12031 SENATE RESOURCES

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 107(RES)
(H) Publish Date: 2/18/05

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act providing for the award of full actual attorney fees and costs to a person aggrieved by unlawful...."
RDU CIVIL
Component Torts and Workers' Compensation
Sponsor Representative Ramras
Requester House Resources
Component No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 20(	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL						

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill amends AS 16.05.791(b) by allowing a person aggrieved by unlawful obstruction or hindrance of hunting, fishing, or the viewing of fish or game to recover full actual attorney fees and costs of action to collect damages, fees, and costs. The Department of Law is unable to recall any lawsuits filed against the State under AS 16.05.790 however, this amendment may make fishers or hunters more likely to engage in litigation. If that were to happen, there would be a workload fiscal impact, but the Department of Law is not able to estimate what that would be. An actual award of fees and costs against the State would be requested in the judgments & claims section of the annual supplemental appropriations bill and are thus not included in this fiscal note.

Prepared by: Kathryn Daughhetee, Director
Phone 465-3673
Division Administrative Services Division
Date/Time 2/2/05 8:14 AM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Date 2/2/2005
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 107(JUD)
(H) Publish Date: 3/7/05

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act providing for the award of full actual attorney fees and costs to a person aggrieved by unlawful...."
RDU CIVIL
Component Torts and Workers' Compensation
Sponsor Representative Ramras
Requester House Resources
Component No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill amends AS 16.05.791(b) by allowing a person aggrieved by unlawful obstruction or hindrance of hunting, fishing, or the viewing of fish or game to recover full actual attorney fees and costs of action to collect damages, fees, and costs. An actual award of fees and costs against the State would be requested in the judgments & claims section of the annual supplemental appropriations bill and are thus not included in this fiscal note. The bill makes an exception for a law enforcement officer while performing the duties of the office.

Passage of this legislation is not anticipated to result in a fiscal impact for the Department of Law.

Prepared by: Kathryn Daughhetee, Director
Phone 465-3673
Division Administrative Services Division
Date/Time 3/1/05 1:45 PM
Approved by: K. Daughhetee for Scott Nordstrand, Acting Attorney General
Date 3/1/2005
Agency Department of Law

ALASKA STATE LEGISLATURE

SENATE RESOURCES COMMITTEE

Senator Tom Wagoner, Chair
State Capitol, Room 427
Juneau, AK 99801-1182
Phone: (907) 465-4907 Fax: (907) 465-4779

Official Business

Senator Ralph Seekins, Vice-Chair
Senator Ben Stevens
Senator Kim Elton

Senator Fred Dyson
Senator Bert Stedman
Senator Albert Kookesh

DATE: January 31, 2006

TO: Tam Cook, Legal

FROM: Mary Jackson, Senate Resource Committee Staff

RE: HB 107 and HB 251

Please provide committee substitutes for the following:

- HB 107: on page 2, lines 17-18, delete ",other than an action relating to commercial fishing,"

  NOTE: Amendment 24-LS0444\I.1 (Kane) was approved, with revisions to reflect the correct lines in bill version X.

- HB 251: we adopted work draft Senate CS 24-LS0770\I (Kane)

Thank you for your time.

SENATE RESOURCES PACKET JAN. 30, 2006

HB 107 Packet –Supplemental Materials

- Cover Sheet _____1 page
- Amendment 24-LS0444\I.1 _____1 page
- Legal Services Memo 1-24-06_____2 pages

- Total Pages _____ 4 pages

24-LS0444\I.1
Kane
1/23/06

AMENDMENT

OFFERED IN THE SENATE BY SENATOR BEN STEVENS

TO: CSHB 107(RES)

17 18

Page 2, lines 20 - 21:

Delete "**, other than an action relating to commercial fishing.**"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM January 24 06

SUBJECT: Cruise ship hindering possibility under AS 16.05.790(a)
(Work Order No. 24-LS0444\X)

TO: Representative Jay Ramras
Attn: Jim Pound

FROM: Brian J. Kane BK
Legislative Counsel

You have posed the following question: Under AS 16.05.790(a), would a cruise ship or other large, non-fishing vessel be guilty of obstructing or hindering lawful fishing if it crossed over a commercial fishing net? The short answer is that it would not be guilty.

The key word in AS 16.05.790(a) applicable here is "intentionally." If this obstruction or hindrance is not done intentionally, then it does not fit the parameters for this misdemeanor. Putting the phrase "intentionally" into context is also helpful.

There are basically four mental states that are statutorily defined for crimes in Alaska. These are listed in AS 11.81.900(a):

> (a) For purposes of this title, unless the context requires otherwise,
>
> (1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;
>
> (2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;
>
> (3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the

> person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;
>
> (4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

"Intentionally" is the most stringent of the four standards.

Because "intentionally" is an element of the crime, the state would have to prove beyond a reasonable doubt that the person acted intentionally. Further, a key phrase in the definition of intentionally is the "conscious objective is to cause that result." Hence, the large, non-fishing vessel would have to know the commercial net was there and then intend to obstruct or hinder its use. It appears that the owner or operator of a vessel simply moving in the water that crosses over a net in its normal flow of travel will not be guilty.

If I may be of further assistance, please advise.

BJK:med
06-060.med

HB

130/

SB

96

Mary Jackson

From: Sen. Tom Wagoner
Sent: Monday, April 18, 2005 11:52 AM
To: Mary Jackson
Subject: FW: New Pom:HB 130 University Land Grant/state Forest

-----Original Message-----
From: POMS@legis.state.ak.us [mailto:POMS@legis.state.ak us]
Sent: Monday, April 18, 2005 11:42 AM
To: Sen. Tom Wagoner
Subject: New Pom:HB 130 University Land Grant/state Forest

David Swingley
12304 Keystone Place

Eagle River 99577,

State lands planned for sale by UA should be sold only under conditions in which subsistence, native cultural claims and ecological habitat provisions take top priority.

Sherrie Wick

From: "Sherrie Wick" <gwick@c2i2.com>
To: <Senator_Bert_Stedman@legis.state.ak.us>
Sent: Wednesday, March 09, 2005 3:29 PM
Subject: U of A Land Grant for Moser Bay, Ketchikan

Dear Senator Stedman:
We are concerned about the possibility of the University of Alaska acquiring ownership of the timber land in and around Moser Bay located north of Ketchikan.
My wife and I were born and raised in Ketchikan. Over the years, due to economic factors, various bays and inlets in the Ketchikan area have been logged and of course that changes the esthetics of those areas. Moser Bay is the last pristine area along the coast north of Ketchikan that has not been molested by human intervention. The inlet is close enough to the Ketchikan marinas which allows the weekend boater to enjoy the beauty, fishing and crabbing. Moser Bay has two medium sized fish creeks that would be in harms way if logged. We enjoy watching the fish go up the stream every fall. Moser Bay could be compared to the Neets Bay argument for not granting land in pristine areas that support abundant wildlife and salmon streams. Also there is a coastal management plan for future development, initiated by the state, that indicates a site in Moser Bay as a potential future site for a resort. Who would want to spend thousands of dollars on a resort fishing vacation located in the middle of a logging operation or an area that has been logged off. Doesn't this ruin the very experience that folks come to our beautiful state to enjoy? I do not buy the argument that the University of Alaska would not log land it was granted by the state. If we grant them the land they can always log the timber whenever they need the revenue.
Surely there is land the state can grant the U of A for the purposes of future revenue without granting them the Moser Bay area which is the last of the unmolested area that the residents can get to by boat on a weekend.
Sherrie and I wish to go on record as being opposed to granting the U of A any of the Moser Bay land.
May we be advised on future developments that concern the Moser Bay area.
Thank you for considering our comments.
Larry and Sherrie Wick.
gwick@c2i2.com

attn SB 96
mary Jackson
1-907-465-4729

4/13/2005

-SB 96

Jason Esler- Cultural Anthropologist

For the past two summers I have been conducting anthropological research in the remote community of McCarthy, Alaska. The focus of my study looks at the relationship between the federal administration of the National Park Service and the rural frontier communities that shape the Alaskan lifestyle protected under ANILCA. My analysis includes observations regarding a lack of cultural relativity among administrative decisions and the shortcomings of cultural resource management in rural Alaska today.

The land that is being proposed for transfer in the McCarthy-Nizina region has great implications for the Alaskan community and lifestyles that subsist within the area. These lands are some of the most important in the area for wood collection and hunting purposes. As the federal regulation of resources has strengthened over the past twenty years, community members have learned to adapt and locate resources that are viable for wood collection and other subsistence activities. These communal resources on state land allow the people of the area to continue their lifestyle, while at the same time, allowing the National Park Service to uphold their goals of preservation.

The state land is an active example of a "buffer zone". These buffer zones are crucial in finding the common ground between the needs and desires of the subsistence lifestyles and the environmentalist ideals that shape current frontier politics. In McCarthy, the buffer zones are limited and often further from the community than would be desired. Since heat and food supplies are not easily found in the McCarthy area due to the amount of federal land that the National Park Service currently operates, these buffer zones act as a very important compromise between Alaska residents and NPS officials. Again, this allows the federal management to maintain the integrity of their property, while also supplying the locals with much needed wood and game.

Without these state lands, the community of McCarthy would be cut from such areas. Where should they turn for resources if the land they now use is sold either as private parcels or to the National Park Service? This frontier culture depends specifically on the 12,500 acre area that is being proposed for transfer. Allowing this section to remain on HB 130 would inevitably leave the residents of McCarthy with no neutral areas to collect wood and hunt from. This is a problem that has continually devastated communities across the last frontiers of America. Without these resources, there is little room to continue on with a subsistence lifestyle. More important for the future is the precedent that this land transfer sets for rural Alaska. If the McCarthy-Nizina region remains of HB 130 it will go on to shape future decisions, eventually leaving the communities of rural Alaska with no land and no resources to legally subsist with.

As an anthropologist, I would also like to note the structural ramifications that this will have on the people of McCarthy in regards to their positions and attitudes toward land protection and state trust. During my research I continually noticed the respect and compassion that the McCarthy residents have for their state representatives and governor. Recent years of environmental protection have driven a gap between the federal government and rural Alaskans, leaving many people feeling like they do not belong in the area. These communities depend on the state to uphold their desires and help them continue their lifestyle of subsistence practices. Confidence and reassurance are found in state decisions that affect rural communities and I fear that if this land transfer includes the McCarthy area, they may lose some of that trust and honor that they have for state

(1)

representation. As the environmentalist movement continues to limit the lifestyle of these communities, it is crucial that the state act with resident concerns in mind. Without the state protecting the land resources of the people, rural Alaska will surely diminish over the next several years.

While I understand that ANILCA is a federal mandate, it is important to note that these federal representations have recently dwindled in WSENP. It was the intention of Alaskan legislation to support these rural community desires when land issues are decided upon. This has not happened with HB 130.

More importantly than the land itself, is what this transfer says about current frontier politics as cultural resource management moves into the twenty first century.. This land transfer under HB 130 was given no community input. There were no public hearings, and most of the people in the McCarthy area were not even aware that their local resources were about to change ownership until about two weeks ago.

Any rural Alaskan will tell you that if you plan on making changes or developing parts of land surrounding yours, an Environmental Impact Statement (EIS) is required. This is used to judge the amount of change that will occur in any ecosystem surrounding the project. For years the people of rural Alaska have respected this law and complied with the necessary assessments. My research supports the concept of a Cultural Impact Statement (CIS), one that assesses the changes which a community will face if a specific land transfer is approved. It seems only fair that the communities of rural Alaska would be given the same respect for their ecosystem as they have shown for the state and federal government when they conduct change in an area. Without detailing the impact on this community, the state is showing the Alaskan people that their decisions are made with out any consideration of the people or their lifestyles.

The governments of this country have seen what can happen when frontier cultures are not considered in land decisions. Across the lower forty eight we have seen numerous rural communities and cultures destroyed at the hands of misrepresentation and broken promises. ANILCA was intended to stop this recurring thematic pattern in frontier politics. In 1980, the legislatures made a bold and much needed move to protect the cultures that shape our final frontiers in America. Have we not learned from past mistakes regarding rural communities? As social scientists, we now understand that rural communities are impacted by federal and state land exchanges on a variety of levels. These impacts are accumulated over time, eventually breaking down the stability of a community one small piece at a time. Allowing this land near McCarthy to be apart of the transfer not only violates the mandate of ANILCA, but also exemplifies my research conclusion that current frontier politics are failing the Alaskan people as we move into the next century.

As a concerned anthropologist, I ask that this committee remove the 12,500 acre McCarthy-Nizina land section from HB130. I would also urge that any future consideration of land transfers in the area be contingent upon a detailed Cultural Impact Statement (CIS). If the state of Alaska wishes to uphold the desire of protecting rural communities, than a CIS must be completed by an anthropologist before the McCarthy-Nizina area is accepted in HB130.

Mary Jackson

From: Sen. Tom Wagoner
Sent: Monday, April 11, 2005 1:54 PM
To: Mary Jackson
Subject: FW: SB 96

From: Jane Button [mailto:ja..e@alaska-hobbithole.com]
Sent: Monday, April 11, 2005 1:49 PM
To: Sen. Tom Wagon :r
Subject: SB 96

Dear Senator Wagoner,
I've been a resident of the Inian Islands near Elfin Cove for 11 years and am strongly opposed to Governor Murkowski's University Lands bill SB 96 in its current form. As written, it would transfer state-owned lands in Idaho Inlet, Mite Cove and Pelican, among many others, to the University of Alaska. This transfer of land is unsuitable for several economic reasons. Not to mention that this land give-away is a poor substitute for University funding.

First, selling land in big chunks will depress the value of real estate currently for sale in areas such as Pelican, Elfin Cove and Excursion Inlet and will likely depress land values for decades.

Southeast Alaska is being asked to give a disproportionate share of its state lands in this transfer. 10% of Southeast's state lands are among the selections, while the percentage for the rest of the state is 0.21%. If these SE parcels are chosen, virtually all of the state lands of Northwest Chichagof Island will be unavailable for future allotments and borough selections. Tiny Mike Island in front of Elfin Cove will be the **only** state land left in this area.

This land transfer would only exacerbate Northwest Chichagof Island's economically depressed status. I've already seen that when resources are sold to non-residents, the buyers bring in their own people as labor, they buy their food elsewhere and they fsometimes don't purchase power from the local utility. The only economic boost they provide is the purchase of fuel. If these lands are sold to non-residents, there will be no net gain to the economy of the state. It's important to keep some state lands in our "economic futures" savings account.

The University has claimed that it will work with locals to find mutually beneficial solutions. By their behavior in my community's locale, I doubt their ability to keep this promise. The University was given 835 acres of Yakobi Island, which they then sold in 2001 for $1.5 million. Local people were told nothing about this sale and given no chance to comment.

Please fix this bill so that it doesn't hurt local people and communities. I believe Bruce Weyrauch's Committee Substitute bill addresses many of these issues. Please consider its changes. Please find more appropriate ways to fund the University. Let's find a method of University funding that belongs in the 21st century, not the 19th.

Thank you very much for your consideration. Please enter these comments into the SB 96's official record.

Jane D. Button
Hobbit Hole, Inian Islands
PO Box 9

4/11/2005

Elfin Cove, AK 99825
(907) 723-8514

April 11, 2005

The Honorable Thomas Wagoner, Chair
Senate Resources committee
Alaska State Legislature

Dear Senator Wagoner

I am writing today to voice my strong objection to the transfer of land at Olive Cove on Etolin Island as proposed in SB 96, the companion Bill to HB 130. I ask that this letter be included in the SB 96 Official Record.

It is obvious that no consideration has been given to the fact that a significant anadromous stream crosses this parcel. Apparently, many are under the impression that every stream in Southeast has fish in it. While this may be true to so[illegible] extent, not every stream has significant populations of Coho, Pinks, Chum, Steelhead, Cutthroat and Dolly Varden. We're talking wild populations – not hatchery enhanced. Such is the case at Olive Cove. It seems the **Central/Southern Southeast Area Plan** published in November 2000 by the DNR is being totally ignored. I have attached page 3-206 of that Area Plan to this letter.

So how would SB 96 affect this area? First of all, the intent of the bill is to generate money for the University. There are two obvious ways this is done:
#1 Logging – removal of the forest surrounding the stream habitat;
#2 Divide the area into parcels for sale – creating lots abutting the stream itself.
With either of these scenarios fish habitat is compromised by the potential development in the watershed.

Olive Creek, also known as Snake Creek to locals, is important to the people of Wrangell. It is used by the people of Wrangell. It provides fishing opportunities both as a designated subsistence area as well as its contribution to the commercial fisheries in the area. Our state fishery management system is based on a sustainable yield. Part of the equation in sustaining fish is protecting their spawning habitat. We have an obligation not to change the character of streams that are supporting significant fish populations.

I urge you to withdraw the Olive Cove Parcel from transfer in SB 96.

Thank you,

Sincerely,
Gayle Gross
PO Box 11
Wrangell, AK 99929
(907) 874-2577 gsmokery@aptalaska.net

Management Intent	Resources/Uses for which Unit is to be Managed	Parcel Description and Related Information
Unit W-15 MTRS T. 065S., R. 085E., Section 31; T. 066S., R. 085E., Section 6 The area of the parcel adjacent to Olive Cove is to be managed for the protection of habitat and wildlife within the estuarine areas. The remainder of the parcel is designated Gu (General Use) and is to be managed during the planning period for dispersed recreation. Portions of the Gu area may be appropriate for eventual residential development, but land disposals are not scheduled during the planning period. The need for a residential land disposal should be re-evaluated at the time of plan update, however. Timber harvest or other development activities are not to be authorized adjacent to the estuary (approximately 500 feet from mean high water). In other areas, timber sales may be designed to provide access and/or promote subdivision at such time as a land disposal is undertaken. Consideration will be given for, but not limited to, buffers along major waterbodies, leave areas for community recreation and leave areas to minimize visual impacts of adjacent land intended for residential development.	Name Olive Cove drainage (Etolin Island) Managed Resources: settlement area, habitat/wildlife and anadromous stream. Areas within and near Olive Cove are important habitat areas; Olive Cove itself is an anadromous stream, contains estuarine wetlands, and has important concentrations of both wildlife and fish species. Black bears concentrate in the fall along the cataloged anadromous fish stream that flows into Olive Cove. Offshore of this parcel Olive Cove is a pink, chum and coho salmon rearing and schooling area and Dungeness crab concentration and harvest area. Shorebirds and waterfowl concentrate in Olive Cove in spring and fall and the area has been identified as an osprey summer foraging area. Olive Cove is a traditional anchorage used by black bear and deer hunters and by trappers.	Acres 450.0 Designations Gu Ru Parcel is located on a flat coastal plain vegetated, in part, by hemlock and spruce forest. An existing subdivision (ASLS 81-233) adjoins the parcel to the north. TLRMP designates the area of the Olive Creek drainage as 'Old Growth Habitat' and all other areas adjacent to the parcel, as 'Scenic Viewshed'. There is an LTF operated by the Forest Service on federal land northeast of the unit. Olive Creek is an anadromous stream.
Unit W-16.00 MTRS T. 066S., R. 085E., Section 6 ASLS 81-233	Name Parcel adjacent to W-15 at mouth of Olive Cove Resources: subdivision area.	Acres 15.6 Designations Parcel is a previous state subdivision (ASLS 81-233). All lots are or will be conveyed to private parties. A large, undeveloped state parcel (W-15) adjoins this unit to the south. This area adjoins a trawl shrimp commercial harvest area. It lies along the route of the Alaska Marine Highway, cruise ships, charter boats and private pleasure craft traversing southeast Alaska to view scenery and wildlife.

Gu General Use
Ru Undeveloped Recreation

Mary Jackson

From: Sen. Tom Wagoner
Sent: Monday, April 18, 2005 11:47 AM
To: Mary Jackson
Subject: FW: SB 96, and Thank-you

From: Jennifer Price [mailto:Jen@soundsailing.com]
Sent: Friday, April 15, 2005 11:43 AM
To: Sen. Tom Wagoner
Subject: SB 96, and Thank-you

Dear Senator Wagoner,

I am finally home with a computer again, after floatplaning out of Warm Springs Bay and Sitka in order to testify in opposition to HB 130/ SB 96 this week. I spoke to you briefly after that long drawn out hearing on Monday evening, and I again would like to thank you for giving each individual the chance to testify against SB 96, even into the dinner hour--poor you and Senator Stevens!

I just wanted to reiterate that this HB 130/SB 96 is flawed, and extremely controversial. I appreciated your adamancy when you told me that the bill is "a mess", and that you would not pass it out of committee until something is done to rectify the public outcry regarding most of the southeast parcels. I think your idea of getting Senators Stedman and Elton together with DNR is a fine one, and I hope that you will follow up on this tactic before passing the bill out of committee. This is a clear indication that you have listened to your constituents, and that you are a worthy public servant looking out for the welfare and the trust Alaskans have put in our representatives, as well as the Department of Natural Resources.

If nothing else, it is important to withdraw from the bill those parcels of land designated "RU," or public recreation and undeveloped tourism including Lynn Canal, Mite Cove, Read Island, Whitney Island, and particularly the five acre archeological Tlingit parcel in Sanford Cove called Sum Dum.

Again, Senator, thank-you for taking the time to listen to all those who testified Monday evening. I hope your dinner was easy to reheat!

Sincerely,

Jennifer Price

1802 B Alder Way
Sitka, AK 99835
(907) 747-7473

Cell: (206) 618-5817 (best while caretaking at Warm Springs Bay 'til May)

Mary Jackson

From: Sen. Tom Wagoner
Sent: Monday, April 18, 2005 11:45 AM
To: Mary Jackson
Subject: FW: Comments on SB 96

From: EDWINA L BARNETT SIMMONS [mailto:simmonsbarnett@msn.com]
Sent: Tuesday, April 12, 2005 8:18 PM
To: Sen. Tom Wagoner
Subject: Comments on SB 96

Dear Senator Wagoner:

We urge you to remove the Pelican, Mite Cove and Idaho Inlet parcels from being transferred to the University as it has been done in HB 130.

Sincerely,
Avery & Edwina Simmons
Lisianski Inlet, Pelican Alaska

Mary Jackson

From: Sen. Tom Wagoner
Sent: Monday, April 18, 2005 11:44 AM
To: Mary Jackson
Subject: FW: SB 96

From: KUHOOK@aol.com [mailto:KUHOOK@aol.com]
Sent: Friday, April 15, 2005 12:21 PM
To: nlcarson@att.net; steve@highlinerlodge.com; Sen. Ben Stevens; Sen. Bert Stedman; Sen. Fred Dyson; Sen. Gretchen Guess; Sen. Kim Elton; Sen. Ralph Seekins; Sen. Tom Wagoner
Cc: greg-donica@gci.net; kylebcarson@hotmail.com; scott_carson428@yahoo.com; cityhall@pelicancity.net; elvira@ptialaska.net; mig@anton.yk.ca; chicobiak@hotmail.com; talair@alaska.net; pdjep@ptialaska.net; akseaplanes@alaska.com; carol@pelicancity.net; artour@alaska.com; croland@alaska.net; pelbar@ptialaska.net; terri@ptialaska.net; simmonsbarnett@msn.com; dspencerak@yahoo.com; jim@jimslater.com; hwmedic2@netscape.net; kathie@akml.org; Rep. Peggy Wilson
Subject: Re: SB 96

I agree with Norm, it would be better to give land to the university that is closer to town and will actaully do some good. The only use I can see from the current land would be a another large lodge, some logging or summer homes for out of towners. None of these will help any local people in the long term and in fact will have a negative aspect for locals just like it does in many parts of the world
where large economic interests take precedence over local peoples best interest. You probably all know of nice places in the world that are now ruined by too much development. As for a short term benefit of jobs and income, everybody is eating so far and I don't know many people in Pelican, besides Steve and Chris, that are in favor of this plan.

This is an important decision for our future, lets take the time to deveop a smart plan and forget the knee-jerk idea that any development is good. I want Pelican to still be a desirable place to visit twenty years from now. The worst land to develop for me is the mite cove soapstone area, second is land directly around my lodge.

Denny Corbin
Lisianski Inlet Lodge, Pelican, Alaska

Amendments to HB 130
Senate Resources Committee
April 18, 2005
Department of Natural Resources

Amendments in CSHB 130(Res)
The House Resources version included amendments to protect public access, make minor boundary adjustments, allow DNR to correct miscellaneous errors and omissions in the Land List, address Native Allotments, protect timber harvest in the University Research Forest, ensure that potential municipalities do not receive less acreage as a result of the bill and codify public notice requirements for the University. The Resources Committee Substitute also eliminated seven parcels from the Lands List including: Neets Bay, Kodiak Lunch complex, Warm Springs Bay, Lena Creek, Port Alexander, Kelp Bay, and Duke Island. The amendments in the CS reduced the acreage by approximately 7000 acres. The amendments bring the total acreage to approximately 253,000. A more detailed analysis of the CS follows.

The page numbers below conform to SB 96, Work Draft version G.

page 5, line 27-28 - section on reserving valid existing rights, added "including a federal, state, or municipal agency".

page 6, line 2-4 was added to allow DNR to reserve existing access routes, trails, roads in addition to those required under AS 38.05.127.

page 7, lines 21-24, new section (m) allows DNR to make minor boundary adjustments to correct errors and omissions

page 7 - 8, new section (n) deletes seven parcels from the land list. These are:

(1) Parcel Number CS.DI.1001, Duke Island;
(2) Parcel Number CS.KI.1001, Kelp Island;
(3) Parcel Number JU.LM.1001, Lena Creek;
(4) Parcel Number KT.1004, Neets Creek;
(5) Parcel Number MA.KR.1001, Kodiak Rocket Range;
(6) Parcel Number PA.1001, Port Alexander; and
(7) Parcel Number ST.1002, Warm Springs Bay.

page 8, lines 4-9. new section (o) prevents DNR from conveying two parcels (Biorka Island and Lisianski Peninsula) "until all Native Allotment applications ...have been denied".

Page 8, Section 6, was significantly expanded to reinstate more of what was in 2000 legislature's SB 7 regarding UA's process.

Page 10, lines 20-22 were added as an additional requirement before land in the University Research Forest can be disposed of, specifically "that the disposal of the land will not interfere with commercially viable timber harvest and resource development".

Page 10, new section 9, adds to AS 29.65 a requirement that DNR include the acreage conveyed to UA under this bill when calculating entitlements for new municipalities.

Amendments in CSHB 130(Fin)
House Finance amended the bill to delete the findings and intent sections, delete three additional parcels from the Land List; add Lena Loop back to the Land List; delete (o) that pertained to Native Allotments and address them in a different section; create a new section (o) that addresses potential borough formation in Wrangell or Petersburg; and added a new section (c) that directs the University's sale process. A more detailed summary follows. The page numbers pertain to CSHB 130 (Fin).

Deleted Section 1 Findings and Section 2 Legislative Intent

Page 2, line 24, **added** a new subsection as follows:
(10) ensure that the University of Alaska's Cooperative Extension Service is adequately staffed to meet the needs of the public.

Page 4, line 1, **added** Native Allotments after right-of-way

Page 6, line 7, **Deleted** (3) Parcel Number JU.LM 1001, Lena Creek

Page 6, line 4, **added** Parcel Number MF.1002, Idaho Inlet;
Page 6, line 6, **added** Parcel Number PA.1002 Mite Cove;
Page 6, line 9, **added** Parcel Number ST.1002. Pelican;

Page 6, line 12

Added new Section (o) Notwithstanding (a) of this section, the state land identified in this subsection and described in the document entitled "University of Alaska Land Grant List 2005", dated January 12, 2005, may not be conveyed to the University of Alaska under this section if the land is included in a borough formed before July 1, 2009, that includes Wrangell or Petersburg. If such a borough is not formed before July 1, 2009, the following land shall be conveyed to the University of Alaska on July1, 2009;

(1) Parcel Number SD.1001, Favor Peak;
(2) Parcel Number CS.OV.1001, Olive Cove;
(3) Parcel Number SD.1001, Read Island; and
(4) Parcel Number SD.1001, Whitney Island.

Page 6, lines 4-9

Deleted previous (o) Notwithstanding (a) of this section, each of the following parcels described in the document entitled University of Alaska Land Grant List, 2005", dated January 12, 2005 may not be conveyed to the University of Alaska under this section until all Native Allotment applications applicable to that parcel have been denied:

(1) Parcel Number PA. 1002, Biorka Island
(2) Parcel Number NS.NS.1001, Lisianski Peninsula
Note: Native Allotments are now addressed on page 4, line 1

Page 7, Line 4

Added new section (c) and renumbered accordingly

(c) Before the Board of Regents of the University of Alaska offers a parcel of land for sale under this section, the board

(1) shall offer first refusal to the closest municipality; and

(2) may offer second refusal to a nonprofit organization established under the laws of the state that is located in the same region as the land that is offered for sale and that has been established for the purposes of managing, developing, selling or using land consistent with historic uses.

The amendments in House Finance delete an additional 1,710 acres from the Land List which brings the total acreage to 251,401 acres. The new AS 14.40.365 (o) puts a hold on the transfer of 2,762 acres until 2009 pending formation of a Wrangell or Petersburg borough.

LEGISLATIVE INTEND RELATING TO HB 130/SB 96
RESTRICTING DEVELOPMENT OF UNIVERSITY OF ALASKA
LAND GRANT LIST 2005
PARCEL NUMBER MA.HR.1001, HAUL ROAD NODES - COLDFOOT

Grantor shall not sell, lease or develop the Property for use or activities that directly compete with those lease purposes identified in Lease ADL No. 415217, dated March 22, 1982 for a period of ten (10) years from the date that DNR transfers title to the University of Alaska. This restriction specifically does not apply to use of the property for direct services relating to construction of pipelines.

Submitted by:

Joseph M. Beedle
University of Alaska
Vice President for Finance

April 11, 2005

University Lands
HB 130
UA Public Notice Section 6 Amendment – March 3, 2005

Subsection (b) – Public Notice

In HB-130 the University proposed to amend subsection (b) of the existing AS 14.40.366 (2000 Senate Bill 7) to read as follows:

(b) The University of Alaska shall give public notice of sales, leases, exchanges and transfers of lands conveyed to Board of Regents in trust for the University of Alaska under AS 14.40.365.

Based on public testimony the university proposes to amend subsection (b) to read as follows:

(b)(1) On lands conveyed to the Board of Regents in trust for the University of Alaska under AS14.40.365

(A) the university shall seek public comment on proposals for land development, exchange, or sale;

(B) the Board of Regents shall adopt policies that require the preparation of land development plans and land disposal plans;

(C) the Board of Regents shall adopt policies requiring public notice of not less than 30 days prior to approval of land development plans and land disposal plans including

(i) notice of the proposed action to local legislators, municipalities and legislative information offices in the vicinity of the action and at other locations as the university may designate;

(ii) legal notice to be published in newspapers of general circulation in the vicinity of the proposed action at least once a week for two consecutive weeks; and

(iii) notice of the proposed action being published on state and university public notice websites.

(b)(2) As used in this section "development, exchange, or sale" does not include easements, rights of way or development of campus facilities.

UNIVERSITY OF ALASKA
2005 STATE LAND BILL, UNIVERSITY PROCESS
LEGISLATIVE BRIEFING DOCUMENT

(April 11, 2005)

Public Notice

On an ongoing basis, the University of Alaska will evaluate its inventory of lands to identify opportunities for development and disposal. The University will do this through the creation of Development Plans and Disposal Plans. Development Plans and Disposal Plans will include specific parcels identified for disposal, lease, subdivision, large scale timber harvesting or other significant surface development projects, as defined by Board of Regents Policy. Notice of proposed Development Plans and Disposal Plans will be sent to all local legislators, municipalities, and legislative information offices in the vicinity of the proposed development(s)/disposal(s). Notice will include descriptions of the proposed development(s) /disposal(s) and location, and reference as to where additional detailed information may be obtained. The Development Plans and Disposal Plans will also be posted on the University's Land Management website (www.ualand.com) and the State of Alaska's Public Notice Website, and published in newspapers of general circulation in the vicinity of the proposed action. The public notice process will be initiated at least 30 days before it is scheduled to be considered by the Board of Regents or administratively approved in accordance with Board of Regents Policy. Written comments received during the public notice period will be considered by the University prior to finalizing the Development Plans and Disposal Plans.

Development Project Feasibilities

After Development Plans have been approved, the proposed development projects will be further evaluated for feasibility. Feasibility studies typically include site evaluations, soil analyses, preliminary designs, title reviews, and marketing analyses. It is during this phase that the University typically conducts public workshop(s) in local communities to consider local impacts; appropriate densities and lot sizes; constraints due to availability of services; easements for roads, trails and utilities; covenants; construction standards; road maintenance; environmental constraints; and other factors that influence the design and potential of the project. In addition, University development projects are subject to all local, state, and federal government regulations including the Alaska Forest Practices Act, water and wastewater regulations, wetlands regulations, Coastal Management Plans, and local zoning and platting ordinances, including all associated public comment and hearing requirements. At this stage, the University also considers opportunities for partnering with either communities or private parties for developments.

Following the feasibility phase, the University will decide whether to drop specific projects, defer them until market conditions improve or constraints are resolved, or proceed with development. Once a preliminary plat is developed, the University must seek approval from the local platting authority prior to finalizing the project. This process includes public meetings held by the local municipality or, if in the Unorganized Borough, by the Department of Natural Resources.

Land Sales

In addition to the Disposal Plan public notice process described above, the University also notifies over 7,000 parties interested in receiving announcements relating to its annual land sale. Properties included in Disposal Plans will typically be offered for sale on a competitive basis (the exception is community interest sales). If no offers are received during the competitive offering, the parcels are offered for sale over-the-counter on a first come, first served basis. Minimum offer prices are established at fair market value. The University offers financing, on approved credit, at competitive interest rates. Sales are closed in-house, with title insurance provided through local title agencies, at the University's expense.

Administrative Protest and Appeal Process

Like the State of Alaska, the University has an Administrative process to address aggrieved parties. This includes the right to protest decisions to another level and to appeal the protested decision to an even higher level/hearing officer. After exhausting the administrative process, a party may file a legal action against the University.

HB

197

Senate Resources **April 18, 2005**

HB197

~~HB 196~~ Materials List

- Sponsor Statement: 1 page
- Talking Points: 1 page
- Sectional Analysis: 2 pages
- Overview Document: 1 page
- House Rules Committee Amendments: 1 page
- 3-22-05 Letter to Rep. Samuels: 3 pages
- Draft Sectional Analysis: 4-5-05: 4 pages
- 3-14-05: AOCGG Letter of Support: 1 page
- 3-11-03: UNICAL Letter of Support: 1 page (note incorrect date of 2003)
- CS HB 197 (RLS): 4 pages
- CS HB 197 (RES): 4 pages
- HB 197: 4 pages
- #1 Fiscal Note: DEC: 3-14-05: 1 page

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REPRESENTATIVE VIC KOHRING
DISTRICT 14

House Bill 197
Sponsor statement

House Bill 197 clarifies the Department of Environmental Conservation's (DEC) authority to exempt gas exploration wells and production facilities from *oil discharge prevention and contingency plans* ("C-Plans"). The legislation also removes the industry's burden of financial responsibility required of wells that do not pose an oil spill threat.

HB 197 fixes the unintended consequences of last year's HB 531. That legislation, in part, limited previous exemptions for gas exploration and production facilities for all shallow natural gas facilities to a narrow exemption for "non conventional gas wells." The problem HB 197 seeks to correct relates to the new definition of "non conventional gas," which HB 531 defined as "coal bed methane, gas contained in shales or gas hydrates."

Benefits of HB 197 include permitting DEC to focus its resources on the review of C-Plans and proof of financial responsibility for those gas exploration facilities that could potentially incur an oil spill. It also gives DEC authority to conduct inspections the Legislature directed when it changed the *contingency plan review renewal requirement* from three to five years. In addition, the bill relieves industry from unnecessary financial costs associated with preparing and implementing oil spill contingency plans for gas exploration facilities where no threat of an oil release spill exists. Lastly, HB 197 relieves industry from the costs involving demonstrating proof of financial responsibility in response to oil spills at gas exploration facilities, where no threat of spills exist.

E-Mail: Representative_Vic_Kohring@legis.state.ak.us • *Toll Free During Session/Year Round: (800) 468-2186*
Website: www.akrepublicans.org/kohring/

HB 197
Talking points

"The SOLE purpose of CS for House Bill No.197 (Rules) is to clarify that oil discharge contingency plans and financial responsibility are NOT required for natural gas wells. If you are drilling *solely for gas*, you are not required to have an *oil spill contingency plan.*

The bill does not otherwise change or exempt any other facilities from existing state requirements to have an oil discharge contingency plan or financial responsibility.

Natural gas wells, production or terminal facilities that may also explore, produce, store or transport oil *are still required to have an oil discharge contingency plan if otherwise required by statute and regulation.*

Under this bill natural gas exploration wells that do not encounter oil are not required to have an oil discharge contingency plan or proof of financial responsibility.

A well drilled to explore for gas would not be required to have an oil discharge contingency plan if the AOGCC determines that evidence demonstrates with reasonable certainty that the well will not penetrate a formation capable of flowing oil to the ground surface.

HB 197 takes the right approach by requiring c-plans only where oil could flow to the ground surface and cause an oil spill.

HB 197 - Sectional Analysis

HB 197 clarifies DEC's authority to exempt natural gas exploration wells that do not pose a threat of an oil spill from the contingency plan and proof of financial responsibility requirements. HB 197corrects an unintended consequence of HB 531, adopted in May 2004, that narrowed of one of the exemptions for natural gas exploration and production facilities from a broad exemption for all shallow natural gas facilities to a narrow exemption for nonconventional gas wells. The 2004 legislation defined "nonconventional gas" as only "coal bed methane, gas contained in shales or gas hydrates."

HB 197 repeals the "nonconventional gas" provisions in AS 46.04.030(b) and AS 46.04.040(b)(3)(A) and replaces them with a broader exemption in AS 46.04.050(c). The new exemption would be for all natural gas exploration wells that the Alaska Oil and Gas Conservation Commission (AOGCC) determines that "evidence demonstrates with reasonable certainty . . . will not penetrate a formation capable of flowing oil to the ground surface."

Section 1. Creates a new authorization in AS 31.05.030(l) for the AOGCC to evaluate the likelihood that a well at a natural gas exploration facility may penetrate a formation capable of flowing oil to the ground surface. If the commission determines that evidence demonstrates with reasonable certainty that a well at a natural gas exploration facility will not penetrate a formation capable of flowing oil to the ground surface, it shall report its determination to DEC. Section 6 repeals the 2004 language authorizing AOGCC to make exception determinations for nonconventional gas wells since that authority is replaced by the new authority in section 1 (AS 31.05.030(l)).

Section 2. Repeals the existing c-plan exemption for nonconventional gas wells and replaces it with a broader exemption in section 5 by creating a new subsection (c) in AS 46.04.050 (exemptions).

Section 3. Repeals the $25,000 financial responsibility requirement for nonconventional gas onshore exploration facilities. Natural gas facilities would only be required to have financial responsibility under AS 46.04.040 if the wells could penetrate a formation capable of flowing oil to the surface. At which point, they would be required to have $1 million in financial responsibility as an onshore oil exploration facility.

Section 4. Clarifies the existing exemption for "natural gas production facilities" and "natural gas terminal facilities." Makes clear that the exemption is not lost unless the facility produces, stores or transports natural gas in combination with crude oil or the facility would qualify as

Form ! DFC

an oil terminal facility with storage capacity above 5,000 barrels of crude oil or 10,000 barrels of noncrude oil.

Section 5. A new subsection to the c-plan and financial responsibility exemptions would exempt a natural gas exploration facility if the AOGCC determines under AS 31.05.030(l) that evidence obtained through evaluation demonstrates with reasonable certainty that all of the exploration wells at the facility will not penetrate a formation capable of flowing oil to the ground surface. If the AOGCC cannot make that determination for all of the wells at the exploration facility, the facility would not be exempted. Similarly, if the drilling of a well does penetrate such a formation a c-plan and financial responsibility would be required.

A new subsection (c) is added to define the term "natural gas exploration facility" with similar exceptions to the exemption if the facility explores, produces, stores or transports natural gas in combination with crude oil or if it qualifies as a regulated oil terminal facility.

Section 6. Repeals the AOGCC nonconventional gas finding provision that is replaced by new AS 31.05.030(l) and removes the definition of nonconventional gas from AS 46.04.900 since it is no longer used in Chapter 4 of Title 46.

OVERVIEW DOCUMENT
Natural Gas Facility Exemption from DEC Contingency Plan Requirements

This bill clarifies DEC's authority to exempt natural gas exploration wells – that do not pose a threat of an oil spill – from contingency plan and proof of financial responsibility requirements. It corrects an unintended consequence of HB 531, which passed the Legislature in May, 2004. That bill, in part, narrowed the scope of an exemption (for natural gas exploration and production facilities) from the preexisting broad exemption for all shallow natural gas facilities, to a narrow exemption for 'nonconventional gas' wells. The problem stems from the HB 531 definition of 'nonconventional gas' as strictly, "coal bed methane, gas contained in shales or gas hydrates."

Benefits of the Legislation.

- Allows DEC to focus its resources on the review of c-plans and proof of financial responsibility for those natural gas exploration facilities that could potentially threaten the environment with oil spills; and

- Ensures that DEC can conduct the additional inspections and drills that the Legislature envisioned would be performed when it changed the contingency plan review renewal requirement from three to five years;

- Relieves industry from the unnecessary financial costs and schedule impacts of preparing and implementing oil spill contingency plans for natural gas exploration facilities where there is not a threat of an oil release from the well; and

- Relieves industry from the unnecessary cost of demonstrating proof of financial responsibility (i.e. insurance, bonds or letters of credit) to respond to oil spills at natural gas exploration facilities where there is not a threat of an oil release from the well.

The "fix" proposed through this bill repeals the "nonconventional gas" provisions in applicable DEC contingency plan and financial responsibility statutes -- AS 46.04.030(b) and .040(b)(3)(A) -- and replaces them with broader exemption language restated in AS 46.04.050(c) for those natural gas exploration wells that the AOGCC determines the evidence "demonstrates with reasonable certainty . . . will not penetrate a formation capable of flowing oil to the ground surface."

DEC has used its existing authority in AS 46.04.050(b) for natural gas *production* wells to exempt natural gas *exploration* wells where there is sufficient geological information to determine that the wells will not penetrate a formation capable of flowing oil to the surface. In consultation with AOGCC, DEC has determined such wells to be natural gas production facilities under .050(b) even if sufficient information is unavailable to quantify their commercial potential as development wells. This bill would clarify DEC's existing exemption authority in AS 46.04.050(b) by exempting all natural gas exploration wells that are not capable of causing an oil spill from the c-plan and financial responsibility requirements. Sec. 5.

RULES COMMITTEE CORRECTIONS TO HB 197(RES)
CONCERNING C-PLAN EXEMPTIONS FOR NATURAL GAS
EXPLORATION WELLS

- HB 197 was intended to exempt gas facilities from c-plan requirements if they were natural gas only facilities and were not otherwise required to have an oil spill contingency plan because they also explore for, produce, store or transport natural gas in combination with oil.

- The Amendment in Resources was apparently directed at making sure refineries, bulk fuel facilities, and refined product pipelines are still required to have a c-plan. That concern was already covered by HB 197 which omits "oil terminal facilities" from the natural gas facility exemptions. Refineries, bulk fuel farms, and refined product pipelines attached to those facilities are all "oil terminal facilities." HB 197 does not change c-plan coverage for those facilities.

- In order to simplify the bill and clarify these points, the Rules Committee CS would define a

  Natural gas exploration facility as :

  "a platform, facility or structure that, except for the storage of refined petroleum products in a quantity not exceeding 10,000 barrels, is used solely for the exploration for natural gas."

  Natural gas production or terminal facility as a:

  "a platform, facility or structure that, except for the storage of refined petroleum products in a quantity not exceeding 10,000 barrels, is used solely for the production, compression, storage, or transport of natural gas."

- The Rules CS addresses the concerns raised in the Resources Committee by clarifying that natural gas production or terminal facilities that may also explore, produce, store or transport oil are still required to have an oil spill contingency plan if otherwise required by regulation.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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March 22, 2005

Representative Ralph Samuels
House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: HB 197

Dear Co-Chairman Samuels:

You asked that the Attorney General's Office provide a response to a question raised by Representative Seaton in the March 21, 2005, House Resources Committee Hearing on HB 197. Representative Seaton asked a question concerning the definitions of "oil", "crude oil" and "natural gas" in sections 4 and 5 of the bill. Because the legislative teleconference system went offline, I was unable to respond to the Representative Seaton's question. I appreciate this opportunity to explain these provisions of the bill.

The existing provisions in AS 46.04.050 provide two exemptions to the oil discharge prevention and contingency plan (C-plan) (AS 46.04.030) and financial responsibility (AS 46.04.040) requirements. The first exemption is for "oil terminal facilities" with an oil storage capacity of less than 5,000 barrels of crude oil or less than 10,000 barrels of noncrude oil. The second exemption is for natural gas production and terminal facilities. In addition, there is a C-plan exemption for natural gas exploration and production facilities in AS 46.04.030(a) that, prior to HB 531 applied to shallow natural gas facilities, and now, applies to "nonconventional gas" which is defined as "coal bed methane, gas contained in shales or gas hydrates." AS 38.05.965.

Representative Seaton's question involves the exemptions in AS 46.04.050 which provides as follows:

> Sec. 46.04.050. Exemptions.
>
> (a) The provisions of AS 46.04.030, 46.04.040, and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 5,000 barrels of crude oil or less than 10,000 barrels of noncrude oil.

(b) The provisions of AS 46.04.030 and 46.04.040 do not apply to a natural gas production facility and a natural gas terminal facility; for purposes of this subsection the terms "natural gas production facility" and "natural gas terminal facility"

(1) mean a platform, facility, or structure that is used solely for the production, compression, storage, or transport of natural gas;

(2) do not include a platform, facility, or structure that produces, stores, or transports natural gas in combination with oil.

Subsection (b) exempts natural gas production and terminal facilities. Subsection (b) defines those facilities as "a platform, facility, or structure that is used solely for the production, compression, storage, or transport of natural gas" but as not including a platform, facility, or structure that produces, stores, or transports natural gas in combination with oil. AS 46.04.050(b)(2) (emphasis added).

Sections 4 and 5 of HB 197 make two clarifications to the exemption. First, section 5 moves the natural gas exploration and production facility exemption in AS 46.04.030(b) to a new subsection (c) in AS 46.04.050. Second, sections 4 and 5 clarify what is meant by the "exclusion" to the exemption for facilities that handle natural gas "in combination with oil." AS 46.04.050(b)(2). It is important to note that oil is defined very broadly in AS 46.04.900(13): as "oil of any kind and in any form, whether crude, refined, or a petroleum by-product, including but not limited to petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquified natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity."

Sections 4 and 5 attempt to resolve any ambiguity in these provisions by defining "in combination with oil" as a facility that stores, produces, explores for, or transports natural gas in combination with crude oil and that crude oil does not include natural gas. New subparagraph (ii) addresses a natural gas exploration or production facility that stores refined petroleum products by providing that it would only need a C-plan or financial responsibility if it stores refined petroleum products in volumes exceeding those in AS 46.04.050(a) (10,000 barrels of noncrude oil). This reflects the Department of Environmental Conservation's interpretation of those provisions since the exemption in AS 46.04.050 was amended in 1992 to address natural gas facilities.

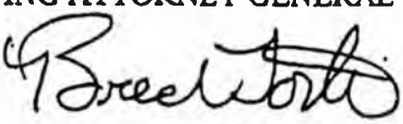
In sum, the definitions in sections 4 and 5 are attempts to clarify the current application of these requirements in light of the existing statutory definitions in AS 46.04.900. As a result, it is not necessary to amend sections 4 and 5 of the bill.

It is also worth noting that -- like any other facility in the state -- a facility exempted from the C-plan requirements must still immediately contain and cleanup oil spills as required by AS 46.04.020 and is strictly liable for the costs and damages from a spill under AS 46.03.822.

I hope that this responds to the question raised by Representative Seaton. If I can provide additional assistance, please let me know.

Sincerely,

SCOTT J. NORDSTRAND
ACTING ATTORNEY GENERAL

By: 

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MEMORANDUM April 5, 2005

SUBJECT: Draft CSHB 197 ( ) -- sectional analysis
(Work Order No. 24-LS0664\Y)

TO: Representative Vic [illegible]

FROM: Jack Chenoweth
Assistant Revisor

The bill draft revises various statutes setting parameters for oil discharge prevention and contingency planning and proof of financial responsibility for natural gas exploration and production facilities. It also spells out in greater detail the role assigned in current law to the Alaska Oil and Gas Conservation Commission in determining whether a facility may be exempt from the oil discharge prevention and contingency planning and proof of financial responsibility requirements.

*

OIL DISCHARGE PREVENTION AND CONTINGENCY PLANNING --

Under current AS 46.04.030(b), "[a] person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless an oil discharge prevention and contingency plan for the pipeline or facility has been approved by the department and the person is in compliance with the plan." The language of the subsection goes on to set out an exemption for a facility that is "used solely to explore for or to develop or produce *nonconventional* natural gas resources," that is, to explore for and develop gas resources from coal bed methane, gas contained in shales, and gas hydrates. However, under current law, this nonconventional gas exemption does not apply if the Alaska Oil and Gas Conservation Commission determines that a well drilled for nonconventional gas may penetrate a formation capable of flowing oil and the volume of oil encountered will be of such quantities that a contingency plan will be required.

The amendment made by the draft's **bill section 2** eliminates the exemption and the exception to the exemption that appear in existing AS 46.04.030(b). A revised and expanded exemption covering recovery of natural gas without regard to source is set out in the new language of AS 46.04.050(c), added by **bill section 5**.

*

PROOF OF FINANCIAL RESPONSIBILITY --

Under AS 46.04.040(b), "[a] person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages." The subsection goes on to set the proof of financial responsibility that must be demonstrated. For onshore facilities concerned with natural gas recovery, AS 46.04.040(b)(3) draws a distinction between *nonconventional* gas exploration -- the proof required is set at $25,000 per incident -- and gas exploration from *other than nonconventional* gas sources -- the proof required is set at $1,000,000 per incident.

The amendment proposed by **bill section 3** eliminates the distinction and extends the $1,000,000 per incident standard to cover onshore facilities concerned with natural gas recovery from nonconventional gas sources. However, under the language added as AS 46.04.050(c) by bill section 5, certain natural gas exploration facilities may be exempt from proof of financial responsibility requirements.

*

REVISION OF THE OIL DISCHARGE PREVENTION AND CONTINGENCY PLANNING AND PROOF OF FINANCIAL RESPONSIBILITY EXEMPTIONS FOR CERTAIN NATURAL GAS *PRODUCTION* AND *TERMINAL* FACILITIES --

Existing AS 46.04.050 sets out several exemptions from the oil discharge prevention and contingency planning and proof of financial responsibility requirements of AS 46.04.030 and 46.04.040. AS 46.04.050(b) currently exempts "a natural gas production facility and a natural gas terminal facility." The subsection supplies definitions for those terms, limiting them to "a platform, facility, or structure that is used solely for the production, compression, storage, or transport of natural gas," and making the exemption inoperable if "a platform, facility, or structure . . . produces, stores, or transports natural gas in combination with oil."

The amendments proposed in **bill section 4** modify the language of AS 46.04.050(b) so that the exemption would operate as to a [natural gas production or terminal] platform, facility, or structure that "is used solely for production, compression, storage, or transport[ation] of natural gas." With the amendment, the facility would be permitted to store a reasonable quantity of refined petroleum products on site without foregoing the exemption.

*

APPLICATION OF THE OIL DISCHARGE PREVENTION AND CONTINGENCY PLANNING AND PROOF OF FINANCIAL RESPONSIBILITY EXEMPTIONS FOR CERTAIN NATURAL GAS *EXPLORATION* FACILITIES --

Bill section 5 is the bill's key provision. It is included by way of a replacement and expansion of the exemption described earlier in the material deleted by the amendment to AS 46.04.030(b) made in bill section 2. The amendment carries forward the idea, now applicable only to natural gas exploration facilities used to explore for nonconventional gas, that these facilities are to be exempt from the oil discharge prevention and contingency planning and proof of financial responsibility requirements of AS 46.04 unless the Alaska Oil and Gas Conservation Commission determines that there is a reasonable probability that the gas well "will not penetrate a formation capable of flowing oil to the ground surface." As the exemption is proposed to be revised and set out in bill section 5, it applies broadly to all gas exploration facilities -- not just those concerned with recovery of natural gas from nonconventional sources -- and supplies a definition for "natural gas exploration facility" that follows distinctions drawn in AS 46.04.050(b) that I discuss in the preceding paragraph of this memo.

*

RESPONSIBILITIES OF THE ALASKA OIL AND GAS CONSERVATION COMMISSION --

The material added by bill section 5 refers to an obligation of the AOGCC to make a determination as to activities involving operation of a natural gas exploration facility. The AOGCC's duties are more specifically spelled out in the material added by **bill section 1**. The material added appears unexceptional and largely replaces the material proposed to be deleted in the amended language set out in bill section 2 and in the material in AS 31.05.030(j)(2)(C), shown in the repealer.

*

REPEALERS --

The provisions proposed for repeal in **bill section 6** include AS 31.05.030(j)(2)(C). This subparagraph currently addresses the duties of the Alaska Oil and Gas Conservation Commission:

> (j) For exploration and development operations involving nonconventional gas, the [Alaska Oil and Gas Conservation] commission
>
> . . .
>
> (2) shall
>
> . . .
>
> (C) for the purposes of AS 46.04.030(b), determine whether a well drilled for nonconventional gas may penetrate a formation capable for flowing oil and, if so, whether the volume of oil encountered will be of such quantities that an oil discharge prevention and contingency plan will be required; . . . .

These concepts appear in material added by bill sections 1 and 5, so their retention here is not warranted.

Proposed also for repeal is AS 46.04.900(10), the definition of "nonconventional gas." With the other changes proposed in the measure, the distinction that limits application of certain current provisions to facilities concerned with recovery of gas from "nonconventional" sources is replaced by material that applies to all natural gas recovery. The definition thus becomes obsolete and can be omitted.

*

Bill section 7 gives the measure an immediate effective date.

JBC:lmb
05-106.lmb

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

ALASKA OIL AND GAS CONSERVATION COMMISSION

333 W. 7th AVENUE, SUITE 100
ANCHORAGE, ALASKA 99501-3539
PHONE (907) 279-1433
FAX (907) 276-7542

March 14, 2005

The Honorable Victor Kohring
Chair, House Special Committee on Oil and Gas
State Capitol
Juneau, Alaska 99801

MAR 16 2005

Re: Letter of Support Concerning House Bill No. 197

Dear Representative Kohring:

The Alaska Oil and Gas Conservation Commission ("Commission") supports House Bill No. 197 ("HB 197"), which amends the laws regarding oil discharge prevention and contingency plans and proof of financial responsibility ("C-plans") to allow better use of geologic information and understanding in determining the need for such plans.

Under current law, a C-plan is required for wells drilled to explore for or produce oil. On the other hand, a C-plan is not required for wells drilled to produce only gas. The treatment of wells drilled to *explore* for gas has a complicated history. Previously, wells drilled for shallow gas were exempted from the C-plan requirement. In 2004, however, HB 531 changed the language from "shallow" gas to "nonconventional" gas. In practical terms, this means that wells drilled to explore for coalbed methane qualify for exemption, but wells drilled to explore for other shallow gas are generally not entitled to exemption. In the Commission's view, there is a mismatch between the current scope of the C-plan exemption and the facts of Alaska's geology.

What the Commission has learned over the years is that drilling in many areas of the state poses essentially no risk of an oil spill. These areas have thick geologic sections containing both conventional and nonconventionaal gas reservoirs, but have very little potential for the existence of zones capable of flowing liquid hydrocarbons. Requiring a C-plan for wells drilled in these circumstances adds cost and delay to gas exploration without providing increased protection to the environment..

HB 197 corrects the inadequacies in current law by providing for a case-by-case geological evaluation of wells drilled to explore for gas – whether shallow or deep, nonconventional or conventional. Under this bill, a well drilled to explore for gas would qualify for a C-plan exemption if, but only if, the Commission determines that evidence demonstrates with reasonable certainty that the well will not penetrate a formation capable of flowing oil to the ground surface. The approach of HB 197 is to base C-plan exemption decisions on application of the Commission's geologic expertise to the specific facts of a proposed exploration project. The Commission believes this is exactly the right approach.

Thank you for your attention.

Sincerely,

Daniel T. Seamount, Jr.
Commissioner

Unocal Alaska
Union Oil Company of California
909 West 9th Avenue, P.O. Box 196247
Anchorage, Alaska 99519-6247
Telephone (907) 276-7600
Fax (907) 263-7698

UNOCAL

Kevin A. Tabler, Manager
Land/Government Affairs

March 11, 2003

Representative Vic Kohring
State of Alaska Legislature
Room 24, State Capitol
Juneau, Alaska 99801-1182

Re: Support for HB197

Representative Kohring:

Union Oil Company of California was delighted to see the introduction of HB 197 to clean up the effect of HB531 (2003 legislation) which created the unintended consequence of elimination of the exemption for oil spill contingency plans for exploration and production facilities used solely to explore, develop or produce shallow natural gas. Our review of the proposed legislation concludes that HB 197 clears up the unintentional change caused by implementation of HB 531 and supports your efforts.

Thank you for taking the initiative to fix this problem.

Sincerely,

Kevin A. Tabler

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 197
(H) Publish Date: 3/16/05

Revision Date/Time (Note if correction):
Dept. Affected: Environmental Conservation

Title: Related to oil discharge prevention and contingency plans for certain natural gas exploration facilities
RDU: Spill Prevention and Response
Component: Industry Preparedness and Pipeline Operations
Sponsor: House Oil & Gas Committee
Requester: House Oil & Gas Committee
Component No.: 1922

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	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 (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

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)*

This bill will not have a financial impact on the department. It clarifies DEC's authority to exempt natural gas exploration wells (that do not pose a threat of an oil spill) from contingency plan and proof of financial responsibility requirements. It corrects an unintended consequence of HB531 passed in May, 2004, which, in part, narrowed the scope of that exemption from the pre-existing broad exemption for all shallow natural gas facilities, to a narrower exemption for "nonconventional gas" wells, defined as strictly "coal bed" methane, gas contained in shales or gas hydrates". This bill repeals the "nonconventional gas" definition in applicable DEC contingency plan statutes AS 46.04.030(b) and 040(b)(3)(A) and replaces it with broader exemption language restated in AS 46.04.050(c) "for those natural gas exploration wells the AOGCC determines will not penetrate a formation capable of flowing oil to the ground surface."

Prepared by: Larry Dietrick, Director
Phone: 465-5250
Division: Spill Prevention and Response
Date/Time: 3/14/05 3:43 PM
Approved by: Kurt Fredriksson, Acting Commissioner
Date:
Agency: Department of Environmental Conservation

ALASKA STATE LEGISLATURE

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Fax (907) 465-3818

REPRESENTATIVE VIC KOHRING
DISTRICT 14

Memorandum

April 12, 2005

To: Senator Tom Wagoner
Chair Senate Resource

From: Vic Kohring VK

Re: Hearing request for HB 197

I respectfully request a Hearing in Senate Resources for HB 197, An Act exempting certain natural gas exploration and production facilities from oil discharge prevention and contingency plans and proof of financial responsibility, and amending the powers and duties of the Alaska Oil and Gas Conservation Commission with respect to those plans and providing for an effective date." as soon as possible.

Attached you will find the sponsor statement, a copy of the legislation, the recently issued legislative audit summary and support letters.

If you have any questions, please do not hesitate to contact me, of my aide Charisse Millett ext. 4899.

Thank you for your consideration.

E-Mail: Representative_Vic_Kohring@legis.state.ak.us • *Toll Free During Session/Year Round: (800) 468-2186*
Website: www.akrepublicans.org/kohring/

HB

198

ALASKA STATE LEGISLATURE

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REPRESENTATIVE JIM ELKINS

Sponsor Statement for HB 198
Dive Fishery Management Assessment

"An Act relating to aquatic farming; and providing for an effective date."

House Bill 198 amends the state's Aquatic Farming Act (AS 16.40.100 – 199) to allow aquatic farms to continue to operate in compliance with a recent Supreme Court decision.

In mid-April, the State Supreme Court ruled that the Act requires the Department of Fish and Game to deny shellfish farmers exclusive rights to significant populations of wild geoducks on their proposed farm sites. Since then, the Southeast Alaska Regional Dive Fisheries Association (SARDFA), the Alaskan Shellfish Growers Association (ASGA) and the Department have negotiated an agreement that would allow these farmers to harvest "insignificant" populations of standing stocks of geoducks. In order to be implemented, this agreement would require a change in statute. Section 1 of HB 198 amends the Aquatic Farming Act to allow shellfish farmers to own, harvest and sell "insignificant populations" of wild shellfish stocks on their aquatic farm sites.

On February 11, 2005, the Department of Fish and Game announced that it will conduct a commercial dive fishery on designated mariculture sites, to remove the commercially significant population of wild geoducks from these small areas. This fishery will be open to all commercial divers in Southeast Alaska. Section 2 of HB 198 makes it clear that the aquatic farmers will not have to replace the shellfish that are harvested in this common property fishery.

Section 3 gives the Department the authority, when it determines it would be beneficial to do so, to let shellfish farmers remove all but an "insignificant population" of wild stock from their sites themselves and give the proceeds from their sale to ADF&G. Section 4 codifies the requirement that proposed farm sites can only get permits if there is an "insignificant population" of the shellfish species to be cultured there, and Section 7 says that this section applies only to permits issued after July 1, 2005.

This legislation, the product of industry members and the administration working to find a compromise, will help ensure the future of this new fishery in Southern Southeast Alaska for years to come and I urge the members support.

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REPRESENTATIVE JIM ELKINS

Sectional Analysis

Section 1 - Amends AS 16.40.100(b) to provide that an aquatic farm permit authorizes the permit holder to acquire ownership of, harvest, and sell wild shellfish from an aquatic farm site if the wild shellfish is present in an "insignificant population" and the wild shellfish is of the same species of shellfish that is intended to be cultured at the site.

Section 2 - Amends AS 16.40.100(e) to provide a limited exception from the requirement that an aquatic farm permit holder restore wild shellfish populations to the levels that existed on the site at the time that the permit was initially issued, so that the permit holder is not required to restore that portion of a wild shellfish population that was removed from the site by a common property fishery.

Section 3 - Amends AS 16.40.100 by adding a new subsection (f) to authorize the commissioner of fish and game to allow an aquatic farm permit holder, under certain circumstances, to remove and sell excess wild shellfish from an aquatic farm site if the population of the wild shellfish species is more than an insignificant population. The permit holder will pay a reasonable amount to the Department of Fish and Game for the harvest and sale of the excess wild shellfish. The money received will be deposited in the General Fund and may be appropriated to the department for shellfish management and enhancement.

Section 4 - Amends AS 16.40.105 by adding a new paragraph to provide that, in addition to the existing criteria for issuance of an aquatic farm permit, the commissioner of fish and game may not issue a permit for a proposed farm site if the site contains more than an insignificant population of wild stock of a shellfish species intended to be cultured on the site.

Section 5 - Adds a new Section AS 16.40.155 to provide, in certain circumstances, confidentiality for aquatic farm and hatchery permit holders.

Section 6 - Adds the definition of "insignificant population" in regards to shellfish populations.

Section 7 - Provides that AS. 16.40.105, as amended by section 4 of the bill, does not apply to aquatic farm permits before the effective dates of the bill.

Section 8 - Provides for an effective date of July 1, 2005.

UNITED FISHERMEN OF ALASKA

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(907) 463-2545 Fax
E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

March 16, 2005

Representative Bill Thomas Co-Chair
Special Committee on Fisheries
Alaska State Legislature
State Capitol (Mail Stop 3100)
Juneau, AK 99801-1182

RE: Support for HB 198

Dear Representative Bill Thomas,

I am writing on behalf of the United Fishermen of Alaska (UFA) to support HB 198 & SB 126, companion bills re' ted to aquatic farming. UFA is a...

HB 198 / SB 126 will do three things. First, this legislation will give the department the statutory authority to allow aquatic farmers to harvest insignificant wild stocks on sites. Second, this legislation is will end confusion for farmers, the department, and the courts regarding approval or denial of future farm applications. Third, this legislation will deal with the mess leftover by inconsistent decisions for various reasons regarding the current 20-30 geoduck farm permits.

Thank you for your consideration, and for bringing interest groups together to support legislation that will benefit the state as a whole.

Respectfully,

Bob Thorstenson, Jr.
President

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Draggers Association • Alaska Longline Fishermen's Association • Armstrong Keta • At-sea Processors Association
Bristol Bay Reserve • Concerned Area "M" Fishermen • Cordova District Fishermen United • Douglas Island Pink and Chum
Fishing Vessel Owners Association • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
North Pacific Fisheries Association • North Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation
Purse Seine Vessel Owner Association • Seafood Producers Cooperative • Southeast Alaska Herring Seiners Marketing Association
Southeast Alaska Fisherman's Alliance •Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association
Southern Southeast Regional Aquaculture Association • United Catcher Boats • United Salmon Association • United Southeast Alaska Gillnetters
Valdez Fisheries Development Association • Western Gulf of Alaska Fishermen

Southeast Alaska Regional Dive Fisheries Association

Mission Statement: To develop, expand, and enhance new and existing dive fisheries in Southeast Alaska.

Julie Decker, Executive Director
Box 2138, Wrangell, AK 99929
Ph: 907-874-3110; Fax: 907-874-4270
info@sardfa.org
www.sardfa.org

Co-Chairs of the House Fisheries Committee
Representative Gabrielle LeDoux
Representative Bill Thomas

March 16, 2005

RE: Support for HB 198 / SB 126 – Aquatic Farming

Dear Representatives LeDoux and Thomas,

I am writing on behalf of the Southeast Alaska Regional Dive Fisheries Association (SARDFA) to support HB 198 / SB 126, companion bills related to aquatic farming. SARDFA is a non-profit, economic development corporation whose mission is to develop, expand and enhance new and existing dive fisheries in Southeast Alaska. SARDFA's Board of Directors represents the commercial harvest divers, processors, and communities of Southeast. Currently, three dive fisheries exist in Southeast: sea urchins (80 permit holders), sea cucumbers (330 permit holders), and geoducks (80 permit holders).

Over the past six years, there has been a deep controversy over which group has the right to harvest the wild stocks of geoducks on farm sites: farmers or fishermen. Judge Thompson ruled that insignificant wild geoducks could be taken by farmers, and significant stocks, or those that would "attract and support a dive fishery", could be taken by the common property dive fishery.

Last April, the Alaska Supreme Court upheld the Thompson ruling, but further stated "the department lacked statutory authority to give aquatic farmers exclusive rights to the existing wild stocks". Since then, ***SARDFA has worked with the State and the farmers to compromise on an acceptable implementation of the Courts' rulings. HB 198 / SB 126 are the result of that work.***

HB 198 / SB 126 are necessary for three reasons. First, this legislation will give the department the statutory authority to allow aquatic farmers to harvest insignificant wild stocks on sites. Second, this legislation will end confusion for farmers, the department, and the courts regarding approval or denial of future farm applications. Third, this legislation will deal with the mess leftover by inconsistent decisions regarding the siting

of the current 20-30 geoduck farm permits by allowing farmers who have already planted on sites, which may contain more than an insignificant amount of wild stocks, to harvest those stocks and pay "reasonable compensation" to the state as a levy.

SARDFA understands the farmers also support this legislation, but would like to see the bill amended to specify the amount of "reasonable compensation" (Section 3, line 19). SARDFA does not believe it is necessary to set this "reasonable compensation", or levy, in statute. As the Department of Law has explained it, the State is approaching the development of this particular resource in a completely new way with this levy and SARDFA believes it would be more practical to allow flexibility to the Department of Fish and Game (ADF&G) to set the levy in regulations.

However, if the Legislature believes it is necessary to fix the levy in statute, ***SARDFA strongly encourages the Legislature to set the levy as high as possible.*** SARDFA believes the higher the levy is, the smaller the net profit to the farmer will be, and consequently the less incentive there will be to the farmer to poach wild geoducks from off of farm sites. Poaching of geoducks by licensed farms in remote areas of Alaska is a serious concern for SARDFA. Geoduck poaching has been a big problem for the State of WA, as a quick search on the Google web site will show you. Proper enforcement of farm site boundaries relative to the harvest of wild stock is highly unlikely for farmers operating 365 days per year. In other words, what's to stop a farmer from sliding down the beach a half mile from his farm site to harvest wild geoducks, making a substantial profit?

The Alaska Shellfish Growers' Association (ASGA) agreed to a compromise with SARDFA last spring. Part of that compromise states: "In the event a site contains more than 12,000 pounds (of geoducks), the farmers would be allowed to harvest everything, but the net proceeds from anything over the cap (12,000) would go to the state's general fund. In other words, the farmer would be allowed to harvest and sell the 'overages', but would be required to give any sales proceeds over direct harvesting, transporting and processing expenses to the general fund" (see attached compromise). Although this agreement does not state the exact rate of levy, the essence of the agreement is that there should be ***no net profit*** by farmers on wild stocks that are considered significant, or common property resource.

Farmers have suggested setting the levy at 30% of the average ex-vessel value (or price paid to fishermen) during the most recent commercial fishery. However, farmers are not fishermen. Farmers are a combination of fishermen and processors, and will receive a price similar to the first wholesale value that processors in the geoduck fishery receive. Therefore, if the levy is based on the ex-vessel value, the rate should be higher to reflect the difference between the values.

In comparison, the last geoduck auction held by the State of Washington (WA) on January 6, 2005, saw high bidders pay the State of WA an average of $6.61 per pound for the right to harvest wild geoducks. If an average first wholesale value for live geoducks was approximately $8 per pound, the "compensation" paid to the State of WA for wild geoducks would be 82.6% of the first wholesale value. SARDFA recommends setting the levy at 80% of the average ex-vessel value of the most recent commercial

fishery, which is one step below the wholesale value and would properly allow for fluctuations in the market.

The most important concept to remember when discussing the rate of levy is that a higher rate will give less incentive to farmers to poach geoducks.

Thank you for your time and consideration. SARDFA supports passage of this bill in its current form.

Sincerely,

Members of:
Southeast Conference
United Fishermen of Alaska
Pacific Coast Shellfish Growers' Assoc.
Interstate Shellfish Sanitation Conference

Julie Decker, Executive Director

Cc: Senator Bert Stedman
Representative Jim Elkins
Alan Austerman, Governor's Fisheries Policy Advisor
Tim Barry, Aid to Senator Stedman
Jim Van Horn, Chief of Staff, Rep. Elkins
David Bedford, Deputy Commissioner, ADF&G
Sarah Gilbertson, Legislative Liaison, ADF&G
Rodger Painter, Vice-President, ASGA
Mark Vinsel, Executive Director, UFA
Bobby Thorstenson, President, UFA
Board of Directors, SARDFA

Alaskan Shellfish Growers ASSOCIATION

March 15, 2005

Representative Jim Elkins
Room 416
State Capitol
Juneau, AK 99801

Dear Representative Elkins:

This letter is to provide a strong endorsement of House Bill 198 and your efforts to seek resolution of the long-standing controversy over the citing of geoduck clam farms in Alaska.

The Alaskan Shellfish Growers Association (ASGA) has been trying to resolve this bitter controversy for the past eight years as it spilled over into the court system, halls of the Capitol and front pages of local newspapers. The industry, state regulators, policymakers, commercial fishermen and the court system have invested innumerable hours wrestling with the difficult issues involved, and we're delighted at the opportunity to put the issue to bed.

Since a decision by the Alaska Supreme Court last spring, ASGA has been working closely with commercial fishermen and the Murkowski Administration to fashion a compromise acceptable to all parties. The result of this cooperative work is HB 198, which has support from farmers, commercial fishermen, Departments of Fish and Game and Law, and Governor Frank Murkowski. While there are many issues upon which we'll continue to disagree, we all support the concepts contained in HB198.

The Department of Law has determined that the legislation does adequately address the issues raise by the Alaska Supreme Court in its 2004 decision. Some of the details wisely are left to be fleshed out in regulation, but ASGA thinks there is one more issue that is best decided by the legislature: the amount of compensation a farmer should pay for harvest of "standing stocks" of wild geoduck clams on the farmsite.

The new section HB 198 adds to AS 16.40.100 is designed to allow farmers to remove "standing stocks" from the farmsite, and provides that the farmer must pay "reasonable compensation" for any "excess wild stock." While we think it is appropriate that harvest of these "excess wild stocks" would result in a tax on the farmer, ASGA believes the amount of "fair compensation" is a legislative prerogative and not a decision to be made by fisheries managers.

We are preparing a proposed amendment to set an extraction tax rate on harvests of "excess wild stocks" of geoduck clams at 30 percent of the price paid fishermen during the most recent commercial fishery. This tax would be added to the Fisheries Business Tax rate of three percent paid by other harvesters. This combined tax rate would exceed the amount the state collects on Prudhoe Bay oil, including severance taxes, royalties and corporate income tax, and is several times higher than the amount paid by other

Rodger Painter • P.O. Box 20704 Juneau, AK 99802-0704 • Phone: (907) 463-3600
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harvesters.

Important to keep in mind is that the tax would affect only those situations where fisheries managers misjudged the amount of standing stocks on new farmsites and that new survey techniques supported by fishermen and farmers would help improve significantly the accuracy of these estimates.

Thank you for this opportunity to resolve this long-standing controversy. The major parties in this dispute are fully committed to setting aside past differences and working together on economic development strategies for Southeast Alaska.

Rodger Painter
Vice President

c.c. Julie Decker, SARDFA
Alan Austerman
David Bedford
ASGA Board of Directors

HB

218

UNITED FISHERMEN OF ALASKA

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April 3, 2006

Senator Tom Wagoner, Chairman
Senate Resources Committee
Alaska State Legislature
State Capitol (Mail Stop 3100)
Juneau, AK 99801-1182

Dear Senator Wagoner:

The United Fishermen of Alaska (UFA) Board of Directors have heard concerns from some hatchery operators regarding HB 218 as it was introduced last year, and we have worked with the sponsor for changes to reflect and address those concerns.
UFA supports passage of House Bill 218 relating to potential reductions in hatchery cost recovery fisheries and resulting increases in common property fisheries to be accompanied by a voluntary assessment/landing tax collected by the Department of Revenue. The basis for UFA support is three-fold:

1. First and foremost, HB 218 is permissive. That is, the hatchery and its Board of Director must elect to harvest surplus salmon through the common property fishery. Similarly, commercial fishermen are under no obligation to participate in the common property fishery and pay the additional landing tax.

2. HB 218 does not in any meaningful manner disrupt hatchery finances or in any way impinge upon the hatchery's fiduciary duties. The additional landing tax will generate the same level of net revenue now generated by the cost recovery fishery. The tax rate will be adjusted annually to ensure that the tax reflects the reasonable financial needs of the hatchery.

3. HB 218 is a first step toward reducing the direct sale of salmon by hatcheries. UFA does not oppose hatchery sales and in fact has a number of member hatcheries, including NSRAA and PWSAC. However, UFA does maintain that whenever possible, commercial salmon fishermen must have maximum opportunity to harvest and sell salmon produced at hatcheries or in the wild.

If you have any further questions regarding UFA's support of HB 218, please do not hesitate to contact me.

Respectfully

Mark D. Vinsel
Executive Director

Mary Jackson

From: Sen. Tom Wagoner
Sent: Monday, May 09, 2005 8:22 AM
To: Mary Jackson
Subject: FW: Hatchery Cost Recovery

-----Original Message-----
From: ssiterry@oz.net [mailto:ssiterry@oz.net]
Sent: Monday, May 09, 2005 7:33 AM
To: Sen. Tom Wagoner
Subject: Hatchery Cost Recovery

Email For: Senator Tom Wagoner
From: ssiterry@oz.net
Name: Terry Bertoson
Street: 1900 W. Nickerson St. #205
City: Seattle, WA
Zip Code: 98119

Subject: Hatchery Cost Recovery

Dear Senator Wagoner,

My name is Terry Bertoson and I am the owner of Sea Hawk Seafoods located in Valdez, Alaska.

Bob Thorstenson gave me your name so that I could contact you and inform you of the severe problems that have developed in Prince William Sound as a result of the current manner that the salmon hatcheries are obtaining their cost recovery funding.

As the price of salmon has dropped the hatcheries have been forced to take a larger share of the returning fish. Some years as much as 60%. Inturn, factory processors from the Bering Sea have seen this as an opportunity to take advantage of their AFA privileges.

Using the ships that are supported by polock allocations, they have been able to turn the hatcheries into their own private fish traps of old.

This year, these ships will be taking 23 million lbs of the 25 million lbs of pink salmon PWSAC will need for their cost recovery requirements.

Because this privileged group is able to out bid the local shore processors, the local buyers raw product source is reduced to 40 to 50% of what it would be otherwise. To make up for this shortfall in volume and cover their overhead, their only option is to lower the price paid to the fishermen.

This is why you see the increasing gap between the hatchery $.20/lb pink prices and the $.10/lb paid to fishermen for the same fish.

The current system has evolved not to benefit the local fishermen, cannery workers,and businesses as it was intended to do. It has evolved to benefit a privileged few.

Fair competition is good for everyone. Unfair competition only benefits the already economically advantaged.

Please feel free to call me, (206) 355-1662, if you wish to learn more about the serious problems we are facing with the way that the hatchery cost recovery system has evolved.

Please Add My Email Address to your distribution list. Thank You.

12:00

RECEIVED
5-7-05
NOON

email: gfandrei@ciaanet.org

FACSIMILE COVER SHEET

This transmission consists of 1 pages including cover page.

Fax To: Senator Thomas Wagoner

Attn: _____ FAX No : 465-4779

From: Gary Fandrei

Remarks: Senator Wagoner I wanted to let you know that I have been following HB 218 on hatchery cost recovery. I initially felt the concept of the bill was good, but had some reservations concerning the specific language in the bill. That language has now been cleaned up and I feel much more comfortable with the passage of this bill. It would provide an option for CIAA cost recovery harvests in lower Cook Inlet. I have also heard from 2 CIAA board members that feel there may be some merit in a cost recovery harvest conducted under the terms of this bill. However, please note the CIAA Board of Directors has not taken a position on this bill.

Gary Fandrei 5-7-05

ICICLE.

May 6, 2006

Senator Tom Wagoner, Chairman
Senate Resources Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Chairman Wagoner and Committee Members,

I am writing to express our support for CS HB 218 relating to cost recovery fisheries for private nonprofit hatchery facilities.

As a major salmon processor with operations in Petersburg, Seward and Bristol Bay we believe this legislation is good for all the salmon industry stakeholders. It will provide another option for nonprofit hatchery boards to consider as a means to cover the expenses for their facilities and operations.

This legislation provides a tool that hatcheries may employ to enable all salmon permit holders to participate in the harvest of surplus salmon produced by the hatcheries in terminal harvest areas. In addition, all processors will have an opportunity to purchase this salmon from the fleets. Currently, only those harvesters and processors that are successful in their pre-season bids to the hatcheries for the cost recovery fish are able to participate. If used, this option would allow more fishing time for the fleets and provide fish to all processors while still covering hatchery expenses.

We believe this option should be made available to nonprofit hatchery facilities and request your support for CS HB 218.

Sincerely,
ICICLE SEAFOODS, INC.

Kris Norosz
Government Affairs

PETERSBURG FISHERIES
A DIVISION OF ICICLE SEAFOODS, INC.
P.O. Box 1147 • Petersburg, AK 99833 • Tel: 907-772-4294 • Fax: 907-772-4472

The Alaska State Senate
Gig Decker, Wrangell Alaska.

Dear Senators, I'm writing in support of HB218.

I have fished Salmon in Alaska continuously for 33 years. I appreciate the hatchery system very much but feel the cost recovery system is becoming obsolete.

These hatcheries were created for the harvesters, now they are becoming an industry of their own. In the event they become bankrupt, the harvesters will continue to pay off the debts even after the fish stop being produced. Most fishermen I speak to want to participate in these fisheries and figure out some kind of assessment to cover costs. Many processors resent the loss of opportunity also.

The efficiency argument has gone both ways. In some cases the cost recovery drives down prices of fish like chums. This has been documented many times. How does this figure into the price per pound to harvest cost recovery?

The critical factor here is having the flexibility to use either system, which the present proposed legislation would do. The bottom line is the question of whom these hatcheries are for and who should decide on their financing.

We have all heard the pros and cons and they go on forever. What concerns me here is that I'm approached by harvesters and processors alike on a regular bases about this. They have been overwhelmingly for this legislation.

Personally, I want the hatcheries to raise the fish, I want to catch them, and I'll pay the bills. This may lead to more realistic views of some operations. The present cost recovery system is fueling the anti-hatchery debate and this may prove to be the most damaging factor of all.

Gig Decker, Wrangell Alaska

Alaska State Senator HB 218 Page 1 of 1

From: Eric & Sarah Jordan
To: lar_Flek@legis.state.ak.us
Cc: seafa@gci.net, Andrew Friske, Mike Blewett, Howard Pendell, Bob Thorstenson
Subject: Alaska State Senator HB 218
Date: Wed, 04 May 2005 18:23:52 -0800 (Alaskan Standard Time)
Files: Alaska_State_Senator_HB_218.doc (24K)

[Unable to display image]

Alaska State Senator
State Capitol Building
Juneau, Alaska 99801-1182

Sitka, AK
May 4, 2005

Dear Senator,

I have looked at HB 218. This letter is to urge you to pass this legislation this year. I am a lifelong Alaska fisherman. I also have a fisheries technician certificate from Sheldon Jackson College where I worked at that hatchery. I helped organize the Northern Southeast Regional Aquaculture Association in 1977-78 as a paid organizer. I have been active in attending NSRAA meetings for many years. A big part of my troll income comes from NSRAA chums, chinook and some coho.

I am very supportive of NSRAA and especially its fine staff like Pete Esquiro and Steve Reifenstuhl. I also strongly support HB 218. I have come to believe that we made a fundamental error when we organized the aquaculture associations to take over ocean ranching technology in Alaska. That error was to set up salmon harvest entities outside of the common property fisheries.

I have come to believe that cost recovery operations in SE Alaska depress the common property fisheries market value and common property fishing opportunities to the extent that it is a big problem for the fishing groups. Just last year we lost our long time troll chum market here in Sitka because the processor was swamped with cost recovery chums.

Years ago when I was organizing NSRAA I assured fishermen that cost recovery operations would be controlled by the fishermen on the board of directors of the association and would not be encroaching on common property fishing areas. About 20 years later I was a common property fisherman fishing outside a designated cost recovery area when NSRAA got an emergency order from ADF&G to allow them to fish outside their designated area and right in front of me and other common property trollers. It has been a constant battle ever since to contain cost recovery operations and preserve the common property opportunity we need to be viable. Fortunately in Sitka, in part because of an enlightened and creative staff at NSRAA, we have been able to work things out the last few years.

Nevertheless I see HB 218 as enabling legislation that will give fishermen and hatchery associations a tool to use if they decide they want to. More importantly it will lead to engaged discussions of the problems and those discussions and the possibility of using this legislation will make the hatchery managers more sensitive to common property fisheries. I don't see any downside to the legislation. I urge you to pass it this session.

Sincerely,

Eric Jordan
F/V I Gotta
103 Gibson Place
Sitka, AK 99835

Senate Resources Chairman Wagoner
Alaska State Senate
State Capitol Building
Juneau, AK 99801-1182

May 6, 2006

Dear Chairman Wagoner

SEAS(Southeast Alaska Seiners Association) is a group of small boat commercial fishermen asking you to support a quick hearing for HB218. We believe that this is an important piece of legislation that needs to move forward as soon as possible.

Traditional cost recovery has been one of the few available options to recover expenses and pay for hatchery operations. The fishing community has been working hard for years to come up with a different approach. Indeed HB218 is very similar to the legislation passed by this body in 2004 with respect to cost recovery. The difference with that piece of legislation is that in this case only the users or "harvesters" who catch the fish actually pay the assessment. 2004's Senate legislation would have mandated all users within similar geographic districts, which would have meant that fishermen would be paying for fish that others were catching and paying hatchery taxes on wild-stock salmon.

HB218 has a zero fiscal note. As stated in the bill, it is our intent to pay any additional costs the program may entail, such as revenue collection or other costs.

It is also important to note that this bill is permissive, allowing the hatchery operators to decide. Several hatchery associations and their Executive Directors are comfortable with the concepts and policies of this HB218, including Cook Inlet Aquaculture Association's Gary Fandrei and Armstrong-Keta's Bart Watson (located in Southeast Alaska). DIPAC, SSRAA and PWSAC have all discussed and opted to not oppose HB218. If this was bad hatchery policy, there would be rampant opposition rather than the small, local opposition that we are experiencing from NSRAA.

But we would especially encourage you to recognize that fishermen broadly support this as evidenced by support from Kake Seiners Association, Petersburg Vessel Owners Association, and the United Fishermen of Alaska. Thank you again for your urgent consideration of HB218.

Respectfully yours,

Bob Thorstenson, Jr., Executive Director, SEAS

PO Box 23081, Juneau, AK 99802 ✆ 907-463-5030 ✆ Fax: 907-463-5083

Senate Resources Committee — April 5, 2006

HB 218 Sponsor Packet

Cover Sheet _____ 1 page

Sponsor Statement _____ 1 page

CS HB 218 (FIN) (HB0218d) _____ 4 pages

Fiscal Notes:

- 4-3-06 DOC _____ 1 page
- 4-04-06 ADF&G _____ 1 page
- 4-04-06 DOR _____ 2 pages
- DPS ---- have not received new one as of 4-04-05

Opposition

- SE Regional Aquaculture Association, Inc. (4-04-06) _____ 1 page
  - Analysis of Operational & Legal Issues _____ 3 pages
  - Why HB 218 is Bad Public Policy _____ 2 pages

Support Documents:

- Email – File, Kate April 4, 2006 _____ 2 pages
- Letter - UFA April 3, 2006 _____ 2 pages
- Email - Bertoson, Terry (5-09-05) _____ 1 page
- Fax - Fandrei, Gary (5-7-05) _____ 1 page
- Letter – Icicle (5-06-06 … note should be 2005) _____ 1 page
- Fax – Decker, Gig (5-06-05) _____ 1 page
- Email – Jordan, Eric & Sarah (5-04-05) _____ 1 page
- Letter – SE Alaska Seiners (5-06-05) _____ 1 page

TOTAL PAGES: _____ 26 pages

REPRESENTATIVE BILL THOMAS
ALASKA STATE LEGISLATURE DISTRICT 5
e-mail: Representative.Bill.Thomas@legis.state.ak.us webpage: www.akrebulicans.org/thomas/

State Capitol
Juneau AK, 99801-1182
907-461-3732
888-461-3732
FAX 907-465-2652

Sponsor Statement
HB 218

"An Act relating to cost recovery fisheries for private nonprofit hatchery facilities"

Salmon hatcheries in Alaska continue to be positive contributors to the economic development of coastal regions. Over the years, hatcheries have provided great benefit to the commercial fishing industry and to other users of fish by enhancing the strength of salmon returns and by creating jobs in our communities. The commercial salmon industry has paid into this program through the Salmon Enhancement Tax since 1980.

HB 218 relates to the methods by which hatcheries generate revenue to cover their operating and capital expenses. These methods are referred to as "cost recovery." Under current practices, hatcheries contract with processors to purchase part of the returning run of fish that are caught in areas known as Special Harvest Areas immediately in front of hatcheries or at remote release sites where enhanced runs of fish have been developed. Typically only a handful of commercial vessels actually participate in the harvest of these cost recovery fish.

HB 218 provides language that would allow hatchery operators to choose to recover their costs through fisheries open to commercial fishermen, allowing the fleet to access more fish. In return for this increased access, the industry would pay an assessment of up to 50% of the value of the fish to ensure that the users of the resource continue to pay for the costs of the hatcheries. Hatcheries were created to enhance the natural production of salmon so that the common property users would have a more abundant resource to harvest. The hatchery system should work toward the goal of minimizing the amount of fish that hatcheries sell directly to processors. However, because each hatchery has a unique financial situation, this alternative type of cost recovery will not be immediately applicable to all hatcheries. For this reason, HB 218 merely provides permissive language. It in no way will force a hatchery to change its current practices.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: CS HB 218 (FIN)
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Commerce
Title: Private Hatchery Cost Recovery Fisheries
RDU: Investments (122)
Component: Investments
Sponsor: Thomas
Requester: Senate Resources
Component No.: 383

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0 0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This legislation would allow private non-profit aquaculture associations to use a new method of conducting their cost recovery operations. Although the Alaska Division of Investments (division) provides financing to private non-profit aquaculture associations under the Fisheries Enhancement Revolving Loan Fund, the associations make all cost recovery decisions without input from the division. As a result this bill will have no fiscal impact on the division.

Prepared by: Greg Winegar, Director — Phone: 907 465-2510
Division: Investments — Date/Time: 4/3/06 11:03 AM
Approved by: William C. Noll, Commissioner — Date: 4/3/2006
Agency: Commerce, Community, and Economic Development

(Revised 9/7/2005 OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Not ..umber:
Bill Version: CSHB 218(FIN)
() Publish Date:

Revision Date/Time (Note if correction):
Dept Affected: Fish and Game
Title: Private Hatchery Cost Recovery Fisheries
RDU: Commercial Fisheries
Component: SE, Central, and Westerward Regions Fish Management
Sponsor: Representative Bill Thomas
Requester: Senate Resources Committee
Component No.: 2167, 2168, 2170

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This legislation is enabling legislation and creates no additional expenses for the Alaska Department of Fish and Game (ADF&G). The promulgation of the regulations required by this legislation is already covered by ADF&G's existing budget. A zero fiscal note assumes that ADF&G will not be conducting hold inspections and that the reporting of harvests and sales taken within the special harvest area will be accomplished through the existing fish ticket catch reporting system.

Prepared by: Sarah A. Gilbertson, Legislative Liaison
Phone: 465-6137
Division: Commissioner's Office
Date/Time: 4/4/06 12:53 PM
Approved by: Commissioner McKie Campbell
Date: 4/4/2006
Agency: Alaska Department of Fish and Game

(Revised 9/7/2005 OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: CSHB 218 (FIN)
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Revenue 04
Title: Private Hatchery Cost Recovery Fisheries
RDU: Tax and Treasury
Component: Tax
Sponsor: Rep. Thomas
Requester: Senate Resources
Component No.: 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	*	*	*	*	*	*

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2006) cost: 0 0
Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

See page 2

Prepared by: Tim Cottongim/Nels Tomlinson
Phone 465-2320
Division: Tax Division
Date/Time 4/4/06 1:45 PM
Approved by: Jerry Burnett, Administrative Services Director
Date 4/4/2006
Agency: Revenue

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. CSHB 218(RES)

ANALYSIS CONTINUATION

This bill authorizes hatchery permit holders to recover costs using an assessment against special common property fisheries in lieu of cost recovery harvests. Revenue is charged with setting the assessment rate, not to exceed 40%, in consultation with the Department of Commerce, Community, and Economic Development, the hatchery permit holder, and commercial fishermen. Licensed fisheries businesses and participating commercial fishermen remit the assessment to Revenue under regulations that would be adopted.

Our interpretation of the bill is that it does not authorize Revenue to enforce an assessment. Revenue will not perform audits or otherwise pursue compliance with an assessment. The assessment is not subject to the administrative provisions of Title 43 that includes penalties, interest, assessments and limitations on assessments, or appeal rights and procedures. The department's authority is restricted to setting the assessment rate, receiving payments, and accounting.

Cost Discussion
Our costs are indeterminant because we cannot predict the number, if any, or complexity of common property cost recovery fisheries that will arise under the bill.

Receipt & Accounting
We are unable to predict the actual number of fisheries that can be handled using existing resources. We estimate that we can receive and account for 2 to 3 common property cost recovery fisheries using existing resources. It is possible, depending on the number of taxpayers per fishery and the complexity and timing of accounting and distribution requirements, that we could receive and account for additional fisheries using existing resources.

Rate Setting
We are unable to predict the cost of setting rates under the bill. The time and expense attributable to rate setting will be influenced by the knowledge, experience, contributions by the participants, the financial and operational status of the hatchery permit holder, and other factors specific to each fishery and hatchery permit holder. We expect to incur travel expenses with respect to hatcheries and interest groups who are testing the waters as well as for any cost recovery fisheries that actually take place. We are unable to anticipate the level of demand for services associated with rate setting activities, however, the successful establishment of a fishery under the program may not be possible without dedicated staffing. There are currently 31 hatcheries in the state. If more than 3 hatcheries elect to become common property cost recovery fisheries, Revenue projects a need for 1 to 2 additional Tax Auditor positions, along with funding for travel.

Revenue Discussion
We are unable to predict the number of cost recovery fisheries that will arise under the bill or receipts associated with a fishery.

NORTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION, INC.

(907) 747-6850 1308 SAWMILL CREEK ROAD SITKA, ALASKA 99835 FAX (907) 747-1470

April 4, 2006

Senator Thomas Wagoner, Chairman
Senate Resources Committee
Alaska State Senate
Alaska State Capital
Juneau, Alaska

Dear Senator Wagoner:

In preparation for the April 5th meeting of your Senate Resources Committee, at which HB 218 will be heard, I have enclosed two documents for your review. One document entitled "Why HB 218 is Bad Public Policy" is presented as a means of sharing with the Committee our general view of HB 218 and why it should not be passed in its present form. The second document entitled "HB 218- Analysis of Operational and Legal Issues", attempts to document many of the more specific issues which we feel need to be worked through before passage.

I want to thank you and the Senate Resources Committee for taking the time to hear our point of view concerning HB 218. Mr. Kevin McDougall, President of the NSRAA Board of Directors, and Ms. Deborah Lyons, Sec. /Treasurer of the NSRAA Board will be testifying for NSRAA, via teleconference. Thanks again for your consideration.

Sincerely,

Pete Esquiro
General Manager

Enclosures
c.c. Senator Bert Stedman

HB 218
Analysis of Operational and Legal Issues

HB 218 creates a process that would subject Regional Non-profit Hatchery Associations and fishermen to a very complex government process. The proposed process is riddled with problematic terms that invite disputes, lawsuits, and confusion. The high cost of implementing this bill will result in lowered revenues to the non-profit and the commercial fishing fleets.

1) The Bill creates special definitions of "special harvest area" and "terminal harvest area" that do not seem consistent with other definitions in existing statutes and regulations. This seems likely to cause problems. Further research is needed to define how this bill would impact current definitions and practices the industry uses for terminal special harvest areas.

2) The "rate of assessment on harvest mechanism" in HB 218 has a fundamental problem. The underlying premise of the language in the bill is that each hatchery is a stand-alone economic unit. Regional hatchery associations are complex businesses that have many sources of revenues, many sources of expenses and many sub business enterprises. These revenues and expenses fluctuate over time, especially with natural fluctuations in salmon survival and market fluctuations in value.

3) The rate of assessment section does not allow the nonprofits to retain funds for future expansions and other programs. All nonprofits have some programs that may not be self funding, based on their individual cost recoveries. This provision should be added to the list of allowed uses for funds.

If this approach had been taken, historically, non-profits would have never been able to expand. This provision will prevent non-profits from making investments in new projects and technologies that will produce additional salmon for the common property fisheries.

4) The bill has a general lack of definition of important financial terms that will be utilized by the Department of Revenue, in setting the assessment rate. These terms must be defined so that non-profits can predict and plan their futures accurately. The definitions of these words used by non-profits might be quite different from meanings State agencies use. Terms that should be defined include:

- Revenue, operating cost, operating reserves, depreciation, capital replacement, capital reserves, equipment upgrade, research, run forecasting
- Another expense category that is not clearly included is depreciation. This starts to get at the issue of capital replacement.
- The bill allows the Department of Revenue to take assessment revenues to cover their collection and implementation costs. This needs to be added to the list to ensure the assessment rate is high enough to cover this "cost".
- Beyond this is the general business issue of upgrading technology and installing new equipment for efficiency, higher productivity or higher survival. As labor costs and inflation in general increase it is necessary to upgrade whenever new technology becomes available. The definitions need to provide for these conditions also.

- "Reasonable" (as in reasonable operating costs) needs to be clearly defined. Letting the department determine "reasonable" with its lack of experience in operating fish hatcheries would be problematic.

5) HB 218 creates a process of multiple steps with several State agencies. There are no time lines. If this process is to be utilized there would have to be some required timely decisions by State agencies so that non-profits, processors and fishermen all have certainty on the fishing plan for the upcoming year.

The bill as currently drafted fails to establish any timelines or deadlines.

6) Providing provisions for fishermen to not sell to licensed buyers removes the non-profits ability to easily collect and enforce collection of assessment. With a high assessment fishermen would have very large incentives to "sell" to unlicensed buyers.

It is our understanding that the Department of Revenue has historically opposed prior requirements to collect directly from fishermen. They don't have the manpower or the budget. If the department is unwilling to collect funds from fishermen the only choice for collection would be to require fishermen to sell to licensed buyers.

7) The Fish and Game Commissioner is required to find that there are no allocative issues. Further he/she is required to have "reasonable consultation with affected commercial fishermen" and the "organizations of affected commercial fishermen". These provisions are vague and undefined. They provide the potential for disputes, protests to the State, and lawsuits. More specificity should be included to prevent abuse of these provisions.

Later in the Bill a similar problem is created with the mandate that the Dept. of Commerce consult with "representatives of affected commercial fishermen". Who are these "representatives"?

This requires a definition and a process to alleviate these problems. The Commissioner needs to know the "organizations of affected commercial fishermen" and "representatives of affected commercial fishermen" have been chosen through some type of process that is democratic and public. There needs to be a time or date certain for their input. The group or organization has to be in existence and choose their representative prior to the beginning of the process of implementing provided in the bill.

There has to be certainty on who has standing to challenge the ruling of the Commissioner in court and on what basis the challenge can be made, or there will be chaos.

One really has to ask what the point of the regional non-profits having representatives of all the user groups on their board, communicating with members and conducting other outreach activities, are for? This essentially allows an entire parallel process for fishermen and fisher organizations to give comments on cost recovery plans.

8) As we know, there are biological surprises in run returns and unpredicted market prices. The process in the bill for assessments has no flexibility like the current system. There needs to be flexibility built into the mechanism. If the run comes in much weaker than predicted or if salmon prices are dramatically different than predicted, the non-profit should be provided some mechanism to alter the assessment rate or harvest plan.

Regional non-profits have this in season flexibility now and they should not give it up. This lack of flexibility could undermine the financial stability of the regional non-profits.

The Commissioner of Fish and Game has authority to operate under "Emergency Order" (EO's) to manage in season fisheries. It is not clear that the Commissioner of Revenue will have similar authority under this legislation to issue "EO's" to either increase or decrease the assessment rate based on the in season run strength or catch rate.

No provision is made for the scenario where the run size exceeds the catching capacity of the fishermen. The non-profit should have flexibility to deal with this occurrence.

9) If the Department of Revenue should be allowed to take cost recovery funds for their budget, the bill should be amended to put a limit on the Department of Revenues expenses. Leaving this open ended invites the State to be inefficient and just treat this as a cost-plus activity. Neither the non-profits nor fishermen would have any way to audit the "reasonableness" of these costs.

Federal and State agencies that have been allowed to "recoup their costs" by their own edicts have historically abused these authorities and costs have become unreasonable.

10) The Dept of Revenue shall "consider" several other factors such as run size and price. Is the department going to do their own research? Are they going to get the information from fishermen? As we know there is always a huge range of run size possibilities and salmon prices. With experience, non-profits have learned to correctly interpret this range of data. The State does not have this experience for non-profit hatcheries.

Since the Department of Fish and Game does not make "hatchery" salmon run forecasts the non-profits are the only logical party to do this. The State is not in a position to judge what is reasonable on these factors.

An alternative: *If the bill sponsors want to insist that the Department of Revenue will determine the assessment level, instead of the hatchery operator, then the State needs to be responsible for any revenue short fall.*

11) The Bill requires these special assessment funds be deposited to the State and await the Legislative and State budget process. This will cause a one year delay in cash flow to the non-profits. In the long-term this may not be a problem, but in the initial startup non-profits will lose one year of funding. There is no requirement that interest be earned on these special assessment funds and passed on to the non-profits.

12) Also, with a special high assessment rate it would be essential that fishermen be required to offload their catch before proceeding to any other fishery, so that processors would clearly know to charge the special assessment rate. There would need to be an enforcement mechanism.

Why HB 218 is Bad Public Policy

HB 218 is a reversal of long standing, successful public policy on how to best build and operate salmon hatcheries in Alaska. No "problem" is actually solved by the bill. While it is unclear that any regional non-profit hatchery association would ever use the mechanism created by HB 218, there is a presumption that the State creates new laws for a purpose.

A Successful State Policy

The private non-profit hatchery program was developed in the 1970's as a major component of the overall State effort to rebuild the salmon industry. The State concluded that the experience of government built and operated hatcheries in other jurisdictions had been very problematic and was the wrong direction for Alaska. Government built, operated and managed hatcheries suffered from myriad problems, including very high costs, very low productivity, disease problems, diminishment of wild stocks, lack of accountability to user groups, and out of date technology.

Alaska constructed a unique program building off of the successes and failures of other models for salmon hatchery programs. The private sector was nominated to build and operate hatcheries and to be accountable to a bottom line that mattered to the primary user group – commercial fishermen. Other user groups were given a voice, but were not required to fund the hatcheries. The State retained several roles – financier, regulating genetics, site location, disease and other areas that would protect the public interest and the health of the fishery resources.

The non-profit hatchery program has fulfilled the vision of the founding legislation. State hatcheries in many cases have been turned over to the non-profit sector to reduce the burden on state finances and to ensure more efficient operations. The State has fulfilled its roles of regulating the hatcheries to protect the public interest and fishery resources.

Nonprofit hatcheries are founded on principles that have worked well in our country – democratic and local control. All user groups participate and management is at the local level where local knowledge is the greatest. This has provided a forum for fishermen on a local level to participate and address their concerns, without appealing to a distant bureaucracy or requiring the Legislature to act to solve local problems. This system has allowed fishermen to pursue different enhancement strategies in different areas of the state, to fit local conditions, versus a one size fits all government solution.

HB 218 – A New Direction

SCS CSHB 218 dictates a major shift in State policy for the non-profit hatchery program. The Bill calls for a complex process involving four state agencies – Board of Fisheries, Department of Revenue, Department of Commerce and Economic Development, and Department of Fish and Game – to determine and regulate the harvest of salmon returning to non-profit hatcheries. This will inevitably destroy private sector efficiency and flexibility that has been the hallmark of the non-profit hatchery program. Passage of this bill will be a clear message to all fishermen and user groups that they should petition the State Government and the Legislature when they don't approve of the operations of a non-profit hatchery.

2, Why HB 218 Is Bad Public Policy

Fishermen can expect to pay for the increased State management of their hatcheries. The Bill takes the first step in this direction by allowing the Department of Revenue to collect a share of the returning salmon harvest to cover their costs. While State agencies may not appreciate the new regulatory burden, they will happily accept the new funding source.

SCS CSHB 218 charts a reversal of three decades of State policy that built a successful nonprofit salmon hatchery program. In place of a proven efficient private sector model, government will be substituted.

What Problem Needs Fixing?

HB 218 does not state what problem it is fixing. Supporters have represented that the bill supplies a voluntary option and "won't hurt anything" because it is voluntary. If there is a problem that the bill is trying to fix this is the most cumbersome, complex and costly way to do that. Presumably, if after the bill is passed supporters would move to the second step of pressuring for utilization of the new law. Why pass the bill unless you intend to use it.

State agencies would interpret the passage of HB 218 as a change in State policy and direction. Why would the Legislature pass a new law unless it intended for its utilization.

The Legislature wisely gave local control to fishermen and required broad democratic participation in the non-profit hatchery process. Under the current system each regional non-profit hatchery association can design flexible cost recovery systems that work best in their region. The fact that a wide variation of cost recovery methods have been tried and exist today is an indication the system is working.

Ian Fisk

From: Kate File [files@acsalaska.net]
Sent: Tuesday, April 04, 2006 2:26 PM
To: Ian Fisk
Cc: akwapsc@aol.com
Subject: HB218 testimony

Senate Chairman Thomas Wagoner
Alaska State Senate
State Capitol Building
Juneau, Alaska 99801

Dear Chairman Wagoner,

My name is Kate File, I am a commercial fisherwoman and I live in Juneau, Alaska. I am writing to you today in support of HB218.

I would like to thank you for taking the time to discuss an issue that is of such critical importance to commercial salmon fishermen.

I would like to start by stating that seven hatcheries (Southern Southeast Aquaculture, DIPAC, Armstrong-Keta, Cook Inlet Aquaculture Assoc., Kodiak Regional Assoc., Valdez hatchery, and Prince William Sound Aquaculture Assoc.) have all discussed HB218 and have not opposed it. If this bill were in any way considered threatening to hatcheries, wouldn't we see opposition across the board to this bill? This however, is not the case.

There are NOT many fishermen who would tell you that the cost recovery system needs to stay status quo. Across the board fishermen of different gear groups believe that the cost recovery system desperately needs to be changed to become more "fishermen friendly". Look at the situation from the commercial fishers point of view. We compete with hatcheries for dock space, price, processing capacity, in the marketplace and we compete for the cost recovery fish. There are many ideas as how to enact change in the current hatchery cost recovery system. This bill will only tax those commercial fishers who choose to fish in the terminal harvest areas. This is extremely important because it gives the commercial fishermen a choice to pay the tax or not and having the choice empowers the fishing sector. Just as HB218 will give the hatchery board a choice as to whether or not to enact this management option. It has always been said among commercial fishermen that the current cost recovery system MUST change in order to create some balance and fairness between the commercial and hatchery sectors.

Commercial fishermen are in favor of having options to be able to deal with a rapidly changing industry. This being said if HB218 were to pass, this would just be