITION STATEMENT:** Testified in support of HB 52.

DAVID SEAMAN

Homer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 52.

REPRESENTATIVE SARAH VANCE

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 52, answered questions as the prime sponsor.

CHRISTOPHER ORMAN, Assistant Attorney General

Natural Resources Section

Department of Law (DOL)

Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 52, answered questions.

#### **ACTION NARRATIVE**

[1:06:06 PM](#)

**CHAIR JOSIAH PATKOTAK** called the House Resources Standing Committee meeting to order at 1:06 p.m. Representatives Schrage, Gillham, Hannan, Rauscher, Cronk, McKay (via Microsoft Teams), and Patkotak were present at the call to order. Representatives Hopkins and Fields arrived as the meeting was in progress.

#### **HB 287-A: OIL & GAS TAX CREDIT FUND APPROP.**

[1:06:50 PM](#)

CHAIR PATKOTAK announced that the first order of business would be HOUSE BILL NO. 287, "An Act making an appropriation for oil and gas tax credits; and providing for an effective date."

CHAIR PATKOTAK noted that committee members should have received the follow-up to their questions from the bill's [2/9/22] hearing. He invited members to ask any further questions.

[1:07:34 PM](#)

REPRESENTATIVE HANNAN said she did not see an answer from the Department of Law (DOL) or the Department of Revenue (DOR) to

her question about the lapsing fund structure and the choice of language included in HB 287.

REPRESENTATIVE PATKOTAK said DOL is not online but that a memo should have been posted to BASIS regarding the "sweepability."

REPRESENTATIVE RAUSCHER, prime sponsor, noted that DOL's busy schedule did not allow for the department to be online today.

[1:08:49 PM](#)

CONOR BELL, Fiscal Analyst, Legislative Finance Division, Alaska State Legislature, responded to Representative Hannan's inquiry. The oil and gas tax credit fund is not subjected to the sweep, he explained, because the sweep provision applies to money in the general fund available for appropriation. The amount in the oil and gas tax credit fund has already been appropriated, so when that money goes from the fund to producers or companies, it is paying for those tax credits and the legislature doesn't have to approve an appropriation for those payments that go out, and since it doesn't require further appropriation it's not subject to the sweep.

[1:09:48 PM](#)

COLLEEN GLOVER, Director, Tax Division, Department of Revenue (DOR), added that the oil and gas tax credit fund is not subject to lapse, and Mr. Bell's response answers the question about whether it is sweepable.

[1:10:31 PM](#)

REPRESENTATIVE HANNAN drew attention to Mr. Bell's memorandum of 2/10/22 answering Representative Schrage's question about there being two bills [HB 250 and HB 287]. She pointed out that both bills include \$60 million for oil tax credit, which would be a total appropriation of \$120 million into the oil and gas tax credit fund should both bills be enacted. Given that amount would exceed the minimum tax due this year, she asked whether \$60 million would remain in the fund to start out fiscal year 2023 (FY 23) or whether the minimum tax owed for FY 22 would be exceeded.

REPRESENTATIVE RAUSCHER replied that the two bills would be sorted out upon reaching the House Finance Committee, and that that committee would not let the appropriations from each bill be added together.

REPRESENTATIVE PATKOTAK added that HB 250 hasn't yet left the House Finance Committee, which is the next assigned committee for HB 287.

[1:12:50 PM](#)

REPRESENTATIVE SCHRAGE asked why the undesignated general fund (UGF) was used in HB 287 as opposed to the constitutional budget reserve (CBR) as previously proposed.

REPRESENTATIVE RAUSCHER answered that last year's appropriation from the CBR was tripped up because of the way the different caucuses within the House view the usage of the CBR. A [3/4 vote of each body] is needed to use the CBR, which is one of the reasons it failed. [Using the UGF] ensures that the legislature doesn't have to go through that again.

REPRESENTATIVE SCHRAGE said there seems to be broad support for paying off the state's debts. He asked whether it would show a stronger statement of support if CBR funds were used given the higher vote threshold to fund these oil and gas tax credits. He further asked whether there is enough money in the CBR from which to pull these funds.

REPRESENTATIVE RAUSCHER responded that he already gave his opinion on why he chose this route, and he still believes it is the best route. He offered his opinion that passing it in both bodies is the important thing and would say more to the oil companies than not getting the appropriation at all.

[1:15:37 PM](#)

REPRESENTATIVE PATKOTAK announced that HB 287 was held over.

**HB 52-TUTKA BAY HATCHERY**

[1:16:16 PM](#)

REPRESENTATIVE PATKOTAK announced that the final order of business would be HOUSE BILL NO. 52, "An Act providing that operation of the Tutka Bay Lagoon Hatchery in Kachemak Bay is compatible with the functions of Kachemak Bay State Park; and providing for an effective date." [Before the committee was the proposed committee substitute (CS) for HB 52, Version 32-LS0327\D, Bullard, 2/4/22, adopted as the working draft on 2/7/22.]

[1:17:07 PM](#)

REPRESENTATIVE HANNAN inquired whether legislatively designated lands have ever before been removed from an existing state park. She further inquired whether there has ever been a conflict with any of the management plans that have existed since Kachemak Bay State Park was created in 1970 and the hatchery built in 1976.

[1:18:19 PM](#)

MONICA ALVAREZ, Section Chief, Resource Assessment and Development Section, Division of Mining, Land and Water (DMLW), Department of Natural Resources (DNR), confirmed that there has been a previous instance where lands were excepted from a legislatively designated area to address a disposal issue. That instance was the legislation that excepted land out of Denali State Park in anticipation of the gas line easement.

REPRESENTATIVE HANNAN asked whether that gas line easement is still pending. She further asked whether language was included that the easement land would revert to Denali State Park if the gas line was never built or whether the easement land would remain as DNR general use land.

MS. ALVAREZ offered her understanding that a "reverter" clause was not included in that particular legislation, and it excepted the lands from the park for the pipeline easement.

[1:19:44 PM](#)

REPRESENTATIVE HANNAN asked whether any of the management plans for Kachemak Bay State Park ever articulated a conflict or objection to the hatchery.

MS. ALVAREZ responded that the draft plans DNR has been working on over the last nine years have listed the hatchery as incompatible. Most recently, in the intent-to-adopt version of that plan, the incompatibility is mainly because DNR recognizes that there is an issue related to a disposal of interest, as well as because the enabling legislation requires that these lands be managed according to the definition of a scenic park.

[1:20:41 PM](#)

REPRESENTATIVE HANNAN noted that Kachemak Bay State Park was created in 1970. She offered her assumption that there have

been several management plans prior to the last nine years that didn't indicate a conflict even though the park was designated as a scenic park.

MS. ALVAREZ answered that the previous plan of 1995 was not as specific as the plan that [DNR] currently has before it and was intending to adopt. In 1995 the current case law was not then in [DNR's] mind. The case most relevant here was in 2013, so the most recent plan was developed with that in mind.

[1:21:55 PM](#)

REPRESENTATIVE FIELDS inquired about the number of driftnet and seine fishermen who pay into the Tutka Bay Lagoon Hatchery and other hatcheries, and the number of fishermen who catch the pinks produced by the hatchery.

[1:22:37 PM](#)

SAMUEL RABUNG, Director, Division of Commercial Fisheries, Alaska Department of Fish and Game (ADF&G), replied that the limited entry permit for the Cook Inlet area is limited in regulation to 545 commercial drift gillnet salmon permits, 686 set gillnet permits, and 68 purse seine permits. There are no purse seine fisheries in Upper Cook Inlet and there are no drift gillnet fisheries in Lower Cook Inlet or Resurrection Bay, but there are set gillnet fisheries in both Upper Cook Inlet and Lower Cook Inlet. Most of the pink salmon are harvested in the purse seine fisheries in Lower Cook Inlet, but in many years the setnet fishery harvests more pink salmon than does the seine fishery. All the permit holders who make commercial salmon landings in Area H pay a 2 percent salmon enhancement tax, which was established in 1988 through a vote by Area H fishermen. The sockeye salmon produced and released from the Tutka Bay Lagoon Hatchery also contribute to the Lower Cook Inlet set and seine fisheries.

[1:24:32 PM](#)

REPRESENTATIVE FIELDS offered his understanding that the Tutka Bay Lagoon Hatchery is primarily a pink salmon hatchery. He sought clarification on how many sockeye salmon come out of the hatchery. He further inquired about the value of red and silver salmon versus pink salmon in Cook Inlet and Kachemak Bay.

MR. RABUNG responded that he does not have that figure before him, but sockeye salmon are more valuable per pound. Pink

salmon typically make up in volume and are the second highest value salmon statewide. Sockeye are the highest when Bristol Bay is taken into account. While he doesn't know what the contribution breakdown is in the salmon enhancement tax, he said that since about 2003 the salmon enhancement tax revenue has only been between \$100,000 and \$200,000 a year. It is not insignificant, but it is not the largest contributor to paying for the operations.

[1:26:37 PM](#)

REPRESENTATIVE PATKOTAK opened public testimony on HB 52.

[1:27:36 PM](#)

WES HUMBYRD testified in opposition to HB 52. He said he has fished 60 years for crab, salmon, and shrimp. He argued that the bill continues the Tutka Bay Lagoon Hatchery burden on 1,109 active Area H permit holders in Upper Cook Inlet, and illegally authorizes exclusive privilege for the Tutka Bay pink hatchery to exploit Kachemak Bay State Park. He further argued that the Cook Inlet Aquaculture Association's (CIAA) annual hatchery expense of \$4.5 million allows access to only 17 of the 1,109 Area H fishermen. He maintained that HB 52 obscures CIAA's insolvency and that the Tutka Bay Lagoon Hatchery is illegal and needs to go away.

[1:30:36 PM](#)

JESSIE NELSON testified in support of HB 52. She stated she is a 56-year resident of Homer and a sport and commercial fisher. She said passing HB 52 is in the best interest of the state to clear the land disposal issue at Tutka Lagoon and to add acreage to the Cottonwood-Eastland parking area to ease the burden on residents from park users. If the bill is not passed and the hatchery is forced to close, she continued, there will be a cost to the state as the law says the state, not the hatchery contractor, must demolish this state asset and return the site to its normal condition. Further, if the hatchery is collateral for loans, that would have to be paid for by the state. While there may not be many seiners participating, each seiner is a small business that employs three to four people, all of whom buy fuel, groceries, and supplies.

[1:32:16 PM](#)

BEAVER NELSON testified in support of HB 52. He said he is a former Alaska Department of Fish and Game (ADF&G) research biologist and now a commercial fisher. He noted he is a member of the Kachemak Bay State Park Citizen Advisory Board but is speaking only for himself. The bill mainly addresses the land disposal issue, he stated, which must be addressed somehow. Qualified people within ADF&G, the Division of State Parks and Outdoor Recreation, and the Department of Law worked together on this bill. Failure to pass HB 52 will likely cause the shutdown of the Tutka Bay Lagoon Hatchery, which would mean no cost recovery revenue to CIAA on the pink salmon from there. This would mean saying goodbye to the China Poot dipnet fishery and the Tutka Lagoon sockeye sport fishery, each of which attracts many people. The Resurrection Bay sockeye sport fishery, which attracts hundreds of people, could also possibly be lost because without the cost recovery revenue stream the Trial Lakes Hatchery may have to be closed.

[1:34:54 PM](#)

CRISTEN SAN ROMAN testified in opposition to HB 52. She said she has followed HB 52 since last spring, and each user group opposing the bill has its own reasons for its opposition. For example, the setnet and driftnet fleet do not like being used for collateral in funding a business that they are not allowed to benefit from. Conservationists are concerned about the land losing its highest threshold of protection. Landowners in the park are upset over CIAA being poor neighbors and bad stewards. Park users are unhappy about the park's draft management plan being overturned after the public process that went into creating it. Liberals and conservatives alike are upset over the Alaska government's valuable money being wasted on this operation. The average citizen does not care to see millions of low-quality pink salmon crowding the bay. She said she is not anti-hatchery, but she is pro-state parks, pro-conservation, and pro-community, and the community wants the hatchery to move out of the park. After 30 years of being unable to run the Tutka Bay Lagoon Hatchery efficiently, it is time for CIAA to move on. The state park can achieve the highest and best use of that land for the benefit of all Alaskans and that is what should be promoted. Without HB 52, the hatchery operations will cease by 2031, and per the park's draft management plan the area can be converted into a group camp facility or utilized for educational purposes, which would be a huge plus for the park and for Homer.

[1:36:53 PM](#)

LEN FABICH testified in support of HB 52. As written, he stated, the bill would cure the legal land disposal issue that state agencies have supported. He has sport and commercially fished Kachemak Bay for over 30 years and is currently one of the commercial seiners participating in the fish provided by Tutka Bay. He supports the land trade because Tutka Bay Lagoon is difficult to navigate and is rarely a destination point for anyone other than those involved in the hatchery or sport fishing for red salmon. The land that the lagoon area is being traded for will have significantly more use on the road system. As a Lower Cook Inlet seiner, he can say that during July nearly the entire fleet fishes for the red salmon produced by this hatchery. In 2019 his entire season was spent fishing red and pink salmon from this hatchery. Commercial fishermen do benefit. The China Poot red salmon dipnet fishery is produced in an effort utilizing two hatcheries, with the collection and egg taking being done at the Tutka Bay Lagoon Hatchery, and puts fish in the freezer for a huge number of people. These are excess fish not caught by the commercial fleet. The pink salmon produced and sold at a cost recovery in Tutka Bay help in a very large way to fund the red salmon production and are critical to the financing of this operation.

[1:39:20 PM](#)

PENELOPE HAAS testified in opposition to HB 52. She noted she is on the board of the Kachemak Bay Conservation Society but is speaking for herself. She has worked in Alaska commercial salmon fisheries for the past 13 years in Bristol Bay, Prince William Sound, and the Alaska Peninsula. She recreates, hunts, and fishes in Kachemak Bay State Park. She said the public record represents what the people want - only a few people have voiced support of HB 52 while over 250 people do not and want the bill to go away. She maintained that the reason the commissioners of DNR and ADF&G support HB 52 is to stop DNR from having to manage a hatchery, which will happen if the bill does not pass. She urged members to look at all the public testimony that shows why the sockeye fishery is not tied to the pink salmon fishery. This hatchery is not supporting commercial fishermen in any meaningful way, she argued, as Lower Cook Inlet setnetters and seiners are catching 97.5 percent of their fish through other fisheries, and the Cook Inlet Conservation Society has provided charts outlining this. These public lands should be managed in the most beneficial way to the public interest, which is closing the Tutka Bay Lagoon Hatchery.

[1:41:42 PM](#)

ROBERT VERNON testified in opposition to HB 52. He argued that extracting 123 acres of land from the middle of a state park to give to private seiners for a "financially failing humpy farm" is like putting a locust farm in the middle of wheat fields. He urged committee members to talk with various other people familiar with different aspects of this issue. He said [the hatchery] pollutes the park and that the park is supposed to guard the pristine nature of this piece of Cook Inlet from pollution.

[1:44:37 PM](#)

BRUCE FRIEND testified in opposition to HB 52. He said he has been a property owner in Big Tutka Bay since 1983 and has watched Tutka Bay Lagoon go from having many species of crab, shrimp, and clams, to now being completely desolate. Much of the lagoon's underwater environment is anaerobic where no species can survive, and this extends into Big Tutka Bay. Current CIAA operations contribute to the disintegration outside of the bay through the illegal dumping of carcasses in front of his cabin and placing unpermitted net pens at the head of the bay. He disagreed that people are unable to navigate into the lagoon as he finds himself in the lagoon numerous times a year. Thought should be given to the future of the bay and its users, he urged, and a look should be taken at financial and fiscal responsibilities by referring the bill to the House Finance Committee. Thirty years of failed operations and failure to take care of Kachemak Bay State Park is a bridge too far.

[1:47:16 PM](#)

ROBERT ARCHIBALD, Chair, Kachemak Bay State Park Citizen Advisory Board, testified in opposition to HB 52. He related that on 2/9/22 the board met with Representative Vance and state agency representatives about the proposed CS for HB 52. Following the discussion, the board voted 11-2 to submit [Resolution 2022 - 1], which opposes HB-52. Regarding the three parcels in the Cottonwood-Eastland area, he noted that parcel B has a deed restriction that limits its use to Kachemak Bay State Park, parcel C has a conservation easement on it, and parcel A has an Interagency Land Management Assignment (ILMA) that was paid for by Friends of Kachemak Bay State Park. The state park system currently manages parcels B and C. [Developing] the Kachemak Bay State Park management plan has been a long process, and the [Kachemak Bay State Park Citizen Advisory Board] is in

favor of how the management plan is currently written, which phases out Tutka Bay Lagoon Hatchery.

[1:49:38 PM](#)

ROBERTA HIGHLAND testified in opposition to HB 52. She said she admires fishers and responsible fisheries and hatcheries but that not all hatcheries are equal. The Tutka Bay Lagoon Hatchery (TBLH) has had years of problems, she continued, and this has never been the right spot for this hatchery. This bill deserves scrutiny because the TBLH, operated by CIAA, has been working under an illegal agreement between parties since the 1970s. This bill attempts to fix the problem from long ago by now asking Alaskans to pay dearly for this mistake through the unjust loss of a spectacular part of their park. The CIAA has a bad financial track record with not just the TBLH losses but an outstanding debt to the state of \$16 million. Closure of the TBLH will help CIAA cut its losses of \$600,000-\$1,000,000 per year from TBLH alone. This hatchery has caused environmental damage to a once rich nursery for crab, shrimp, and clam, and historically there has been large-scale illegal dumping of fish carcasses in Tutka Bay. Removal of the 123 acres from Kachemak Bay State Park sets a dangerous precedent of allowing industrial or commercial operations to supersede state park protection, not to mention that the original ILMA is for 6.84 acres. She said she supports a separate bill to add the Eastland property. She further said that there are enough legal questions about HB 52 and past agreements that she is seeking her own legal opinion.

[1:51:56 PM](#)

STEVE VANEK testified in support of HB 52. He stated he has been commercial fishing in Cook Inlet since 1966, owns an original limited entry drift permit, and is the longest serving board member of the Cook Inlet Aquaculture Association. As a board member of CIAA, he voted to mothball Tutka Bay Lagoon Hatchery when pinks were at three cents a pound and the processors didn't even want them from commercial fishermen. The CIAA continued to maintain Tutka Bay Lagoon Hatchery so it could be reopened when the price increased. Many of the objections to TBLH are from people who are anti-hatchery, he argued, and that has nothing to do with the location of TBLH. He pointed out the private inholdings in the park, the sawmill currently going in opposite the hatchery, and a lodge, and asked whether those things are alright in a state park. He noted that Tutka Bay Lagoon Hatchery is a business that depends on many support industries and asked whether [the state] is going to get rid of

another fishing business at a time when oil is no longer king. In answer to Representative Rauscher, Mr. Vanek stated he supports HB 52 and added that the sponsor has done a remarkable job in all the negotiations that have gone into the bill.

[1:55:26 PM](#)

ROD VAN SAUN testified in support of HB 52. He said he has fished Ninilchik, Kachemak Bay, and Cook Inlet for over 30 years as both a commercial and charter fisherman. As a guide, pink salmon were a vital part of his operation and clients from all over the state and country loved it. As a commercial fisherman, there were years he would not have been in existence if not for Tutka, which continues to be true. He disagreed with the statements that dipnetters will not lose their sockeye, and said the sockeye in Resurrection Bay, China Poot, and Tutka will all go away. Tutka is important for funding those programs that benefit Alaskans from all over the state. People being able to snag and dipnet those sockeye takes pressure off the Kenai and Kasilof, he asserted, and gives the people of Homer and Seward fisheries that they would not otherwise have. He said the importance of passing HB 52 cannot be overstated.

[1:57:54 PM](#)

DAVID MARTIN testified in support of HB 52. He noted he is active in several commercial fishing organizations and has been a board member of CIAA since the 1980s but specified that he is speaking on behalf of himself. He said he has commercial drift fished in Cook Inlet for 50 years, including seining in Tutka, China Poot, and Lower Cook Inlet. He has been directly involved in all aquaculture activities plus the regional planning team that scrutinizes aquaculture and state hatchery programs for compliance with state policy and law using the best science and genetic information available. This bill will resolve the legal matter of fixing a constitutional land disposal issue, which will benefit thousands of people. The small group that opposes hatcheries is using this forum to try to close the Tutka hatchery, which they have tried for years. The Tutka hatchery is one spoke in the wheel of aquaculture's multiple hatcheries and projects, all resources are used to fund all projects. For example, funds from the hatchery have supported decades of invasive pike suppression in the Susitna drainage, which has resulted in 1.7 million adult sockeye returning for harvest by the common property fisheries that otherwise would have been eaten by the invasive pike. Another example is the beaver dam removal that aquaculture has done for decades. He is proud of

having paid his 2 percent aquaculture tax. Regarding the view-scape, he added, he enjoys seeing the net pens and the fish and tourists enjoy watching the fishermen fish.

[2:00:54 PM](#)

LIZ NERING, Cook Inlet Keeper, testified in opposition to HB 52. She noted that Cook Inlet Keeper is a community-based organization of 8,500 members dedicated to protection of the Cook Inlet watershed. She pointed out that the public has only had four days' notice to respond to this [proposed] CS, which is inadequate given the bill would override the extensive public process to come up with the Kachemak Bay State Park management plan. To date, both ADF&G and the sponsor have not answered why the increase in acreage from the original ILMA of 6.84 acres to the bill's proposed removal of 123.45 acres [from the park]. Cook Inlet Keeper has repeatedly asked for original maps and the answers have varied on why this increase in acreage is necessary. Regarding statements about the guarantees that [Version D of HB 52] would provide to the public, there is no such text in the bill that provides those guarantees. For example, it is not written in the bill that the public will continue to have access and no guarantee that DNR couldn't sell the land under its management operations. There is no guarantee about what the status of the land would be if it was returned to state park land in the future. Further, the fiscal note attached to the bill is inadequate.

[2:03:22 PM](#)

MALCOLM MILNE testified in support of HB 52. He noted he is a Lower Cook Inlet seine permit holder, current first vice president of CIAA, president of the local Homer organization called North Pacific Fisheries Association, a member of the Cook Inlet Seiners Association, and a member of the Homer Fish and Game Advisory Committee. He said he supports HB 52 as a cure to the land disposal issue between the Department of Natural Resources and the Alaska Department of Fish and Game. The land disposal issue needs a solution, he continued, and he appreciates the sponsor bringing the bill forward. Because a majority of the CIAA board of directors must be Area H permit holders, and the gear groups include drifters, seiners, and setnetters, the decisions are made by fishermen for fishermen. This bill is not a venue or a trial for the hatchery, and as a CIAA board member he is aware there is room for improvement, which CIAA works towards every day. A past management plan for Kachemak Bay State Park that continued the compatible use

determination for Tutka Bay Lagoon Hatchery was rescinded upon the recent development of the land disposal issue. He urged that there be collaborative work towards building community.

2:06:50 PM

KEVIN WALKER testified in opposition to HB 52. He stated he worked for CIAA for several seasons at the Trail Lakes Hatchery and is [currently] on the Kachemak Bay State Park Citizen Advisory Committee but is speaking on his own behalf. He maintained that the China Poot dipnet fishery does not depend on the Tutka Bay Lagoon Hatchery. He said the hatchery was totally closed for seven years between 2003 and 2011, with no expenses shown. From 2005-2010, with the Tutka Bay Lagoon Hatchery closed, between 100,000 and 500,000 sockeye were released into the China Poot system according to the 2021 annual management plan from ADF&G. Trail Lakes Hatchery is responsible for incubating these fish, no sockeye salmon have been in Tutka Bay Lagoon Hatchery for many years. Sockeye cannot survive in the Tutka Bay Lagoon Hatchery. He argued that HB 52 would benefit a tiny fraction of the fishermen who must pay into CIAA to support this hatchery; 97 percent of fishermen pay this fee at absolutely no benefit from the hatchery. Most of the fish go to cost recovery. The land to be traded in this bill is already owned by DNR. The Friends of Kachemak Bay State Park has paid the \$2,400 fee to initiate a land transfer to include this land into the Kachemak Bay State Park. No trading is needed, the process began several years ago. The Tutka Bay Lagoon Hatchery should be re-purposed into an education and youth camp, rental cabins, and other park facilities compatible with outdoor recreation. He urged that HB 52 be rejected and the original intent to adopt a park management plan be continued.

2:09:20 PM

ALAN PARKS testified in opposition to HB 52. He said he is retired from 40 years of commercial fishing in Alaska. As a boy he had a permit and fished Lower Cook Inlet and went in and out of the lagoon all the time when it first started operating under the Division of Fisheries Rehabilitation, Enhancement and development (FRED). He said his opposition to the bill stems from the poor stewardship and degradation by CIAA, which has destroyed the lagoon. Further, he is concerned about CIAA's loans with the Department of Commerce, Community and Economic Development (DCCED) and the State of Alaska allowing state property to be used as collateral for one of CIAA's loans, which he thinks inappropriate. There are a few violations where CIAA

has infringed on a half-acre of state park lands outside of the ILMA with ADF&G and DNR, which CIAA operates under. He urged that a thorough look be taken at the many details associated with this project.

2:12:09 PM

BRENT JOHNSON testified in support of HB 52. He said he has been a setnetter since 1962, is a CIAA member, and was president of the CIAA board for 15 years. He stated that the fish he catches don't have anything to do directly with Tutka Bay Lagoon Hatchery, so he doesn't have a direct financial link. However, he continued, the work done by CIAA directly supports what he does. Also, the Tutka Bay Lagoon Hatchery directly supports what he does in a way because the processors depend on having fish so they can stay in business and this hatchery produces fish that have helped the processors stay in business. Due to some disaster years in the Upper Cook Inlet, there are now fewer processors in Kenai than there ever have been since the beginning of the fishery. He needs the processors to stay in business so that when he does catch fish, he has someone to sell his fish to. His neighbor sport fishes for sockeye in Tutka Bay. If CIAA loses the Tutka Bay Lagoon Hatchery there will be no more sockeye in either China Poot or Tutka Bay. He concluded by stating that the pink salmon are high quality.

2:14:25 PM

NANCY HILLSTRAND testified in opposition to HB 52. She stated she has been in fisheries for 45 years, including working at the Tutka Bay Lagoon Hatchery for 11 years, and she is the owner/operator of Coal Point Seafoods and Pioneer Alaskan Fisheries. She said the disposal and compatibility issues have already been cured with the solution found after eight years of revising the Kachemak Bay [State Park] management plan, under which it was determined that the best thing to do is phase out the inefficient hatchery. Phasing out the hatchery would cure all the incompatible issues, she continued, including the chronic strife. When thinking about HB 52, a question is whether the bill serves the highest and best use to assure the greatest utilization and development of a state-owned facility. A second question is whether the bill authorizes exclusive use of fisheries just allowing 17 people to have access to these fish compared to the 1,100 other fishermen in the Area H Cook Inlet fisheries. A third question is whether HB 52 promotes inefficient aquaculture. Looking at the \$17 million of debt that all the fishermen are being put through attests to

something that needs to be investigated as far as upholding the state constitution. All these issues have to do with the constitution, she argued, and HB 52 is not constitutional.

2:17:05 PM

JEFFREY LEE testified in opposition to HB 52. He noted he is a member of the Kachemak Bay State Park Citizen Advisory Board, which has put him on the forefront of this battle that has been raging since 2011. It has been nothing but conflict and strife with Cook Inlet Aquaculture Association for years, he said. One chronic thing through these past 12 years has been the misleading information or half information on this. Some of the land disposal issues are already being solved or have been solved by this management plan, and the disposal would be solved by doing nothing if HB 52 does not pass. The Cottonwood-Eastland land as a land swap is simply a grab because one must be swapped for the other, and that [was already] moving along just fine. The red salmon program is separate and can be eliminated because there are lots of ways in the future that the state park can work to continue that program. Seventeen seiners, 1 percent of the fishermen, will benefit from this. The management plan, if followed, would open a huge area for future growth for everyone, not a select few.

2:19:26 PM

EARL HOPPER testified in support of HB 52. He said the bill would cure the legal state land disposal issue that the state agencies support. He and his family dipnet and fill their freezer every year. It would be a shame to see it go away as those fish are a big part of his family's diet and provide much benefit.

2:20:31 PM

ALLEN DAVIS testified in support of HB 52. He stated that this fishery provides a local economic opportunity and is an important local fishery that many people take advantage of. In addition, it takes pressure off the Kenai and Kasilof dipnet fisheries.

2:21:15 PM

CHRIS BARROWS, President, Pacific Seafood Processors Association, testified in support of HB 52. He said the bill is a solution to the land issues associated with the Kachemak Bay

State Park plan and the need to continue operation of the Tutka Bay Lagoon Hatchery. He stated that the 1995 management plan identifies fisheries enhancement as a goal for Kachemak Bay State Park and as compatible under permit focused on fishing as a critical recreational and commercial activity in the park and in Tutka Bay specifically. Any changes to the park plan that would end operations at the Tutka Bay Lagoon Hatchery would impact communities and permit holders who have already faced years of economic hardship. Commercial fishers and processors in Southcentral Alaska make up a vital backbone of local communities, employing 11,500 workers and contracting with local vendors and service providers. The breadth of fisheries users - recreational, personal use, commercial, and sport - is significant in its reliance on this hatchery and has been for decades. Removing recreational and employment opportunities will unnecessarily remove some of the base of local economies. This bill resolves an issue that results in support of these jobs, the revenue created by the hatchery, the infrastructure that supports entities, and the volume necessary for processors.

[2:23:36 PM](#)

CHRIS PERRY testified in support of HB 52. He specified he has commercially fished Upper and Lower Cook Inlet for 39 years. The bill would protect the Tutka Bay Lagoon Hatchery in the state park. This small hatchery benefits all Alaskans and visitors by its substantial contribution to personal use, sport, and commercial fisheries. China Poot fishery residents are allowed to take 12 fish a day with no annual limit. Closure of the hatchery would close these fisheries. The CIAA pays for the entire cost of these stocking projects. Closure of the hatchery would also close all seining in Kachemak Bay as there are limited pink salmon returns and no other sockeye in the area. Many of the negative biological impacts being quoted are not scientifically proven and are still under research. There are very productive finfish and shellfish fisheries near large hatcheries in Prince William Sound and Southeast Alaska. There have been as many as 84 salmon seine permits in Lower Cook Inlet. Throughout the 1980s there were between 52 and 83 seine permits fished; in the 2000s between 15 and 36 permits were fished which was mainly due to the Tutka Bay Lagoon Hatchery's temporary closure. The bill does not allow increased hatchery production or expansion into other parts of the park and does not change existing public use.

[2:26:21 PM](#)

HOLLY NORWOOD, on behalf of herself and her husband, testified in support of HB 52. She said she and her husband are "generic" Kenai Peninsula residents who do not commercial fish or have much involvement with the environmental community. She and her husband support keeping the Tutka Bay Lagoon Hatchery open, which means they support the bill. What catches their attention if the hatchery was to close is the inability to get sockeye at China Poot and Tutka Bay because she and her husband depend on those fish for food security. She disagreed that all of Homer supports closing the Tutka hatchery as there are people on both sides whom she and her husband respect. Those who want the hatchery closed have hunches that the pink fry are competing with [other] salmon, the [hatchery] pinks are hurting the wild pinks, and the herring and crab are gone because of this hatchery. But, she added, the science does not support that.

[2:29:13 PM](#)

SUE CHRISTIANSEN testified regarding HB 52. She noted she owns a cabin adjacent to the state park, has been a commercial fisher, is a cofounder of the Kachemak Heritage Land Trust, and is a board member of the Kachemak Bay State Park Citizen Advisory Council. However, she qualified, she is speaking on her own behalf. One of her favorite places on earth is Tutka Bay Lagoon because it meets every unique scenic criterion that the state park was designated for. An application is currently ongoing to designate the lagoon as a [Biosphere] Reserve under the United Nations Educational, Scientific and Cultural Organization (UNESCO). If HB 52 does not pass, the hatchery will remain open and there will be 10 years to come up with a better solution. A [biosphere] reserve is about fostering ecologically sustainable development, which is the best use for Tutka Bay Lagoon.

[2:31:42 PM](#)

DEAN DAY, Executive Director, Cook Inlet Aquaculture Association (CIAA), testified in support of HB 52. He said the bill resolves the land disposal [and incompatibility] issue that is highlighted in the new proposed park management plan. For decades the Tutka Bay Lagoon Hatchery has operated under multiple park plans with the designation of being compatible. If this hatchery is no longer operational, the China Poot dipnet fishery goes away, along with all sockeye enhancement in the Lower Cook Inlet, which includes Hazel Lake, Kirschner Lake, and Tutka Bay Lagoon fishery. The complexity of the China Poot project is described in his written testimony. The Trail Lakes Hatchery is an integral part of the project but cannot do the

project itself. It is true that the program took place during the closure, but it still required the facility to be operational and staffed seasonally, which means that during the closure CIAA had to continue paying the electric bills, insurance, maintenance, and upkeep for the project to continue. It never was designated to be a stand-alone project. The sockeye program is costly and comes with a risk, and thus requires pink salmon returns for funding for the project to be sustainable. Funding for projects is determined by CIAA's 26-member, all volunteer, board of directors made up of multiple stakeholders.

[2:34:12 PM](#)

PAUL A. SHADURA II testified regarding HB 52. He related that he has been commercial fishing for 55 years, and that since the late 1970s he has been a board member of CIAA, a nonprofit regional association. He qualified, however, that he is not representing CIAA in this discussion. He thanked Representative Vance for addressing the possible inconsistencies in the proposed park management plan. He said provisions in Appendix C of the completed 5/20/14 Standard Agreement [for Professional Services] [between CIAA and ADF&G], establish a contract period of 20 years, expiring 6/30/2033, and allow for contract renewal upon request. Cook Inlet Aquaculture Association is contracted to operate the Tutka Bay facilities under ADF&G's strict permit guidelines and the comprehensive Regional Cook Inlet Management Plan. As a CIAA board director, he is aware of CIAA's fiduciary responsibilities and had assumed that to enter the revolving loan fund to further improve CIAA facilities and operations, that CIAA had a long-term commitment from the state to be able to pay these loans through the cost recovery process. He noted that CIAA is not a single operation, but rather a comprehensive one that affects all areas of Cook Inlet and Resurrection Bay, with multiple facilities in various legislative districts. The operation of CIAA through Tutka Bay is just one of many parts, but a very important part, to maintain the operation and continue with solvency.

[2:37:40 PM](#)

MAKO HAGGERTY testified in opposition to HB 52. He said he owns Mako's water taxi, has spent much time on the bay, and is aware of how much use the area gets from all sorts of user groups. Kachemak Bay State Park is Alaska's first state park and a jewel in the state park system, he continued, and Tutka Bay Lagoon is a jewel within the park. Carving it up for special interests is

a dangerous precedent for this and all state parks. The park is a growing economic engine. As other resources diminish, the continuing growth of Kachemak Bay State Park contributes more and more to the local economy. He said he supports this critical visitor industry, whereas HB 52 benefits so few and is a social program for special interests. The zero fiscal note is false, he maintained, because the bill will cost the state money and therefore should not be passed without knowing what those costs will be.

[2:40:33 PM](#)

KASEY ADERHOLD testified in opposition to HB 52. She urged that since this is a park issue, it be settled as such. She argued that it doesn't make sense to cut out an over-sized chunk of the park, either temporarily or permanently, just because the hatchery isn't in compliance with the [proposed] new management plan. Kachemak Bay State Park is a unique and important environment, so it is worth taking the time to explore the options that do not resort to removal of this land from park management. The bill is too rash and sets a bad precedent for all of Alaska's parks. Park management plans must be able to be developed without fear that conflicts with narrow interests may end up in a loss of park land that is meant for the good of the public. The hatchery has been given 10 years of continued operation during which a solution can be sought. It is worth taking the time to get it right while keeping the park intact for the highest use of the land.

[2:41:58 PM](#)

ARON PETERSON testified in opposition to HB 52. He stated he is opposed to the bill mainly because it is a legal issue and sets a precedent of removing land from a park that could then happen all over the state. There is no benefit from the Cottonwood-Eastland land trade, he argued, and it is a bill just for special interests.

[2:42:56 PM](#)

MARK THOMAS testified in support of HB 52. He said his first experience in Tutka Bay Lagoon was in the late 1980s when he drifted in a sport fishing boat and caught pink salmon. The brood stock situation at the hatchery is because brood stock had to be imported for the Lower Cook Inlet lakes spawning program. It had to be moved there because there were no other options for CIAA to do that. He argued that access to Tutka Bay Lagoon

would not be lost with passage of HB 52 because people would still be able to drift in and catch pinks, the sockeye would still be there, and the trail system would still be there.

[2:45:08 PM](#)

DAVID SEAMAN testified in opposition to HB 52. He said he lives in Little Tutka Bay about nine or ten miles from the Tutka Bay Lagoon Hatchery. He related that he has history with the hatchery through hauling its supplies, personnel, and mail, especially when the hatchery was owned by ADF&G. He said he would rank the hatchery on whether it is providing fish for the common property fishery and not just for itself, which it hasn't done since CIAA took it over. He wouldn't say that it has been a success as CIAA has its own fiefdom up there and own private industry and sells the fish to whoever CIAA wants. He further related that he ran a tender where he bought fish out of Tutka and bought fish all over the bay and suddenly they went away from Tutka and are still away. Much has been said about what happens with pink salmon that go out and compete with other species as well as other pinks in the bay. He said he is not for giving away park lands to a private interest group.

[2:47:18 PM](#)

CHAIR PATKOTAK closed public testimony after ascertaining that no one else wished to testify. He noted that the public can submit written comments on HB 52 for as long as the bill is in committee.

[2:48:29 PM](#)

REPRESENTATIVE FIELDS asked how the China Poot dipnet fishery stayed open during the nine-year period when CIAA was not operating the Tutka Bay Lagoon Hatchery.

MR. RABUNG clarified that the hatchery stopped producing pink salmon for a period because the price of pinks was so low, but CIAA continued to use the hatchery for the sockeye program and stocking of China Poot was continued. He offered his understanding that CIAA was running out of ways to fund it. The price of pinks came back up and the demand for pinks is tremendous. He pointed out that every hatchery program in the state, regardless of what a hatchery's mix of species is, has pinks and/or chums as their cost recovery fish.

MR. RABUNG noted that the Lower Cook Inlet lakes sockeye program includes Hazel, Leisure, and Kirschner lakes. He specified that the brood stock currently produced for this program are released at Tutka Bay Lagoon Hatchery, so the eggs are collected at Tutka Bay Lagoon Hatchery. It is true that Trail Lakes Hatchery is where the eggs are incubated and reared to fry stage, or smolt stage in the case of Tutka, and then they are taken offsite and released at those Lower Cook Inlet lakes projects. But, he reiterated, the brood stock is at Tutka, and it is complex.

2:50:40 PM

MR. RABUNG explained that, previously, the brood stock for the Lower Cook Inlet lakes projects came from Tustumena Lake. The eggs were collected from wild stock that matured in the lake every year. Upon reaching sexual maturity and the ability to spawn, the sockeye would swim up into the stream to spawn, which was when the brood stock was collected and the eggs collected and which were flown to the Trail Lakes Hatchery for incubation, rearing, and subsequent out planning at the release sites. However, another location had to be found after the federal government determined that commercial activity in Tustumena Lake was incompatible with the lake being in a [federally designated Wilderness area]. So, for a short period, eggs were then taken from Hidden Lake in Kenai, part of the Kenai River system. But those fish were not well adapted to the life history of the Lower Cook Inlet lakes project because they swim 100 miles upstream and go into a lake to rear and spawn. After more looking around the English Bay Lakes stock were found. The nearest significant stock of sockeye, it is the appropriate stock for all the Lower Cook Inlet lakes stocking program, and it has been identified in the Cook Inlet Comprehensive Salmon Plan as the appropriate stock. So, with assistance from ADF&G and Nanwalek, owner of the land, CIAA collected eggs from English Bay Lakes for three or four years. Those eggs were incubated at Trail Lakes Hatchery and the fry were released at the Lower Cook Inlet lakes project and at Tutka Bay Lagoon Hatchery where they were imprinted so they would return there.

MR. RABUNG continued. He explained that once the fish started returning to Tutka Bay Lagoon Hatchery there was no longer a need to go into English Bay Lakes, which was timely because the Nanwalek community was done with egg collecting being on their land. So, the cycle now is that all the brood stock returns to Tutka Bay Lagoon Hatchery where the eggs are collected and then flown to Trail Lakes Hatchery where they are incubated to the juvenile stage and then out planted. Trail Lakes doesn't have

any salmon that return to it, it is what is called a central incubation facility. All eggs must be transported into Trail Lakes Hatchery and all the juveniles must be transported out for release somewhere else. Trail Lakes Hatchery is used for sockeye because it is on well water, which is virus-free water. Tutka Bay Lagoon Hatchery does not have virus-free water so all that can be done there is collect the eggs and release the fish. Eggs cannot be incubated and reared at Tutka Bay Lagoon Hatchery because that would violate ADF&G's sockeye salmon policy.

[2:54:11 PM](#)

REPRESENTATIVE HANNAN drew attention to Representative Vance's briefing paper on HB 52. She said she is trying to avoid fish politics and is looking to understand the legal land disposal issues that have brought forth this situation. She observed that the briefing paper includes four court precedents, the first citation being [the 2000 decision for Northern Alaska Environmental Center v. State of Alaska, Department of Natural Resources] that establishes the functionally irrevocable test. She asked whether that case was about state park land.

[2:55:26 PM](#)

REPRESENTATIVE SARAH VANCE, Alaska State Legislature, prime sponsor of HB 52, deferred to Mr. Christopher Orman to answer the question given he provided the documentation within DNR's white paper.

[2:55:45 PM](#)

CHRISTOPHER ORMAN, Assistant Attorney General, Natural Resources Section, Department of Law (DOL), offered his recollection that [the 2013 decision for SOP, Inc. v. State of Alaska, Department of Natural Resources] is the only case addressing and dealing with legislatively withdrawn lands, so state park lands. The other cases deal with public domain lands, so general state lands.

[2:56:35 PM](#)

REPRESENTATIVE HANNAN drew attention to the paragraph on page 2 of the HB 52 briefing paper which states: "The plain language of ADF&G's 2014 agreement with CIAA suggests a lease - and thus a disposal - of these lands. The agreement allows CIAA to operate the TBLH for twenty years. The agreement states that the parties would work towards transferring the TBLH facilities

to CIAA." She related that in a meeting yesterday with Mr. Rabung of ADF&G, it was asserted that this remains ADF&G land, that the hatchery is ADF&G's and CIAA is simply a contractor that can be terminated on a 90-day notice, whereas DNR's read is that the lease leads to a transfer of the facilities to CIAA. She asked which interpretation is more accurate.

MR. ORMAN first clarified that [the 2020 decision for SEACC v. State of Alaska] was unique because it was talking about general state lands, public domain lands, and about an issue involving the [Alaska Mental Health Trust Authority] and trust land. It is a complicated issue of conveyance and lack of public notice, but in general that case is probably general state lands although there are a lot of nuances.

MR. ORMAN then addressed Representative Hannan's question about the agreement. He said he doesn't necessarily disagree with ADF&G's point there, but pursuant to the language in the 2014 agreement two things have been stated that are a concern about that agreement. First, the idea that legislatively withdrawn lands could ever be at any point potentially conveyed to an entity like CIAA is a problem. Regarding the agreement being referred to potentially as a lease or suggests a lease, he said a lease concept is a problem when talking about legislatively withdrawn lands. Given the legislature set these lands aside for the department to manage the lands, and only to be the one managing these lands, the idea that ADF&G somehow holds a lease or interest to the lands or holds the land is problematic when talking about disposal, when talking about the functionally irrevocable test. In that briefing paper and talking about that agreement, when the agreement is characterized as a lease, when the idea is that there is a potential lease of legislatively withdrawn lands, he said that has been the trigger as far as the functionally irrevocable test, that's the problem and that's the disposal.

[3:00:47 PM](#)

REPRESENTATIVE HANNAN posed a scenario in which ADF&G is operating the aquaculture location, the hatchery, as ADF&G did in its original state. She asked whether that would then not be irrevocable land because it remains in state hands.

MR. ORMAN responded that if only ADF&G was operating the hatchery, and it was the state operating the hatchery, there is still a problem potentially with the ILMA and there is also then the definition of scenic park. There is a lot of history, a lot

of documents, and a lot of different viewpoints. So, he continued, the answer to that question becomes complicated and the best answer would be, "Well, we may not then directly have the disposal problem we have, which is the investment, the interest there, the functionally irrevocable problem, I think then there's still going to be other legal problems that would have to be addressed and figured out."

[3:02:13 PM](#)

CHAIR PATKOTAK invited Mr. Rabung to give further clarification.

MR. RABUNG spoke to the professional services agreement contract between ADF&G and CIAA. He said the contract states that during this term the parties agree to explore the possibility of the transfer of ownership of the hatchery to CIAA. He further said that members of the public were pushing for ADF&G to transfer ownership of the 12 state-owned hatcheries with contracted operators to the contractors. This was investigated by ADF&G, and it was found not legal.

MR. RABUNG spoke to another part of the contract, [Appendix C, Article VII. Interagency Land Management Assignment (ILMA)], which states: "ADF&G holds an ILMA from the Department of Natural Resources (DNR) (ADL200098), a copy of which is attached and made part of this contract. There is no expiration date. The Contractor shall be responsible for complying with the terms and conditions of the ILMA and any additional amendments. The ILMA authorizes land use for the Tutka Bay Lagoon Hatchery and the ILMA is not transferable from the state to CIAA. The State of Alaska retains primary responsibility for adherence to the conditions of the ILMA." Mr. Rabung elaborated that this is a state hatchery on state land; this does not change regardless of whether the land is general DNR state land or state park land. The only thing changing since 1976 when the hatchery was constructed in its location, he said, is the paperwork regarding the land status. Nothing new is going to be built or developed. It is just basically being grandfathered and the operation continued as it has been since the state invested into it and built it in 1976 using state bond money.

[3:04:36 PM](#)

MR. RABUNG addressed several statements made during the earlier testimony. Regarding constitutionality, he pointed out that aquaculture is included in the Alaska State Constitution under Article 8, Section 15. He further pointed out that Alaska

Statute (AS) 16.05.092 directs ADF&G to do these things, so the department is doing what the state law requires it to do. Regarding changing the hatchery into some other use, he said his understanding is that it is not the hatchery that is at issue, it is the disposal of land that is at issue. So regardless of what the facility is, whether a hatchery or a wilderness center or a Girl Scout camp, the land issue is the same. Regarding Mr. Clem Tillion, founder of the park, he recounted that Mr. Tillion is the one who got the hatchery built and who spoke in support of the hatchery continuing prior to his death.

[3:06:02 PM](#)

REPRESENTATIVE VANCE noted that the CIAA contract can be viewed on BASIS [under the documents provided for the bill's hearing before the House Resources Standing Committee on 2/7/22].

CHAIR PATKOTAK invited the sponsor to make any final comments on HB 52.

REPRESENTATIVE VANCE thanked the public for testifying and said she respects the positions of everyone who supported or opposed the bill through this public process. She further thanked ADF&G and DNR for working with her on the bill.

[3:07:01 PM](#)

CHAIR PATKOTAK [announced that HB 52 was held over].

[3:08:13 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:08 p.m.