

S B

156



Official Business

Alaska State Legislature

Senate

RESOURCES SUBCOMMITTEE ON FISHERIES

Pouch V
State Capitol
Juneau, Alaska 99811

March 15, 1983

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 156

The subcommittee has taken testimony and recommends replacing SB 156 with CS SB 156(Res) and reports CS SB 156(Res) back to the committee as a whole with the following recommendations.

Members

Recommendation

Senator Mulcahy

Bob Mulcahy

Do Pass

Senator Eliason

Al Eliason

x 9

Senator Gilman

Don Gilman

Do Pass

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

10 Earnest Creek
Contracts & Facilities Unit
Division of Administration
Department of Fish & Game

September 14, 1982

WILSON L. CONDON
ATTORNEY GENERAL

Director, Bureau of Transfer
for Fisheries

By: John B. Gargine
Assistant Attorney General
Department of Law

RECEIVED
SEP 14 1982

You have asked several questions regarding the Department of Fish and Game's proposed transfer of three state hatcheries to non-profit regional aquaculture associations. Specifically, you wish to know whether there is any bar to a negotiated transfer to a selected transferee, and what types of transfer are permissible. We conclude that Fish and Game currently may not undertake any type of transfer, since no statutory authority for a transfer now exists. If the legislature does grant the necessary power to Fish and Game, it will be able to do a negotiated transfer, but will not be able to give up ownership without receiving fair value for the facilities.

Lack of statutory authority. Fish and Game has no specific authority to dispose of property. AS 16.05.050(3) authorizes the commissioner to "design and construct" hatcheries, but not to lease or sell them. Similarly, both AS 16.05.020, the statute listing the commissioner's broad functions, and AS 16.05.092, the statute broadly defining the powers of the FRED division (which runs the hatcheries), are silent as to Fish and Game's and/or FRED's power to dispose of them. There is no Alaska constitutional provision or judicial decision expressly requiring that an executive department have explicit statutory authority before it may dispose of state property. But this is the general rule of law followed elsewhere, and one must presume that the rule applies in Alaska, too.

*Contract
to
transfer
to
non-profit
association
of
aquaculture
associations
of
Alaska*

This general rule is reflected in the myriad of cases concerning disposition of state property (generally land) by sale or lease, virtually all of which discuss the statutory basis for the transfer. Many of these cases can be found under West's Key Number States 89. "It is a well settled principle of law that title to government property may pass only in the manner prescribed by the duly constituted legislative body and that title to any such property may not be forfeited through the oversight, carelessness, negligence or even intentional conduct of any of the agents of the government." State v. West, 229 S.E.2d 826, 831-32 (N.C. App. 1976), aff'd, 355 S.E.2d 158 (N.C. 1977). See also Finch v. State, 124 So.2d 825, 827 (Ala. 1960) (within

constitutional limitations, legislature has power to provide for leasing of state property, and may set limits on length of leases and determine general policy concerning them); State Land Board v. Heuber, 548 P.2d 1323, 1328 (Or. App. 1976) (conveyance by state is valid only if done with proper statutory authority); 5B G. Thompson, Real Property § 2720 (1975 repl. ed.) (state may dispose of lands through the legislature; state officers may act only in accordance with constitution and statutes); 72 Am. Jur.2d States §§ 66, 67 (1974).

The necessary statutory authority to sell or lease cannot be found in general grants of power made by the legislature to state officials. Samsell v State Land Development Co., Inc., 174 S.E.2d 318 (W.Va. 1970), invalidated a mineral lease made in 1962 by the state director of natural resources. The legislature had in 1961 vested title to state land in the Public Land Corporation, of which the natural resources director was secretary, and the corporation had not ratified the lease. The court declined an invitation to uphold the lease on the basis of a general statute allowing the director to execute contracts and agreements in the name of the state.

Another instructive case is Central Advertising Co. v. Michigan State Highway Commission, 172 N.W.2d 432 (Mich. 1969). There the highway commission attempted to place a restrictive covenant banning roadside advertising on some excess land it was selling. In the absence of any statutory authority for this covenant, the court found, its inclusion was beyond the commission's power. Again the court declined to find the requisite authority for the covenant in the statute conferring general powers on the commission.

We would conclude, then, that before Fish and Game can transfer operation of its hatcheries to an aquaculture association, either by sale or lease, the legislature must specifically authorize Fish and Game to make such a transfer. Perhaps an amendment could be proposed to AS 16.05.050(C), which would allow the commissioner to lease or sell the "hatcheries, pipe lines, rearing ponds, fishways, and other projects beneficial for the fish and game resources of the state" that the subsection now empowers him to construct.

Incidentally, if the hatcheries could be regarded as surplus property, then the Department of Administration currently has the power to dispose of them, by sale or lease, under AS 44.71.010. If, say, the FRED division were unable to operate them because of manpower shortages caused by budget constraints, the hatcheries might be properly regarded as surplus property.

and disposition under AS 44.71.010 might be appropriate. When, however, the decision to transfer operations to the aquaculture associations reflects a department policy determination, invocation of AS 44.71.010 would not in our opinion be proper.

Negotiated transfer. On this question, we refer you to a May 28, 1980 informal opinion of this office, which is attached to this memorandum. While that opinion is directly concerned with disposal of surplus property under AS 44.71.010 (discussed above), the principle is the same. Competitive bidding is required only when specified by statute. Since there is no statute here mandating such bidding, a negotiated transfer is permissible. We would repeat the observation contained in the 1980 informal opinion, though: any transfer agreement (assuming that the requisite statutory authority is obtained) should state why Fish and Game believes the transfer to be in the state's best interest.

Permissible types of transfer. On this question, too, we refer you to another recent informal opinion, this one dated March 30, 1982, and dealing with the very issue of hatchery transfers. That opinion is also attached to this memorandum, and we believe answers the question you pose. In addition, we note that any transfer without compensation of the hatcheries, either as an outright grant or under a "performance purchase" agreement (automatic transfer after a number of years of successful operation by the aquaculture association), would seem to be inconsistent with AS 16.10.500-.620, the fisheries enhancement loan program. AS 16.10.510 authorizes loans (not grants) to certified aquaculture associations to construct hatcheries (under AS 16.10.375-.475). It would be difficult to square this legislative directive with a Fish and Game decision to turn over grants to the associations hatcheries that Fish and Game built with its own funds. While the legislature has made direct appropriations to aquaculture associations (e.g., § 3, ch. 42, SLA 1982), these grants have not been specifically for the purpose of constructing hatcheries. Of course, the legislature (subject only to constitutional public interest requirements) could authorize a transfer at less than fair market value.

To sum up, then, we believe that the three hatcheries cannot at present be either sold or leased by Fish and Game, because of the lack of statutory authority for hatchery transfer. If the legislature sees fit to confer such authority, then Fish and Game will be able to lease the hatcheries or sell them for fair value to an aquaculture association with which Fish and Game

Ernest Creek
Contracts & Facilities Office
Department of Fish & Game
466-086-83

September 9, 1987

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has negotiated an agreement. However, the department will not be able to transfer the hatcheries at less than fair market value in the absence of specific legislative authority to do so.

Please feel free to contact us if you have additional questions.

JBG:dln

Attachments

The Honorable William R. Hudson DATE May 28, 1980
Commissioner
Department of Administration FILE NO. J-66-737-80

TELEPHONE NO

FROM AVRUM M. GROSS
 ATTORNEY GENERAL

SUBJECT Negotiated sale of excess
 or surplus housing

By:

 Rodger W. Pegues
 Assistant Attorney General

You have asked whether you may dispose of surplus housing to employee-residents by negotiation.

No statute requires disposal by bid, and the applicable statute, AS 44.71.010, expressly allows for disposition "on the terms [you] consider for the best interests of the state." Some record of how the chosen terms serve the best interests of the state should be a part of the file. Otherwise, there are no other requirements.

The applicable regulations, 2 AAC 20.010(a)(1), allows either a negotiated or competitive sale.

There is no constitutional requirement for a competitive sale. Such requirements as exist are to be found in the statute. Libby v. City of Dillingham, P.2d _____ (Alaska Sup. Ct. Op. No. 2097, May 23, 1980). Here, it is the best interests of the state which must be served.

RWP:cb

to W. I. "Bob" Palmer, Coordinator
Office of Special Projects
Office of the Governor

DATE: March 30, 1982

FILE NO: J66-197-82

TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Transfer of operation
of state hatcheries

By: *W. Davis*
LESLIE L. DAVIS
Assistant Attorney General

This will confirm our telephone conversation in response to your memorandum of September 9, 1981. We see no problem with the transfer of responsibility for operation of state-owned fish hatcheries to the private nonprofit aquaculture associations whose membership is directly benefitted by the hatcheries' work. However, if ownership of the hatcheries is transferred, the state must receive fair value for the facilities. If the associations are unable to purchase the facilities, the state may lease them for a nominal fee and provide that the associations shall operate and maintain them. Our opinion is based upon the following legal principles and reasoning.

The Alaska Constitution prohibits the transfer of public property except for a public purpose. Alaska Const., art. IX, § 6. Generally, this requires that the state receive fair value for property which it disposes of. The Department of Administration is by statute responsible for disposing of surplus or obsolete property on terms which are "in the best interests of the state." AS 44.71.010.

The value of a salmon hatchery is in its ability to enhance the supply of fish to be caught by commercial and sport fishermen. Since the ownership of hatchery-produced fish is not retained after they leave the hatchery, the market value of a hatchery is difficult to determine. The establishment of a hatchery serves a public purpose by supporting both commercial and recreational fishing in the state. See Wright v. City of Palmer, 468 P.2d 326 (Alaska 1970), holding that encouraging industrial development is a public purpose. As a hatchery becomes productive, its economic benefit is realized directly by fishermen. In transferring responsibility for a hatchery to the people directly benefitted, the public purpose clause requires that the state obtain terms which recover as much of the public contribution as is reasonable under the circumstances.

We conclude that a simple transfer of ownership without compensation to the state would be suspect. If ownership

is transferred, the state should receive reasonable compensation for its costs. As an alternative, a lease of the hatchery for a nominal fee with the lessee paying for operation and maintenance and indemnifying the state from liability for any harm arising from operation of the hatchery would be consistent with the public purpose clause. See Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963), regarding a similar lease of a public hospital to a nonprofit corporation.

We note that the general obligation bonds which were issued to pay for the hatcheries do not require the state to continue ownership or operation of the hatcheries. 1974 Alaska Sess. L., ch. 133; 1976 Alaska Sess. L., ch. 214; 1978 Alaska Sess. L., ch. 140; 1980 Alaska Sess. L., ch. 01. However, the money received from those bond issues may not be spent for any other purpose without an appropriation. There is a legal question as to whether money received from a bond issue but not spent for the purposes for which the bonds were authorized may be reappropriated for another public purpose or must be used to redeem the bonds. We will defer addressing this question until it is directly presented. We hope that this answers your questions.

LLD/pjg

cc: Hon. Jim Duncan
House of Representatives

RESOLUTION
OF THE
ALASKA FISHERIES COUNCIL
November 23, 1982

WHEREAS, the Fisheries Rehabilitation, Enhancement & Development Division of the Alaska Department of Fish and Game has played a vital role in the State of Alaska's Salmon Enhancement Program; and

WHEREAS, the Fisheries Rehabilitation, Enhancement & Development Division shall continue to play a vital role in the support of the Salmon Enhancement Program by providing technical services such as pathology, genetics, and limnology, as well as to produce fish in areas not suited for cost recovery for the benefit of all Alaskans, be they subsistence, sport, or commercial users, and continue to develop new biotechnology; and

WHEREAS, the People of the State of Alaska have expressed their edict by imposing a spending limit as an amendment to the Constitution of the State of Alaska; and

WHEREAS, the provisions of the spending limit may cause funding problems that jeopardize the statutorily required and other vital contributions of the Fisheries Rehabilitation, Development & and Enhancement Division to the Alaska Salmon Enhancement Program; and

WHEREAS, the policy of the State is to promote enhancement of the State's salmon fisheries through private, non-profit regional aquaculture associations comprised of all of the various user groups, thereby furthering a valid public purpose; and

WHEREAS, the search for viable options has been exhaustive and but one found; NOW THEREFORE BE IT

RESOLVED that the Alaska Fisheries Council respectfully recommends to the Governor of the State of Alaska that legislation be introduced by his hand to grant authority to the Commissioner of the Department of Fish and Game to sell or lease State-owned salmon hatcheries to Qualified Regional Aquaculture Associations, and further be it

RESOLVED that the Alaska Fisheries Council respectfully recommends to the Legislature of the State of Alaska that said legislation be enacted into law, and further be it

RESOLVED that the Commissioner of the Department of Fish and Game initiate sincere negotiations with those Qualified Regional Aquaculture Associations who apply to lease or buy state-owned salmon hatcheries within their respective regions and that said negotiations be concluded in a timely fashion.

Signed,

Curt Kerns, Chairman
Alaska Fisheries Council

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAUMEMORANDUM

To: The Honorable Bill Sheffield
Governor

From: Curt Kerns, Chairman *Curt Kerns*
Alaska Fisheries Council
Office of the Governor

Subject: AFC Resolution of November 23, 1982

Date: January 3, 1983

The Alaska Fisheries Council respectfully requests your consideration of the enclosed resolution and accompanying draft legislation.

The resolution and legislation are the culmination of work first begun in July of 1981 when Budget and Management first flagged FRED Division operating and maintenance funding as an area of potential problems, given the imposition of the spending limit. A cabinet-level steering committee and then a working group were formed. A number of options were reviewed; the steering committee narrowed the list to five. After additional study, the Alaska Fisheries Council met to review the options. Four have significant constitutional or political problems. The remaining option -- selected transfer -- while not free of objections, was judged worthy of your consideration.

Should your administration make the decision to introduce the enclosed legislation, passage of the bill and subsequent transfer of selected FRED production facilities to the private sector will not be a panacea in that FRED budgetary requirements will not be reduced. Future increases, however, will not grow as rapidly without transfer. If Alaska is to have a competitive and healthy salmon industry on into the future, FRED will need to be funded at a rate commensurate with other A.D.F. & G. divisions.

A plethora of background materials are available. If your office requires further input, please contact us.

Enclosures

TO: Ernest Creek
Contracts & Facilities
Division of Administration
Department of Fish & Game

DATE: September 7, 1982
BY: [Signature]
SUBJECT: [Signature]

FROM: WILSON L. CONDO
ATTORNEY GENERAL

SUBJECT: Authorization to Transfer
for Hatcheries

By: John B. Gargine
Assistant Attorney General
Department of Law

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SEP 14 1982

You have asked several questions regarding the Department of Fish and Game's proposed transfer of three state hatcheries to non-profit regional aquaculture associations. Specifically, you wish to know whether there is any bar to a negotiated transfer to a selected transferee, and what types of transfer are permissible. We conclude that Fish and Game currently may not undertake any type of transfer, since no statutory authority for a transfer now exists. If the legislature does grant the necessary power to Fish and Game, it will be able to do a negotiated transfer, but will not be able to give up ownership without receiving fair value for the facilities.

Lack of statutory authority. Fish and Game has no specific authority to dispose of property. AS 16.05.050(3) authorizes the commissioner to "design and construct" hatcheries, but not to lease or sell them. Similarly, both AS 16.05.020, the statute listing the commissioner's broad functions, and AS 16.05.092, the statute broadly defining the powers of the FRED division (which runs the hatcheries), are silent as to Fish and Game's and/or FRED's power to dispose of them. There is no Alaska constitutional provision or judicial decision expressly requiring that an executive department have explicit statutory authority before it may dispose of state property. But this is the general rule of law followed elsewhere, and one must presume that the rule applies in Alaska, too.

*Contract for
aquaculture
Contract for
Finch v. State
124 So.2d 825*

This general rule is reflected in the myriad of cases concerning disposition of state property (generally land) by sale or lease, virtually all of which discuss the statutory basis for the transfer. Many of these cases can be found under West's Key Number States 89. "It is a well settled principle of law that title to government property may pass only in the manner prescribed by the duly constituted legislative body and that title to any such property may not be forfeited through the oversight, carelessness, negligence or even intentional conduct of any of the agents of the government." State v. West, 229 S.E.2d 826, 831-32 (N.C. App. 1976), aff'd, 235 S.E.2d 159 (N.C. 1977). See also Finch v. State, 124 So.2d 825, 827 (Ala. 1960) (within

constitutional limitations, legislature has power to provide for leasing of state property, and may set limits on length of leases and determine general policy concerning them); State Land Board v. Heuber, 548 P.2d 1323, 1328 (Or. App. 1976) (conveyance by state is valid only if done with proper statutory authority); 5B G. Thompson, Real Property § 2720 (1978 repl. ed.) (state may dispose of lands through the legislature; state officers may act only in accordance with constitution and statutes); 72 Am. Jur.2d States §§ 66, 67 (1974).

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We would conclude, then, that before Fish and Game can transfer operation of its hatcheries to an aquaculture association, either by sale or lease, the legislature must specifically authorize Fish and Game to make such a transfer. Perhaps an amendment could be proposed to AS 16.05.050(2), which would allow the commissioner to lease or sell the "hatcheries, pipe lines, rearing ponds, fishways, and other projects beneficial for the fish and game resources of the state" that the subsection now empowers him to construct.

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September 9, 1987
Page 4

has negotiated an agreement. However, the department will not be able to transfer the hatcheries at less than fair market value in the absence of specific legislative authority to do so.

Please feel free to contact us if you have additional questions.

JBG:dln

Attachments

TO: Officer of the Attorney General
Department of Law
Juneau

DATE: July 28, 1962

FILE NO:

ATTENTION: G. Thomas Koester

TELEPHONE NO: 465-4120

FROM: Earnest Creek
Contracts & Facilities Officer
Division of Administration
Department of Fish and Game

SUBJECT: Hatcheries Transfer

We are anticipating in the near future the decision to transfer the Cannery Creek and Main Bay Hatcheries to Prince William Sound Aquaculture Corporation, and the Beaver Falls Hatchery to Southern Southeastern Regional Aquaculture Association, Inc.

Consequently, we need your opinion re:

1. State's ability to transfer property to a selected transfer; ;
2. Fish and Game's authority to transfer by:
 - (a) Sublease
 - (b) Performance Purchase (pass title after successful operation for 5 to 10 years)
 - (c) Grant.

Thank you for your help.

ERG/hb

The Honorable William R. Hudson . DATE: May 28, 1980
Commissioner
Department of Administration . FILE NO: J-66-737-80

TELEPHONE NO

FROM: AVRUM M. GROSS . SUBJECT: Negotiated sale of excess
ATTORNEY GENERAL . or surplus housing

By:
Rodger W. Pegues
Assistant Attorney General

You have asked whether you may dispose of surplus housing to employee-residents by negotiation.

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The applicable regulations, 2 AAC 20.010(a)(1), allows either a negotiated or competitive sale.

There is no constitutional requirement for a competitive sale. Such requirements as exist are to be found in the statute. Libby v. City of Dillingham, P.2d ____ (Alaska Sup. Ct. Op. No. 2097, May 23, 1980). Here, it is the best interests of the state which must be served.

RWP:cb

to W.I. "Bob" Palmer, Coordinator
Office of Special Projects
Office of the Governor

DATE: March 30, 1982

FILE NO: J66-197-82

TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Transfer of operation
of state hatcheries

By: *LD*
Laura L. Davis
Assistant Attorney General

This will confirm our telephone conversation in response to your memorandum of September 9, 1981. We see no problem with the transfer of responsibility for operation of state-owned fish hatcheries to the private nonprofit aquaculture associations whose membership is directly benefitted by the hatcheries' work. However, if ownership of the hatcheries is transferred, the state must receive fair value for the facilities. If the associations are unable to purchase the facilities, the state may lease them for a nominal fee and provide that the associations shall operate and maintain them. Our opinion is based upon the following legal principles and reasoning.

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We conclude that a simple transfer of ownership without compensation to the state would be suspect. If ownership

is transferred, the state should receive reasonable compensation for its costs. As an alternative, a lease of the hatchery for a nominal fee with the lessee paying for operation and maintenance and indemnifying the state from liability for any harm arising from operation of the hatchery would be consistent with the public purpose clause. See Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963), regarding a similar lease of a public hospital to a nonprofit corporation.

We note that the general obligation bonds which were issued to pay for the hatcheries do not require the state to continue ownership or operation of the hatcheries. 1974 Alaska Sess. L., ch. 133; 1976 Alaska Sess. L., ch. 214; 1978 Alaska Sess. L., ch. 140; 1980 Alaska Sess. L., ch. 91. However, the money received from those bond issues may not be spent for any other purpose without an appropriation. There is a legal question as to whether money received from a bond issue but not spent for the purposes for which the bonds were authorized may be reappropriated for another public purpose or must be used to redeem the bonds. We will defer addressing this question until it is directly presented. We hope that this answers your questions.

LLD/pjg

cc: Hon. Jim Duncan
House of Representatives

Alaska Statutes

Title 16. Fish and Game.

Chapter

- 10. Fisheries and Fishing Regulations (§§ 16.10.010 — 16.10.720)
- 20. Conservation and Protection of Alaskan Wildlife (§§ 16.20.010 — 16.20.320)
- 51. Alaska Seafood Marketing Institute (§§ 16.51.010 — 16.51.180)
- 52. Fishery Industrial Technology Center (§§ 16.52.010 — 16.52.070)
- 55. Shooting and Firearm Safety (§§ 16.55.010 — 16.55.040)

Chapter 05. Fish and Game Code.

Article

- 4. Licensing of Commercial Fishing Crewmembers and Vessels (§§ 16.05.440 — 16.05.720)

Article 1. The Department of Fish and Game.

Section

- 50. Powers and duties of commissioner
- 65. Application extension
- 90. Organization of the department
- 94. Duties of section of subsistence

Section

- hunting and fishing
- 110. Composition of fund
- 130. Diversion of funds prohibited

Sec. 16.05.050. Powers and duties of commissioner. The commissioner has, but not by way of limitation, the following powers and duties:

(1) assist the United States Fish and Wildlife Service in the enforcement of federal laws and regulations pertaining to fish and game;

(2) through the appropriate state agency, acquire by gift, purchase, or lease, or other lawful means, lands, buildings, water, rights-of-way, or other necessary or proper real or personal property when the acquisition is in the interest of furthering an objective or purpose of the department and the state;

(3) design and construct hatcheries, pipe lines, rearing ponds, fishways, and other projects beneficial for the fish and game resources of the state;

(4) accept money from any person under conditions requiring the use of the money for specific purposes in the maintenance of the protection, rehabilitation, propagation, preservation, or investigation of the fish and game resources of the state or in settlement of claims for damages to fish or game resources;

(5) collect, classify, and disseminate statistics, data and information as in his discretion will tend to promote the objects of AS 16.05.010 — 16.05.950;

(6) capture, propagate, transport, buy, sell, or exchange fish or game or eggs for propagating, scientific or stocking purposes;

(7) Repealed by § 2 ch 227 SLA 1970.

(8) provide public facilities where necessary or proper to facilitate the taking of fish or game, and enter into cooperative agreements with any person to effect them;

(9) administrative, budgeting, and fiscal powers;

(10) the supervision and maintenance, including construction and operation, of vessels used by the Department of Fish and Game;

(11) authorize the holder of an interim-use permit under AS 16.43.010 — 16.43.380 to engage on an experimental basis in commercial taking of a fishery resource with vessel, gear, and techniques not presently qualifying for licensing under AS 16.05.010 — 16.05.950 in conformity with standards established by the Alaska Commercial Fisheries Entry Commission.

(12) [Effective until January 1, 198?] not later than March 31 of each year, provide to the commissioner of revenue the names of those fish and shellfish species which he designates as developing commercial fish species for the following fiscal year of the state; a fish or shellfish species is a developing commercial fish species if, within a specified geographical region,

(A) the optimum yield from the harvest of the species has not been reached;

(B) a substantial portion of the allowable harvest of the species has been allocated to fishing vessels of a foreign nation; or

(C) a commercial harvest of the fish species has recently developed.

[Effective January 1, 1983] not later than January 31 of each year, provide to the commissioner of revenue the names of those fish and shellfish species which the commissioner of fish and game designates as developing commercial fish species for that calendar year; a fish or shellfish species is a developing commercial fish species if, within a specified geographical region,

(A) the optimum yield from the harvest of the species has not been reached;

(B) a substantial portion of the allowable harvest of the species has been allocated to fishing vessels of a foreign nation; or

(C) a commercial harvest of the fish species has recently developed.

(§§ 6, 11 art I ch 64 SLA 1959; am § 1 ch 42 SLA 1963; am § 2 ch 227 SLA 1970; am § 2 ch 79 SLA 1973; am § 12 ch 79 SLA 1979; am § 1 ch 82 SLA 1982)

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shall be shared with municipalities in accordance with AS 43.75.130 and 43.75.135, as those sections read before their respective amendment and repeal by this Act. The taxes paid for the 1979 calendar year and for each succeeding calendar year shall be shared with municipalities in accordance with AS 43.75.130 as amended by sec. 11 of this Act."

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(1) the conservation and management of the fish or game resource will not be affected adversely; and

(2) the failure to timely apply is the result of excusable neglect.

(b) The fee for an extension granted under this section is \$45.

(c) As used in this section, "excusable neglect" does not include unfamiliarity with or ignorance of applicable laws and regulations. In order to show excusable neglect, a person must have demonstrated,

(3) "commission" means the Alaska Commercial Fisheries Entry Commission;

(4) "debtor" means an individual commercial fisherman who either initially contracts for a loan under AS 16.10.333 — 16.10.337 or assumes a loan as provided in those sections. (§ 1 ch 134 SLA 1972; am § 5 ch 83 SLA 1978)

Effect of amendments. — The 1978 amendment added paragraphs (3) and (4).

Article 8. Salmon Hatcheries.

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380. Regional associations	440. Regulation
385. [Transferred]	460. inspection of hatchery
420. Conditions of a permit	470. Annual report

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(1) it is comprised of associations representative of commercial fishermen in the region;

(2) it includes representatives of other user groups interested in fisheries within the region who wish to belong; and

(3) it possesses a board of directors which includes no less than one representative of each user group that belongs to the association.

(b) In this section "user group" includes, but is not limited to, sport fishermen, processors, commercial fishermen, subsistence fishermen, and representatives of local communities.

(c) A qualified regional association, when it becomes a nonprofit corporation under AS 10.20.005 — 10.20.725, is established as a service area in the unorganized borough under AS 29.03.020 for the purpose of providing salmon enhancement services. (§ 2 ch 161 SLA 1976; am § 2 ch 59 SLA 1979)

Effect of amendments. — The 1979 amendment added subsection (c).



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

7-19-83
7:30p

July 19, 1983

Ur

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

Re: CS SB 156 (Rls) --
Relating to the sale,
lease, or grant of
state hatchery
facilities.

Dear Mr. President:

Under the authority granted in art. II, sec. 15, of the Alaska Constitution, I have vetoed Committee Substitute for Senate Bill No. 156 (Rls).

The sale, lease, or granting of publicly financed hatchery facilities to the private sector, some of which have been constructed with publicly endorsed bond monies, represents a major public policy issue having significant long term institutional implications. This Administration may conclude after thorough review of the subject that it is in the public interest to provide for such transfers. However, that policy determination has yet to be developed.

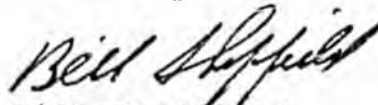
I asked my Fisheries Task Force to review the state's hatchery program and recommend to me long term goals and objectives for this important activity. The Task Force did review the program, but made a determination that the issue was complicated and of such importance that they ultimately recommended I establish a special Aquaculture Policy Study Group to perform the necessary, indepth analysis of the present program, goals and problems of the state's salmon aquaculture program.

The Governor is elected by the citizens and is directly accountable to the citizens. This bill fragments that line of accountability by requiring the regional quasi-private, non-profit associations to approve of transfer to non-association, private, non-profit operators, thus giving a group in the private sector very unusual authorities over executive actions.

The Attorney General has also advised me that there is a possible constitutional problem with the bill in its provision that the commissioner may grant hatcheries to aquaculture associations or non-profit hatchery corporations. If "grant" means without payment, as it presumably does, the transaction might be in violation of the requirements of Article IX, Section 6 of the State Constitution, which prohibits the expenditure of public money or transfer of public property for other than public purposes. Similar problems might arise if a hatchery was sold for less than its fair market value.

Until these several issues are clarified and until the Legislature and I have had an opportunity to establish the state's Aquaculture Policy I have determined that it is not in the public's interest to approve this legislation and perhaps to allow the transfer of a facility prior to making these determinations.

Sincerely,



Bill Sheffield
Governor

Alaska State Legislature

BETTYE FAHRENKAMP
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ROBERT H. ZIEGLER, SR.
VICE-CHAIRMAN
DICK ELIASON - PAUL FISCHER
VIC FISCHER - BOB MULCAHY
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POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-2834
(907) 465-3835

Senate

Committee on Resources

TO: Senate Resources Committee Members
FROM: Senate Resources Committee Staff
RE: March 25 Hearing
DATE: March 24, 1983

On Friday, March 25 at 3:00 pm in the Beltz Room, the following bills will be heard:

SB 120 AN ACT RELATING TO SOIL AND WATER CONSERVATION.

The sponsor of SB 120 has requested that the Committee consider Sponsor Substitute for SB 120 in lieu of the original bill.

SSSB 120 creates the Soil and Water Conservation Board in place of the Soil Conservation Board, and replaces the current system of one Soil Conservation District (which includes the area of the entire state) divided into subdistricts, with a system of Soil and Water Conservation Districts.

The membership of the Board is increased to allow for appointment of 1 member from each of 5 geographic areas of the state; each board member must be a producer of renewable resources and have a cooperative agreement with a soil and water conservation district, rather than possessing land as is currently required. The Board's advisory duties are increased to allow them to hold public hearings and to review appeals. The Commissioner of DNR is authorized to appoint an executive director and clerical staff to assist the Board.

The following 3 bills have passed out of the Resources Subcommittee on Fisheries. Recommendations of the Subcommittee have been incorporated into draft Committee Substitutes, which will be discussed by Senator Mulcahy, Subcommittee Chairman, at the hearing.

CSSB 73 AN ACT RELATING TO COMMERCIAL FISHING LOANS, which changes the residency requirement for a commercial fishing loan from 5 years to 2 years.

CSSB 136 AN ACT RELATING TO THE OPERATION OF STATIONARY FISHING GEAR, which provides exemptions to the present requirement that a permit holder be physically present during the operation of stationary fishing gear.

CSSB 156 AN ACT RELATING TO THE SALE, LEASE OR GRANT OF STATE HATCHERY FACILITIES, which allows the Commissioner of Fish and Game to sell, lease, or grant a state hatchery facility to a qualified regional aquaculture association.

The following two bills will also be heard:

SR 2 RELATING TO THE CROSS ISLAND WELL

SR 2 resolves that the North Slope Borough not impose restrictions in addition to those already required by the state on the operator of the Cross Island Well in the Beaufort Sea.

SB 151 AN ACT RELATING TO REGIONAL RESOURCE DEVELOPMENT AUTHORITIES.

The Committee will be considering further a Committee Substitute for SB 151. Additional amendments to the CS are still being prepared, and will be submitted to you under separate cover prior to Friday's hearing.

It is hoped that final Committee action could be taken on several of these bills.

Alaska Statutes

Title 16. Fish and Game.

Chapter

- 10. Fisheries and Fishing Regulations (§§ 16.10.010 — 16.10.720)
- 20. Conservation and Protection of Alaskan Wildlife (§§ 16.20.010 — 16.20.320)
- 51. Alaska Seafood Marketing Institute (§§ 16.51.010 — 16.51.180)
- 52. Fishery Industrial Technology Center (§§ 16.52.010 — 16.52.070)
- 55. Shooting and Firearm Safety (§§ 16.55.010 — 16.55.040)

Chapter 05. Fish and Game Code.

Article

- 4. Licensing of Commercial Fishing Crewmembers and Vessels (§§ 16.05.440 — 16.05.720)

Article 1. The Department of Fish and Game.

Section

- 50. Powers and duties of commissioner
- 65. Application extension
- 90. Organization of the department
- 94. Duties of section of subsistence

Section

- hunting and fishing
- 110. Composition of fund
- 130. Diversion of funds prohibited

Sec. 16.05.050. Powers and duties of commissioner. The commissioner has, but not by way of limitation, the following powers and duties:

(1) assist the United States Fish and Wildlife Service in the enforcement of federal laws and regulations pertaining to fish and game;

(2) through the appropriate state agency, acquire by gift, purchase, or lease, or other lawful means, lands, buildings, water, rights-of-way, or other necessary or proper real or personal property when the acquisition is in the interest of furthering an objective or purpose of the department and the state;

(3) design and construct hatcheries, pipe lines, rearing ponds, fishways, and other projects beneficial for the fish and game resources of the state;

(4) accept money from any person under conditions requiring the use of the money for specific purposes in the furtherance of the protection, rehabilitation, propagation, preservation, or investigation of the fish and game resources of the state or in settlement of claims for damages to fish or game resources;

(5) collect, classify, and disseminate statistics, data and information as in his discretion will tend to promote the objects of AS 16.05.010 — 16.05.950;

(6) capture, propagate, transport, buy, sell, or exchange fish or game or eggs for propagating, scientific or stocking purposes;

(7) Repealed by § 2 ch 227 SLA 1970.

(8) provide public facilities where necessary or proper to facilitate the taking of fish or game, and enter into cooperative agreements with any person to effect them;

(9) administrative, budgeting, and fiscal powers;

(10) the supervision and maintenance including construction and operation, of vessels used by the Department of Fish and Game;

(11) authorize the holder of an interim-use permit under AS 16.43.010 — 16.43.380 to engage on an experimental basis in commercial taking of a fishery resource with vessel, gear, and techniques not presently qualifying for licensing under AS 16.05.010 — 16.05.950 in conformity with standards established by the Alaska Commercial Fisheries Entry Commission.

(12) [Effective until January 1, 1983] not later than March 31 of each year, provide to the commissioner of revenue the names of those fish and shellfish species which he designates as developing commercial fish species for the following fiscal year of the state; a fish or shellfish species is a developing commercial fish species if, within a specified geographical region,

(A) the optimum yield from the harvest of the species has not been reached;

(B) a substantial portion of the allowable harvest of the species has been allocated to fishing vessels of a foreign nation; or

(C) a commercial harvest of the fish species has recently developed.

[Effective January 1, 1983] not later than January 31 of each year, provide to the commissioner of revenue the names of those fish and shellfish species which the commissioner of fish and game designates as developing commercial fish species for that calendar year; a fish or shellfish species is a developing commercial fish species if, within a specified geographical region,

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UNITED FISHERMEN OF ALASKA

MAILING ADDRESS & OFFICE
197 SOUTH FRANKLIN ST.
JUNEAU, ALASKA 99801
907 586-2820

Cass M. Parsons
Executive Director

March 15, 1983

Honorable Bob Mulcahy
Chairman
Subcommittee on Fisheries
Pouch V
Juneau, Alaska 99811

Dear Senator Mulcahy:

During its last annual board meeting in February, the United Fishermen of Alaska's Board of Directors endorsed the concept of transferring state hatchery facilities to private non-profit aquaculture associations in the event the FRED Division of the Department of Fish and Game is faced with the necessity of closing state hatchery facilities.

The UFA favors passage of Senate Bill 156, a bill allowing the State of Alaska the statutory authority to transfer, by lease or sale, state hatchery facilities to qualified regional aquaculture associations.

Sincerely,

Cass M. Parsons
UFA Executive Director

CMP/jb