

HEB

265

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/22/96

FURTHER:

DATE TURNED INTO OFFICE: 4-18-96

The Resources Committee considered CS FOR HOUSE BILL NO. 265(FSH)
 Relating to the export of live dungeness crab.

and recommends:

- be replaced with _____ CS _____
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

| SIGNING DO PASS | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|----------------------------------|-------------------------------------|-----------------------|-------------------------------------|-----|----|
| <i>[Signature]</i> | | <i>[Signature]</i> | <input checked="" type="checkbox"/> | | |
| <i>[Signature]</i> | | | | | |
| <i>[Signature]</i> | <input checked="" type="checkbox"/> | | | | |
| <i>[Signature]</i> | | | | | |
| CHAIR: <i>[Signature]</i> | <input checked="" type="checkbox"/> | CHAIR: | | | |

NEW FISCAL NOTE(S):

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
| | | | |
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PREVIOUS FISCAL NOTE(S):*

| Department | Date | Zero | Fiscal |
|------------|------|-------------------------------------|--------|
| | | <input checked="" type="checkbox"/> | |
| | | <input checked="" type="checkbox"/> | |
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| | | | |

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 12, 1996

The Honorable Loren Leman
Senator
Senate Resources Committee
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

Re: House Bill 265
Export of Dungeness Crab

Dear Senator Leman and Committee members:

This is a response to your request for a copy of the oral testimony on HB 265 presented to the Senate Resources Committee earlier today. The testimony is summarized below:

Last year I sent a letter to Representative Williams indicating that the previous version of this bill might present constitutional difficulties. I do not know how many of you have seen that letter, but I want to make it clear that the department of law's concerns have been greatly reduced both because of changes made in the CS for this bill and because of we have learned that the underlying statute, AS 16.10.240, serves the purpose of making commercial fishing regulations, including size and sex limitations and reporting requirements, enforceable.

It has been called to our attention that the underlying statute generally prohibiting transport of live king, Tanner, and Dungeness crab, except via air freight after prepackaging, helps prevent vessels fishing in isolated areas from retaining undersize or female crab in violation of state regulations. It has also been called to our attention that these enforcement concerns are much less significant in the Dungeness fisheries because they do not generally occur in isolated deep water areas and it is much easier for enforcement officers to board and inspect vessels fishing for Dungeness than for king and Tanner crab. Thus, the underlying statute will continue to serve a compelling purpose even if export of dungeness is allowed. We also note that by prohibiting export by surface transportation during periods in which PSP testing is required, this bill will continue to allow the statute to serve public health purposes.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE (907) 269-5100
FAX (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS ALASKA 99701-4679
PHONE (907) 451-2811
FAX (907) 451-2846

P O BOX 110300, DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3600
FAX (907) 465-6735

Our previous concern centered on the fact that this bill might undermine public health and safety purposes of the underlying statute, AS 16.10.240, and increase the risk that the statute would be subject to attack under the commerce clause of the U.S. constitution. After reviewing the CS for this bill and discussing the enforcement purposes of the underlying statute with ADF&G staff and F&WP staff we do not believe that this bill would significantly increase the risk of a successful challenge to the underlying statute.

We hope this summary is of assistance to you. We will be happy to provide additional information or clarification if needed.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 

Steven A. Daugherty
Assistant Attorney General

cc: Pat Pourchot
Legislative Director
Office of the Governor

Bruce Botelho
Attorney General

Barbara Ritchie
Deputy Attorney General

Deborah Behr
Assistant Attorney General
Legislation and Regulations Section

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CS HB265(FSH)

Revision Date: 2/22/96 Dept. Affected: Fish and Game
 Title: Export of dungeness crab BRU: CFMD
 Component: Fisheries Management
 Sponsor: Rep Williams
 Requester: House Fisheries COMPONENT SERIAL NO. 1841

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TRAVEL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CONTRACTUAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| SUPPLIES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| EQUIPMENT | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| LAND & STRUCTURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| GRANTS, CLAIMS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| MISCELLANEOUS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------------|---|---|---|---|---|---|
| CAPITAL EXPENDITURES | 0 | 0 | 0 | 0 | 0 | 0 |
|----------------------|---|---|---|---|---|---|

| | | | | | | |
|------------------------|---|---|---|---|---|---|
| CHANGE IN REVENUES () | 0 | 0 | 0 | 0 | 0 | 0 |
|------------------------|---|---|---|---|---|---|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|--|--|--|--|--|--|
| 1002 Federal Receipts | | | | | | |
| 1003 OF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | | | | | | |

Estimate of any current year (FY96) cost: 0

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Paul Larson Phone: 485-6130
 Division: Commercial Fisheries Management and Development Date: 2/22/96
 Approved by Commissioner: Frank Rue Date: 2/22/96
 Agency: Fish and Game

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 265 (FSH)

Revision Date: 22-Feb-96
 Title: Export of Live Dungeness Crab
 Sponsor: Rep. Williams
 Requestor: Rep. Williams

Department Affected: Environmental Conservation
 BRU: Environmental Health
 Component: Seafood and Sanitation Inspections

COMPONENT SERIAL NO. 1936

Expenditures/Revenues:

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TRAVEL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CONTRACTUAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| SUPPLIES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| EQUIPMENT | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| LAND & STRUCTURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| GRANTS, CLAIMS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| MISCELLANEOUS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------------|-----|-----|-----|-----|-----|-----|
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|----------------------|-----|-----|-----|-----|-----|-----|

| | | | | | | |
|--------------------|-----|-----|-----|-----|-----|-----|
| CHANGE IN REVENUES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|--------------------|-----|-----|-----|-----|-----|-----|

FUND SOURCE

| | | | | | | |
|------------------------|------------|------------|------------|------------|------------|------------|
| 002 Federal Receipts | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 003 GF Match | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 005 GF/Program Receipt | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 006 GF/NOTIA | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Other | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS (Attach a separate page if necessary)

Prepared by Jackie Adam
 Division Director, Division of Environmental Health

Phone: 907-269-7645
 Date: 2/22/96

Approved by Commissioner *Lawrence*
 Agency Department of Environmental Conservation

Date: 2/22/96

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Alaska State Legislature



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March 30, 1995

MEMORANDUM

TO: Representative Bill Williams

FROM: Linda Brooks *LB*
Legislative Analyst

RE: Live Crab Exports to Canada: Reporting Requirements
Research Request 95.171

You posed this question: if Alaska fishermen could deliver live crab to Canadian ports by boat, how would the volume of these sales be recorded? That is, are there reporting requirements that would allow U.S. authorities to know the extent of the trade?

Alaska fishermen who export crab must comply with four state reporting requirements, but the data collected from those reporting requirements would not reveal the volume of live crab being exported to Canada. It appears that information about the amount of Alaska crab exported to Canada could be obtainable from Canadian and U.S. Customs data.

State Reporting Requirements

Alaska fishermen who sold crab directly from their boats to processors in Canadian ports would be classified as "catcher-exporters," and they would have to comply with four state reporting requirements:

- Intent to Operate Application
- Fish tickets
- Processors' annual reports
- Fisheries business license tax return

The fishermen would first file "Intent to Operate" applications with the Alaska Department of Fish and Game (ADF&G). They would also obtain Fisheries Business Licenses from the Alaska Department of Revenue. Fishermen could not begin to export crab until ADF&G approved their Intent to Operate applications. As a condition for approval, fishermen would have to provide

Representative Williams

March 30, 1995

Page 2

ADF&G with proof that they had met the Alaska Department of Revenue's surety bond and fisheries business license tax prepayment requirements.

After fishermen satisfied the Department of Revenue's requirements and obtained approval of their Intent to Operate applications, ADF&G would provide them with fish tickets. Fishermen would have to submit completed fish tickets for their catches to ADF&G before exporting any live crab (5 AAC 39.130). Fishermen would record on the tickets where they caught the crab, the number of pots used, and the number of pounds of crab sold on each ticket.

Fish tickets would be a continuous reporting requirement. Fishermen who directly exported crab would complete a fish ticket for each catch. Fishermen "catcher-exporters" also would face two annual reporting requirements: completion of an Alaska Commercial Operator's Annual Report and a Fisheries Business License Tax return. Both the report and the return would have to be filed by April 1st and would cover all activity from January to December of the preceding year. Fishermen "catcher-exporters" would record on the annual report the amount of crab caught by fishing area and would indicate the price received when sold. Tax forms for the fisheries business license tax would be obtained from the Alaska Department of Revenue, and fishermen "catcher-exporters" would be responsible for paying the tax due.

Nevertheless, while the fishermen "catcher-exporters" would have to comply with the different state reporting requirements, the data collected through these reporting requirements would not reveal the volume of live crab being exported by Alaska fishermen directly into Canadian ports. Fish tickets provide ADF&G with data on the amount of crab being harvested in various areas of the state so that biologists have the information necessary to manage the fishery. The fish tickets would quantify the amount of crab harvested, but they would not indicate the geographical destination of any crab that was exported and sold out-of-state. Likewise, annual processors' reports and business license tax returns would provide no information about the geographical destination of live crab exported from Alaska.

The State of Alaska would have both fiscal and fishery management interests in assuring that fishermen "catcher-exporters" complied with the state reporting requirements. Normally fish processors handle fish tickets, processors' annual reports, and fisheries business license taxes so that fishermen who sell their catches in Alaska are not personally involved in any of these reporting requirements. However, fishermen who act as "catcher-exporters" would be responsible themselves for initiating the reporting processes and complying with all requirements. Some "catcher-exporters" might evade compliance to avoid paying the fisheries business license tax, others might be unaware of the reporting requirements. Failure to submit fish tickets would nonetheless hamper ADF&G's ability to manage the fishery properly. Fish and Wildlife officers from the Alaska Department of Public Safety enforce the ADF&G fish ticket regulations, but fishermen "catcher-exporters" who failed to submit fish tickets would only face a \$1,000 fine for a first offense. In terms of fish tax revenues, the amount lost would depend on the number of "catcher-exporters" who failed to obtain licenses and to pay taxes. The Alaska Department of

Representative Williams

March 30, 1995

Page 3

Revenue enforces tax laws, but the penalty for first-time offenders who failed to obtain a fisheries business license would only be a \$5,000 dollar fine.

U.S. and Canadian Customs Data

U.S. and Canadian Customs data offer the best hope for tracking the volume of live crab exported by Alaska fishermen into Canadian ports. The North American Free Trade Agreement has eliminated the requirement for fishermen to file export declarations, but import data are still kept. Bill Aberle, who works at the Alaska Center for International Business at the University of Alaska, explained that Canada and the United States exchange import data with each other. The United States relies upon Canadian import data to gauge the volume of U.S. exports into Canada. Mr. Aberle said that the Canadians' import data would be detailed enough to track the volume of Alaska dungeness crab received in Canadian ports. Because airports and seaports are tracked separately, it would also be possible to discern the amount of crab arriving by vessel. Mr. Aberle was only unsure of whether or not live crab could be differentiated from other types such as frozen crab.

Furthermore, while Alaska fishermen no longer need to file export declarations with U.S. Customs, they still have to stop en route to Canada at U.S. Customs. At U.S. Customs the fishermen "catcher-exporters" would obtain permits that allow them to conduct trade in foreign ports. Upon their return from Canada, the fishermen again would be required to stop at U.S. Customs. Alaska fishermen re-entering the state would have to file cargo declarations with U.S. Customs. Doug Harmon, port director for the U.S. Customs office in Ketchikan, said that for documentation purposes, they would generally ask fishermen to produce fish tickets for cargo that they might have sold in Canada. Although the Ketchikan U.S. Customs office does not track goods sold in Canada on a regular basis, Mr. Harmon thought that his office might be able to enter into an interagency law enforcement agreement with the Alaska Department of Revenue or the Alaska Department of Public Safety to ensure that fishermen "catcher-exporters" were complying with state reporting requirements for live crab that they sold in Canada. If Alaska officials wished to establish such an agreement, Mr. Harmon said they should contact Mr. Jensen or Mr. Blackmore in the U.S. Customs Enforcement Office in Anchorage.

Finally, in addition to customs data, Alaska fishermen who sold live crab in Prince Rupert would have to obtain permits from the Prince Rupert Fisheries and Oceans Office. A Canadian fisheries official said that each permit would describe the approximate weight of the product, who the product was sold to and its approximate value. The Canadian fisheries official thought his office might be able to share such information with the U.S. National Marine Fisheries Office, if U.S. officials requested information about the amount of Alaska dungeness crab being sold in Prince Rupert.

We hope this information is useful to you. Please do not hesitate to call if you have further questions.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

**DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL HEALTH
DIRECTOR'S OFFICE
555 CORDOVA STREET
ANCHORAGE, ALASKA 99501**

Telephone: (907) 269-7644
Fax: (907) 269-7654

January 23, 1996

The Honorable Bill Williams
House of Representatives
Room 128, Capitol Building
Juneau, Alaska 99801

Dear Representative Williams:

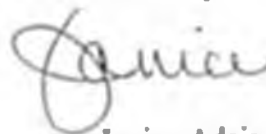
This letter is in response to your request that we provide you with a summary of DEC's recent actions relating to the testing of crab viscera for PSP.

In early October, 1995 our Food Safety Lab compiled the results of the viscera testing that had been conducted over the past 2 years. It was clear that during the winter months in Southeast and the Bering Sea, PSP is not a problem in crab viscera. We took that information to FDA for their concurrence. With it, we were able to suspend the winter PSP testing of crab viscera in these two areas. The testing is still required in and around Kodiak.

I've enclosed a copy of the press releases we issued on this topic. They outline the timelines for which the testing is not required as "winter" varies between the two areas. As you'll note, and I think it's important to point out, we will be doing "spot" monitoring to be sure the PSP levels aren't on the rise. If we find increases, the PSP testing requirement would be reinstated.

Please let me know if you have any questions.

Sincerely,



Janice Adair
Director

1A1a (g) en PSP WILLIAMS

Enclosures

cc: Michele Brown, Acting Commissioner
Shari Kochman, Governor's Legislative Office

DEC NEWS RELEASE

Alaska Department of Environmental Conservation
Environmental Health Division
555 Cordova St. 5th Floor
Anchorage, Alaska 99501
Phone: (907) 260-7601 Fax: 260-7610

November 3, 1995

Contact: Manny Soares or Mike Ostasz, DEC Anchorage

CRAB MONITORING PROGRAM REVISED FOR SOUTHEAST ALASKA

Weekly sampling of Southeast Alaska commercial crab for paralytic shellfish poison (PSP) is no longer required of processors, following review of two years worth of lab data by the Department of Environmental Conservation.

"We can lift this requirement from processors for the time being, and will do periodic testing to ensure the levels remain low," said Janice Adair, Director of DEC's Division of Environmental Health. "If levels go back up, we will likely need to reinstate the weekly monitoring to ensure unsafe product isn't being sold." Adair said that the change applies to the crab fishery between October 1 - March 31.

Widespread testing of crab for PSP was initiated several years ago to meet federal requirements when the toxin was found in the viscera of commercially-caught crab. Testing will continue in other parts of the state where toxin levels remain high.

DEC reviewed the PSP data for crab from Southeast Alaska, for a two year period, to re-evaluate the appropriateness of the fall/winter monitoring requirement. This work by the Palmer Laboratory showed that levels now are and have been well within the action limits, with little or no detectable toxin.

The change in the monitoring program applies to all species of crab caught in Southeast Alaska, and allows the sale of crab with the viscera intact, in live or whole-cooked form.

###

crabPSP11/3/95.rtd

| | | |
|--|----------|----------------|
| Post-It™ brand fax transmittal memo 7671 | | # of pages > 1 |
| To | MANNY S. | |
| Co. | SEA | |
| Dept. | | |
| Fax # | 2A-7510 | |
| From | | |
| Co. | | |
| Phone # | | |
| Addr | | |

DEC NEWS RE

Alaska Department of Environmental
 Environmental Health Division
 555 Cordova St. 5th Floor
 Anchorage, Alaska 99501
 Phone: (907) 269-7501 Fax: 269-7510

December 26, 1995

Contact: Mike Ostasz shellfish coordinator
 (907) 269-7638 or
 Manny Soares, manager, Seafood program
 (907) 269-7640

REVISED OPILIO TANNER CRAB MONITORING PROGRAM FOR BERING SEA

The Department of Environmental Conservation has announced that, effective immediately, weekly PSP crab sampling of Opilio Tanner crab from the Bering Sea is no longer required by seafood processors for the period of January 15, 1996, until the close of that fishery by the Alaska Department of Fish and Game.

According to Manny Soares, manager of DEC's seafood program, the agency has just completed review of Paralytic Shellfish Poison (PSP) data from a three year period for the Bering Sea crab to re-evaluate the winter monitoring requirement.

Soares said, "Evaluation of the PSP test result data from DEC's Palmer Laboratory for this time period has shown the levels are well within the action limits, with little or no detectable toxin. As a result, we've discontinued the weekly testing requirement but will test periodically to ensure the levels remain low."

The announcement applies to Opilio Tanner crab from the Bering Sea and allows the sale of crab with the viscera intact, live, or whole cooked form.

Don Munhoven
F/V Blue Fin
P. O. BOX 6335
Ketchikan, Ak.
99901
(907-225-5328)

IAR 1 8 199

Attn: Bill Williams.

We are in favor of lifting the ban of shipping live crab only via air freight
in regards to Alaska Statue Sec. 16.10.240.

We know this creates unnecessary hardship on the fishermen and their
markets and only financially benefits the airlines.

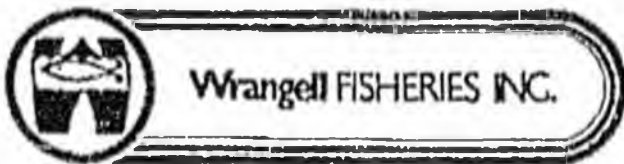
Lifting the ban would allow fishermen to create a better quality product
and would create more jobs.

Thank-you,

Don Munhoven



3-17-95



641 SHAKES STREET, P.O. BOX 908, WRANGELL, ALASKA 99779

TEL. (907) 874-3346 FAX (907) 874-3035

FEBRUARY 23, 1996

Representative Bill Williams
D. Saxman

Dear Sir:

We applaud house bill No. 265 regarding the export of live Dungeness Crab. As we get to gear up for the upcoming season we look forward to seeing this bill become law.

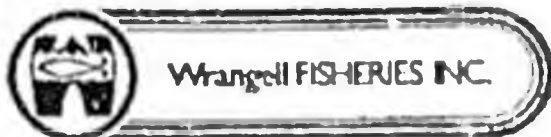
Thanks for your legislation, as it is ridiculous to limit processors by means of the fashion in which to ship their product.

Please let me know at what stage this bill is in, via return fax or call at the above number. All the best

M. Steven Bunness
Assistant Plant Manager

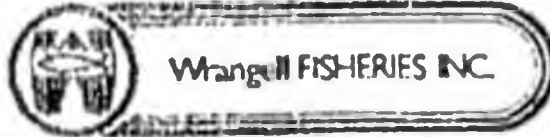
M STEVEN BUNNESS
Assistant Plant Manager

LEVI S. DOW
Plant Manager



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