

S B

140

COMMITTEE REPORT

SENATE

FURTHER: Finance

2/3/81

Date: 2/16/81

Mr. President:

The Committee on RESOURCES has had SR 140 establishing a fishery product receiving loan fund

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for SR 140  same title
- new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
CHAIRMAN



# Alaska State Legislature

3

## Senate

### RESOURCES SUBCOMMITTEE ON FISHERIES

JUNEAU, ALASKA

March 4, 1981

#### Senate Resources Subcommittee on Fisheries meeting

The meeting was called to order by Chairman Mulcahy at 3:14 P.M. Senators Eliason and Gilman were present.

First on the agenda was SCR 12 "Relating to Hand Trolling".

Russel Bartoo testified on SCR 12. He said that he agreed with only a couple of parts of the resolution. He felt that the real problem facing hand trollers is the 80/20 split of resource allocation.

John Wilcox, President of the Juneau Hand Trollers, testified on SCR 12. He said he was hopeful that the resolution would at least give the Board of Fisheries knowledge that a problem exists with their proposed amendment.

Burt Finley, Secretary/Treasurer of the Juneau Hand Trollers, testified on SCR 12. He said he felt the resolution would go a long way towards convincing the Board of Fisheries that their proposed amendment should be changed.

Lewis Schnaper testified on SCR 12. He said that as a power troller he didn't oppose the resolution, but felt that whole issue boils down to the 80/20 split. He felt the split was an equitable solution.

Senator Eliason asked him to briefly run down problems that trollers are facing.

He said the main problem was the OY, optimum yield, that the trollers are given in Kings and Silvers. As this is being cut, it is becoming hard to have a good season.

SCR 12 was moved with individual recommendations.

Next on the agenda was SB 140.

Chairman Mulcahy briefly explained CSSB 140 to the committee, and to the people attending the meeting.

Roger Painter and Hank Ostrosky commented briefly on CSSB 140.

CSSB 140, and SB 141 were moved with individual recommendations.

Chairman Mulcahy adjourned the meeting at 3:50 P.M.

## MEMORANDUM

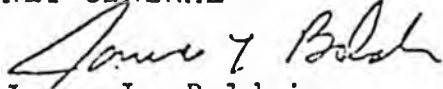
State of Alaska

12  
TO Keith Specking  
Legislative Assistant  
Governor's Office

DATE: February 11, 1981

FILE NO: J-77-126-81

TELEPHONE NO: 465-3684

FROM WILSON L. CONDON  
ATTORNEY GENERALSUBJECT: Committee Substitute  
for SB 140By:   
James L. Baldwin  
Assistant Attorney General

Please find attached a draft committee substitute for SB 140, the Fishery Product Revolving Loan Fund. This committee substitute would amend SB 140 by deleting proposed AS 44.25.-055(2) and (3) from SB 140. These sections should be deleted to allow the Department of Revenue to adopt these terms by regulation. Both the term of the loan and the loan-to-value ratio may vary because of changes in market conditions. Regulations pertaining to these areas will provide the department with the flexibility to respond to market conditions. Because the price of fishery products may fluctuate rapidly, it is not feasible to establish these loan guidelines by law.

JLE:bjl

cc w/enc.: Honorable Thomas K. Williams  
Commissioner  
Department of Revenue



# Alaska State Legislature

## Senate

JUNEAU, ALASKA

### RESOURCES SUBCOMMITTEE ON FISHERIES

February 11, 1981

#### Senate Resources Subcommittee on Fisheries Meeting

The meeting was called to order at 3:04 PM by Chairman Mulcahy. Present were Senator Gilman and Senator Eliason. Senator Fahrenkamp monitored while SB 140, 141 were being considered.

Before the bills were considered, Mark Hutton, John Doyle, and Don Rosenberg from the University of Alaska briefly summarized the plan for the improvement of fisheries and fishery related marine affairs programs. Mark Hutton gave the testimony. Mr. Hutton passed brochures and studies of the program to the subcommittee, and briefly explained the ten month study.

Senator Gilman asked where the program fit in with the Institute of Marine Science. Mr. Hutton said the new program was parallel with the present Institute of Marine Science in most programs.

First on the agenda were SB 140, and SB 141 "An Act establishing a fishery product revolving loan fund", and "An Act making a special appropriation to the loan fund".

Chairman Mulcahy stated that because Commissioner Williams of the Department of Revenue was out of town, the bills would be held over.

Roger Painter of United Fisherman's Association (tape reading 290) was the first to testify. He said that fishermen were highly in favor of this bill. He was very glad to see it come along. He had only one concern with the bill. He said that while it would be desirable to not loan money to Japanese controlled companies, he didn't want to stop the bill if it is impossible to differentiate between companies.

Chairman Mulcahy said he had had that concern expressed to him from several sectors.

The next person to testify was Rick Lauber of Pacific Seafood Processors Association (tape reading 435). He said he was in favor of this bill, and felt it was good. He said that it would benefit processors, fishermen, and workers. Mr. Lauber said that it will not be low-cost

page two  
Senate Resources Subcommittee on Fisheries Meeting  
February 11, 1981

money to subsidize the industry, but the availability of money would help greatly.

Chip Thoma, from the audience, asked what the definition of facilities was. Did it mean shore-based processors only?

Next on the agenda was SB 103 (tape reading 580).

John P. Doyle, of the University of Alaska testified in favor of SB 103. He felt that while the quality of Alaska salmon is good, this program would make it even better. He said that the initial effort was in the Prince William Sound, but that it would go statewide, and effect all phases of the fishing industry eventually.

SB 103 was moved with individual recommendations.

Chairman Mulcahy said SB 111 would be considered at a later date.

The meeting was adjourned by Chairman Mulcahy at 3:36 PM (tape reading 636).



# Alaska State Legislature

## Senate

JUNEAU, ALASKA

### RESOURCES SUBCOMMITTEE ON FISHERIES

February 13, 1981

#### Senate Resources Subcommittee on Fisheries meeting

The meeting was called to order by Chairman Mulcahy at 3:33PM. Senators Eliason and Gilman were present.

First on the agenda was SB 140, "An Act establishing a fishery product revolving loan fund", and SB 141 "An Act making a special appropriation to a fishery product revolving loan fund" (tape reading 045).

Commissioner Tom Williams, of the Department of Revenue, testified on SB 140. He briefly explained the bill. Commissioner Williams said the real purpose of the bill was to benefit Alaskan fishermen. Because of this, he recommended that the loans not be restricted to Alaskan processors. He felt that SB 141 appropriated enough money to cover all the needs, but in case it didn't, priorities would be assessed by how much Alaskan fishermen benefited.

A question was raised about the Bering Sea crab fishery. Since a lot of these are Washington based fishermen and processors, would loaning money to the processors benefit Alaskan fishermen?

Commissioner Williams said that if the money would not be enough, perhaps that would be a lower priority.

A question was raised about the availability of loans to small processors. The subcommittee said all members have had concerns expressed to them about that.

Commissioner Williams stated that no money would be loaned until it was secured by inventory.

Chairman Mulcahy asked for a definition of inventory.

Chairman Mulcahy asked for a letter explaining the department's position and intent. He also asked for a definition of facilities.

The meeting was adjourned by Chairman Mulcahy at 4:34PM. (tape reading 334, side 2).

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate

### Committee on Resources

#### MEMORANDUM

TO: SENATE RESOURCE COMMITTEE MEMBERS

FROM: JIM PALMER  
SENATE RESOURCES COMMITTEE STAFF

RE: CSSB 140 "AN ACT ESTABLISHING A FISHERY PRODUCT REVOLVING LOAN FUND."  
SB 141 "AN ACT MAKING A SPECIAL APPROPRIATION TO THE FISHERY PRODUCT  
REVOLVING LOAN FUND."  
SCR 12 "A RESOLUTION RELATING TO HAND TROLLING."

DATE: MARCH 5, 1981

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The Subcommittee on Fisheries, chaired by Senator Mulcahy, has passed out of subcommittee CSSB 140, SB 141 and SCR 12.

These three measures have been scheduled for full committee consideration on Friday, March 13.

Attached are some informational materials relative to these bills.

- (1) copy of subcommittee substitute for SB 140.
- (2) a February 27 letter to Senator Mulcahy from the Department of Revenue on SB 140 and 141.
- (3) a memorandum from Legislative Affairs Agency on the constitutionality of precluding fish processors who are 80% or more owned by foreign nationals from obtaining fishery product loans under SB140. This memorandum was dated March 3 and was directed to Senator Mulcahy.
- (4) a memorandum to Senator Mulcahy dated March 4 on the constitutionality of giving first priority in the award of fishery loans to Alaskans.
- (5) fiscal note prepared for SB 140 by the Dept. of Revenue.

I also understand that the subcommittee will be preparing a letter of intent to accompany CSSB 140.

# Alaska State Legislature



Senate

## Committee on Resources

DEEVE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE CHAIRMAN  
GRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI

POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99911  
(907) 465-3034  
(907) 465-3035

March 13, 1981  
1:30 p.m.

Beltz Room  
211 Capitol

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### MEMBERS PRESENT

SENATOR FAHRENKAMP  
SENATOR FISCHER  
SENATOR ELIASON  
SENATOR GILMAN  
SENATOR MULCAHY  
SENATOR STURGULEWSKI

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Hearing: SJR 25 "Relating to the Klondike Gold Rush  
National Historical Park"  
SCR 12 "Relating to hand trolling"  
SB 140 "An Act creating a fishery product  
revolving loan fund"  
SB 141 "An Act making a special appropriation  
to the fishery product revolving loan  
fund"

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### SJR 25

John McDermott, Skagway City Council, stated there had been a considerable breakdown in communication with the National Park Service. Their major problem is with the Park Service's land acquisition policy. The policy is in draft form and there has never been a public meeting on it. He stated that SJR 25 will certainly help their situation and the City Council supports it.

Skip Elliott, Skagway City Manager, stated that he had previously outlined the City's problems when he testified on

SB 36. He said that the Park Service is more receptive since the introduction of SB 36 and SJR 25.

Senator Mulcahy put forth the motion to move SJR 25 with individual recommendations.

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SCR 12

Senator Eliason stated that the Board of Fisheries made a mistake at their last meeting in limiting hand trollers to one line. SJR 12 addresses some of the options to the problems the Board created.

Senator Mulcahy put forth the motion to move SCR 12 with individual recommendations.

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SB 140 and SB 141

Senator Mulcahy stated that the Senate Resources Subcommittee on Fisheries held hearings on SB 140 February 11th, February 18th, and March 4th. He stated that SB 141, which is an appropriations bill of \$100 million, was not addressed in Subcommittee because it is basically a Finance Committee Issue. He requested that the Committee adopt the Subcommittee's CSSB140 with one amendment:

Page 1, Line 15-16, delete the words "processing of" and replace with "such processors' inventories of canned, frozen or processed"

Senator Mulcahy put forth the motion to move CSSB 140 as amended with individual recommendations.

Senator Mulcahy put forth the motion to move SB 141 with individual recommendations.

The Chairman adjourned the hearing at 2:45 p.m.

SB140-41

I. REQUEST

Bill/Resolution No. \_\_\_\_\_  
Title An Act establishing a fish pack revolving loan fund.  
Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Revenue  
Program Category Affected Revenue Collection and Management  
BRU, Program, or Subprogram(s) Affected Treasury Management

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	13.1	52.2	57.4	63.2	69.5	76.4
200 TRAVEL	3.0	12.0	13.2	14.5	16.0	17.6
300 CONTRACTUAL	2.0	2.0	2.2	2.4	2.7	2.9
400 COMMODITIES	.2	.3	.3	.4	.4	.5
500 EQUIPMENT	2.0					
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	<b>20.3</b>	<b>66.5</b>	<b>73.1</b>	<b>80.5</b>	<b>88.6</b>	<b>97.4</b>

FUNDING (Thousands of Dollars)

GENERAL FUND	20.3	66.5	73.1	80.5	88.6	97.4
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	1	1	1	1	1	1
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Above includes salary and benefits for State Investment Officer II. Travel cost due to nature of fishing business and review requirements for loans. Contractual expenditures for advertising for regulations, etc. Equipment for State Investment Officer.

Costs shown in FY 81 are for a three month period assuming bill would pass by March 31. If not effective until new fiscal year, equipment costs should be moved to FY 82.

Above is predicated on use of Alaska financial institution teller-servicer.

*Anselm C. Staack*

IV. DATE January 26, 1981 PREPARED BY Anselm C. Staack, Treasury Comptroller  
AGENCY Dept. of Revenue/Treasury Division  
PHONE 465-2351

Original: Legislative Finance  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)

1	POSITION TITLE State Investment Officer II				RANGE/STEP 22A	BARG. UNIT. X	LOCATION Juneau	GOV.	APPROV.	DIS.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG.		

3	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
4	PERSONAL SERVICES: SALARY 3,494 x 12		41,928
5	BENEFITS 41,928 x .1533		6,428
6	FICA SBP		2,004
7	HEALTH INS. Mo. Fix. 12x150		1,800
8	TOTAL PERSONAL SERVICES 01		52,160
9	TRAVEL 02		12,000
10	CONTRACTUAL 03		2,000
11	COMMODITIES 04		300
12	EQUIPMENT 05		2,000
13	OTHER		
14	TOTAL COST		68,460

JUSTIFICATION:

Necessary to implement and monito. new Fish Pack Revolving Loan Fund.

Investment Officer will review and screen loan applications, Analyzes overall value and security and approves loan for purchase/participation. Confer with affected agencies and institutions to maintain smooth revolving loan program. Works with Alaska financial institutions for participations.

	CODE	FUNDING SOURCE	
15		FED RCPTS. 1007	
16		GF MATCH. 1008	
17		GEN. FUND 1001	68,460
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20		OTHER	

21 CONTINUATION

22 ADDITION XX FOR B&M USE ONLY

AA KEY NUMBER \_\_\_\_\_ COLUMN NO. \_\_\_\_\_

AGENCY Department of Revenue PROGRAM Revenue Collection and Management

BRU Treasury Management

**13** REQUEST FOR NEW POSITIONS

COMPONENT \_\_\_\_\_

**FY 82**

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

RECEIVED BY  
GENERAL CLERK  
107 200 2000

MEMORANDUM

March 4, 1981

SUBJECT:           Constitutionality of giving first priority in  
                    the award of fishery loans to Alaskans.  
                    (CSSB 140)

TO:                 Senator Bob Mulcahy

THROUGH:          Joseph A. Guthrie  
                    Legislative Counsel

FROM:             Bernie M. Tuggle, Jr.  
                    Legislative Legal Extern

You have asked whether first priority in the award of fishery loans under CSSB 140 could be given to companies which are owned 50 percent or more by Alaska residents. Your proposal would be subject to attack under the privileges and immunities clause by individuals and to equal protection attack by corporations.

The privileges and immunities clause, Article IV, section 2 says that:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Corporations, however, are not protected under this clause, since they are not citizens. Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975). Therefore, only individuals could pursue a privileges and immunities challenge against your proposal.

The purpose of the clause is:

To place the citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned.

Paul v. Virginia, 19 L.Ed. 357 (1869). However the clause does not preclude disparity of treatment in situations where there are perfectly valid independent reasons for it. What the clause does bar is discrimination against citizens of other states where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states. A substantial reason for the discrimination would not exist unless there is something to indicate that non-citizens constitute a "peculiar source of evil" at which the discriminatory statute is aimed. Toomer v. Witsell, 92 L.Ed. 1460, 1472 (1948). Moreover, even where the presence or activity of non-residents causes or exacerbates the problem the state seeks to remedy, there must be a "reasonable relationship" between the danger posed by noncitizens, as a class, and the discrimination practiced upon them. Id., at 1473. Therefore, the privileges and immunities clause demands a two-step analysis.

First, do non-residents constitute a peculiar source of evil at which your proposal is aimed? I believe that a reasonable and persuasive argument could be made that they do. Alaska has a strong interest in regulating and controlling those things it claims to "own" (the funds for which the fishery loans would derive). Yet while this interest is by no means absolute, Baldwin v. Montana Fish & Game Comm'n, 56 L.Ed.2d 354 (1978), Alaska's ownership of the funds is a crucial factor. Hicklin v. Orbeck, 57 L.Ed.2d 397, 405 (1978). In Hicklin, the Court found that Alaska had "little or no" proprietary interest in much of the activity swept within the ambit of Alaska Hire. Id. On the other hand, under your proposal Alaska does have a significant proprietary interest, e.g., management of loan funds, and development of the fishing industry. Given this state interest in the funds which would be the source of fishery loans, non-Alaskans could be a "peculiar source of evil" if the loan funds were limited, non-Alaskans flocked to the state to get the loans, etc.

Second, is there a reasonable relationship between your proposal and the class at which your proposal is aimed. Again, I would say "yes". Non-Alaskans are not absolutely barred from receiving a loan; they must simply wait in line. I would conclude that your proposal is constitutionally valid as applied to non-Alaskan individuals.

Senator Bob Mulhy  
Page 3  
March 4, 1981

Corporations, meanwhile, could mount a Fourteenth Amendment equal protection attack. However your proposal seems valid since it involves no suspect classes and no fundamental rights. Instead, it is an example of the type of socio-economic legislation that warrants a low level rational basis test. Usually, such a test amounts to the judiciary deferring to the legislative judgment.

While the Alaska Supreme Court no longer applies a two-tiered approach to equal protection cases, State v. Erickson, 574 P.2d 1 (Alaska 1978), the result would be the same since there are no fundamental rights or suspect classes involved with your proposal.

In summary, your proposal seems constitutionally valid both in regards to individuals and to corporations.

BMT:JAG:ljb

Enclosures

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH 5  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2300

February 27, 1981

The Honorable Bob Mulcahy  
Senate Resources Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Re: SB 140 and 141 (fish pack loans)

Dear Senator Mulcahy:

This is in response to the questions that came up during my testimony on these bills before your subcommittee.

1. Loans for inventory; not working capital. It is definitely the Governor's intent that these loans would be made to finance fish pack inventories and not to provide processors with working capital loans. As an artifact of being transformed to proper legal style, my draft references to "fish pack loans" were deleted and the present ambiguity as to intent resulted. To restore clarity, I would suggest the following amendments to the version of the bill as introduced:

p. 1, lines 15-16: "located in Alaska and which are used to finance such processors' inventories of canned, frozen or processed [PROCESSING OF] fishery products from Alaskan fisheries."

2. When loans are to be made and funded. It is our intent to use the contractual power proposed in AS 44.25.050(3) to make commitments to participate in pack financings before the fish are bought and processed. However, since the financing would be to finance only the pack or inventory (see comment 1), the execution of such commitments and the actual funding would take place only after the inventory is in existence. Funds for starting up at the beginning of the season would be from a processor's working capital and, hence, could not be advanced under this loan program.

3. Term of the loans. The Committee expressed concern that if there is no clear statutory limit to the term of the loans, processors may attempt to sell last the inventory collateralizing the loan fund's participation in order to prolong or take advantage of the lower interest rate. This

concern will be taken care of by the fact that a participation in a loan will be purchased, rather than a separate loan be made from the loan fund. The fund will be a partner in a fish pack loan, together with the banks or other financial institutions that are participating in the loan. All participants in the loan would have pro-rata, undivided interests in the collateral, and therefore, it would not be possible for a processor to pay off his higher-interest bank participations in the loan while stretching out the State's lower-interest participation.

As I testified, rigidly limiting the term of a loan to one year is unrealistic. True, in good years all the processors can work down their inventories and pay off the loan within 12 months, but good years don't come every year and it is not uncommon for a processor to need more time than that to get squared away. Our leverage over the processor is not so much that we can declare him in default and jerk the loan out from under him, as it is that we can refuse to help finance the current year's pack for him until the last year's pack loan is all cleaned up. This is much more meaningful economic power than the threat of foreclosing on an inventory that the processor would probably have been having trouble with.

I therefore recommend that line 15 on page 2 of the original bill be deleted and the following subsections renumbered accordingly.

4. Collateral. The loans will be for fish pack and will be secured by the pack and the receivables arising from the pack. Fluctuations in the market price for fish products might suddenly lower the value of the pack so that the loan it secures then represents more than 75 percent of the pack's value. What happens then? Literally under the statute, the loan would no longer be one in which we could legally participate. We would be forced to declare a default and foreclose on the loan, thereby acquiring a lot of fish products in the middle of a bad market for fish product.

The large banks that will be originating and participating in many of these loans -- the Rainiers, the Sea Firsts and the like -- know all about this business and aren't about to let themselves lose a lot of money at it. It seems to me, then, that it would be wise to share ratably in the collateral that they themselves are willing to accept, instead of hoping to protect ourselves by a fixed loan-to-value ratio that may quickly become unrealistic as the market changes. Accordingly, I suggest the following amendment to the original bill:

p. 2 lines 16-18: "(3) the state participation must be ratably secured on at least an equal basis as the participations of all other participants in the loan, which must be secured by a pledge of the fish processor's inventory being financed by the loan or the accounts receivable arising from that inventory [OF THE FISH PROCESSOR] or by other collateral acceptable to all participants in the loan [AND MAY NOT EXCEED 75 PERCENT OF THE APPRAISED VALUE OF THE COLLATERAL TAKEN AS SECURITY];"

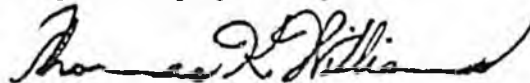
5. Definition of "facilities located in Alaska", which determines eligibility. The committee expressed concern about the meaning of this term, particularly whether floating processors in the three-mile limit would qualify. Certainly under the present wording of the bill they could be construed as being facilities located in Alaska, and we would adopt a regulation to that effect unless the Legislature shows an intent to the contrary. However, it would be a matter of administrative discretion, and the policy taken now could be reversed in the future. Thus, if you wish to ensure that floating processors will qualify for these fish pack loans, you might add the following definition to proposed AS 44.25.065 on page 3 of the bill:

"facilities located in Alaska" means facilities at which fisheries products are canned, frozen or otherwise processed for inventory and includes such facilities both onshore and offshore, provided that the floating facilities are registered with the State of Alaska or the U.S. Coast Guard and operate within the three-mile limit or within historic bays and inland waters of the State of Alaska.

Let me conclude this letter by assuring you that I do not intend to set up a poorly run loan program if this bill passes. Safeguarding the integrity of the program while meeting the public need is the goal. This will not mean that every processor gets financing under this program, but at the same time no processor with facilities in Alaska will automatically

be excluded. Decisions will be made on a case-by-case basis. The processor will first go to a financial institution or CFAB, which will originate and participate in the loan. The originator will be free to agree to commit to a participation or to decline it. If it agrees, the originator will invite us to participate, and we will in turn apply our independent judgment in deciding whether or not to make a commitment. The terms and conditions, the safeguards and protections, the duties and obligations will all be spelled out in great detail in the loan agreements, which we can and will insist on being to our satisfaction before we agree to participate. It is important that the statute preserve administrative flexibility to adapt, if appropriate, to the particular circumstances of the individual borrower. This bill, with the changes I have suggested, would provide a skeleton to support the program, and we will do our best to flesh it out into a healthy program.

Very truly yours,



Thomas K. Williams  
Commissioner of Revenue

TKW:mll

cc: Senator Eliason  
Senator Gilman

STATE OF ALASKA  
THE LEGISLATURE  
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3811

MEMORANDUM

March 3, 1981

SUBJECT:           Constitutionality of precluding fish processors  
                    who are 80 percent or more owned by foreign  
                    nationals from obtaining fishery product loans  
                    under SB 140.

TO:                 ~~Senator Bob Mulcahy~~

FROM:              Joseph A. Guthrie           *JAG*  
                    Legislative Counsel

Attached is a memorandum prepared by Bernie M. Tuggle, a  
legal extern serving with the Division of Legal Services. I  
have reviewed his memorandum and agree with the conclusions  
and advice given in it.

JAG:ljb

Attachment

# STATE OF ALASKA THE LEGISLATURE

FOUCHY STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465-3111

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1981

SUBJECT:            Constitutionality of precluding fish processors who are 80 percent or more owned by foreign nationals from obtaining fishery product loans under SB 140.

TO:                 Senator Bob Mulcahy

FROM:              Bernie M. Tuggle <sup>BT</sup>  
                    Legislative Legal Extern

You have asked me to explore the constitutionality of precluding fish processors who are 80 percent or more owned by foreign nationals from obtaining loans from the fishery product revolving loan fund which would be created by SB 140. This issue raises Fourteenth Amendment equal protection problems because your proposal would discriminate against persons on the basis of alienage.

As a practical matter, many fish processors would be organized under the corporate form of business. This raises the initial question whether corporations are protected under the equal protection clause. The answer is an unequivocal "yes". Grosjean v. American Press Co., 80 L.Ed. 660 (1936). Therefore, corporations and other types of business organizations receive the same amount of equal protection as individuals.

Traditionally, classifications based on alienage, like those based on nationality, or race, are inherently suspect and subject to the highest judicial scrutiny. Graham v. Richardson, 29 L.Ed.2d 534 (1971). However it is unclear whether strict scrutiny applies to non-resident aliens as well as resident aliens. While the numerous cases which have struck down alienage classifications have all involved resident aliens, Truax v. Raich, 60 L.Ed. 131 (1951); Takahashi v. Fish and Game Comm'n, 92 L.Ed. 1478 (1948); Graham v. Richardson, supra; Sugarman v. Dougall, 37 L.Ed.2d

853 (1973); In re Griffiths, 37 L.Ed.2d 910 (1973); Hampton v. Mow Sun Wong, 48 L.Ed. 495 (1976); Examining Board v. Otero, 49 L.Ed.2d 63 (1977); Nyquist v. Mauclet, 53 L.Ed.2d 63 (1977); the Court has never directly addressed this issue. The lower courts, meanwhile, have split on whether strict scrutiny is the appropriate level of judicial review for laws which discriminate against non-resident aliens. Compare Moreno v. Toll, 489 F.Supp. 658 (D. Md. 1980) with United States v. Tsuda Maru, 429 F.Supp. 519 (D. Alaska 1979).

Matthews v. Diaz, 48 L.Ed.2d 478 (1976) suggests that classifications which discriminate against non-resident aliens are not as suspect as classifications discriminating against resident aliens.

Neither the overnight visitor, the unfriendly agent of a hostile foreign power, the resident diplomat, nor the illegal entrant, can advance even a colorable constitutional claim to a share in the bounty that a conscientious sovereign makes available to its own citizens and some of its guests. (Emphasis in original)

Id. at 490. This possible difference in levels of judicial scrutiny will prove important as discussed below.

Another factor as to whether your proposal would pass constitutional muster would be the characterization of the benefit sought. Here, that benefit would be a fishery product loan. As a general rule, the strict scrutiny approach is applicable to state classifications based on alienage, excepting those dealing with governmental functions, in which case the less stringent rational basis test will be applied. For example in Foley v. Connelie, 55 L.Ed.2d 287 (1978), the Court upheld a New York statute limiting appointment to the state police force to United States citizens by applying a rational basis, rather than a strict scrutiny test. The application of this less demanding standard, however, was clearly limited to alienage classifications in matters involving the state's historical power to exclude aliens from participation in its political institutions. As the Court stated:

The essence of our holdings to date is that although we extend to aliens the right to education and public wel-

fare, along with the ability to earn a livelihood and engage in licensed professions, the right to govern is reserved to citizens.

Id. at 293. Foley, then, stands for a limited exception to the general strict scrutiny standard, and this exception will apply only in cases involving state regulation of one of the basic functions of government.

In the closest case on point, Nyquist v. Mauclet, supra, the Court struck down a New York Statute which barred resident aliens from state financial assistance for higher education. While Nyquist was a 5 to 4 decision, I believe that it would be followed and your proposal as applied to resident aliens would be struck down. Even though Nyquist is factually distinguishable, its holding is on point. The New York statute indirectly barred a resident alien from seeking higher education, i.e., he could not secure a state loan to pursue his education. Similarly, your proposal would indirectly bar a resident alien from pursuing his livelihood, i.e., he could not obtain a state loan from the fishery product revolving loan fund. Moreover, loans to fishermen could hardly be characterized as a "basic governmental function" such as holding public office. Therefore, such loans would not fit within the one recognized exception to the general rule of strict scrutiny for classifications based on alienage.

Your proposal as applied to non-resident aliens would pass constitutional muster for two reasons. First, although this area of the law is unsettled, judicial review of classifications discriminating against non-resident aliens seems to be lower than strict scrutiny. Second, the Supreme Court's cases have often emphasized that resident aliens live in American communities, must obey our laws, pay taxes, serve in the armed forces, and have made significant contributions to our country. It is the burdens which resident aliens bear along with citizens that makes discriminations against resident aliens irrational. Resident aliens are in many respects just like citizens, and classifications which disadvantage them will usually be subjected to strict judicial scrutiny. However the philosophical and legal support for this doctrine is absent when a case involves a non-resident alien.

In summary then, if your proposal includes resident aliens, it probably would be struck down. If your proposal includes only non-resident aliens, then most likely it would survive an equal protection attack.

BMT:ljb

16

Alaska State Legislature

(1)

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POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3034  
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Senate

Committee on Resources

MEMORANDUM

TO: SENATE RESOURCE COMMITTEE MEMBERS

FROM: JIM PALMER  
SENATE RESOURCE COMMITTEE STAFF

RE: ALASKA RENEWABLE RESOURCE CORPORATION REPORT

DATE: FEBRUARY 10, 1981

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Attached for your information is the 1980 Report from the Alaska Renewable Resource Corporation pursuant to SB 140.



Official Business

# Alaska State Legislature

Senate


Office of the Secretary

Pouch V  
State Capitol  
Juneau, Alaska 99811

MEMORANDUM

February 10, 1981

TO: Senator Fahrenkamp  
Chairman  
Resources Committee

FROM:  Peggy Mulligan  
Secretary of the Senate

SUBJECT: Alaska Renewable Resources Corporation  
1980 Report

The President has referred the attached report to your committee.

Alaska  
Renewable  
Resources  
Corporation

*Rec  
Com.  
Jan*

February 9, 1981

*Box 1647, 99802*  
526 Main Street  
Juneau, Alaska  
99801  
(907) 465-4616

The Honorable Jalmar M. Kerttula  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Kerttula:

P.O. Box 828  
Anchorage, Alaska  
99510  
(907) 279-5602  
or (907) 272-2508

Pursuant to SB 140 "An Act relating to financial assistance for commercial purchasers of salmon. . .", the following report summarizes lending and investment activities undertaken by the Alaska Renewable Resources Corporation for the period ending December 31, 1980.

Investments and loans made under the Commercial Fish Purchasers Assistance Fund totaled \$12,564,425 on December 31, 1980. By the end of January 1981, the termination date of SB 140, the \$15 million fund had been fully committed. ARRC assisted fish purchasers, processed, transported and marketed over 20 million pounds of product and employed over 1,000 seasonal workers. Each investee is more fully described below.



ALASKA FOOD COMPANY. (\$500,000 in equity for 47% of outstanding stock; \$1,000,000 in subordinated convertible debt; \$2,000,000 in senior debt secured by plant and vessel) total investment: \$3,500,000.

The NEFCO bankruptcy enabled ARRC and a group of Alaskan entrepreneurs to acquire the Kodiak Gibson Cove facility. The company employs over 150 local people and purchases a broad variety of product from local fishermen. In joint-venture with Ball Brothers, Inc., Alaska Food transported Bristol Bay sockeye to Vancouver, B. C. for canned product. This experimental program was profitable.

The facility is the only one in Alaska known to be planning a whitefish (bottomfish) line in 1981. The firm is seeking additional capital from a variety of sources to finance the whitefish expansion. Cost of the expansion is budgeted at \$2.5 million. The firm has initiated a subsidiary company for seafood marketing.

BALL BROTHERS, INC. (\$500,000 in equity for 40% of outstanding stock; \$3,000,000 in senior debt secured by real property and equipment; \$840,873 in short-term revolving pack financing) total investment: \$4,340,873.

Ball Brothers, Inc., buys, processes fish in Dillingham, and transports finished and round fish product to Anchorage and Kenai processors for custom processing and/or direct sale. The company was in serious financial trouble and would not have been operational for the 1980 season without ARRC assistance. The company moved nearly 4 million pounds of product and employed over 125 seasonal workers. Product inventory is currently being liquidated. The company requires substantial managerial improvement but should break even this year. Continued dependence upon ARRC is probable. No pay down on term indebtedness is expected this year. The repayment schedule on term indebtedness has been rescheduled.

SALAMATOF SEAFOOD, INC. (\$2,034,109 debt secured by second deed of trust on Kenai main plant; \$316,111 in equity) total investment: \$2,350,220.

Salamatof is a major fresh/frozen product processor located on the Kenai River. The Kenai plant is new, well laid out, and constitutes 17% of Kenai Peninsula freezing capacity. The company processed several million pounds of product during the 1980 season but lost control of the plant and field costs. At the close of the season, the company had trade payables of over \$1,200,000, owed funds to over 100 fishermen, and was in default on a number of provisions in ARRC's investment agreement.

In September, ARRC dispatched an audit team to the company. Upon receiving audit figures confirming the poor financial status of the company ARRC called the Waterer Loan, taking Waterer's 15 shares (42% ownership) in the company and accepted Waterer's resignation as President and Director on November 13, 1980. In December, ARRC also acquired the stock held by an Ohio investor. ARRC now owns 100% of the company.

A petition for bankruptcy under Chapter 11 (reorganization) has been filed. ARRC plans to operate the facility during the 1981 season and to submit a reorganization plan to the court in the fall. An experienced manager has been hired and negotiations are now underway with customers for custom processing.



ICICLE SEAFOODS. (\$1,950,000 short-term pack loan secured by inventory) total investment: \$1,950,000.

When final audit figures for the year ending March, 1980, revealed a loss of over \$2,500,000 on 1979 operations, several banks which had provided short-term credit to Icicle threatened to withdraw funds to continue with its 1980 salmon season. ARRC's loan enabled Rainier, the lead bank, to restructure the group of banks involved in the credit, thus reducing the risk of bank initiated foreclosure proceedings as had occurred at NEFCO. The initial participation by ARRC was at \$3 million. The amount shown above reflects pay down on the 1980 pack line.

On January 28, 1981, ARRC committed to a \$5 million investment in Icicle. Subsequently SOHIO has agreed to join ARRC with an investment of \$1.5 million. These funds, coupled with new term debt, will enable the firm to properly finance the dramatic growth which it has enjoyed over the past five years. ARRC evaluated the company carefully over a three month period and concluded that the firm's management and product markets are basically sound. Rapid growth, cost overruns on recent capital construction projects, and failure to properly capitalize the firm's growth, led to the clear need for the venture capital injection.

Of ARRC's \$5 million commitment, \$3.5 million will come from the Commercial Fish Purchasers Assistance Fund, and \$1.5 million from ARRC's regular FY 81 capital appropriation. The company will be required to undertake specific programs designed to strengthen it. When the investment is concluded, ARRC will own a substantial equity in Icicle below its 49% limitation. There will be provisions for equity repurchase by Icicle, its employees and fishermen.

MARTIN CLARK d/b/a CLARK CONSTRUCTION. (\$373,332 debt secured by equipment) total investment: \$410,000.

A smaller buyer and transhipper of high quality salmon located in Dillingham, Clark moved approximately one million pounds of product this year. ARRC's loan enabled Clark to acquire and install ice producing machinery vitally needed to improve product quality in Bristol Bay. Clark sells ice to other processors as well as engaging in fish buying and shipping. Clark is in financial difficulty. ARRC is providing technical assistance.

AMERICAN EAGLE. (\$50,000 working capital loan secured by personal guarantees) total investment: \$200,000.



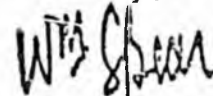
The Honorable Jalmar M. Kerttula  
Page Four

Four entrepreneur/fishermen acquired a WWII vesse, and have converted it to a floating processor. ARRC made a working capital loan of \$150,000 and followed up with an additional \$50,000 out of the special fund after the season had begun. In addition to the normal difficulties of a start-up operation the business has suffered from conflict between the owners as well as mechanical problems. Operations for salmon were conducted in the False Pass area.

This venture continues in its attempts to reorganize. ARRC is currently reviewing a plan for mechanical and organizational changes.

To some extent, all of these companies, which are Alaska owned and controlled, will all require a pack line of credit for the 1981 season. Icicle alone, for instance, may need around \$35 million. For this reason, ARRC and the companies in which it has invested are watching SB 140 (pack financing) with special interest. They hope that as Alaskan companies, their credit requirements will receive priority over their non-Alaskan competitors.

Sincerely,



William E. Spear  
Chairman



February 3, 1981

The Honorable Jalmar Kerttula  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which would establish the fishery product revolving loan fund in the Department of Revenue. This bill is designed to provide short-term financing to fish processors with facilities located in Alaska. The Department of Revenue would be authorized under the bill to purchase participation interests in loans made by banks to fish processors. These loans would provide needed funds to fish processors to cover operating costs before the fishery products are sold.

I am also transmitting a bill appropriating money to the fund.

Sincerely,

*SJS*

Jay S. Hammond  
Governor



JUNEAU, ALASKA

# Alaska State Legislature

## Senate

### RESOURCES SUBCOMMITTEE ON FISHERIES

March 4, 1981

TO: Senator Bettye Fahrenkamp, Chairman  
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 140 "An Act creating a Fishery Product Revolving  
Loan Fund"

The subcommittee has taken testimony and replaced SB 140 with CSSB 140 and reports CSSB 140 back to the committee as a whole with the following recommendations.

Members		Recommendation
Senator Mulcahy	<i>Bob Mulcahy</i>	<i>No Rec</i>
Senator Eliason	<i>P. Eliason</i>	" "
Senator Gilman	<i>Don Gilman</i>	<i>NO Rec</i>