

572 SRES HB 248 - HB 264

HB

248

# COMMITTEE REPORT

## SENATE

4/14/77

4/22/77

Date

Mr. President:

The Committee on ~~XXXXXX~~ Resources has had CSHB 248 (Fin)  
Alaska Pipeline Commission  
under consideration. A majority of the members of the Committee

- recommends it do pass
- recommends it do not pass
- recommends it do pass with attached amendment(s)
- recommends it be replaced with CS for CSHB 248 and that  
SCS for CSHB 248 do pass
- (and) recommends it be referred to the \_\_\_\_\_  
committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) \_\_\_\_\_

### MEMBERS SIGNING THE MAJORITY REPORT:

<u>Charles French</u>	<u>Do Pass</u>	_____
<u>Kate Meland</u>	<u>NO Rec</u>	_____
<u>John Hickey</u>	<u>DO PASS</u>	_____
<u>William D. _____</u>	<u>Do Pass</u>	_____

### MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

\_\_\_\_\_ recommends: \_\_\_\_\_

\_\_\_\_\_ recommends: \_\_\_\_\_

\_\_\_\_\_ recommends: \_\_\_\_\_

R. Pollock  
Chairman

SCS CSHB 248 (FINANCE)

The Senate Resources Committee substitute resolves the differences between the Pipeline Commission, the Attorney General's office, and the Alyeska Pipeline Company.

The Senate Committee substitute more clearly defines the regulatory and tariff setting authority of the Pipeline Commission. At the same time it removes the non-pipeline connected activities of affiliated interests from regulation and provides a certainty of at least a partial cash flow to the pipeline carrier during suspension of the filed tariff and the operation of a temporary tariff.

\* \* \* \* \*

SUMMARY OF BILL ANALYSIS

1. Brings the pipeline connected activities and property of affiliated interests under commission regulations. Non-pipeline connected activities of the affiliated interests are exempt.
2. Brings connections and interconnections under the commission's permit requirements.
3. Allows the commission to suspend the filed tariff for 18 months instead of only 6 months.
4. Clearly establishes the commission's authority to set a temporary tariff thus eliminating the contention that shipment of oil could not be accepted until a tariff was set.

5. Allows the collection of the filed tariff but stipulates that the difference between the filed tariff and the temporary tariff must be placed in escrow, or acceptably bonded in lieu thereof, until the tariff question is resolved. This provision protects the state's shipments and those of the other shippers while not forcing the pipeline carrier to operate without at least partial revenue.
6. Reiterates the requirement that records be kept at a place convenient to the commission.
7. Allows the commission the latitude of having a limited number of persons present during an investigatory hearing.
8. Gives the pipeline carrier ten calendar days to appeal a commission decision before the commission can appeal for judicial enforcement.
9. Makes the Act retroactive to July 1, 1976. This was acknowledged as proper by all parties.

April 28, 1977

HB

264

COMMITTEE REPORT

\*\*Finance

4/21/77

SENATE

Date

Mr. President:

The Committee on RESOURCES has had CSHB 264 (Fin) fisheries enhancement under consideration. A majority of the members of the Committee

recommends it do pass

recommends it do not pass

recommends it do pass with attached amendment(s)

recommends it be replaced with CS for CSHB 264 (Resources) and that 3 CS for CSHB 264 (Resources) do pass Individual Recs.

(and) recommends it be referred to the \_\_\_\_\_ committee

reports it back without recommendation

AND attaches a report of its intent

(other) \_\_\_\_\_

MEMBERS SIGNING THE MAJORITY REPORT:

<u>[Signature]</u>	<u>NO REC</u>	_____
<u>[Signature]</u>	<u>No Rec</u>	_____
<u>[Signature]</u>	<u>No Rec</u>	_____
<u>[Signature]</u>	<u>No Rec</u>	_____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

\_\_\_\_\_ recommends: \_\_\_\_\_

\_\_\_\_\_ recommends: \_\_\_\_\_

\_\_\_\_\_ recommends: \_\_\_\_\_

[Signature]  
Chairman

*Terry Gardiner*

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

April 25, 1977

Memo

To: Senate Resources Committee

From: Rep. Terry Gardiner

Re: Sectional Analysis of SCS for House CSHB 264 (referred to as HB 264). "An Act Relating to Fisheries Enhancement; and providing for an effective date;"

Section 1.

Section 1 repeals AS16.10.375 and re-enacts it with new language. The present section 375 requires the Commissioner of Fish & Game to:

- 1.0 Designate regions of the State for purposes of enhancing salmon production.
- 2.0 Develop and amend if necessary a comprehensive salmon enhancement plan for each region for both public and private non-profit hatchery systems.
- 3.0 Develop a comprehensive salmon enhancement plan in cooperation with appropriate qualified regional associations formed under section 380.

Hb 264 rewords section 375 and requires the following activity:

- 1.0 The Commissioner of Fish & Game shall designate regions of the State for purposes of salmon production.
- 2.0 Develop and amend as necessary a comprehensive salmon plan for each region for both public and private non-profit hatchery systems.
- 3.0 Require that the comprehensive salmon plan be developed by regional planning teams.
- 4.0 The regional planning teams shall consist of; Dept. of Fish & Game personnel, and representatives of the appropriate qualified regional associations formed under section 380 of this chapter.

The basic change in the present section 375 by HB 264 is the requirement for the creation of regional planning teams. In the past year it proved that there was some ambiguity regarding how the comprehensive enhancement plans were to be developed. The experience in Prince William Sound Aquaculture Association in dealing with the Dept. of Fish & Game at the regional planning team concept was finally evolved and put in place and is working.

This amendment to the legislation adds some clarity and direction to the Dept. of Fish & Game regarding how these regional salmon plans are to be developed.

Section 2.

Section 2 amends AS16.10.400 (a). The amendments to section (a) and section (e) are obvious from the draft of the bill. The amendment to section (a) tightens up the discretion given to the Commissioner of Fish & Game under the existing law. Under HB 264, "the Commissioner or his designee may issue a permit subject to the restrictions imposed by statute or regulations." The discretionary phrase "he considers desirable" is removed. The reason is to give the permit holders some certainty regarding their actions.

The second change to subsection (a) adds the language to require that a permit application be reviewed by the regional planning team prior to its being issued. The reason is to make sure that the permit application is reviewed by the regional planning team which is drawing up the comprehensive salmon plan prior to the issuance.

The original HB 264 transferred the term renewable into subsection (a) while at the same time deleting (d). The Senate State Affairs Committee Substitute removed the phrase 'or renew' from (a).

The result of removing the section allowing for renewability of permits from this bill leaves the situation that once a permit is issued by the Commissioner of the Dept. of Fish & Game, it remains in the permit holder it may not be transferred and may only be altered, suspended or revoked subject to AS16.10.430 which deals with failure to comply with conditions or terms of the permit. This amendment again is an attempt to give some certainty to the permit holder that the terms under which he is going to operate a permit will either be in law or regulation and not subject to discretionary decisions by the Dept. of Fish & Game.

Subsection (e) is an attempt to clarify an ambiguous situation under the present law. Under the present law, there are provisions for three different types of non-profit hatchery corporations to exist; those established by a qualified regional association; those established by a separate non-profit corporation which are approved by a qualified regional association; and those established by a separate non-profit corporation which are not approved by qualified regional association. This language clarifies the ambiguity that existed of whether a qualified regional association had to go out and establish a separate non-profit corporation for each of the hatcheries it was going to build. Under the amending language, a qualified regional association can construct as many hatcheries as it wishes without establishing separate corporate identities for each of those hatcheries.

### Section 3

Section 3 amends AS16.10.430 (a). The amendment of the additional language to the present section 430 requires that a decision to revoke a permit may only be made "after the regional planning team for the area in which the hatchery is located is notified and granted an opportunity to comment on the proposed suspension of revocation." This is an attempt to clarify the situation in which the Dept. of Fish & Game, due to its organizational structure, may act in an arbitrary manner of revoking a hatchery permit without consulting with the regional planning team which is developing and administering the comprehensive salmon plan for each region.

### Section 4.

Section 4 amends AS16.10.450. There is a little bit of possible confusion in reading the proposed amendments and deletions in this section. On examination of the bill it should be noted that the phrase deleted on page 2 line 21 "fisheries research, salmon rehabilitation projects, or" is merely moved up into line 18. Its just a rearrangement of the phrases.

The substantive amendment to AS16.10.450 is the phrase on line 19 and 20, "costs of operating the qualified regional association for the area in which the hatchery is located." the addition of that language allows the use of funds obtained from the sale of surplus salmon or salmon eggs which return to the hatchery to help defray the costs of operating the qualified regional association for the area in which the hatchery is located. The reason for the addition of that language is the realization after starting to work with the law allowing the establishment of regional associations, that there are no provisions made for the funding of such regional associations. Although it is realized that there will be no surplus salmon until there are some returns to the hatcheries which may be 4 to 6 to 8 years down the line, and even then the monies received from the sale of surplus salmon will probably be primarily dedicated to the retirement of debt and operating costs. This additional language will provide for the possibility of funding the qualified regional associations.

The second amendment to section 450 on page 2 line 22 and 23 is a rewording of the present law to clear up any ambiguities of fish which return to hatcheries and are sold for human consumption, whether they return to a State hatchery or a private non-profit hatchery, shall be of comparable quality to fish harvested in the commercial area and sold at prices commensurate with the current market.

### Section 5

Section 5 repeals and re-enacts AS16.10.470 regarding the annual reporting. The present law regarding annual reporting requires the submission of an annual report to the Dept. of Fish & Game including but

not limited to:

- 1.0 A Complete description of all significant hatchery operations;
- 2.0 Statistics on the numbers of eggs and fish handled by the hatchery whether for production or sale;
- 3.0 Further recommendations for modification of the hatchery program;
- 4.0 Any other relevant data required by the Department.

The amended amendment in HB 264 requires an annual report to "include but not be limited to statistics on the number of eggs and fish handled by the hatchery, whether for production or sale." The other three items listed in the present section 470 are deleted. The reason for the deletion is that the other three items are very ambiguous and could if required become quite costly to the hatchery owner. It is felt by the non-profit hatchery owners and potential owners that the overhead cost for operating hatcheries should be held at a minimum and that any reporting features should be only those which are required by necessity and not those of convenience.

Subsection (b) of AS16.10.470 was added by the Senate State Affairs Committee. The essence of the section would require the submission of an annual financial report for the Dept. of Commerce and Economic Development on a form to be provided by the Dept. of Commerce & Economic Development. The primary purpose of this amendment is to make sure that the financial statements and essential operating criteria will be kept by all non-profit hatcheries in the state in the same basic format so there will be an ability to compare cost and efficiencies throughout the State.

#### Section 6.

Section 6 amends AS16.10.500. Sections 500 through 560 deal with the Fisheries Enhancement Loan Program.

Section 500 amends the declaration of policy to allow for the making of grants for organizational and planning purposes to regional associations which have qualified under section 380 and by means of long term low interest loans for hatchery planning construction and operations.

The grant provisions are in section 10 of the bill and the loan provisions are dealt with in sections 11 and 12.

The reason for the making of grants for organizational and planning purpose has been as a result of the realization of the realities that Prince William Sound Aqualculture Assoc. and the Southern Southeast Re-

gional Aqualculture Assoc. have gone through in organizing the regions which are required by this Act.

The grants under this provision are only available to regional associations which have been qualified under section 380 which means that they have been recognized by the Commissioner of Fish & Game and he has determined that:

- 1.0 Their Board of Directors is representative of the requirements of the law under this act; and
- 2.0 that he has designated that region of which the corporation will operate under.

Because of the size of the regions and the necessity for large regions to operate under a regional type concept, the cost of organizing and planning the region is substantial. Also, until the region is organized and has an opportunity to vote on an assessment procedure there is no revenue. It is a question of the cart before the horse. These grants are intended to provide that initial monies to organize and to get an assessment mechanism in place for the ongoing revenues to the regional and hatchery corporations.

The second provision of the amendment to section 500 adds the additional language on page 3 line 15 so that the long term low interest loans may be used for operational costs. Again, this is a result of the realization after a year of operation under this Act that once hatcheries are constructed and the fry released, it may be two to four years before there are any returns to the hatchery from which a surplus of fish may be sold to provide revenues. During that time period there is a necessity for money for operating costs to run the hatcheries and this provision will allow the loans to be made for those operating costs.

#### Section 7

Section 7 amends the law by adding a new section AS16.10.505. This section was originally in the HB 252 introduced by Rep. Specking. In the House Finance Committee, HB 252 was adopted as an amendment to HB 264 and incorporated in as section 7 of the bill.

The Fisheries Enhancement Revolving Loan Fund was created to assist in the transfer of funds within the State Government. Under this Act the Dept. of Commerce & Economic Development is authorized to make the loans for the hatchery projects but the Dept. itself is not funded. This provision will allow them to receive funds, which were also appropriated under HB 253 to this revolving loan fund while their paper is being transferred over to the Dept. of Revenue at which time the fund would again be filled. The Dept. of Commerce requested the Fisheries Enhancement Revolving Loan Fund provision be implemented into the bill.

Rep. Specking's companion bill HB 253 which also passed the House appropriates 2 million dollars to the Fisheries Enhancement Revolving Loan Fund.

Section 8.

Section 8 amends AS16.10.510 (1) and (2). Subsection (1) adds the language to allow the loans to be made for operations of hatcheries facilities. Subsection 2 clarifies the ambiguous tri-level structure of non-profit hatchery corporations as explained in section 2 of HB 264 and also deletes the phrase "provided the hatchery has received preliminary project approval from the Commissioner of Fish & Game". That phrase was deleted on request of Commissioner Brooks of that department in the original HB 264. The phrase "preliminary project approval" was very ambiguous to both the Dept. and the non-profit hatchery groups and was causing quite a problem in determining when an applicant was qualified for a loan.

Section 9

Section 9 repeals and re-enacts AS16.10.510 (8). The present subsection (8) reads as follows: "upon written approval, defer interest and principle payments up to 6 years." The reason for such a provision was based upon the fact that the hatcheries once built and in operation would take four to six years before generating enough dollars from the sale of surplus fish to handle the debt service and retire the loan in addition to providing operating costs. The Dept. of Commerce & Economic Development found some ambiguity in the present way subsection (8) is written and interpret it to mean that even though they were to defer interest and principle payments up to 6 years, the interest itself would continue to accrue during the 6 year period.

The provision in section (9) of the bill clarifies the issue and states that no interest on the principle shall accrue during the period up to 6 years before the loan is repaid. The second sentence in subsection 9 "this provision applies to loans made under this chapter before the effective date of this Act." was added by the Senate State Affairs Committee in their Committee Substitute. At the present time there is only one loan under the provisions of this Act by the Dept. of Commerce & Economic Development. The Aquaculture group in Prince William Sound has received a loan and constructed a hatchery. The loan has not been repaid nor has a 6 year period elapsed at this time. The effect of the second sentence of subsection (8) is to clarify the issue that this amendment is to apply to that loan.

Section 10.

Section 10 adds an additional paragraph, AS16.10.510. Subsection (9) outlines the provisions for making grants for organizational and planning purposes to the qualified regional associations. There is a two-step approach in making the grants under this section:

- 1.0 A grant may be made to a qualified regional association in an amount not to exceed \$100,000.00 per region. That grant is the applicant to qualify pursuant to section .380 as the regional association for that area. That determination includes a determination by the Commissioner of Fish & Game that the Board of Directors of the corporation meets the requirements of the law and that the regional boundaries have been defined according to his discretion.
- 2.0 An additional \$100,000.00 on a 50-50 cash matching basis may be made to those regional associations which have an authorized assessment under either section .530 or .540 of this chapter.

Subsection (9) also provides that the state portion of the matching share shall be made available when a final vote for assessments is made under Section .530 or .540 of this chapter. The money would be made available through the collection of the assessments throughout the season and at the end of the fishing season. To the degree that the State Dept. of Commerce & Economic Development feels they can rely upon the collection of the necessary amount of money to match the second \$100,000.00, this sentence allows them to make the state portion of the matching share available.

The last sentence of subsection (9) was added by the Senate State Affairs Committee. It is intended to clarify any ambiguities which may exist in the Dept. of Commerce & Economic Development on who is eligible.

Section 11.

Section 11 amends AS16.10.520 (a). The amendment to this section again is clarifying the tri-level structure of local private non-profit corporations which is discussed in section 2 of this analysis.

Section 12.

Section 12 amends AS16.10.520 (b). The present subsection (b) reads as follows: "no loan may exceed 75% of the total project cost as determined by the Commissioner."

The Prince William Sound Aquaculture group and the various other experts which have analyzed the situation in the past year, have found that the 75% loan limitations have made the feasibility of non-profit hatcheries in the private industry very unlikely. The private industry is depleted and is unable to put up the necessary amount of money to equal 25% of the total project cost. The only source of the revenues as can be determined at this time will come from the assessments on the fishermen

which even then will take one to two years to build up a 25% portion of the total project costs of a hatchery.

The present section 12 was added by the Senate State Affairs Committee. In the original HB 264, subsection (b) was deleted in its entirety.

The Senate State Affairs Committee Substitute provision for subsection (b) provides for two different types of loan restrictions. The provision for a loan not to exceed 75% of the total project cost is included in the CS. Additionally, subsection (b) would allow a loan to be made for the total project cost provided the fishermen of a region have voted to assess themselves under either section .530 or .540 of this chapter. Also that the Commissioner of Commerce must determine that the assessment is of sufficient size so that a qualified regional corporation could establish a 10% equity position over a six year period. The section also defines that total project costs includes planning, construction and operation in line with the policy statement in section .500.

To adopt the concept of establishing an equity position of 10% of the total project costs over a period of time, there must be authority for the Commissioner to loan the total project costs initially. The contractor for the project must be paid off initially and not over a period of time. This method allows the construction and operation of hatcheries to go forward in the immediate future, yet guarantees the applicant will establish a 10% equity position in the project.

### Section 13.

Section 13 repeals and re-enacts AS16.10.530 (a). Section .530 is referred to as the mandatory assessment section. The present law provides that a mandatory assessment may be levied by the Commissioner of Commerce & Economic Development "for the purposes of securing repayment of a loan or loans made to qualified regional associations which have formed a non-profit corporation or to a local non-profit corporation established or approved by a qualified regional association." That section does two things; one, it provides that the assessment, as interpreted by the Commissioner of Commerce may only be levied for the purposes of securing a repayment of a loan. That has been interpreted as meaning only when the loan is in jeopardy or the security is in jeopardy. The second portion of that provision states that the assessment is inherently dependent upon the application and granting of a loan.

The version presented in the bill rewrites the section to accomplish two basic purposes:

- 1.0 The assessment shall be levied by the Commissioner of Commerce & Econ. Development on request of the regional qualified association after compliance with subsection (e);

- 2.0 The revenues derived from the assessment shall be for the purpose of providing revenue for the qualified regional associations in which the assessment is made.

Those provisions accomplish two things:

- 1.0 It unhooks the requirement of a mandatory assessment from the application for a loan or the default on loan repayments.
- 2.0 Provides that the assessment mechanism is initiated by the qualified regional association and not by the Commissioner of Commerce.

Subsection (a) of the bill also states that the "Commissioner shall determine whether the procedural requirements under (e) of this section were followed and whether the proposed assessment is reasonable." The reason for that section is to leave the final determination of whether the assessment shall be imposed up to the governmental body through the Commissioner's office both with the procedural safeguards and the substantive question of whether the assessment is reasonable enough in its scope to accomplish the job proposed. That is an important feature when connected with the amendments made in AS16.10.520 above which require the Commissioner to determine whether the assessment under either section .530 or .540 is of a sufficient amount to insure the establishment of an equity position of 10% of the loan over a six year period.

For the Committee's information it should also note that AS16.10.530 (b) is repealed in the repealer section of the bill in section 18 on page 16. The reason for the repeal of (b) is that it is no longer relevant with the amendments made to subsection (a).

#### Section 14.

Section 14 of the bill amends AS16.10.530 (c) and (d). The subsection (c) deletes the provision that the assessment is connected with the application for a loan. That amendment makes the provision consistent with the amendments made in section 13 above.

Subsection (d) states that "the assessment once instituted shall terminate upon a request of the qualified regional corporation but only after all financial obligations relating to the assessments have been met." This provision is necessary in light of the amendments made in AS16.10.530 (a) in section 13 of the bill. With the amendment in subsection (a) the assessment is no longer automatically connected to the loan. This language in AS16.10.530 (d) guarantees that if the assessment is used as collateral to any loan whether from the state or any other source, the qualified regional corporation has no authority and no power to revoke that assessment or stop that assessment until all of the financial obligations relating to the assessment have been met.

Section 15.

Section 15 of the bill amends AS16.10.530 by adding a new subsection (e). This subsection lays out in detail the procedural requirements for a qualified regional corporation to follow before a request can be made of the Commissioner of Commerce to impose a mandatory assessment in the area of the regional corporation. The terms may seem detailed and cumbersome, the intent is to provide ample opportunity for all of the people who would be required to pay an assessment to voice their concerns at public meetings and to vote on the assessment. It requires at least two public meetings and that the ballots be made available to all of those who will be made a part of the assessment, twice. It does state that no person may vote more than once but requires that the ballots be made available by mail to all the people within the region who sell fish commercially.

Subsection (f) is also an addition to the present law and states that the qualified regional corporation shall establish standard registration procedures for voting on an assessment under this section.

Section 16.

Section 16 of the bill adds the necessary language to create a regional salmon enhancement authority.

I would note that section 16 is identical to the original SB 39 of Senator Kerttula's which the Senate Resource Committee passed out earlier this session. Sb 39 is presently in the Senate Finance Committee but it was amended substantially by the Senate State Affairs Committee by in fact adding the first 6 pages of what is now SCS CSHB 264.

The purpose of creating the regional salmon enhancement authorities is to provide a financial vehicle for the availability of federal dollars.

The present public works bill of President Carter's which is being worked on in Free Conference Committee in Congress, provides for money to be administered through the Economic Development Agency but limits the recipients to only federal agencies, states, municipalities, townships, or political subdivisions of those. The Senate Resources Committee heard testimony on SB 39 from the Prince William Sound Aquaculture Assoc. that they were found to be ineligible for an EDA Grant because they were not a political subdivision.

This language is the near identical language of the Regional Electrification Assoc. which are presently in the statutes, AS18.57.

Section 17.

On Page 16 of the bill, section 17 states as follows: "Notification, public meeting and voting procedures instituted before the effective date of this act that are substantially in compliance with AS16.10.530 (e), shall be considered a constitute compliance with this Act, and are radified upon the effective date of this Act."

The qualified regional corporations in Southern Southeast Regional Aqualculture Assoc. and the Cook Inlet Regional Aquaculture Assoc. have proceeded through somewhat similar notification of public meeting and voting procedures regarding the mandatory assessment provisions at this time. The Southern Southeast Regional Aqualculture Assoc. is at the present time undergoing a large notification public meeting and balloting on the mandatory assessment. That region encompasses all of lower Southeastern Alaska including Petersburg, Wrangell, Ketchikan, Craig, Klawock, Hydaburg and all fishermen who commercially sold fish within fishing districts 1 through 8. A large portion of those fishermen reside in Oak Harbor, Seattle, Bellingham, Mr. Vernon and other coastal towns in Washington, They are all being provided with a ballot to vote on the mandatory assessment procedures.

There is a fiscal note attached to this bill from the House Finance Committee pertaining to the grant provisions of AS16.10.510 (9) found in section 10 of the bill. It anticipates the creation of 6 regions including Ketchikan, Sitka, Bristol Bay, Cook Inlet, Kuskokwim and Prince William Sound. The note anticipates the granting of the entire initial \$100,000 plus the additional \$50,000 matching monies to each region for a total of \$900,000.

COMMITTEE REPORT

SCS CSHB 264 (RESOURCES)  
AN ACT RELATING TO FISHERIES ENHANCEMENT  
AND PROVIDING FOR AN EFFECTIVE DATE

Section 1.

Section 1 repeals AS 16.10.375 and re-enacts it with new language. The present section 375 requires the Commissioner of Fish and Game to:

- (1) Designate regions of the State for purposes of enhancing salmon production.
- (2) Develop and amend if necessary a comprehensive salmon enhancement plan for each region for both public and private non-profit hatchery systems.
- (3) Develop a comprehensive salmon enhancement plan in cooperation with appropriate qualified regional associations formed under section 380.

HB 264 rewords section 375 and requires the following activity:

- (1) The Commissioner of Fish and Game shall designate regions of the State for purposes of salmon production.
- (2) Develop and amend as necessary a comprehensive salmon plan for each region for both public and private non-profit hatchery systems.

(3) Require that the comprehensive salmon plan be developed by regional planning teams.

(4) The regional planning teams shall consist of; the Department of Fish and Game personnel, and representatives the appropriate qualified regional associations formed under section 380 of this chapter.

The basic change in the present section 375 by this bill is the requirement for the creation of regional planning teams. In the past year it's proved that there was some ambiguity regarding how the comprehensive enhancement plans were to be developed. The experience in Prince William Sound Aquaculture Association in dealing with the Department of Fish and Game at the regional planning team concept was finally evolved and put in place and is working.

It is the intent of this section that the Department of Fish and Game involve the public in the development of comprehensive salmon plans by the creation of regional planning teams which shall consist of representatives of appropriate qualified regional associations, local department personnel, regional department personnel and other personnel as determined appropriate by the Commissioner.

These teams will provide the means by which the second half of the original legislative intent can be accomplished. This intent states that ". .the program shall be operated without adversely affecting natural stocks of fish in the state and under a policy of management which allows reasonable segregation of returning hatchery-reared salmon from naturally occurring stocks." The planning team approach to this concern will bring the greatest amount of talent to bear on this problem and will allow for a flexible approach that can tailor a program to suit the unique conditions of a specific region while allowing for the adaptability necessary to accommodate chance. It constitutes an approach that integrates the many human concerns and biological variables into a comprehensive problem solving effort. It is recognized by the legislature that planning is a continuous process that should be cooperatively conducted on a local level, by persons familiar with the area in question.

It is also intended that the Division of Fisheries, Rehabilitation and Enhancement be the lead agency in coordinating this planning which should be an inter divisional effort on the part of the Department. This intent is expressed as an extension of the statutory responsibility of the division to " 1)Develop and continually maintain a comprehensive, coordinated State plan for the orderly present and long-range rehabilitation,

enhancement and development of all aspects of the State's fisheries for the perpetual use, benefit and enjoyment of all citizens and revise and update this plan annually." In regard to salmon, it is clear that any planning effort must incorporate full consideration of all departmental functions, including management, rehabilitation and enhancement.

This amendment to the legislation adds some clarity and direction to the Department of Fish and Game regarding how these regional salmon plans are to be developed.

Section 2.

Section 2 amends AS 16.10.400 (a). The amendments to section (a) and section (e) are obvious from the draft of the bill. The amendment to section (a) tightens up the discretion given to the Commissioner of Fish and Game under the existing law. Under HB 264, "the Commissioner or his designee may issue a permit subject to the restrictions imposed by statute or regulations." The discretionary phrase "he considers desirable" is removed. The reason is to give the permit holders some certainty regarding their actions.

The second change to subsection (a) adds the language to require that a permit application be reviewed by the regional planning team prior to its being issued. The reason is to

make sure that the permit application is reviewed by the regional planning team drawing up the comprehensive salmon plan prior to the issuance of any permits.

The repeal of AS 16.10.400 (d), the section allowing for renewal of permits, leaves the situation that once a permit is issued by the Commissioner of Fish and Game, it remains in the permit holder it may not be transferred and may only be altered, suspended or revoked subject to AS 16.10.430 which deals with failure to comply with conditions or terms of the permit. This amendment again is an attempt to give some certainty to the permit holder that the terms under which he is going to operate a permit will either be in law or regulation and not subject to discretionary decisions by the Department of Fish and Game.

Subsection (e) is an attempt to clarify an ambiguous situation under the present law. Under the present law, there are provisions for three different types of non-profit hatchery corporations to exist; those established by a qualified regional association; those established by a separate non-profit corporation which are not approved by qualified regional association. This language clarifies the ambiguity that existed of whether a qualified regional association had to go out and establish a separate non-profit corporation for each of the hatcheries it

was going to build. Under the amending language, a qualified regional association can construct as many hatcheries as it wishes without establishing separate corporate identities for each of those hatcheries.

### Section 3.

Section 3 amends AS 16.10.430 (a). The amendment of the additional language to the present section 430 requires that a decision to revoke a permit may only be made "after the regional planning team for the area in which the hatchery is located is notified and granted an opportunity to comment on the proposed suspension or revocation." This will assure the regional planning team which is developing and administering the comprehensive salmon plan for each region will be involved in the decision making process.

### Section 4.

Section 4 amends AS 16.10.450. There is a little bit of possible confusion in reading the proposed amendments and deletions in this section. On examination of the bill it should be noted that the phrase deleted on page 2 line 21 "fisheries research, salmon rehabilitation projects, or" is merely moved up into line 18. It's just a rearrangement of the phrases.

The substantive amendment to AS 16.10.450 is the phrase "costs of operating the qualified regional association for the area in which the hatchery is located." The addition of that language allows the use of funds obtained from the sale of surplus salmon or salmon eggs which return to the hatchery to help defray the costs of operating the qualified regional association for the area in which the hatchery is located. The reason for the addition of that language is the realization after starting to work with the law allowing the establishment of regional associations, that there are no provisions made for the funding of such regional associations. Although it is realized that there will be no surplus salmon until there are some returns to the hatcheries which may be 4 to 6 to 8 years down the line, and even then the monies received from the sale of surplus salmon will probably be primarily dedicated to the retirement of debt and operating costs. This additional language will provide for the possibility of funding the qualified regional associations.

The second amendment to section 450 is a rewording of the present law to clear up any ambiguities of fish which return to hatcheries and are sold for human consumption, whether they return to a State hatchery or a private non-profit hatchery, shall be a comparable quality to fish harvested in the commercial area and sold at prices commensurate with the current market.

Section 5

Section 5 repeals and re-enacts AS 16.10.470 regarding the annual reporting. The present law regarding annual reporting requires the submission of an annual report to the Department of Fish and Game including but not limited to:

- (1) A Complete description of all significant hatchery operations;
- (2) Statistics on the numbers of eggs and fish handled by the hatchery whether for production or sale;
- (3) Further recommendations for modification of the hatchery program;
- (4) Any other relevant data required by the Department.

The amended amendment requires an annual report to "include but not limited to information pertaining to species; brood stock source; number, age, weight, and length of spawners; number of eggs taken, and fry fingerling produced; and the number, age, weight, and length of adult returns attributable to hatchery releases, on a form to be provided by the Department of Fish and Game. The other three items listed in the present section 470 are deleted. The reason for the deletion is that

the other three items are very ambiguous and could if required become quite costly to the hatchery owner. It is felt by the non-profit hatchery owners and potential owners that the overhead cost for operating hatcheries should be held at a minimum and that any reporting features should be only those which are required by necessity and not those of convenience.

Subsection (b) of AS 16.10.470 requires the submission of an annual financial report for the Department of Commerce and Economic Development on a form to be provided by the Department of Commerce and Economic Development. The primary purpose of this amendment is to make sure that the financial statements and essential operating criteria will be kept by all non-profit hatcheries in the state in the same basic format so there will be an ability to compare cost and efficiencies throughout the State.

#### Section 6.

Section 6 amends AS 16.10.500, the declaration of policy, to allow for the making of grants for organizational and planning purposes to regional associations which have qualified under section .380 and by means of long term low interest loans for hatchery planning construction and operations.

The reason for the making of grants for organizational and planning purpose has been as a result of the realization of

the realities that Prince William Sound Aquaculture Association and the Southern Southeast Regional Aquaculture Association have gone through in organizing the regions which are required by this Act.

The grants under this provision are only available to regional associations which have been qualified under section .380 which means that they have been recognized by the Commissioner of Fish and Game and he has determined that:

- 1.0 Their Board of Directors is representative of the requirements of the law under this act; and
- 2.0 that he has designated that region of which the corporation will operate under.

Because of the size of the regions and the necessity for large regions to operate under a regional type concept, the cost of organizing and planning the region is substantial. Also, until the region is organized and has an opportunity to vote on an assessment procedure there is no revenue. These grants are intended to provide that initial monies to organize and to get an assessment mechanism in place for the ongoing revenues to the regional hatchery corporations.

The second provision of the amendment to section 500 adds the additional language so that the long term low interest loans may be used for operational costs. Again, this is a result of the realization after a year of operation under this Act that once hatcheries are constructed and the fry released, it may be four to six years before there are any returns to the hatchery from which a surplus of fish may be sold to provide revenues. During that time period there is a necessity for money for operating costs to run the hatcheries and this provision will allow the loans to be made for those operating costs.

Section 7.

Section 7 amends the law by adding a new section AS 16.10.505. The Fisheries Enhancement Revolving Loan Fund was created to assist in the transfer of funds within the State Government. Under this Act the Department of Commerce and Economic Development is authorized to make the loans for the hatchery projects but the Department itself is not funded. This provision will allow them to receive funds, which were also appropriated under HB 253 to this revolving loan fund while their paper is being transferred over to the Department of Revenue at which time the fund would again be filled. The Department of Commerce requested the Fisheries Enhancement Revolving Loan Fund provision to be implemented into the bill.

Section 8.

Section 8 amends AS 16.10.510 (1) and (2). Subsection (1) adds the language to allow the loans to be made for operations of hatcheries facilities. Subsection 2 clarifies the ambiguous tri-level structure of non-profit hatchery corporations as explained in section 2 of HB 264 and also deletes the phrase "provided the hatchery has received preliminary project approval from the Commissioner of Fish and Game." That phrase was deleted on request of Commissioner Brooks of that department in the original HB 264. The phrase "preliminary project approval" was very ambiguous to both the Department and the non-profit hatchery groups and was causing quite a problem in determining when an applicant was qualified for a loan.

Section 9.

Section 9 repeals and re-enacts AS 16.10.510 (8). The present subsection (8) reads as follows: "upon written approval, defer interest and principle payments up to 6 years." The reason for such a provision was based upon the fact that the hatcheries once built and in operation would take four to six years before generating enough dollars from the sale of surplus fish to handle the debt service and retire the loan in addition to providing operating costs. The Department of Commerce and Economic Development found some ambiguity in the present way subsection (8) is written and interpret it to mean that even though they were to defer interest and principle payments up to

6 years." The reason for such a provision was based upon the fact that the hatcheries once built and in operation would take four to six years before generating enough dollars from the sale of surplus fish to handle the debt service and retire the loan in addition to providing operating costs. The Department of Commerce and Economic Development found some ambiguity in the present way subsection (8) is written and interpret it to mean that even though they were to defer interest and principle payments up to 6 years, the interest itself would continue to accrue during the 6 year period.

The provision in section (9) of the bill clarifies the issue and states that no interest on the principle shall accrue during the period up to 6 years before the loan is repaid. The second sentence in subsection 9 "this provision applies to loans made under this chapter before the effective date of this Act." was added by the Senate State Affairs Committee in their Committee Substitute. At the present time there is only one loan under the provisions of this Act by the Department of Commerce and Economic Development. The Aquaculture group in Prince William Sound has received a loan and constructed a hatchery. The loan has not been repaid nor has a 6 year period elapsed at this time. The effect of the second sentence of subsection (8) is to clarify the issue that this amendment is to apply to that loan.

Section 10.

Section 10 adds an additional paragraph AS 16.10.510. Subsection (9) outlines the provisions for making grants for organizational and planning purposes to the qualified regional associations. There is a two-step approach in making the grants under this section:

- 1.0 A grant may be made to a qualified regional association in an amount not to exceed \$100,000.00 per region. That grant is available only after the Commissioner of Fish and Game has found the applicant to qualify pursuant to section .380 as the regional association for that area. That determination includes a determination by the Commissioner of Fish and Game that the Board of Directors of the corporation meets the requirements of the law and that the regional boundaries have been defined according to his discretion.
  
- 2.0 An additional \$100,000.00 on a 50-50 cash matching basis may be made to those regional associations which have an authorized assessment under either section .530 or .540 of this chapter.

Subsection (9) also provides that the state portion of the matching share shall be made available when a final vote for assessmen-s is made under Section .530 or .540 of this chapter.

The private money would be made available through the collection of the assessments throughout the season and at the end of the fishing season. To the degree that the Department of Commerce and Economic Development feels they can rely upon the collection of the necessary amount of money to match the second \$100,000.00, this sentence allows them to make the state portion of the matching share available.

The last sentence of subsection (9) was added by the Senate State Affairs Committee. It is intended to clarify any ambiguities which may exist in the Department of Commerce and Economic Development on who is eligible.

#### Section 11.

Section 11 amends AS 16.10.520 (a). The amendment to this section again is clarifying the tri-level structure of local private non-profit corporations which is discussed in section 2.

#### Section 12.

Section 12 amends AS 16.10.520 (b). The present subsection (b) reads as follows: "no loan may exceed 75% of the total project cost as determined by the Commissioner."

The Prince William Sound Aquaculture group and the various other experts which have analyzed the situation in the past year, have

found that the 75% loan limitations have made the feasibility of non-profit hatcheries in the private industry very unlikely. The private industry is depleted and is unable to put up the necessary amount of money to equal 25% of the total project cost. The only source of the revenues as can be determined at this time will come from the assessments on the fishermen which even then will take one to two years to build up a 25% portion of the total project costs of a hatchery.

The amendment to AS 16.10.520 (b) makes a substantive change in the present law. The amended section allows loans to be made for the total project costs which are defined as planning and construction costs and the costs for operations for not more than the first six years. The Commissioner of Commerce and Economic Development must determine that the applicant has sufficient financial resources to insure the establishment of an equity position in the project equal to 10% of the loan within six years or less either through an assessment under section .530 or .540 or by other means approved by the Commissioner.

This amendment follows the concept adopted throughout this bill to proceed with the establishment of non-profit hatcheries at a pace as fast as possible and insure that the beneficiaries of the increase in fisheries production are contributing their

share of the funds. This loan provision provides for monies to be loaned for three different types of activities; planning, construction, and operations. The planning and construction portions of the loan provision are intended to provide monies for a broad range of activities related to the selection and development of a site for a hatchery which would include but not be limited to site selection, water source, and quality evaluation, brood stock, sources and selection, transportation of brood stocks to the site, in addition to site preparation and architectural drawings for the facility. The construction costs are intended to meet all of those costs normally related to the construction of a hatchery facility. The provision for loans for costs for up to the first six years of operations is made in recognition of the fact that there may be no returns of fish to the hatchery for a period of 4 to 6 years to provide cash flow for repayment of the debt, debt services and costs of operations.

The last sentence of the amendment providing that the costs for operations shall be loaned on an annual basis, is to insure that that portion of the loan attributable to the operational costs will be available for that purpose and will not be used to cover possible cost overruns in the planning and construction phases of the operations. If there are cost overruns in the planning and construction phases, the borrower must face that

problem at that time and not be dependent upon using money from that portion of the loan attributable to the operational functions of the hatchery.

The amended language adopts the concept of establishing an equity position of 10% of the total project costs over a period of time. The contractor for the project must be paid off initially and not over a period of time. This method allows the construction and operation of hatcheries to go forward in the immediate future, yet guarantees the applicant will establish a 10% equity position in the project.

### Section 13.

Section 13 repeals and re-enacts AS 16.10.530 (a). Section .530 is referred to as the mandatory assessment section. The present law provides that a mandatory assessment may be levied by the Commissioner of Commerce and Economic Development "for the purposes of securing repayment of a loan or loans made to qualified regional associations which have formed a non-profit corporation or to a local non-profit corporation established or approved by a qualified regional association." That section does two things; first, it provides that the assessment, as interpreted by the Commissioner of Commerce may only be levied for the purposes of securing a repayment of a loan. That has been interpreted as meaning only when the loan security is in

jeopardy. The second portion provides that the assessment is inherently dependent upon the application and granting of a loan.

The amendment in the bill rewrites the section to accomplish two basic purposes:

- 1.0 The assessment shall be levied by the Commissioner of Commerce and Economic Development on request of the regional qualified association after compliance with subsection (e) and that the Commissioner determines that the assessment is reasonable.
- 2.0 The revenues derived from the assessment shall be for the purpose of providing revenue for the qualified regional associations in which the assessment is made.

Those provisions accomplish two things:

- 1.0 It unhooks the requirement of a mandatory assessment from the application for a loan or the default on loan repayments.
- 2.0 Provides that the assessment mechanism is initiated by the qualified regional association but subject to final determination by the Commissioner of Commerce.

Subsection (a) of the bill also states that the "Commissioner shall determine whether the procedural requirements under (e) of this section were followed and whether the proposed assessment is reasonable." The reason for that section is to leave the final determination of whether the assessment shall be imposed up to the governmental body through the Commissioner's office both with the procedural safeguards and the substantive question of whether the assessment is reasonable enough in its scope to accomplish the job proposed. That is an important feature when connected with the amendments made in AS 16.10.520 above which require the Commissioner to determine whether the assessment under either section .530 or .540 is of a sufficient amount to insure the establishment of an equity position of 10% of the loan over a six year period.

Subsection (a) clarifies that the assessment will be levied on the basis of where the fish is caught and not where it is sold. "...an assessment shall be levied on the sale of one or more species of salmon caught by persons licensed under AS 16.05.540 - 16.05.600 in the area in which the assessment is to be levied. AS 16.10.530 (b) is repealed. The reason for the repeal of (b) is that it is no longer relevant with the amendments made to subsection (a).

Section 14.

Section 14 of the bill amends AS 16.10.530(c) and (d). The subsection (c) deletes the provision that the assessment is connected with the application for a loan. That amendment makes the provision consistent with the amendements made in section 13 above.

Subsection (d) states that "the assessment once instituted shall terminate upon a request of the qualified regional corporation but only after all financial obligations relating to the assessments have been met." This provision is necessary in light of the amendments made in AS 16.10.530(a) in section 13 of the bill. With the amendment in subsection (a) the assessment is no longer automatically connected to the loan. This language in AS 16.10.530(d) guarantees that if the assessment is used as collateral to any loan whether from the state or any other source, the qualified regional corporation has no authority and no power to revoke that assessment or stop that assessment until all of the financial obligations relating to the assessment have been met.

Section 15.

Section 15 of the bill amends AS 16.10.530 by adding a new subsection (e). This subsection lays out in detail the procedural requirements for a qualified regional corporation to follow before

a request can be made of the Commissioner of Commerce and Economic Development to impose a mandatory assessment in the area of the regional corporation. The terms may seem detailed and cumbersome, the intent is to provide ample opportunity for all of the people who would be required to pay an assessment to voice their concerns at public meetings and to vote on the assessment. It requires at least two public meetings and that the ballots be made available to all of those who will be made a part of the assessment, twice. It does state that no person may vote more than once but requires that the ballots be made available by mail to all the people within the region who sell fish commercially.

Subsection (f) is also an addition to the present law and states that the qualified regional corporation shall establish standard registration procedures for voting on an assessment under this section.

#### Section 16.

Section 16 of the bill adds the necessary language to create a regional salmon enhancement authority.

The purpose of creating the regional salmon enhancement authorities is to provide a financial vehicle for the availability of federal dollars.

This language is the near identical language of the Regional Electrification Association which are presently in the statutes, AS 18.57. provided the qualified regional association complies with the requirements of the bill, the state will recognize the creation of a regional salmon enhancement authority as a public body corporate and politic as a political subdivision of the State.

Section 17.

Section 17 states as follows: "Notification, public meeting and meeting and voting procedures instituted before the effective date of this act that are substantially in compliance with AS 16.10.530(e), shall be considered to constitute compliance with this Act, and are ratified upon the effective date of this Act."

The qualified regional corporations in Southern Southeast Regional Aquaculture Association and the Cook Inlet Regional Aquaculture Association have proceeded through somewhat similar notification of public meeting and voting procedures regarding the mandatory assessment provisions at this time. The Southern Southeast Regional Aquaculture Association is at the present time undergoing a large notification public meeting and balloting on the mandatory assessment. That region encompasses all of lower Southeastern Alaska including Petersburg, Wrangell, Ketchikan, Craig, Klawock, Hydaburg and all fishermen who

commercially sold fish within fishing districts 1 through 8. A large portion of those fishermen reside in Oak Harbor, Seattle, Bellingham, Mt. Vernon and other coastal towns in Washington. They are all being provided with a ballot to vote on the mandatory assessment procedures. This section provides that those efforts will be recognized as compliance with the requirements of this bill provided they are in substantial compliance. Other provisions of the law necessarily require the determinations of substantial compliance to be made by the Commissioner of Commerce and Economic Development.

There is a fiscal note attached to this bill from the House Finance Committee pertaining to the grant provisions of AS 16.10.510 found in section 10 of the bill. It anticipates the creation of 6 regions including Ketchikan, Sitka, Bristol Bay, Cook Inlet, Kuskokwim and Prince William Sound. The note anticipates the granting of the entire initial \$100,000 plus the additional \$50,000 matching monies to each region for a total of \$900,000.